A

CONCISE TREATISE

ON THE

LAW OF CORPORATIONS

HAVING CAPITAL STOCK:

INCLUDING

MANUFACTURING CORPORATIONS AND BUSINESS CORPORATIONS,

Insurance Companies, Guaranty Companies, Banks, Safe Deposit Companies, Trust Companies, Railroad Companies, Plank-Road Companies, Gas-Light Companies, Bridge Companies, Telegraph Companies, Navigation Companies, Building Companies, Elevator Companies, Ferry Companies, Guano Companies, Park Associations, Stage-Coach Companies, Homestead Companies, Water-Works Companies, Hotel Companies, Pipe-Line Companies, Tramway Companies,

AND THE

RIGHTS AND LIABILITIES OF STOCKHOLDERS AND OFFICERS.

NEW YORK CASES AND STATUTES.

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PREFACE.

THE object of this work is to present, in a concise form, a guide to all the general laws regulating the organization and management of stock corporations in the State of New York.

With the passage of the Business Act in 1875, and the act for the formation of safe-deposit companies, passed the same year, it became possible to organize a corporation under the general laws for any purpose except that of transacting the business of trust companies. This omission was supplied in 1887 and a corporation may now be formed under the general laws for the purpose of carrying on any lawful business.

The Manufacturing Act of 1848 and the Business Act of 1875 are the ones under which a large proportion of all the corporations of this state are organized, and these acts consequently receive a fuller treatment than is given to others. The laws pertaining to banks, insurance companies, railroads, etc., are considered so far as they regulate the organization and management of corporations formed under them as *corporations*,—the mass of rules and regulations affecting such companies simply as transacting the business provided for in the above acts being omitted.

By thus limiting the scope of the work, it becomes possible within a moderate compass to consider the whole body of the statute law of this state affecting corporations, as such, and the interpretation which the courts have placed upon such statutes. It will be found, by arranging the subjects under topical headings, that the laws may be grouped

into comparatively few classes. Thus the Manufacturing Act is the type upon which many of the later acts have been formed, while many of the provisions of the Business Act are contained in others. By this arrangement repetition is avoided and the substance of the different laws is given, in connection with the decisions construing or affecting all statutes of a similar nature.

The liabilities of directors and trustees, and the rights and liabilities of stockholders, are subjects of the greatest importance to every one bearing such relations to corporations. These rights and liabilities are almost wholly created by statute, and consequently are but slightly touched upon in works on general corporation law, or in those which treat of the general liabilities of officers and stockholders. The endeavor has been to give these subjects the consideration their importance entitles them to, and to set forth clearly and concisely the rights and liabilities of stockholders and officers in the corporations of this state, as fixed by the statutes and interpreted by the courts.

Other subjects, such as the provisions regulating legal actions and proceedings, taxation, and dissolution, are generally governed by the codes and the statutes, and affect all corporations equally, and, therefore, are not generally included, at any length in works treating of special corporations.

While avoidlng all needless repetition, the language of the statutes has been followed as closely as possible, and in addition to the statements of the law in the body of the work, the acts for the formation of manufacturing corporations and business corporations, and the franchise tax act are given in full, in the appendices.

In the collection of cases no attempt has been made to multiply citations, but rather to select, so far as possible from the latest decisions of the Court of Appeals, those cases which establish or define the principles of the law governing corporations or construing statutory provisions; and it is

believed that no such case has been omitted. When necessary, however, to elucidate or explain principles so established, and upon questions that have not been passed upon by the Court of Appeals, the decisions of the lower courts have been fully cited.

C. T. H.

NEW YORK, June 10, 1890.

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ART. V. RAILROAD AND CONSTRUCTION COMPANIES.
ART. VI. MISCELLANEOUS CORPORATIONS.
ART. VII. GENERAL PROVISIONS.

THE Constitution of the State of New York provides that corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation cannot be attained under general laws.[1]

Under this provision general laws for the organization of corporations for different purposes have, from time to time, been passed, until, in 1875, previous legislation was supplemented by a law so broad in its scope[2] that corporations may now be organized under the general laws for the purposes of carrying on any lawful business.

A corporation for any given purpose may often be organized under one of several different acts. Thus a corporation for manufacturing purposes may be organized under the law of 1848[3] or under the Act of 1875 above referred to, and the various considerations of the different

[1] Article VIII., sec. 1.
[2] Laws of 1875, chap. 611.
[3] Laws of 1848, chap. 40.

liability of stockholders, publicity of corporate transactions, restrictions as to incorporators, etc., will guide the practitioner in his selection of the law (where a choice is afforded) under which he will organize.

Prior to the adoption of the Constitution of 1846, several acts for the organization of corporations for specific manufacturing purposes were passed,[1] but these will not be considered here, as, even if still in force, they are practically obsolete.

ARTICLE I.

Manufacturing Corporations.

The Act of 1848, "to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,"[2] from the time it was passed until 1875 remained the most general law for the formation of corporations in the state, and under it by far the greater number of corporations have been organized. It still continues, on account of the facility it offers for the organization of companies, the liberality of its enactments, and the certainty of its provisions arising from forty years of judicial construction, not only one of the most important, but the one that is, perhaps, generally preferred for the organization of those corporations whose purposes admit them to its provisions.

Under this act, a corporation may be organized for any one of the following purposes:

Manufacturing, Mining, etc.—Carrying on any kind of manufacturing, mining, mechanical or chemical business.

Printing and Publishing.—The business of printing, publishing or selling books, pamphlets or newspapers, or advertising the same or other articles.

[1] Laws of 1811, chap. 67; Laws of 1815, chaps. 47 and 202; Laws of 1816, chap. 58; Laws of 1817, chap. 223; Laws of 1821, chap. 14.

[2] See App. A (*post*), where the act is given in full.

Real Estate Business.—Purchasing, taking, holding and possessing real estate and buildings, and selling, leasing and improving the same.

Dairy Purposes.—Making butter, cheese, concentrated or condensed milk, or any products of the dairy.

Church Sheds and Laundry Purposes.—Erecting buildings for church sheds or laundry purposes, and carrying on of laundry business.

Slaughtering Animals.—Slaughtering animals.

Towing.—Towing or propelling canal-boats, vessels, rafts, or floats on the canals or navigable rivers of the State of New York by animal or steam power.

Coal and Farm Produce.—Buying, storing, selling, or shipping coal, merchandise, and farm produce, their operations not to be confined to the county in which their certificates shall be filed.

Hot Water and Steam.—Supplying of hot water or hot air or steam for motive power, heating, cooking, or other useful applications in the streets and public and private buildings of any city, village, or town in this state.

Cattle, etc.—Buying, breeding, grazing, pasturing, dealing in and selling cattle, sheep, hogs, horses and other live stock in the United States of America, British North America and elsewhere.[1]

By subsequent legislation its provisions have been extended to corporations organized for the following purposes:

Raising Vessels.—Constructing and using machines for the raising of vessels or other heavy bodies.[2]

Collecting and Storing Ice.—Collecting, storing and preserving ice, preparing it for sale, transporting and vending the same.[3]

Mineral Water.—Bottling and selling mineral water drawn from any natural mineral spring.[4]

[1] Laws of 1848, chap. 40, § 1, as amended by Laws of 1888, chap. 313.

[2] Laws of 1851, chap. 14.

[3] Laws of 1855, chap. 301.

[4] Laws of 1863, chap. 63.

Navigation and Salvage.—Constructing, owning, and using vessels and machines to be employed for hire in towing vessels, carrying freight and passengers, and in aiding, protecting and saving vessels and their cargoes, wrecked or in distress, on any of the navigable rivers or lakes in or bordering upon the State of New York, or on the high seas, or in the various arms of the seas and rivers running into the same, with all the rights appertaining by law to private individuals performing services as salvors.[1]

Floating Elevators, etc.—For the purpose of carrying on the business of constructing, maintaining and using stationary and floating elevators or warehouses for all purposes pertaining to or connected with trade or commerce in the several kinds of grain in the State of New York.

Skating Rinks.—Purchasing a suitable lot and erecting thereon a building to be used as a skating rink, and for holding fairs, meetings, exhibitions, and all other lawful entertainments and amusements.[2]

Agricultural Purposes.—Propagating, cultivating and developing the different varieties of grape, and the manufacture of wines and brandies therefrom, and cultivating sugar-cane, cotton, rice, tobacco, indigo, and other products of the earth, preparing the same for market, and for transporting and disposing of the same.[3]

Coal and Peat.—Buying and selling and transporting coal and peat of all kinds.[4]

Residences, etc.—Purchasing, acquiring, maintaining, and improving real estate for residences, homesteads and apartment houses, to be leased and conducted by the corporation so formed, and occupied by the stockholders thereof and others.

Public Hall.—Purchasing, acquiring, maintaining, improving and managing a building or buildings which shall con-

[1] Laws of 1864, chap. 337.

[2] Laws of 1864, chap. 337, § 3, as amended by Laws of 1868, chap. 781.

[3] Laws of 1865, chap. 234.

[4] Laws of 1865, chap. 307.

tain a hall for public meetings and entertainments, and apportioning and distrib[illegible]ng the same among the stockholders and members of such corporation.

Improving Land, etc.—Filling in and improving lands.[1]

Transporting Oil, etc.—The storage, conveyance and transportation of petroleum and other oils.[2]

Dredging and Dock Building.—Constructing and using machines for dredging and filling of land and dock-building, or for the construction and operation of inland wharves and basins, and the purchase, improvement and sale thereof.[3]

Water for Mining, etc.—Accumulating, storing, conducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal and agricultural purposes.[4]

Warehouses and Elevators.—Carrying on the business and operations of owning, constructing, maintaining, using and operating warehouses, elevators, docks, wharves and basins.[5]

Railway Depots.—Purchasing, acquiring, building upon and improving real estate for union railway depots, to be leased and occupied by any railroad company or companies owning, leasing or operating a railroad within this state.[6]

News-Agencies.—Receiving, obtaining, collecting and accumulating items and matters of news, and selling, vending, furnishing and supplying the same.[7]

Water for Power, etc.—Boring, sinking, digging for, accumulating, conducting by underground pipes, conduits and

[1] Laws of 1871, chap. 535, as amended by Laws of 1881, chap. 589.

[2] Laws of 1875, chap. 113.

[3] Laws of 1875, chap. 365.

[4] Laws of 1880, chap. 85. Section 3 provides that any mining company previously incorporated may conduct this business, provided the intention to do so was specified among the objects for which it was formed; and, under section 4, if such intention were not specified in the certificate, such a corporation may avail itself of the benefit of the act by signing and acknowledging a certificate stating that it intends to avail itself of such act, and filing such certificate with the clerk of the county where the original certificate was filed and a certified copy in the office of the Secretary of State. By section 5, the city of New York is excepted from these provisions.

[5] Laws of 1881, chap. 650.

[6] Laws of 1882, chap. 273.

[7] Laws of 1883, chap. 240.

reservoirs, and furnishing water to be used for power and fire purposes.[1]

Method of Organization.—Any of the foregoing corporations may be formed by any number of persons not less than three. They must make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, two certificates in writing, in which shall be stated:

1. The corporate name.
2. The objects for which the company shall be formed.
3. The amount of capital stock.
4. The time of its existence, not exceeding fifty years.
5. The number of shares of which the stock shall consist.
6. The number of trustees, and their names, who shall manage the concerns of the company for the first year.[2]
7. The place or places where the company shall carry on its business.

One certificate must be filed and recorded in the office of the clerk of the county in which the principal place of business of the company is to be located, and the duplicate in the office of the secretary of state.[3]

Before a certificate can be filed and recorded, the fee for filing and for recording must be paid[4]; and the tax for organization, of one eighth of one per cent. upon its capital, must be paid to the state treasurer.[5]

When the certificate has been filed and recorded, the persons who have signed and acknowledged the same, and

[1] Laws of 1884, chap. 386.

[2] Corporators are the associates engaged in organizing a company. When the organization is complete their functions and liabilities cease, and then devolve upon the directors, trustees or stockholders, as may be provided in the act of incorporation. *Chase* v. *Lord*, 77 N. Y. 1.

[3] In case of the refusal of the secretary of state, for any reason, to file the certificate, his decision may be reviewed by a writ of mandamus. *People* ex rel. *Belknap* v. *Beach*, 19 Hun, 259.

[4] Laws of 1882, chap. 156, § 1, provides that the Secretary of State may charge a fee of ten dollars for filing, and fifteen cents per folio for recording, every certificate of incorporation under the Manufacturing Act.

[5] Laws of 1886, chap. 143, as amended by Laws of 1887, chap. 284.

their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by that name shall possess all the general powers of corporations.[1]

(1) **The Corporate Name.**—This act contains no restriction as to the name which may be adopted, and, provided that it is not the same as that of any existing corporation in the state, or so nearly resembling it as to be likely to deceive, any name may be chosen.

The corporation may be called a company, a corporation, an association, or by the name of a firm, or even by the name of a street and number.

(2) **The Objects for which it is Formed.**—To set forth properly the objects for which the company is formed is of paramount importance, as the certificate constitutes the charter of the company, and its charter is the measure of its powers. What that includes impliedly excludes all others. It is usually preferable, therefore, to set forth its objects in as general terms as possible and bring it within the act;[2] and if it is desirable to specify more particularly the definite objects for which it is organized, to follow the general statement by words designating such particular object.

It will ordinarily be found that the exact words of the statute confer the broadest powers.

On the other hand, it is sometimes desirable strictly to limit the corporate powers, and then, of course, the objects will be specifically designated.

(3) **The Amount of Capital Stock.**—This may be of any desired amount. It is subject, however, to a tax or license fee of one eighth of one per cent.

(4) **The Time of Existence.**—This may be for any time not exceeding fifty years.

[1] Laws of 1848, chap. 40, § 2.

[2] The objects must be confined to one of the general purposes mentioned in the section; thus manufacturing only, or mining only; but a company organized for mining need not confine its business to one metal. *People* v. *Beach*, 19 Hun, 259.

(5) **The Number of Shares.**—There is no restriction as to the number and par value of the shares.

(6) **The Number of Trustees, etc.**—There may not be less than three nor more than thirteen trustees. A majority of them must be citizens and residents of this state.

The trustees named in the certificate manage the concerns of the company for the first year, or until their successors are chosen.

(7) **The Place or Places where the Company shall carry on its Business.**—If the company is formed for the purpose of carrying on any portion of its business in any place out of the state, the certificate must so state, and must also state the name of the town and county in which the principal part of its business within the state is to be transacted; and such town and county will be deemed the principal place of business of the company.[1] If the place or places of business outside of the state are set forth with reasonable certainty it is sufficient, even if the town or county be not designated.[2]

ARTICLE II.

Business Corporations.

Under the act providing for the organization of business corporations, passed in 1875, a corporation may be organized for carrying on any lawful business except banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, or safe-deposit companies, including the renting of safes in burglar- and fire-proof vaults.[3]

[1] Laws of 1857, chap. 29, § 3.

[2] *People* ex rel. *Belknap* v. *Beach*, 19 Hun, 259.

[3] Laws of 1875, chap. 611, § 1. By Laws of 1889, chap. 422, companies organized under this act for the purpose of boring, drilling, digging or mining for natural gas, and conveying the same in pipes, etc., are authorized to lay pipes in the public

The scope of this act is best shown by noting the objects for which corporations have been formed under it.[1] Thus, not only have corporations been organized under this act for manufacturing and for mining purposes, for buying, selling and dealing in various kinds of personal property and real estate, but also for such purposes as the following: Maintaining a ferry; transacting a general mercantile and importing business; improving land, building hotels and boarding houses; publishing books, pamphlets and newspapers; purchasing bills of exchange, promissory notes and other evidence of indebtedness of nations and corporations, and selling the same; cultivating a taste for art and building and renting opera houses; transmitting messages and furnishing service, etc.; transportation of commercial commodities; buying and selling stocks, bonds, mortgages, etc.; general shipping and forwarding and transportation business; establishing telephone lines in foreign countries; soliciting business, making collections and guaranteeing payments to corporations; running cabs and hacks drawn by horses for the conveyance of passengers; gathering and distributing news to newspapers; constructing a canal (in a foreign country); erecting and maintaining a light-house (in a foreign country), mercantile agency; protecting merchants from bad debts; running stages and omnibuses; running a line of steamboats; searching and guaranteeing titles to real estate; detective business; agency business; brokerage; guaranteeing collection of claims; guaranteeing endowments.

The method of organization is quite unlike that of the organization of manufacturing corporations as shown in the last article. There must be three or more corporators, a

roads and highways, and to enter upon and acquire land, with or without the owners' consent, for the purpose of conveying natural gas.

[1] The secretary of state is required by the act to publish, as an appendix to the session laws of each year, a statement of the corporations organized under it, stating their name, principal business, etc. Laws of 1875, chap. 611, § 9.

majority of whom must be citizens and residents of this state. They must make, sign and acknowledge a certificate which shall set forth:

1. The name of the proposed corporation.

2. The object for which it is formed, including the nature and locality of its business.

3. The amount and description of the capital stock.

4. The number of shares of which such capital stock shall consist.

5. The location of the principal business office.

6. The duration of the corporation, which, however, cannot exceed fifty years.[1]

The certificate, it will be noticed, is similar to that used under the Manufacturing Act; and where the two correspond, what was said in the last article will apply to this. No directors or trustees, however, are named in this certificate; for whereas, under the Manufacturing Act, the filing and recording one certificate with the county clerk, and the duplicate with the secretary of state, completed the incorporation of the company, here filing the certificate with the secretary of state is only preliminary to the organization.

The certificate must be filed with the secretary of state, who will thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books for subscriptions to the capital stock.[2] No subscription may be received unless, at the time of making it, the subscriber pays ten per cent. of the par value of the stock subscribed for in cash.[3] The delivery of a check only is not a compliance with the statute, and creates no contract of subscription that can be enforced either by the commissioners or by the subscriber.[4] If, however, a check is delivered, and as a matter of fact is paid, it would probably satisfy the requirements of the statute and the contract

[1] Laws of 1875, chap. 611, § 3, as amended by Laws of 1890, chap. 23, § 1.

[2] Id. § 4.

[3] Id. § 5.

[4] *Excelsior Grain Binder Co.* v. *Stayner*, 25 Hun, 91.

would be complete, even did a short time elapse between the delivery and payment.[1]

When one half of the capital stock has been subscribed, a meeting of the subscribers must be called by the commissioners for the purpose of adopting by-laws and electing directors. At least five days before the meeting, a written or printed notice stating the time, place and object of such meeting must be deposited in the post-office, addressed to each subscriber at his last known place of residence.[2]

At the time and place designated in the notice, the meeting should be called to order by one of the commissioners, the license for obtaining subscriptions and the notice of the meeting read, and a chairman and secretary elected. A resolution for the adoption of by-laws should be offered and by-laws adopted. A board of directors, consisting of not less than three nor more than thirteen, should then be elected. Each director, at the time of his election and throughout his term, must be a stockholder in the company to the extent of at least five shares.[3] No other restriction is imposed.

A complete record of the proceedings of the meeting with a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen, must then be made and verified and filed in the office of the secretary of state, who will thereupon issue to the directors a certificate setting forth that said corporation is fully organized in accordance with the act. The certificate must include a copy of the original certificate, the date and place of subscribers meeting, the names of the directors elected, and a statement that all the provisions of this act have been duly observed in the organization of such corporation. Within ten days after the issuing of the certificate, a copy must be filed and recorded in the office of the clerk of the county in which the principal business office of the company is situated.[4]

[1] *Black River, etc., R. R. Co.* v. *Clarke*, 25 N. Y. 208; *Beach* v. *Smith*, 30 id. 116; *N. Y. & O. M. R. R. Co.* v. *Van Horn*, 57 id. 473.

[2] Laws of 1875, chap. 611, § 5.

[3] Id. § 10, as amended by Laws of 1890, chap. 23, § 2.

[4] Id. § 7.

Previous to filing the record with the secretary of state and the issue of the certificate by him, his fees and the organization tax of one eighth of one per cent. on the capital must be paid.

When thus organized, the corporation possesses the general powers of corporations organized under the laws of this state.[1]

ARTICLE III.

Insurance and Guarantee Companies.

Subdivision 1. Marine Insurance Companies. Any number of persons, not less than thirteen, may organize a company for the purpose of making insurance upon vessels, freights, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank-notes, bills of exchange and other evidences of debt, bottomry, and respondential interests, and to make all and every insurance appertaining to or connected with marine risks and risks of transportation and navigation.[2]

They must file, in the office of the Superintendent of the Insurance Department, a declaration signed by all the corporators, expressing their intention to form such a company. A copy of the charter proposed to be adopted must be comprised in the declaration. They must also publish a notice of such intention once a week, for at least six weeks, in a public newspaper in the county in which the company is proposed to be located.[3]

The charter, which, before the company commences business, must be approved by the attorney-general,[4] should set forth:

1. The name of the company.

[1] Laws of 1875, chap. 611, § 2.

[2] Laws of 1849, chap. 308, § 1, as modified by Laws of 1853, chap. 463, § 22; chap. 466, § 28; and by chap. 528, § 1.

[3] Id. § 3, as modified by Laws of 1853, chap. 463, § 22; chap. 466, § 28; chap. 528, § 1; and by Laws of 1859, chap. 366.

[4] Id. § 11.

2. The place where the principal office for the transaction of its business shall be located.

3. The nature of the business to be undertaken.

4. The mode and manner in which its corporate powers are to be exercised.

5. The mode and manner of electing trustees or directors (a majority of whom shall be citizens of this state), and of filling vacancies.

6. The period for the commencement and termination of its fiscal year.[1]

7. The amount of capital to be employed in the transaction of its business.[2]

After having published the notice and filed the declaration and charter, the corporators may open the subscription books to the capital stock of the company;[3] provided, however, that no company shall be organized with a smaller capital than two hundred thousand dollars, to be paid in in cash.[4]

All charters formed or extended under this act are of thirty years' duration, subject, however, to amendment or change by the legislature.[5]

After the charter has been certified by the attorney-general to the Superintendent of the Insurance Department as in accordance with the requirements of the act and not inconsistent with the constitution or laws of the state, the Superintendent of the Insurance Department will cause an examination to be made to ascertain if an amount equal, at least, to the minimum capital required by the act has been paid in, and a certificate to that effect will be filed in his office, and he will thereupon furnish the corporation a certified copy of the charter and certificate, which, upon

[1] This is now generally made December 31st to conform with the requirements of the Insurance Department in regard to annual reports. See Laws of 1861, chap. 326, § 2.

[2] Laws of 1849, chap. 308, § 10, as amended by Laws of 1867, chap. 574.

[3] Id. § 4.

[4] Laws of 1878, chap. 337.

[5] Laws of 1849 chap. 308, § 15.

being filed in the office of the clerk of the county in which the company is to be located, will be the authority to commence business and issue policies.[1]

Subdivision 2. Fire and Inland Navigation and Transportation Insurance Companies.—Any number of persons, not less than thirteen, may organize a company for the purpose of making insurance on dwelling-houses, stores and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, and the risks of inland navigation and transportation.[2]

A declaration similar to that of marine-insurance companies[3] must be filed in the office of the Superintendent of the Insurance Department, and a notice of intention published for at least two weeks in a public newspaper in the county in which such insurance company is proposed to be located.[4]

No company may be incorporated for the above purposes with a smaller capital than two hundred thousand dollars, to be paid in in cash.[5]

A majority of the directors or trustees must be citizens of the state, and each must be the owner, in his own right, of at least five hundred dollars' worth of the stock of such company at its par value.[6] With these exceptions, what has been said of the charter, etc., of marine-insurance companies will apply here.

After the examination and approval of the charter by

[1] Laws of 1849, chap. 308, § 11, as modified by Laws of 1853, chap. 463, § 22, and by Laws of 1859, chap. 366.

[2] Laws of 1853, chap. 466, § 1. Any company organized under this act for the purpose of insuring against loss or damage by the risks of inland navigation or transportation may make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportion (Laws of 1861, chap. 92). Fire-insurance companies may insure against loss or damage by lightning (Laws of 1880, chap. 452) and by wind-storms and tornadoes (Laws of 1882, chap. 218).

[3] *Ante*, p. 12.

[4] Laws of 1853, chap. 466, § 3, as modified by Laws of 1859, chap. 366, and amended by Laws of 1873, chap. 851, § 1.

[5] Laws of 1878, chap. 337.

[6] Laws of 1853, chap. 466, § 4.

the attorney-general, and its certification by him to the Superintendent of the Insurance Department, and the examination by him or his agents, at which examination the corporators or officers of such company shall be required to certify under oath that the capital exhibited is the *bona fide* property of the company, the certificates shall be filed in the office of the Superintendent of the Insurance Department, and he will deliver to such company a certified copy of the charter and of such certificates, which, on being filed in the office of the clerk of the county where the company is to be located, shall be their authority to commence business and issue policies.[1]

Subdivision 3. Life, Health and Casualty Insurance, Guarantee and Indemnity Companies.—Any number of persons, not less than thirteen, may associate and form a company or incorporation for any of the purposes specified in either of the following departments:

First Department. To make insurance upon the lives of persons, and every insurance appertaining thereto or connected therewith, and to grant, purchase or dispose of annuities and against disablement or death resulting from travelling or general accidents.

Second Departnemt. To make any of the following kinds of insurance, and to make such examinations and inspections as are hereinafter provided: first, upon the health of persons; second, against injury, disablement or death of persons resulting from travelling, or general accidents by land or water; third, guaranteeing the fidelity of persons holding places of public or private trust; fourth, upon the lives of horses, cattle and other live-stock; fifth, upon plate glass against breakage; sixth, upon steam-boilers and upon pipes, engines and machinery connected therewith or operated thereby against explosion and accident, and against loss or damage to life or property resulting therefrom, and to make inspections of, and issue certificates of inspection upon, such

[1] Laws of 1853, chap. 466, § 10.

boilers, pipes, engines and machinery; seventh, against loss by burglary or theft, or both.[1]

No company organized under this act for the purposes named in the first department is permitted to undertake either of the risks mentioned in the second department; and no company organized under this act for either of the purposes mentioned in the second department may undertake any business mentioned in the first department, nor can any such company organized since the passage of the act undertake or do more than one of the several kinds of insurance mentioned in the second department; and no company organized under this act may undertake any business or risk except as therein provided. It is provided, however, that nothing contained in this act shall affect the business of any company previously organized under the second department.[2]

A declaration signed by each of the corporators, setting forth their intentions to form a company for any one of the above purposes, and the department under which the company is intended to be formed, must be filed in the office of the Superintendent of the Insurance Department. The declaration must comprise a copy of the charter they propose to adopt, which shall set forth:

1. The name of the company.
2. The place where it is to be located.
3. The kind of business to be undertaken and the department (as shown above) by which such business is authorized.
4. The mode and manner in which the corporate powers of the company are to be exercised.
5. The manner of electing trustees or directors and officers (a majority of whom must be citizens of the state), the time of such election, and the manner of filling vacancies.

[1] Laws of 1853, chap. 463, § 1, as amended by Laws of 1889, chap. 338.

[2] Id. § 2, as amended by Laws of 1879, chap. 485, § 2.

6. The amount of capital to be employed.

7. Such other particulars as may be necessary to explain and make manifest the objects and purposes of the company and the manner in which it is to be conducted.[1]

After the approval of the declaration and charter by the attorney-general, who will certify the same and deliver it back to the Superintendent of the Insurance Department, a certified copy will be furnished to the corporators,[2] who shall then publish their intention to form such a company, for six weeks in a paper in the county in which the principal office of the company is to be located, and in such paper in the city of Albany as is designated to publish the notices and advertisements required by the Superintendent of the Insurance Department.

When such publication shall be completed the corporators are authorized to open books to receive subscriptions to the capital stock.[3]

No such company can be organized with a capital of less than one hundred thousand dollars, and no company can commence business until it has deposited with the Superintendent of the Insurance Department the sum of one hundred thousand dollars in such securities as are required by the act.[4]

Upon depositing the requisite amount of capital, the Superintendent of the Insurance Department will furnish the corporation with a certificate of such deposit, which, with the certified copy of the declaration and charter, when filed in the county clerk's office of the county where such company is to be located, will be the authority to commence business and issue policies.[5]

[1] Laws of 1853, chap. 463, § 3, as amended by Laws of 1879, chap. 485, § 3.

[2] Id. § 4, as modified by Laws of 1859, chap. 366.

[3] Id. § 5, as modified by Laws of 1884, chap. 133, and by Laws of 1885, chap. 262.

[4] Id. § 6, as amended by Laws of 1862, chap. 300, § 2, as modified by Laws of 1865, chap. 328, § 2; and as amended by Laws of 1881, chap. 560, § 1.

[5] Id. § 7.

Every charter of a company organized for any of the above purposes continues until repealed.[1]

Subdivision 4. Title Guarantee Companies.—A corporation may be organized for the purpose of examining titles to real estate, of procuring and furnishing information in relation thereto, and of guaranteeing or insuring bonds and mortgages, and the owners of real-estate and others interested therein against loss by reason of defective titles and other incumbrances of or upon such real estate.[2]

The corporators, who must be at least five in number and a majority of whom must be citizens of the United States and residents of the county in which the company is proposed to be located, must make a certificate, signed and sealed and duly acknowledged by each of the corporators, which shall set forth:

1. The name of the proposed corporation.

2. Their intention of forming a corporation for the purpose of examining titles of real estate and guaranteeing and insuring the same, and bonds and mortgages, as expressed above.

3. The amount and description of the capital stock.

4. The location of the principal business office.

5. The duration of the corporation, which however shall not exceed fifty years.[3]

The certificate must be filed in the office of the Superintendent of the Insurance Department, and he will thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books of subscription to the capital stock of such corporation, at such times and places as they may determine.[4]

The commissioners may then proceed to open books for subscription to the capital stock of such corporation; but no subscription shall be received unless, at the time of making

[1] Laws of 1853, chap. 463, § 20.
[2] Laws of 1885, chap. 538, § 1.
[3] Id. § 3.
[4] Id. § 4.

it, the subscriber pays ten per cent. of the par value of the stock subscribed for, in cash.

When one third of the capital stock has been subscribed, the commissioners must call a meeting of the subscribers, by a notice in writing mailed to each at his last known place of residence, at least five days before the time fixed for such meeting, designating therein the place and object of the meeting, for the purpose of adopting by-laws and electing trustees and directors.[1]

The directors may not be less than five nor more than thirteen in number, and each director at his election and throughout his term of office must be a stockholder in the company to the extent of at least five shares.[2]

Within ten days after such subscribers' meeting, the commissioners must file in the office of the Superintendent of the Insurance Department a verified record of the proceedings, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen, and thereupon the Superintendent will issue to the directors a certificate setting forth that such corporation is fully organized in accordance with the act.

The certificate will include a copy of the original certificate, filled by the corporators in the office of the Superintendent of the Insurance Department, the date and place of the subscribers' meeting, the names of the directors elected, and a statement that all the provisions of this act have been fully observed in the organization of such corporation.

Within ten days after the issuing of this certificate, a copy must be filed in the office of the clerk of the county in which the principal business office of such corporation is situated, and upon such filing the incorporation is complete.[3]

No such corporation may be organized with a smaller capital than one hundred and fifty thousand dollars, nor with

[1] Laws of 1885, chap. 538, § 5.
[2] Id. § 7.
[3] Id. § 9.

a capital exceeding one million dollars; and the capital must be divided into shares of one hundred dollars each.[1]

Subdivision 5. Credit, Guarantee and Indemnity Companies.—Any number of persons not less than eleven may associate and form an incorporated company for the following purposes: To guarantee and indemnify merchants, manufacturers, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them.[2]

They must file in the office of the Superintendent of the Insurance Department a declaration signed by each of them, expressing their intention of forming a company for the purpose of transacting the business of guaranteeing and indemnifying persons giving credit to those doing business with them from loss by reason thereof, as expressed above. The declaration must also comprise a copy of the charter proposed to be adopted.[3]

The charter should set forth:

1. The name of the company.

2. The place where the principal office for the transaction of its business shall be located.

3. The nature of the business to be transacted, as set forth above.

4. The mode and manner in which the corporate powers granted are to be exercised.

5. The mode and manner of electing directors and filling vacancies.

6. The periods of commencement and termination of its fiscal year.

7. The amount of capital employed in the transaction of its business.

Each director must be an owner in his own right of at

[1] Laws of 1885, chap. 538, § 10.
[2] Laws of 1886, chap. 611, § 1.
[3] Id. § 2.

least one thousand dollars' worth of stock of such company, at its par value.[1]

No company may be incorporated under this act in the city or county of New York, or in the county of Kings, with a smaller capital than one million dollars, nor in any other county of the state with a smaller capital than five hundred thousand dollars.[2]

No such company shall commence business until at least twenty-five per cent. of the capital has been paid in, nor until it has deposited with the Superintendent of the Insurance Department the sum of one hundred thousand dollars.[3]

ARTICLE IV.

Banking, Safe Deposit, and Trust Companies.

Subdivision 1. Banks.—Banks of discount and deposit may be organized with a capital of not less than one hundred thousand dollars, and in places not exceeding thirty thousand inhabitants with a capital of not less than fifty thousand dollars; and in places not exceeding six thousand inhabitants, with the approval of the Superintendent of the Banking Department, they may be organized with a capital of not less than twenty-five thousand dollars.[4]

A certificate must be made, signed, sealed and acknowledged by the corporators which shall set forth:

1. The name assumed to distinguish such association, and to be used in its dealings.

2. The place where the operations of discount and deposit of such association are to be carried on, designating the particular city, town or village.

3. The amount of capital stock of such association and the number of shares into which the same shall be divided.

4. The names and places of residence of the shareholders, and the number of shares held by each of them respectively.

[1] Laws of 1886, chap. 611, § 3.
[2] Id. § 5.
[3] Id. § 11.
[4] Laws of 1882, chap. 409, § 29.

5. The period at which such association shall commence and terminate.

The certificate must be recorded in the office of the clerk of the county where any office of such association shall be established, and a copy filed in the office of the Superintendent of the Banking Department.[1]

Such association shall have power to carry on the business of banking by discounting bills, notes and other evidences of debt; by receiving deposits; by buying and selling gold and silver bullion, foreign coin and bills of exchange, in the manner specified in the articles of association for the purposes authorized by this act; by loaning money on real and personal security; and by exercising such incidental powers as shall be necessary to carry on such business; to choose one of their number as president of such association, and to appoint a cashier and such other officers and agents as their business may require, and to remove such president, cashier, officers and agents, at pleasure, and appoint others in their places.[2]

Before commencing business, the two principal officers of the company must make an affidavit stating that the whole of the capital stock, or such portion as, by its charter, shall be required to be paid or secured before the commencement of its operations, has actually been paid, or secured to be paid, according to the provisions of its charter.[3]

Such affidavit, if made in a city, must be made before the mayor or recorder of the city, and if elsewhere, before the county judge of the county or any justice of the Supreme Court therein, and must be filed in the clerk's office of the city and county, or of the county, in which it is taken.[4]

[1] Laws of 1882, chap. 409. § 30. The act does not in terms require a certificate to be *filed* in the county clerk's office, although § 31 implies that this is done; and the better practice is to file either an original or a certified copy in that office.

[2] Id. § 35.

[3] Id. § 192.

[4] Id. § 193.

The charter will be void unless such affidavit is made and filed within a year of the time the charter is granted.[1]

Before such a bank is authorized to commence business, the Superintendent of the Banking Department will cause an examination to be made to ascertain whether the requisite amount of capital has been paid in in cash; and when satisfied that it has in good faith been subscribed and paid in in cash, he will issue his certificate to that effect, authorizing such bank to commence business.[2]

The act contains no restriction as to the number or qualifications of the corporators, shareholders or directors; nor as to the duration of the charter;[3] nor as to the by-laws that shall be adopted; nor as to the officers that shall be chosen; nor as to the amount of capital (except the minimum amount) that shall be employed; nor as to the number and value of the shares. All these are left to the discretion of the members.

Subdivision 2. Safe-Deposit Companies.—Any five or more persons may organize a company for the purpose of taking and receiving upon deposit, as bailee, for safe-keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities, and valuable papers of any kind and other valuble personal property, and guaranteeing their safety, upon such terms and for such compensation as may be agreed on by such company and the respective bailors thereof, and to let out vaults and safes and other receptacles for the uses and purposes of such corporation.

The corporators must make, sign and acknowledge a certificate which shall set forth:

1. The corporate name.
2. The objects for which the corporation shall be formed.
3. The amount of capital stock.
4. The term of its existence, not to exceed fifty years.

[1] Laws of 1882, chap. 409, § 194.

[2] Id. § 18.

[3] The charter of any corporation organized under the general laws may be repealed at any time by the legislature.

5. The number of shares of which the stock shall consist.

6. The number of trustees, and their names, residences, occupations and post-office addresses, who shall manage the concerns of said corporation for the first year.

7. The name of the place in which the operations of the corporation are to be carried on.

The certificate must be filed in the office of the clerk of the county in which the business of the corporation is to be carried on, and duplicates in the office of the secretary of state and in the banking department of the state.

The capital of such a company shall not exceed one million dollars nor be less than one hundred thousand dollars, except in cities or villages of less than one hundred thousand inhabitants, in which the capital stock may not be less than ten thousand dollars.

No such company is authorized to commence or transact business until the whole amount of the capital stock shall have been paid in.[1]

There may not be less than five nor more than thirteen trustees, who shall respectively be stockholders of the company, and a majority of whom shall be citizens of this state.[2]

When the certificates have been filed as above, the incorporation is complete.[3]

Subdivision 3. Trust Companies.—Any number of persons, not less than thirteen, three fourths of whom are residents of this state, may associate together for the purpose of organizing a trust company.[4]

Such persons must sign and seal a certificate which must state:

1. The name of the association.

2. The place where its business is to be transacted.

[1] Laws of 1875, chap. 613, § 1, as amended by Laws of 1883, chap. 273.

[2] Id. § 3, as amended by Laws of 1883, chap. 338.

[3] Id. § 2.

[4] Laws of 1887, chap. 546, § 1.

3. The amount of capital stock and the number of shares into which the same is to be divided.

4. The name, residence and post-office address of each member of such association.

5. The term of existence of such association, which shall not exceed fifty years.

6. A declaration that each member of such association will accept the responsibilities and faithfully discharge the duties of a trustee in such institution, if elected to act as such, when authorized under the provisions of this act.[1]

A notice of intention to organize such a trust company must be published at least once a week for four weeks in a newspaper to be designated by the Superintendent of the Banking Department, published in the city where such trust company is proposed to be located. This notice must specify the names of the corporators, the name and location of the company as set forth in the organization certificate; and if there is any trust company or trust companies organized and doing business in such city, a copy of such notice must also be sent to them at least fifteen days before the certificate is filled.[2]

The certificate must be executed in duplicate and duly acknowledged, and within sixty days thereafter one copy must be filed in the office of the clerk of the county wherein such trust company is proposed to be located, and one copy in the office of the Superintendent of the Banking Department.[3]

Upon a receipt of such certificate at the office of the Superintendent of the Banking Department, if it is duly executed and accompanied by satisfactory evidence of the proper service and publication of the notice, as above stated, he will indorse the certificate "filed for examination."[4]

He will then ascertain, from the best sources of information at his command, the general fitness of the persons named

[1] Laws of 1887, chap. 546, § 2.
[2] Id. § 4.
[3] Id. § 3.
[4] Id. § 5.

in such certificate for the discharge of the duties appertaining to such a trust, and whether it is such as to command the confidence of the community in which the company is proposed to be located, and also whether the public convenience and advantage would be promoted by such establishment;[1] and if he shall be satisfied that the organization of such a company will be a public benefit, he must within sixty days after the certificate has been filed by him for examination, issue, under his hand and official seal, a certificate of authorization to the persons named therein, or to a portion of them, together with such other persons as a majority of them may in writing approve, which will authorize the persons named therein to become a trust company, as designated in the organization certificate, subject to the provisions of the act under which it is organized. No person may be named in such certificate who has not made and acknowledged the declaration contained in the sixth paragraph of the certificate.[2]

Such certificate of authorization will be transmitted by the Superintendent to the county clerk of the county in which the trust company is to be located, who will file it and attach it to the organization certificate previously filed by him, and the Superintendent will also file a duplicate copy of such certificate in his own office.[3]

If the Superintendent of the Banking Department shall not be satisfied that the establishment of a trust company, as proposed in any organization certificate filed by him, is expedient and desirable, he must, within sixty days thereafter, instead of giving a certificate of authorization as above stated, give notice to the county clerk of the county in which such trust company is proposed to be located, that he refuses to issue a certificate of authorization, which notice will be filed by the county clerk with the organization certificate of such company.[4]

[1] Laws of 1887, chap. 546, § 7.
[2] Id. § 8.
[3] Id. § 9.
[4] Id. § 10. The refusal of the Su-

Upon the filing of a certificate of authorization in the county clerk's office, the persons named in such certificate, and their successors, are thereby duly and lawfully constituted a body corporate and politic, and vested with all the powers and charged with all the liabilities conferred and imposed by the act.[1]

Before the Superintendent of the Banking Department issues a certificate of authorization, he will cause an examination to be made to ascertain whether the requisite capital has been paid in in cash, and no such association may commence business until a certificate of authorization has been granted.[2]

Before entering on active business the association must file with the Superintendent of the Banking Department a list of its shareholders, giving the name, residence, post-office address and number of shares held by each of them respectively, which list must be verified by the two principal officers of the company.[3]

The trustees of such company may not be less than thirteen nor more than twenty-four in number. The persons named in the organization certificate, or such of them, respectively, as shall become holders of at least ten shares of the capital stock, shall constitute the first board of trustees, and may add to their number, not exceeding twenty-four, and shall continue in office until others are elected to fill their places. Within six months from the time when such company commences business, the trustees must classify themselves by lot into three classes, as nearly equal as may be, the term of office of the first class to expire on the third Wednesday of January following such classification, and of the other two classes one and two years thereafter, respectively. All future elections shall be of a number to fill the

perintendent to give the certificate of authorization may be reviewed by mandamus.

[1] Laws of 1887, chap. 546, § 11.
[2] Id. § 12.
[3] Id. § 13.

class whose term is about to expire, and shall be elected for three years.[1]

The capital stock of any such company must be at least five hundred thousand dollars, provided, however, that trust companies with a capital of not less than two hundred thousand dollars may be organized in any city the population of which does not exceed one hundred thousand inhabitants. The capital stock must be divided into shares of one hundred dollars each.[2]

All companies organized under this act, in addition to the ordinary powers of corporations organized under the laws of this state, are given power to act as fiscal or transfer agents of any body politic or corporation; to receive deposits of trust property; to act as trustee under any mortgage or bond issued by any municipality or corporation, and to accept and execute any other municipal or corporate trusts; to accept and execute trusts for married women in respect to their separate property, and to act as agents for them in respect to such property; to act, under the order or appointment of any court of record, as guardian, receiver or trustee of the estate of any minor, and as depositary of any moneys paid into court, and to take, accept and execute all such legal trusts, duties and powers in regard to property as may be granted to it by such courts, or by any person, corporation or body politic; to invest and deal in stocks, bills of exchange, bonds and mortgages and other securities; and to act as executor, trustee, or administrator of any deceased person, or as a committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.[3]

[1] Laws of 1887, chap. 546, § 14.
[2] Id. § 19.
[3] Id. § 21.

ARTICLE V.

Railroad and Construction Companies.

Subdivision 1. Domestic Railroads.[1]—Any number of persons, not less than twenty-five, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use.

For this purpose they must make and sign articles of association, in which shall be stated :

1. The name of the company.

2. The number of years the same is to continue.

3. The places from and to which the road is to be constructed or maintained and operated.

4. The length of such road, as near as may be, and the name of each county in this state through or into which it is made or intended to be made.

5. The amount of the capital stock of the company,

[1] An act to authorize the formation of railroad corporations and to regulate the same. Laws of 1850, chap. 140. Railroads in foreign countries are now governed by Laws of 1881, chap. 468 (see next subdivision). Laws of 1875, chap. 606, as amended by Laws of 1881, chap. 485, Laws of 1882, chap. 393, and Laws of 1888, chap. 514, provide for the construction and operation of steam railways in counties of the state, and the appointment of commissioners for laying out the same. Such commissioners determine upon the necessity of the railway and locate its route; decide upon the plan of construction; determine the time within which it shall be constructed and the maximum rates of fare; fix the capital stock, the number of shares into which it shall be divided and the percentage to be paid at the time of subscribing; prepare the articles of association and open books for subscription; and when the amount of stock, directed by them, has been subscribed, call a meeting of the subscribers for the purpose of electing such a number of directors for the control and management of the road as the commissioners may determine; and after such election, deliver to the directors a certificate, in duplicate, of such organization; and upon filing such certificate in the office of the secretary of state, and the duplicate in the county clerk's office where such road is located, the organization of such corporation is complete.

which shall not be less than ten thousand dollars for every mile of road constructed or proposed to be constructed.

6. The number of shares of which said capital stock shall consist.

7. The names and places of residence of thirteen directors of the company who shall manage its affairs for the first year and until others are chosen in their places.[1]

Each subscriber must sign the articles of association, giving his place of residence and the number of shares he agrees to take.[2]

When at least one thousand dollars of stock for every mile of road proposed to be made has been subscribed, and ten per cent. paid thereon, in good faith in cash, to the directors named in the articles, an affidavit of such subscription and payment, and that it is intended in good faith to construct or to maintain and operate the road, must be made by at least three of the directors, and indorsed on or annexed to such articles, and such affidavit must be filed and recorded, with the articles of association,[3] in the office of the secretary of state; and thereupon the subscribers, and all persons who shall afterwards become stockholders, shall be a body corporate, with all the privileges of corporations under the laws of this state.[4]

In case the whole of the capital stock is not before subscribed, the directors may then open books of subscription to fill up the capital stock of the company, provided, however, that every subscriber at the time of subscription shall pay at least ten per cent. on the amount subscribed by him, in money.[5]

The directors must be thirteen in number, and each must

[1] By chapter 829 of Laws of 1872 it was provided that when such articles of association are made, except the names and residences of the directors, and such directors are subsequently chosen at a meeting of the subscribers, the names and residences of the directors so chosen may be inserted with like effect as though inserted in the original articles.

[2] Laws of 1850, chap. 140, § 1.

[3] Id. § 2.

[4] Id. § 1.

[5] Id. § 4.

be a stockholder absolutely in his own right, and qualified to vote for directors.[1]

Subdivision 2. Foreign Railroads. — Companies may be formed for the purpose of constructing, maintaining and operating in any foreign country a railroad or railroads for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any railroad already constructed in whole or in part for the like public use, with power to construct, maintain and operate in connection with such railroad or railroads a line or lines of telegraph and such lines of steamboats or sailing-vessels as may be proper or convenient for use in connection therewith.

The corporators must be at least ten in number, and a majority of them inhabitants of this state.[2]

They must make and sign articles of association, in which shall be stated, in addition to the objects for which the company is organized, as expressed above:

1. The name of the company.

2. The number of years the same is to continue, not exceeding one hundred years.

3. The place from and to which the said line or lines shall be constructed, maintained and operated, as nearly as practicable.

4. The amount of the capital stock of the company.

5. The number of shares of which such capital stock shall consist.

6. The names and places of residence of not less than seven persons, who shall act as a board of directors for the management of the affairs of the company for the first year and until others are chosen in their places.

[1] Laws of 1850, chap. 140, § 5, as amended by Laws of 1854, chap. 282, and Laws of 1873, chap. 710; on roads of less than twenty miles in length the directors may be seven. Laws of 1864, chap. 582, § 3, as amended by Laws of 1883, chap. 46.

[2] Laws of 1881, chap. 468, § 1.

Each subscriber must subscribe his name, place of residence, and number of shares of stock he agrees to take.

Such articles of association must be approved by the governor and filed in the office of the secretary of state, and he, upon payment to him of a fee of fifty dollars, will cause the same to be recorded and will issue a certificate under the seal of the state, certifying that the persons named in such certificate, their associates and successors, are legally established as a corporation under the name and for the purpose stated in the articles of association, with all the powers and the privileges, and subjects to all the duties, liabilities and restrictions, set forth in this act.[1]

It is provided that this certificate, or a duly certified copy of the record thereof, shall be conclusive evidence of the establishment of the corporation at the date of such certificate.[2]

Upon the issue of above certificate, such corporation may proceed to organize by calling a meeting of the subscribers, of which notice shall be given to each subscriber of the place and purpose of such meeting, at least five days before the day appointed for such meeting.[3]

When such corporation shall have been organized, in case the whole of the capital stock has not been subscribed, the board of directors may open books of subscription to fill up the same, and may continue to receive such subscriptions until the whole capital stock is subscribed; provided, however, that no subscription shall be received unless ten per cent. of the amount subscribed for be paid to the directors, in money, at the time of subscription.[4]

Every corporation formed under this act is required to maintain its principal office within this state, and to have there an officer or agent upon whom the service of process may be made.

[1] Laws of 1881, chap. 468, § 2.
[2] Id. § 3.
[3] Id. § 6.
[4] Id. § 7.

It must also hold its annual meeting for the choice of directors at such place within the state as may be established by the by-laws of the company.[1]

ARTICLE VI.

Miscellaneous Corporations.

Under this article are included the various laws which the legislature has passed from time to time for the incorporation of companies for special purposes. Most of such laws, enacted prior to the Business Act, are covered by that act, and companies may be formed under either.

The method of organization generally consists in making a certificate, signed and acknowledged in duplicate, by the corporators, which should set forth the chapter, etc., of the act under which it is desired to organize, and in addition thereto:

1. The corporate name.

2. The objects for which the company shall be formed, as provided in the act under which it is proposed to organize.

3. The amount of capital stock.

4. The number of shares of which the stock shall consist.

5. The time of its existence.

6. The number and names and residences of the directors or trustees who shall manage the affairs of the company for the first year, or until their successors are chosen.

7. The place or places where the company shall carry on its business.

One certificate should be filed in the office of the secretary of state and the duplicate in the office of the clerk of the county where the principal place of business of the company is to be located.[2]

[1] Laws of 1881, chap. 468, § 9.

[2] Where any material variation from this course is necessary, it is indicated either in the text or in the foot-notes. The laws in this article are arranged in chronological order.

Plank Road and Turnpike Companies.—Any number of persons, not less than five, may form a corporation for the purpose of constructing and owning a plank road or turnpike. Notice must be given, in at least one newspaper printed in each county through which the road is intended to be constructed, of the time or places where subscription books will be opened, and when stock to the amount of at least five hundred dollars per mile of road has, in good faith, been subscribed, the persons subscribing may sign articles of association, adding thereto the number of shares taken by each subscriber.

Before such articles of association can be filed, at least five per cent. of the amount of the stock subscribed must be paid in, in cash, to the directors named in the articles, and an affidavit, made by at least three of such directors, of such payment and that the requisite amount of stock per mile has been subscribed, must be made and indorsed on the articles, or be annexed thereto.

The duration of such company cannot exceed thirty years.[1]

Gas Light Companies.—Any three or more persons may form a company for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings of any city, village or town, or two or more villages or towns, not over five miles distant from each other, in this state. The duration of such company cannot exceed fifty years. The directors may not be less than three nor more than thirteen in number, and shall be stockholders in such company, and a majority of them must be citizens of this state.[2]

Bridge Companies.—Any number of persons, not less than

[1] Laws of 1847, chap. 210. as amended by Laws of 1849, chap 250.

[2] Laws of 1848, chap. 37 as amended by Laws of 1871, chap. 95; Laws of 1872, chap. 374; Laws of 1881, chap. 311; and Laws of 1883, chap. 497. Such a company may use electricity for the purposes of lighting. Laws of 1879, chap. 512, as amended by Laws of 1882, chap. 73.

five, may form a corporation for the purpose of constructing and owning a bridge or causeway across any stream, or channel, or water, which it may be necessary to cross in order to form, in connection with such bridge or causeway, a continuous roadway.

The articles of association must be signed by each subscriber, and must state the number of shares of stock taken by him, and must be filed in the offices of the state engineer and surveyor and clerk of the county or counties in which the bridge is built; and such articles cannot be filed until one fourth of the capital has been actually subscribed and five per cent. of that amount paid in, in cash, and an affidavit of such subscription and payment made by at least three of the directors and filed with the articles.

The capital stock must be divided into shares of twenty-five dollars each, and the duration of the corporation cannot exceed fifty years.

The directors may not be less than five nor more than nine in number, and shall respectively be stockholders in the company to the extent of at least four shares, and shall be citizens of this state, and a majority of the directors must be residents of the county or counties in which such bridge shall be located; and every stockholder must be a citizen of the United States.[1]

Telegraph Companies.—Any number of persons may associate and form a company for the purpose of owning or constructing, using and maintaining, a line or lines of electric telegraph, whether wholly within or partly beyond the limits of this state; or for the purpose of owning any interest in any such line or lines of electric telegraph, or any grants therefor.

The certificate must be signed by the shareholders, and the number of shares held by each of them respectively stated therein, and a copy must be filed in the office of the

[1] Laws of 1848, chap. 259, as amended by Laws of 1881, chap. 313.

clerk of the county where any office of such association shall be established.

No restrictions are imposed as to the amount of capital to be employed, the duration of the company, the qualifications of the corporators, or as to the number and qualification of the directors.[1]

Navigation Companies.—Any number of persons, not less than seven, may form a company for the purpose of building for their own use, equipping, furnishing, fitting, purchasing, chartering, navigating and owning vessels to be propelled solely or partially by the power or aid of steam or other expansive fluid or motive power, to be used in all lawful commerce or navigation upon the oceans, seas, sounds and rivers, navigable by ocean steamers, or for the transporting of passengers, freight and mails.

The certificate must state particularly the ports between which such vessels are intended to be navigated.

The capital may not be less than fifty thousand dollars, nor more than four million dollars, and the duration of the company may not exceed twenty years.

There may not be less than five nor more than nine directors, who must respectively be stockholders in such company and citizens of the United States, and a majority of them must be residents of this state.[2]

Building and Elevator Companies.—Any number of persons, not less than five, may form a company for the erection of buildings, or for the laying out and subdivision of lands into building lots and villa plots, and the improvement and sale thereof; or the construction or leasing of elevators and warehouses for the storage and elevating of grain, and for the making, purchasing and selling of materials for the construction of buildings.

The capital of such company cannot be less than three

[1] Laws of 1848, chap. 265, as amended by Laws of 1853, chap. 471.

[2] Laws of 1852, chap. 228, as amended by Laws of 1853, chap. 124, and Laws of 1875, chap. 445.

thousand dollars nor exceed one million dollars, and the term of its existence cannot exceed fifty years.

There must be a board of not less than three nor more than nine trustees, who shall respectively be stockholders in such company and citizens of the United States, and a majority of whom shall be citizens of this state.[1]

Ferry Companies.—Any three or more persons may form a company for the purpose of conducting and managing a ferry.

The certificate must state, in addition to the matters ordinarily contained therein, the places to and from which the ferry established, or to be established, shall run.

The duration of such company cannot exceed fifty years. The directors may not be less than three nor more than fifteen in number, and each must be a stockholder in the company and a citizen of the United States, and a majority must be citizens of this state.

No such company is authorized to commence business until at least one half of its capital has actually been paid in, and an affidavit of such payment sworn to by a majority or the directors has been filed in each of the offices in which the certificate of incorporation is required to be filed.[2]

Inland Navigation Companies.—Any five or more persons may form a company for the purpose of building for their own use, equipping, furnishing, fitting, purchasing, chartering or owning steam, sail or other boats, ships or vessels, or property to be used in lawful business, commerce, trade or navigation upon the lakes or rivers, and for the carriage, transportation or storing of lading, freight, mails, property or passengers on such lakes and rivers.

The capital of such company may not be less than three thousand dollars nor more than two million dollars, and the time of its duration may not exceed twenty years.

[1] Laws of 1853, chap. 117, as amended by Laws of 1883, chap. 238.

[2] Laws of 1853, chap. 135.

There may not be less than three nor more than thirteen directors, who shall respectively be stockholders of such company.[1]

Guano Companies.—Any five or more persons may form a company for the purpose of mining the article of ammoniated or other guano, and importing, exporting, buying or selling the same, and purchasing, chartering and navigating such steam or sailing vessels, and the purchasing of any such real or personal estate as may be necessary, proper or convenient in transacting such business.

The duration of such company cannot exceed thirty years. The trustees may not be less than five nor more than nine in number, and each must be a stockholder in the company and a citizen of the United States, and a majority must be citizens of this state.[2]

Skating Parks and Sporting Grounds.—Any number of persons, not less than seven, may form a company for the purpose of constructing parks to be used for skating and other lawful sports.

The duration of such company cannot exceed fifty years, and the capital must be divided into shares of twenty-five dollars each.

Each subscriber to the articles of association must add to his name and residence the number of shares of stock taken by him. The articles of association cannot be filed until one fourth of the capital stock has been subscribed, nor until at least one twentieth has been actually paid in to the directors in cash, and an affidavit of such payment made by at least three of such directors and annexed to or indorsed on such articles of association. They must then be filed in the office of the state engineer and surveyor, and in the office of the county clerk.

The directors may not be less than five nor more than nine in number, and each must be a stockholder owning at

[1] Laws of 1854, chap. 232, as amended by Laws of 1878, chap. 394.

[2] Laws of 1857, chap. 546.

least four shares of stock and must be a citizen of this state, and a majority of the directors must be residents of the county where the real estate of such corporation is located.[1]

Stage-Coach Companies.—Any number of persons, not less than five, may form a company for the purpose of establishing, maintaining and operating any stage or omnibus route for public use in the conveyance of persons and property elsewhere than in the city of New York, or for the purpose of maintaining and operating any such stage route already established.

The articles of association, in addition to the statements generally made therein, must state, as nearly as practicable, its route, and each subscriber shall add his place of residence and the number of shares he agrees to take.

When at least ten per cent. of the capital has been paid in, and an affidavit indorsed on such articles or annexed thereto stating the amount of stock subscribed and the fact of such payment, and that it is intended in good faith to maintain and operate the stage route or routes mentioned in such articles of association has been made by at least three of the directors, a copy must be filed in the office of the town clerk of each of the towns through which the stage route is intended to run.

In case the whole of the capital has not been then subscribed, the directors may open books of subscription to fill up the capital stock, provided that every subscriber at the time of subscribing shall pay to the directors ten per cent. upon the amount subscribed by him.

The directors may not be less than three nor more than five in number, and each must be a stockholder, owning stock absolutely in his own right. No other restrictions are imposed.[2]

Driving-Park and Agricultural Associations.—Any number of persons, not less than six, citizens of this state and of full age,

[1] Laws of 1861, chap. 149.

[2] Laws of 1867, chap. 974.

may form a company for the purpose of maintaining a driving park or agricultural association in this state.

The articles of association cannot be filed until the whole of the capital stock has been subscribed, and one twentieth of the amount has been actually paid in, in cash, and an affidavit of such subscription and payment made by at least three of the directors and attached thereto, or indorsed thereon, and filed with such articles.

The capital stock must be divided into shares of not less than ten dollars nor more than one hundred dollars each.

The officers of such association must consist of a president, at least one vice-president, a secretary, a treasurer and any number of directors which is divisible by three, not exceeding fifteen,—the directors to be divided into three classes, one third to be elected annually.[1]

Homestead Corporations.—Any number of persons, not less than three, may form a company for the purpose of accumulating funds for the purchase of real estate, paying off encumbrances thereon, the improvement and subdivision thereof into lots or parcels suitable for homesteads, and the distribution of such lots or parcels among the shareholders.

No restrictions are imposed by the act as to the number or qualification of the directors or trustees, nor as to the amount of capital stock or the number of shares, nor as to the time of its existence.[2]

Water-Works Companies.—Any number of persons not less than seven may form a water-works company, to supply water to any of the towns or villages and to the inhabitants thereof in this state.

Before making their certificate, such persons must present to the town or village authorities an application setting forth the persons who propose to form such company, the proposed capital stock and number and character of the shares, and the sources from which water is intended to be supplied,

[1] Laws of 1872, chap. 248, as amended by Laws of 1872, chap. 609.

[2] Laws of 1872, chap. 820.

and shall request the authorities of such town or village to consider the application to supply it with pure and wholesome water; and such authorities must determine, within thirty days, whether such application shall be granted, and not until such application is granted shall a certificate of organization be made and filed.

The certificate, filed in the office of the secretary of state, must recite, in addition to the matters ordinarily contained therein, the fact of such application and determination, and such certificate must be subscribed by the persons by whom such application was made and be sworn to by a majority of such persons.

The act contains no restrictions as to the number or qualifications of the directors or trustees, nor as to the amount of capital stock or the duration of the company.

Such a company may lay and maintain its pipes and hydrants in any of the highways of the town from which the consent has been obtained, and may contract with such town, or any other town in the county in which it shall be organized, to supply it with water.[1]

Railroad-Supply Companies.—Any nine or more persons may form a corporation in the manner specified or required in the Manufacturing Corporations Act [2] for the purpose of building, manufacturing, owning, furnishing, letting, selling and maintaining locomotive engines, cars, rolling-stock and machinery to be used or operated upon railways, or for any one or more of such purposes.[3]

[1] Laws of 1873, chap. 737, as amended by Laws of 1881, chap. 213. Such a company, when fully organized, may acquire any land necessary to carry out the purposes for which it was formed. Laws of 1876, chap. 415, as amended by Laws of 1885, chap. 422. None of the provisions of this act apply to any towns in the county of Kings.

By Laws of 1875, chap. 181, villages in this state are authorized to construct water-works, and may take any of the works constructed by any corporation, which they may need, at an appraised valuation.

[2] *Ante*, p. 6.

[3] Laws of 1873, chap. 814. Such a company may lay and maintain such railway tracks, not exceeding one mile in length, as may be necessary to connect its works with any railroad within

Hotel Companies.—Any five or more persons may form a company for the purpose of erecting buildings for hotel purposes, or for keeping hotels, or for either or both of such purposes.

The capital of such company may not be less than ten thousand dollars nor more than one million dollars, and its duration may not exceed fifty years.

There may not be less than three nor more than nine trustees, who must respectively be stockholders in such company and citizens of the United States, and a majority of whom must be citizens of this state.[1]

Pipe-Line Companies.—Any number of persons, not less than twelve, may form a company for the purpose of constructing and operating, for the public use, lines of pipe for the conveying or transporting therein petroleum, gas, liquids, or any products or property, or for the purpose of maintaining and operating any line of pipe already constructed. The capital of such company may not be less than fifteen hundred dollars for every mile of pipe constructed, or proposed to be constructed.

The certificate, in addition to the matters usually contained, must state as near as may be the length of such pipe-line and the places from and to which it is to be constructed or maintained and operated, and the name of each county in this state through and into which it is to be constructed, and must also state the number of shares taken by each subscriber.

No such articles of association can be filed until at least ten hundred and fifty dollars of stock for every mile of pipe-line proposed to be constructed or maintained has been subscribed, and twenty-five per cent. thereon paid in, in cash, and an affidavit indorsed thereon or annexed thereto, made by at least three of the directors, which shall state that such

the state, and take the necessary land therefor. This, however, does not apply to the counties of New York or Kings. Laws of 1880, chap. 267.

[1] Laws of 1874, chap. 143.

subscription and payment has been made, and that it is intended in good faith to construct or to maintain and operate such line, and that such corporation was not projected and formed with the intent or for the purpose of selling or conveying its franchise to any person or corporation, nor with intent or for the purpose of injuring any person or corporation, nor for any fraudulent purpose; and such affidavit must be taken and held as part of the articles of association.

There must be a board of seven directors, and each director must be a stockholder absolutely in his own right. No other restriction or qualification is imposed.[1]

Tramway Companies.—Any number of persons, not less than thirteen, may form a company for the purpose of constructing, maintaining and operating an elevated tramway, constructed of poles, piers, wire, rods, ropes, bars or chains for the transportation of freight in suspended buckets, cars, or other receptacles, for hire.

The articles of association must be subscribed with the number of shares and place of residence of each subscriber, and, in addition to the matters usually contained therein, must state the places from and to which the tramway is to be constructed, maintained and operated; its length, as near as may be; and the name of each county in this state through or in which it is made or intended to be made; and when properly made and executed must be filed in the office of the secretary of state.

The first section of the act provides that the directors to manage the affairs of the company for the first year shall not be less than three in number. By the fourth section it is provided that there shall be a board of three directors.

When organized, such a corporation may acquire land

[1] Laws of 1878, chap. 203. The act provides for the condemnation and acquisition of such land as may be necessary for its use. It does not, however, apply to the city of New York.

for its use in the manner provided for its acquisition by railroad corporations.

It is expressly excepted from the provision of the Revised Statutes requiring corporations to commence business within one year from the time of organization.[1]

ARTICLE VII.

General Provisions.

The following provisions, except when otherwise indicated, are applicable to all corporations organized under the general laws:

Amending Certificate.—If by reason of the omission of any matter required to be stated in a certificate of any corporation organized under a general act any informality exists therein, the directors may make and file an amended certificate to conform to the general act under which it was organized, and it will then be deemed a corporation from the time of filing the original certificate. No suit pending against such a corporation is affected, and no rights accrued are impaired by the filing of such amended certificate.[2]

The purpose of the statute is to remedy patent omissions, that is, the omission of things which are required to be stated, and which, being omitted, make the certificate imperfect on its face.[3]

Filing and Recording Certificate.—All certificates of incorporation required to be filed in the office of the secretary of state or in the office of any county clerk, must be recorded in such office; and it is provided that no certificate shall be

[1] Laws of 1888, chap. 462.

[2] Laws of 1870, chap. 135.

[3] In re *N. Y., L. & W. R. R. Co.*, 25 Hun, 556, it was held, therefore, that a change in the route of a railroad could not be effected by filing an amended certificate. It would seem that any defect in the organization of a corporation would be cured by a subsequent recognition of the corporation by the legislature. *B. R. & U. R. R. Co.* v. *Barnard*, 31 Barb. 258.

filed or recorded until the fee for filing and recording is paid.[1]

It was held, however, in *Raisbeck* v. *Oesterricher*,[2] that the failure to file the duplicate certificate of a manufacturing corporation in the office of the secretary of state was not sufficient to render the members partners between themselves and liable to account as such; but a corporation *de jure*, which may successfully maintain itself against an inquiry on the part of the state, is not created until all the formalities required by the act of organization are complied with.[3]

Organization Tax.—Every corporation having capital stock divisible into shares, except literary, scientific, medical and religious corporations and corporations organized under the banking laws of the state, or under the act for the incorporation of building, mutual loan and accumulating fund associations,[4] must pay to the state treasurer a tax of one eighth

[1] Laws of 1881, chap. 22. The fee for recording is the same as that for recording deeds. *Ibid.* The fees of the Secretary of State are established by Laws of 1882, chap. 156, and, so far as relates to corporations, are as follows:

For filing every certificate of incorporation under chap. 40, Laws 1848, ten dollars.

For filing every certificate of incorporation of gaslight companies, turnpike companies, waterworks companies, ferry companies, navigation companies, telegraph companies, telephone companies, hotel companies and co-operative associations, and of every business corporation or company (except as hereinafter stated), ten dollars.

For filing, recording and issuing all the necessary papers in and about the organization of business corporations formed under chap. 611 Laws 1875, ten dollars; and for a certified copy of the certificate of incorporation of such last-named business corporations, three dollars.

For filing articles of association of a railroad to be constructed in a foreign country and issuing certificate of incorporation and recording the same, fifty dollars.

For filing articles of association of every other railroad, and for filing every agreement of consolidation between two or more railroads, twenty-five dollars.

[2] Common Pleas. Sp. Term 1878, 4 Abb. N. C. 444. As to the general rule that members of a corporation cannot set up a defect in its organization to escape any of the liabilities attaching thereto, see Chap. VII., *post.*

[3] *B. & A. R. R. Co.* v. *Cary*, 26 N. Y. 75; *Childs* v. *Smith*, 46 id. 34.

[4] Laws of 1851, chap. 122

of one per cent. upon the amount of its capital stock or upon any subsequent increase thereof; and no such company is permitted to exercise any corporate powers, nor will the secretary of state or county clerk file such certificate, until such tax is paid.[1]

Where a new company is formed out of an old one, but with increased capital stock, it is subject to a tax on the whole of its capital.[2]

The Corporate Name.—Several of the acts for the organization of corporations provide that they shall not have the same name as an existing corporation in this state, or so nearly resembling it as to be calculated to deceive;[3] and the Superintendent of the Insurance Department is required to reject the name of any insurance company which he shall deem to be so nearly similar to any already in use as to lead to confusion or uncertainty on the part of the public.[4] But even in the absence of any statutory provision, no corporation would be allowed to assume a name so closely resembling that of another corporation organized within the state as to be likely to deceive;[5] and an injunction will issue to prevent the use of such a corporate name, or a name nearly approaching it, by an individual.[6]

In corporations organized under the Business Act, where it is desired to limit the liability of the stockholders,[7] the name of the company must, in every case, have as its last word the word "limited," and such a corporation must keep its full name affixed, in legible characters, outside of its place or places of business, and it must also be stated in every notice, advertisement and other official publications of such

[1] Laws of 1886, chapter 143, as amended by Laws of 1887, chap. 284.

[2] *People* ex rel. *Schurz* v. *Cook*, *People* ex rel. *Mertens*, v. id., 110 N. Y. 443.

[3] This is substantially the language of the Business Corporations Act, Laws of 1875, chap. 611, § 4.

[4] Laws of 1877, chap. 211.

[5] *American Grocer* v. *Grocer Publishing Co.*, 25 Hun, 398.

[6] *New York Cab Co.* v. *Mooney*, 15 Abb. N. C. 152; Supreme Ct. Sp. Term, 1884.

[7] As to the liability of stockholders in the different kinds of corporations, see Chap. VII., *post*.

company, and in all its bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters and other writings used in the transaction of the business of the corporation.[1]

Within the foregoing limits, any name may be assumed to designate a corporation organized under the laws of this state.[2]

Forfeiture for Non-User.—It is provided in the Revised Statutes,[3] that if any corporation shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

The true construction of this section would probably refer the business here spoken of to such as it might lawfully do under its act of incorporation, and the failure to do this business, although it might do other business, would sustain an action by the people for its dissolution.[4]

Railroads are expressly excepted from the operation of this section.[5]

The Choice of Laws under which to Organize.—Generally, in the incorporation of insurance and guarantee companies, banking, safe deposit and trust companies, and railroad and construction companies, no room for choice is offered in the selection of the act under which such a company may organize; but the incorporation of many companies for other purposes than those above mentioned may be effected under different laws. Thus, a company for the purpose of doing any manufacturing business may be incorporated under the Act of 1848,[6] or under the Business Act of 1875,[7] and different considerations will govern in the selection. For instance, the latter act is somewhat more onerous in its requirements for organization than the former, and the liabilities of trustees are somewhat greater;[8] while, on the other hand, the liability of the stockholder is, in some respects, less.[9]

[1] Laws of 1875, chap. 611, § 35.

[2] See *ante*, p. 7.

[3] Part 1. chap. XVIII., title 3, § 7.

[4] *People* v. *Troy House Co.*, 44 Barb. 625.

[5] Laws of 1846, chap. 155.

[6] *Ante*, p. 2; app. A, *post*.

[7] *Ante*, p. 8; app. B, *post*.

[8] See Liabilities of Officers and Directors, Chap. V., *post*.

[9] See Liabilities of Stockholders, Chap. VII., *post*.

The same may be said, *mutatis mutandis*, as to the choice between the Business Act and the various special acts enumerated in the last article. The Business Act is broad enough in its terms to cover any of the corporations provided for in the other acts, except those containing provisions for the appropriation of land; and with this exception, so far as laws enacted prior to the Business Act[1] are concerned, a corporation may be organized under either. Where, however, a law has been passed for the organization of corporations for special purposes, subsequent to such a general act, it is probable that a company for such special purposes could be incorporated only under the special act.[2]

[1] This act was passed June 21st, 1875.

[2] A special act is not repealed by a general act covering the same ground, unless a clear intention to repeal it is manifest in the act itself. *Matter of D. & H. C. Co.*, 69 N. Y. 209; *Village of Gloversville* v. *Howell*, 70 id. 287; *Barnes* v. *Brown*, 80 id. 527; *McKenna* v. *Edmundstone*, 91 id. 231. But where a special act is passed subsequent to a general act covering the same subject, a different rule prevails. As was said by Earl, J., in *Heckmann* v. *Pinkney* (81 N. Y. 211, 215): "It is the undoubted rule that repeals by implication are not favored. Where there is no repealing clause in a later statute, and that and a former one can stand together, and both have effect, they will generally both be held to be in force. But where a later statute, not purporting to amend a former one, covers the whole subject, and was plainly intended to furnish the only law upon the subject, the former statute must be held repealed by necessary implication."

Following the rule thus laid down, it was held in *People* ex rel. *Eden Musee Americain Co.* (*Lim.*) v. *Carr* (36 Hun. 488, aff'd on opinion below, 100 N. Y. 641) that the provisions of the act of 1875, prescribing the manner in which business corporations might reduce their capital stock, was repealed by implication by the passage of chap. 264 of the Laws of 1878, entitled "An act to authorize corporations organized under the laws of this state to reduce their capital stock;" and that from and after the passage of the latter act all corporations thereafter organized could only reduce their capital stock by complying with its terms and provisions.

The effect of this rule would be to prevent the organization of companies under the Business Act for such purposes as "searching and guaranteeing titles to real estate," and perhaps "guaranteeing the collection of claims" after the passage of special acts for the organization of companies for those purposes. See *ante*, pp. 18, 20; but see reorganization of corporations under the Business Act, Chap. II., *post*.

CHAPTER II.

POWERS AND PRIVILEGES.

ART. I. GENERAL POWERS AND PRIVILEGES.
ART. II. INCIDENTAL POWERS AND PRIVILEGES.
ART. III. SPECIAL POWERS AND PRIVILEGES.

ARTICLE I.

General Powers and Privileges.

The Revised Statutes enumerate the following general powers as belonging to every corporation:[1]

General Powers.—1. Every corporation, as such, has power:

1. To have succession by its corporate name for the period limited in its charter; and when no period is limited, perpetually.

2. To sue and be sued, complain and defend, in any court of law or equity.[2]

3. To make and use a common seal, and alter the same at pleasure.

4. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter.

5. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

[1] Revised Statutes, part 1. chap. xviii., title 3.

[2] In regard to suits by and against corporations, see Chap. VIII., *post*.

In what Corporations to Vest.—2. The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter or in the act under which it shall be incorporated.

What other Powers to be Possessed.—3. In addition to the powers enumerated in the first section of this title, and to those expressly given in its charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

That corporations have the powers expressly conferred on them by their charters, and such others as are necessarily incidental to the exercise of those powers, is an elementary proposition. The difficulties lie in the application of the rule to particular cases, and in that respect it is one of the difficult problems that is constantly presenting itself to the courts, but which, as coming within the general law of corporations, rather than as being affected by statutory provisions, does not come within the scope of this work.

Corporate Name.—As we have seen,[1] the latitude allowed a corporation in its choice of name is practically unlimited, and it is unnecessary to consider that subject further here. The manner of changing the corporate name will be considered in Art. III. of this chapter.

Duration.—When no time is limited as to the duration of a corporation either in its charter or in the act under which it is organized, its duration is perpetual (*supra*); subject, however, to the provisions that the charter of every corporation organized under the laws of this state is subject to alteration, supervision and repeal, in the discretion of the legislature.[2]

[1] *Ante*, p. 46.

[2] Rev. Stat. part I. chap. xviii., title 3, § 8.

Extending Term of Existence.—*Manufacturing Corporations.* Any company formed under the Manufacturing Act which may have fixed the duration of its existence for less than fifty years, may by vote of the stockholders representing a majority of the stock extend the term of its corporate existence from time to time to a period not longer in the aggregate than it could have originally fixed it.

A new or amended certificate under its corporate seal must be signed and acknowledged by the president and two thirds of its directors or trustees, and filed in the office of the clerk of the county where its business is carried on, and in the office of the secretary of state.[1]

Same.—*Business Corporations.*—Whenever any corporation organized under the Business Act has fixed the duration of its corporate existence for a less period than fifty years, it may at any time extend the term of its existence for a term which, with the term originally fixed, will not exceed fifty years.

The stockholders owning two thirds in amount of the capital stock must sign a certificate either in person or by attorney duly authorized and acknowledged or proved, so as to enable it to be recorded, and such certificate must be filed in the office of the secretary of state and of the clerk of the county in which the principal business office of such corporation is situated.[2]

Same.—*Banks.*—Any bank organized under the laws of this state may extend the term of existence beyond the time mentioned in the certificate of incorporation, by the consent of the stockholders owning two thirds in amount of the capital stock, by a certificate signed and acknowledged by such stockholders, and filed in the office of the clerk of the county in which the original certificate of incorporation was filed, and a copy in the office of the superintendent of the banking department, and upon filing such certificate, its

[1] Laws of 1857, chap. 29, § 2, as amended by Laws of 1867, chap. 12.

[2] Laws of 1875, chap. 611, § 29.

time of existence will be extended, as designated therein, for a period not exceeding the time for which it was organized in the first instance, and will continue to enjoy all the rights and be subject to all the liabilities as before such extension.[1]

Same.—*Turnpike and Plank-Road Companies.*—Plank-road and turnpike companies may at any time within five years of the expiration of their corporate existence continue their corporate existence for a period not exceeding thirty years, with the consent of a majority of all the members of the board of supervisors of the county or counties in which any such road is located, together with the consent, in writing, from persons owning two thirds of the capital stock of such company.

This does not apply to the counties of Kings, Queens, Yates, Seneca and St. Lawrence.[2]

Extending Term of Existence.—*Generally.*—It is provided by an act passed May 17th, 1867,[3] that any company or corporation previously formed under any general law of this state may at any time within three years of the expiration of its term of existence extend such term beyond the time mentioned in the original articles of association or certificate of incorporation.

A certificate signed by the stockholders owning two thirds in amount of the capital stock of such company must be acknowledged or proved so as to enable it to be recorded; and filed in the office of the secretary of state and in the office of the clerk of the county in which its original certificate or articles of association, if any, are filed and recorded; and thereupon the time of existence of such company will be extended, as designated in such certificate, for a term not exceeding the term for which it was organized in the first instance.

[1] Laws of 1889, chap. 177.

[2] Laws of 1876, chapter 135, as amended by Laws of 1879, chap. 253.

[3] Laws of 1867, chap. 937.

The Corporate Seal.—The seal of a corporation may be made by an impression directly on the paper.[1]

If a corporation have no formal seal, it may adopt any seal it deems proper, and the seal so adopted is the seal of the corporation *pro hac vice.* Thus the adoption of the seal set opposite the name of one of the officers as the corporate seal is sufficient.[2]

The Right to Hold Real Estate.—A corporation organized under the laws of this state may hold such property either real or personal within the state as may be necessary for the purposes of its business, not exceeding the amount limited in its charter or the act under which it is organized.[3] The same right is in effect extended to corporations organized under the laws of any other state of the United States by conferring on such corporations the right to hold and convey such real estate within this state as is necessary for the purposes of their business.[4]

Many of the acts contain restrictions as to the amount of real estate that corporations may hold and the purposes for which it can be purchased and held; and in the purchase of real estate beyond the amount actually necessary for the purpose of the business of such company these acts should be consulted.[5]

Lands in Other States or Countries.—Any corporation organized under the laws of this state, and transacting business in it and other states or foreign countries, except savings-banks, may acquire, hold and convey in such states or foreign countries, with the consent thereof, such real estate as is requisite for such corporation in the convenient transaction of its business.[6]

[1] Code of Civ. Proc. § 960.

[2] *South Baptist Soc.* v. *Clapp.* 18 Barb. 35; *Christie* v. *Gage,* 2 T. & C. 344.

[3] Rev. Stat., part I. chap. xviii., title 3, § 1.

[4] Laws of 1887, chap. 450.

[5] Laws of 1848, chap. 40, § 1 (App. A, *post*); Laws of 1875, chap. 611, § 2 (App. B, *post*); and the special laws given in Chap. I., *ante.*

[6] Laws of 1872, chap. 146, as amended by Laws of 1883, chap.

Adjacent Lands.—Any corporation which has sold or conveyed any part of its real estate, may, notwithstanding any restrictions in its charter, purchase, take and hold from time to time any lands adjacent to those already held by it. But it is provided that such purchase must be authorized by the supreme court upon the application of such corporation, and the court must be satisfied that the value of all the lands proposed to be purchased does not exceed that of lands sold and conveyed by it within three years preceding such application.[1]

The Right to Hold Stock of other Companies.—Several of the acts for the organization of corporations contain clauses restricting such companies from holding stock in other companies.[2]

Manufacturing Companies.—Corporations organized under the Manufacturing Act are authorized to hold stock in the capital of any corporation engaged in the business of mining, manufacturing or transporting such materials as are required in the prosecution of the business of such company so long as they continue to furnish or transport such materials for the use of such company, and for two years thereafter, but no longer. They may also hold stock in the cap-

361. As to the right to hold stock in other corporations conferred by the same act, see *post*, p. 56.

[1] Laws of 1882, chap. 290.

[2] Even when no prohibition is expressly imposed a corporation has no implied right to subscribe for the stock of other companies. Thus it was held in *The Nassau Bank* v. *Jones*, 95 N. Y. 115, that a banking corporation, organized under the general laws of this state, has no power to subscribe for the stock of a railroad corporation.

It is there said (p. 121) that "the language employed in the act defines their [the banks'] powers and duties, and excludes by necessary implication a capacity to carry on any other business than that of banking, and the adoption of any other methods for the prosecution of such business than those specifically pointed out by the statute."

The same rule would doubtless apply in the case of any corporation becoming a subscriber to the stock of other corporations, but a distinction might possibly be made between a subscription to stock and an investment in stock already issued.

ital of any corporation which uses or manufactures materials mined or produced by them.[1]

Except as expressly authorized, companies organized under the above act are not permitted to use any of their funds in the purchase of any stock in any other corporation.[2]

Insurance and Guarantee Companies.—With the exception of life insurance companies, insurance and guarantee companies are generally permitted to invest their surplus in the stock of other solvent, dividend-paying companies organized under the laws of this state or of the United States. They are not, however, permitted to purchase their own stock.[3]

Railroads.—Railroad companies organized under chapter one hundred and forty of Laws of 1850 are prohibited from using any of their funds in the purchase of any stock in their own or any other corporation;[4] but by subsequent legislation, any railroad corporation organized under the laws of this,or of any adjoining state, is authorized to subscribe for, take and hold the stock of union railway depot companies.[5]

Corporations organized for the purpose of building and operating railroads in foreign countries are prohibited from using their funds in the purchase of any stock in their own or any other corporation, except so far as the same may be agreed upon in their articles of association.[6]

Pipe-Line Companies.—Any company organized for the purpose of constructing pipe lines, etc, is prohibited from using any of its funds in the purchase of any stock in its

[1] Laws of 1866, chap. 838, § 3, as amended by Laws of 1876, chap. 358.

[2] Laws of 1848, chap. 40, § 8.

[3] As to what the capital and surplus of such companies may be invested in consult the acts under which the company is organized as given in Chap I., *ante*; Laws of 1849, chap. 308, § 8, as amended by Laws of 1857, chap. 469, § 1. Also Laws of 1853, chap. 466, § 8, as amended by Laws of 1871, chap. 608, § 1. Also Laws of 1853, chap. 463, § 8, as amended by Laws of 1868, chap. 318, § 1, as modified by Laws of 1865, chap. 328, § 2; also Laws of 1875, chap. 423, § 2, as amended by Laws of 1886, chap. 394.

[4] Laws of 1850, chap. 140, § 8.

[5] Laws of 1882, chap. 273, § 2.

[6] Laws of 1881, chap. 468, § 12.

own or any other corporation, or from in any manner becoming liable for the debt or miscarriage of any person or corporation.[1]

Stock of Foreign Corporations.—The laws heretofore given are modified by a law passed in 1872, and amended in 1883, which provides that any corporation, except a savings-bank, organized under the laws of this state, and transacting business in it and other states or foreign countries, may "invest its funds in the stocks, bonds or securities of other corporations owning lands situated in this state or such states, provided that loans shall not be made on any stocks upon which dividends shall not have been declared continuously for three years immediately before such loans are made; and provided further that such stocks shall be continuously of a market value twenty per cent. greater than the amount loaned or continued thereon."[2]

This act, as originally passed in 1872, authorized any corporation organized under the laws of this state, and transacting business in several states, to hold real estate in such states.[3] The amendment of 1875 extended it to corporations doing business in foreign countries, as well as other states, and authorized them also to hold stock in other corporations, provided such stock was based upon or represented real estate required in its business. The amendment of 1883 extended it still further, as above stated, but excepted savings-banks from its provisions. Originally intended to enable corporations to invest in real estate in other states and foreign countries, this act has by successive amendments assumed a much broader scope, but whether as broad as the language of the act, aside from its history, would indicate, cannot in the absence of judicial construction safely be assumed.

The Right to Appoint Officers.—Corporations have the right to

[1] Laws of 1878, chap. 203, § 9.

[2] Laws of 1872, chap. 146, as amended by Laws of 1883, chap. 361, § 1.

[3] See *ante*, p. 53.

appoint such subordinate officers and agents as the business of the corporation may require, and to allow them a suitable compensation.[1]

A corporation must necessarily transact its business through officers, and should have at least a president, secretary and treasurer. Most of the acts for the organization of corporations provide for the election of a president from the board of directors or trustees.[2] The Business Act provides that all the officers of the company prescribed by the by-laws shall be elected from the board of directors, and that there must be a president, secretary and treasurer.[3]

The act for the incorporation of Title Guarantee Companies contains the same provision as to officers, and in addition to the officers above named requires the election of a General Manager.[4]

By-Laws.—A corporation has the right to make by-laws, not inconsistent with any existing laws, for the management of its property, the regulation of its affairs, and for the transfer of its stock.[5]

Such by-laws must be reasonable and consistent with the general principles of law, and, while they may regulate and modify the constitution of the corporation, they cannot alter it, and all amendments must be equally in accord with such principles.[6]

Unless expressly authorized by its charter, or by the act

[1] See *ante*, p. 49.

[2] See the several acts for the incorporation of the following corporations, as given in Chapter I., *ante*, which provide that a president shall be elected: Building associations, ferry companies, gas-light companies, guano companies, hotel companies, manufacturing corporations, pipe-line companies, railroad-supply companies, stage-coach companies.

[3] Laws of 1875, chap. 611, § 10, as amended by Laws of 1890, chap. 23.

[4] Laws of 1885, chap. 538, § 6.

[5] See *ante*, p. 49. As to the effect of by-laws, and as to who is presumed to have notice of them under the decisions in this State, see Chap. VIII.

[6] *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159; *Driscoll* v. *West Bradley, etc., M. Co.*, 59 N. Y. 96.

under which it is organized, a corporation has no power to enact a by-law creating a lien on its shares.[1]

Who Authorized to Make By-Laws.—The directors or trustees of the following corporations are empowered by the acts under which they are organized to make necessary by-laws.[2]

Manufacturing corporations, insurance and guarantee companies, safe deposit companies, trust companies, railroad construction companies, building and apartment-house companies, ferry companies, gas light companies, guano companies, hotel companies, and navigation companies.

The act for the incorporation of business corporations provides that when one half of the capital has been subscribed the subscribers shall adopt by-laws.[3] But whether adopted by the stockholders or directors they must be adopted at a meeting held within the state.[4]

What the By-Laws Must Provide.—There is generally no provision as to what shall be contained in the by-laws. Under the Business Act, however, the subscribers, when one-half of the capital has been subscribed, must meet and adopt by-laws, which shall provide:

1. The number of directors of the corporation.

2. The term of office of such directors, which shall not exceed one year.

3. The manner of filling vacancies among directors and officers.

4. The time and place of the annual meeting.

5. The manner of calling and holding special meetings of the stockholders.

6. The number of stockholders who shall attend either in person or by proxy at every meeting, in order to constitute a quorum.

[1] *Driscoll* v. *West Bradley, etc., M. Co.*, 59 N. Y. 96.

[2] See the acts under which they are organized as given in Chap. I., *ante*. When the directors are not empowered by the charter to make by-laws that power remains in the shareholders. Taylor on Corporations, § 582.

[3] Laws of 1875, chap. 611, § 5.

[4] *Ormsby* v. *Vermont Copper Mining Co.*, 56 N. Y. 623.

7. The officers of the corporation, the manner of their election by and among the directors, and their powers and duties. But such officers shall always include a president, a secretary and a treasurer.

8. The manner of electing or appointing inspectors of election.

9. The manner of amending the by-laws.[1]

The act for the incorporation of title guarantee companies provides that when one third of the capital has been subscribed, a meeting of the subscribers shall be called for the purpose of electing directors and adopting by-laws, and there is the same provision as to what the by-laws shall contain as in the Business Act, except that in the former the officers must include a general manager as well as a president, secretary and treasurer.[2]

By-Laws—How Amended.—No rules for the modification or amendment of by-laws are prescribed by the several acts; and, since amending a by-law is but substituting a new by-law in place of an old one, it follows that the same body that has power to make by-laws has power to amend them.[3]

The Business Act provides that no amendment to the by-laws of corporations organized under it shall take effect until a copy of such amended by-law has been filed in the office of the secretary of state, and in the office of the clerk of the county where its principal business office is located.

Title guarantee companies, in case of the amendment of any by-law, are required to file a copy of such amended by-law, duly certified under the seal of the corporation, with the superintendent of the insurance department, and with the clerk of the county where its principal place of business is located, and no amendment to a by-law can take effect until so filed.[5]

[1] Laws of 1875, chap. 611, § 6.
[2] Laws of 1885. chap. 538, § 6.
[3] *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159.
[4] Laws of 1875, chap. 611, § 7.
[5] Laws of 1885, chap. 538, § 7.

Certain By-Laws to be Published.—No by-law, made by the directors or managers of a corporation, regulating the election of directors or officers, is valid unless it shall have been published for at least two weeks in some newspaper in the county at least thirty days before such election.[1]

No by-law of any moneyed corporation[2] regulating the election of its directors, whether made by the directors or stockholders, is valid unless made at least sixty days before the day appointed for the election, and unless it is published for at least two weeks in succession, immediately following its enactment, in some newspaper in the city or county where the corporation is situated.[3]

Any by-law designating the time and place of an election comes within the provisions of these statutes.[4]

ARTICLE II.

Incidental Powers and Privileges.

In addition to the powers above enumerated, and to those expressly given in its charter, or in the act under which it is incorporated, a corporation possesses no powers, except such as are necessary to the exercise of the powers so given or enumerated.[5]

This statute is not intended to establish any rule inconsistant with the presumption that a corporation may, within the reasonable scope of its business, make every contract that a natural person could make.[6] Unless restrained by law, it may make any contract necessary to advance the objects for which it was created.[7] It may borrow money

[1] Revised Statutes, part I., chap. xviii., title 4, § 6.

[2] Moneyed corporations are defined as corporations having banking powers or having the power to make loans upon pledges or deposits, or authorized by law to make insurances.

[3] Laws, 1882, chap. 409, § 207.

[4] *Matter of Long Island. R. R.*, 19 Wend. 37.

[5] Revised Statutes, part I., chap. xviii., title 3, § 3; *ante*, p. 50.

[6] *Feeny* v. *People's Fire Ins. Co.*, N. Y. Super. (2 Robt.) 599.

[7] *Legrand* v. *Manhattan Mercantile Assn.*, 80 N. Y. 638.

necessary for its business[1] and, unless expressly prohibited, may mortgage its property to secure the same; but, in the absence of some statute allowing it, it cannot mortgage its franchises.[2]

Even where the statute did expressly prohibit corporations organized under it from mortgaging or creating any lien upon their property, it was held that a purchase-money mortgage given by such a corporation (one organized under the Manufacturing Act before it was amended)[3] was a valid lien upon the property until the purchase price was paid, as against any one but *bona fide* purchasers.[4]

As pertaining to the incidental powers of corporations, organized under the laws of this state, it has been held that a company, organized for the purpose of raising and smelting ore, had the power to purchase smelting works and all the appurtenances, and that even though the property included some foreign to the purposes required for the business, yet if made in good faith the purchase would not be void.[5]

SPECIAL PROVISIONS REGULATING MORTGAGES.

Manufacturing Corporations.—Corporations organized under the manufacturing acts as originally passed, were prohibited from mortgaging or creating a lien upon any of their property,[6] but in 1864 an act was passed enabling corporations organized under that act, or any acts amending or extending the same, to mortgage their real estate, providing that the written assent of the stockholders owning at least two thirds of the capital stock should first be filed in the office of the clerk of the county where the mortgaged property was

[1] *Curtiss* v. *Leavitt*, 15 N. Y. 9; *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159.

[2] *Carpenter* v. *Black Hawk Gold Mining Co.*, 65 N. Y. 143.

[3] Laws of 1848, chap. 40, § 2.

[4] *Coman* v. *Lakey*, 80 N. Y. 345.

[5] *Moss* v. *Averell*, 10 N. Y. 449.

[6] Laws of 1848, chap. 40, § 2.

situated.[1] This power was extended in 1871 to personal, as well as real estate.[2]

In 1878 an act was passed to enable any such corporations to secure a debt "by mortgaging all or any part of the goods and chattels of such corporation, and also the franchises, privileges, rights and liberties thereof." But in order to do this the written assent of a majority of the stockholders owning at least two-thirds of the capital stock must be filed in the office of the clerk of the county where the corporation has its principal place of business, and also in the office of the clerk of the county where such goods and chattels are situated.[3]

This amendment was not intended to supersede the amendments of 1864 and 1871 and does not take away the previously existing power of the owners of two thirds of the stock to authorize the mortgaging of the real and personal property of the corporation, but only gives power to add to a chattel mortgage a mortgage upon the corporate franchises; but such franchises, privileges, rights and liberties must be specially mentioned in the assent signed by the stockholders, or the mortgage will be inoperative as to them while still a lien upon the property.[4]

These amendments effectually relieve such corporations from the restriction upon their corporate capacity to give any lien upon their property, by mortgage or otherwise, imposed by the second section of the original act. As is said by Rapallo, J., in the case of *Lord* v. *Yonkers Fuel Gas Co.* (*supra*): "It is evident that such restriction is intended only to limit the general powers of trustees of such corporations, and subject them to the control of the stockholders in the matter of giving mortgages or liens, and was not founded on any supposed policy of withholding from that particular class of corporations, the full control of their property, and

[1] Laws of 1864, chap. 517, § 2.
[2] Laws of 1871, chap. 481, § 1.
[3] Laws of 1878, chap. 163, § 1.
[4] *Lord* v. *Yonkers Fuel Gas Co.*, 99 N. Y. 547.

the corporate power of disposing of or incumbering it which is possessed by corporations in general. With the prescribed consent of the stockholders, they are declared to be as competent as natural persons to secure the payment of their legitimate debts by mortgage upon their real or personal property."

It will be noticed that, with the exception of the power to mortgage real property, which should be named, a compliance with the last amendment is broad enough to cover both.

Business Corporations.—Corporations organized under the Business Act are authorized to borrow money for the legitimate purposes of their business, and for that purpose to issue bonds with or without coupons attached, or to mortgage any portion of their real estate. Such bonds or mortgages cannot bear interest at a rate exceeding six per cent., and the amount outstanding must at no time exceed one half of the value of the corporate property. The written assent of stockholders, owning more than two thirds of the stock, must first be obtained. Any issue in excess of the amount above specified renders any director voting for the same personally liable to the holders of such bonds or mortgages for any damages caused by such over-issue.[1]

There is no provision for a mortgage of the franchises of such corporations, and, as we have seen,[2] without such a provision none can be made.

No bonds can be issued by such a company, except for money, labor done or property actually received for the use and legitimate purpose of such corporation at its fair value, and all fictitious increase of indebtedness, in any form, is void.[3]

Building Companies.—Any company organized under chapter one hundred and seventeen of Laws of 1853, or its amend-

[1] Laws of 1875, chap. 611, § 13, as amended by Laws of 1888, chap. 394.

[2] *Ante*, p. 61.

[3] Laws of 1875, chap. 611, § 14.

ments,[1] may secure the payment of any debt contracted in the purchase of property for the business for which it was incorporated or to develop property already purchased, by mortgaging, and issuing mortgage-bonds on any part of its real estate, goods and chattels, and on its franchises, privileges, rights and liberties, provided that the written assent of a majority of its stockholders, owning at least two-thirds of its capital stock, be first filed in the office of the clerk of the county where the corporation has its principal place of business, and also in the office of the clerk of the county where such real estate, goods and chattels are situated.[2]

Gas-Light Companies.—These companies may borrow money necessary for their business, to an amount not exceeding one-half of their capital stock, and may issue bonds for any amount so borrowed, and mortgage the corporate property and franchises to secure the payment of any debt so contracted.[3]

Railroads.—Railroad companies are authorized to borrow money for completing or operating their road, and to issue bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted for such a purpose.[4] Such a mortgage upon real and personal property need not be filed as a chattel mortgage, if recorded as a mortgage of real estate in each county in or through which the railroad runs.[5]

The rolling-stock of a railroad is not real estate, and unless this requirement is complied with a mortgage upon rolling-stock must be filed as an ordinary chattel mortgage.[6]

Stage-Coach Companies.—Companies organized under chapter nine hundred and seventy-four of the laws of 1867 for the

[1] See *ante*, p. 36.

[2] Laws of 1880, chap. 182, as amended by Laws of 1889, chap. 57.

[3] Laws of 1848, chap. 37, § 2, as amended by Laws of 1872, chap. 374.

[4] Laws of 1850, chap. 140, § 28, subdv. 10, as amended by Laws of 1887, chap. 724.

[5] Laws of 1868, chap. 779.

[6] *Hoyle* v. *Plattsburgh & Montreal R. R. Co.*, 54 N. Y. 314.

purpose of establishing and operating stage or omnibus routes may borrow money for the purpose of equipping and operating their lines, and may issue bonds for any amount so borrowed, and may mortgage their corporate property and franchises to secure the same.[1]

To Secure Future Advances.—After some vacillation in the State courts, it has been finally decided in the Supreme Court of the United States, that a mortgage to secure future advances is valid unless prohibited by statute;[2] and it seems now to be well settled in this state that a corporation may secure the payment of its negotiable bonds, to be thereafter issued, even though the debts authorized to be secured were not in existence at the time of the execution of the bonds and mortgage. If the bonds are negotiated only for the purpose of securing or paying debts contracted before the negotiation, the security to the creditors then for the first time comes into being and is as effectual as if the mortgage were executed at the same time with the delivery of the bonds.[3]

Renewals of notes are protected by a mortgage executed as a collateral and continuing security for the payment which then had been or should thereafter be made.[4]

A mortgage may cover the future as well as present estate of a company;[5] and it may be given to trustees to secure bonds issued.[6]

The Assent of the Stockholders.—Where the statute requires

[1] Laws of 1867, chap. 974, § 13, subdv. 4.

[2] *Jones* v. *N. Y. Guaranty & Indemnity Co.*, 101 U. S. 622.

[3] *Lord* v. *Yonkers Fuel Gas Co.*, 99 N. Y. 547; *Martin* v. *Niagara Falls Paper Mfg. Co.*, 44 Hun, 130; *Jones* v. *N. Y. Guaranty & Indemnity Co.*, 101 U. S. 622. In *Carpenter* v. *Black Hawk Gold Mining Co.* (65 N. Y. 43), it is said (*obiter*) that "a mortgage upon real estate is allowed only to secure the payment of debts. It cannot be made to raise money merely to carry on the operations of the company;" but this expression was not concurred in by the other members of the commission, and is overruled by the cases above cited.

[4] *Martin* v. *Niagara Falls Paper Mfg. Co.*, 44 Hun, 130.

[5] *Fisk* v. *Potter*, 2 Abb. Ct. App. Dec. 138. *Carpenter* v. *Black Hawk Gold Mining Co.*, 65 N. Y. 43.

[6] See cases cited in note 3 (*supra*).

that the assent of the stockholders be obtained before a mortgage is executed, such assent is an indispensable condition to a valid mortgage.[1] The assent of the corporation itself is not a compliance with the statute. It must be the individual act of the stockholders.[2]

Whether, in the very common case of stock remaining in the treasury of the company after it is issued, it is necessary to have the assent of stockholders owning two-thirds of the whole amount issued has not been decided—the question, in the case of *Vail* v. *Hamilton* (*supra*), having been raised, but, as not necessary to the decision of the case, not having been passed upon. Where the assent of two-thirds of the whole can be obtained, it is perhaps safer to obtain it, but in the case of the *Greenpoint Sugar Company* v. *Whitin*,[3] it was held that stock not issued could be deducted in estimating the amount necessary to constitute two-thirds, as otherwise it might happen that there would not be a sufficient ownership of stock to enable the company to execute a mortgage at all, and the same reasoning would apply in the case of the ownership of stock by the company. In the same case it is said that the purpose and intent of the requirement is to protect stockholders from improvident or corrupt acts of the officers, and that its general purpose and design was in the interests of the stockholders only. It was accordingly held that an assent to the issue of a bond secured by mortgage, not specifying any amount, nor describing the property covered by the mortgage, and filed with the mortgage, was sufficient. Where a mortgage has been executed without the required assent of the stockholders, it is validated by a subsequent assent if there are no intervening rights, and from that time it becomes a valid mortgage.[4]

[1] *Vail* v. *Hamilton*, 85 N. Y. 453; *Rochester Savings Bank* v. *Averell*, 96 id. 467.

[2] *Vail* v. *Hamilton* (*supra*).

[3] 69 N. Y. 328.

[4] *Rochester Savings Bank* v. *Averell*, 96 N. Y. 467.

Filing Assent where Real Estate is out of the State.—Where a corporation makes a mortgage of any of its real estate situated beyond the limits of this state, and the recording office of the county in which it is situated refuses to file or record the assent, it may be filed in the office of the clerk of the county where the company has its principal place of business within the state.[1]

Failure to file Assent.—By a law passed April 1, 1875,[2] it was provided that in cases where a corporation had before that time executed a mortgage of any of its real estate, and the requisite assent of the stockholders had been given at or before the time of the giving of the mortgage, but had not been filed in the office of the clerk of the county where the real estate was situated, the consent, accompanied by an affidavit of an officer or stockholder that it was made and signed at the time it purported to have been made, might be filed, and the mortgage would then have the same validity and effect, from the time of filing such assent, as if it had been filed with, or had preceded the filing of the mortgage, except that no intervening rights either by action, lien or otherwise, should be affected by such a mortgage. This statute is construed as in entire conformity with the more general principle that where a mortgage has been executed without the requisite assent, the defect is cured by a subsequent assent if there are no intervening rights, and from the time of such assent it becomes a valid mortgage.[3]

The filing of the assent is not an indispensable condition to the validity of the mortgage as against a subsequent mortgagee or purchaser with notice, and if essential to complete the rights of the mortgagee, it may be filed as of the time the assent was given.[4]

[1] Laws of 1869, chap. 706.

[2] Laws of 1875, chap. 88.

[3] *Rochester Savings Bank* v. *Averell*, 96 N. Y., 467.

[4] Ibid.

ARTICLE III.

Special Powers and Privileges.

In addition to the general powers enumerated in the first article of this chapter, and the incidental powers referred to in Article II., there are certain special powers conferred by statute upon corporations which are not among those enumerated, nor are they such as incidentally flow from the powers granted to all corporations.

CONSOLIDATION OF CORPORATIONS.

Manufacturing Corporations.—Corporations organized under any general or special law for the purpose of carrying on any kind of manufacturing business of the same or similar nature, may be consolidated into a single corporation.

The directors of companies desiring to consolidate must enter into an agreement under their respective corporate seals for the consolidation of such companies, prescribing the terms and conditions of consolidation, the mode of carrying it into effect, the name of the new corporation, the number of trustees (not less than three nor more than thirteen), the names of the trustees who shall manage the concerns of the company for the first year and until others shall be elected in their places, the term of existence of such new company (not exceeding fifty years), the name of the town or towns, county or counties in which the operations of the new company are to be carried on, and if any of the consolidated companies were organized for the purpose of carrying on any part of their business in any place out of this state, and the new company proposes to do the same, the agreement must so state, and must also state the name of the town or city and county in which the principal part

of the business of the new company within the state is to be transacted, the amount of capital, the number of shares of stock into which the same is to be divided, and the manner of distributing such capital among the consolidated corporations or their stockholders, and such other particulars as may be necessary.

The capital cannot be larger in amount than the fair aggregate value of the property, franchises and rights of the several consolidated corporations, but it may be increased in the same manner as that of manufacturing corporations.[1]

The agreement so made must be submitted to the stockholders of the respective corporations at meetings specially called for that purpose, upon notice specifying the time and place of such meeting and its object, addressed and mailed to each of the stockholders where their address is known, at least thirty days before such meeting, and published for at least three successive weeks in a newspaper published in each of the counties of this state in which any of the corporations to be consolidated has its place of business.

At such meetings each share of capital stock present either in person or by proxy is entitled to one vote, and when sanctioned by two-thirds in amount of the stock so represented, in a vote taken by ballot at each of the meetings, the agreement of the directors is deemed to be the agreement of the several corporations, and a verified copy of the proceedings of such meetings made by the respective secretaries, and attached to the agreement, is evidence of such action.

If at such meetings, or within twenty days thereafter, any stockholder of any such corporations object to such consolidation, and demand payment for his stock, if such consolidation take effect, he, or the new company may apply at any time within sixty days after such meeting of the stock-

[1] Laws of 1884, chap. 367, § 1. For an act nearly identical, but applying only to corporations organized under chap. 40 of Laws of 1848, see Laws of 1867, chap. 960. As to how the capital stock may be increased, see Chap. III., *post*.

holders to the supreme court, at any special term held in any county in which the new corporation may have its place of business, upon eight days' notice, for the appointment of three appraisers to appraise the value of the stock.

The court will thereupon appoint three such appraisers and designate the time and place of the first meeting, and will give such directions in regard to the proceedings on such appraisement as may be deemed proper, and will also direct the manner in which payment for such stock shall be made. The court may fill any vacancy in the board occurring through refusal or neglect to serve or otherwise.

At the time and place designated the appraisers, or any two of them, after being duly sworn honestly and faithfully to discharge their duties, must estimate and certify the value of such stock at the time of such dissent and deliver one copy of such appraisal to such new company, and one copy to the stockholders if demanded. The expenses of the appraisal are to be paid by the company.

When the corporation has paid the stockholder the value of his stock so appraised as directed by the court, all interest of such stockholder in the stock and in the property of such corporation ceases, and such stock may be held or disposed of by the new corporation.[1]

Duplicate copies of the agreement, which, it will be noticed is similar in its terms to the certificate required under the Manufacturing Act, and of the proceedings at the stockholders' meetings verified as required above, must be filed in the office of the clerk of the county in this state where the operations of the corporation are to be carried on and in the office of the Secretary of State, and from the time of such filing, the corporations agreed to be consolidated shall be merged in the new corporations,[2] and shall

[1] Laws of 1884, chap. 367, § 2. Such stockholder is entitled to interest on the award from the time of filing he report only, and not from the time of the dissent. *Trask* v. *Peekskill Plow Works*, 6 Hun, 236.

[2] Laws of 1884, chap. 367, § 3.

possess the general powers of corporations and be entitled to enjoy the rights, franchises and privileges of each of the companies from which it has been formed, subject, however, to the liabilies, restrictions, duties and provisions contained in the Manufacturing Act, so far as the same may be applicable to such corporations.[1]

Upon the consolidation of such corporations all the powers, privileges, rights and franchises of both vest in the new, and all property mentioned in the agreement is deemed transferred without any other deed or transfer,[2] and such new company may carry on the business of any of the companies so consolidated.[3] It is provided that the rights of creditors shall not in any way be impaired by such consolidation, and any suit pending against any of the consolidated companies, or its stockholders, shall not be discontinued, but may be prosecuted to completion, or the new company may be substituted in the place of the old.[4]

Consolidation of Insurance Companies.—The directors of any two companies organized under chapter four hundred and sixty-six of laws of 1853, or its amendments,[5] may enter into and make an agreement under their respective corporate seals for the merger of one of the companies into the other, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the amount of capital (which cannot be larger than the aggregate capital of the two), the number of shares into which it is to be divided, with such other particulars as may be deemed necessary, not inconsistent with the provisions of the act under which they are organized. This agreement must be submitted to the Superintendent of the Insurance Department for his approval.[6]

It is provided that such an agreement, after the approval of the Superintendent of the Insurance Department, shall

[1] Laws of 1884, chap. 367, § 4.
[2] Id. § 5.
[3] Id. § 7.
[4] Id. § 6.
[5] This now includes only fire and inland-navigation insurance companies.
[6] Laws of 1878, chap. 98, § 1.

become the agreement of the companies only after it has obtained the assent of a majority of the whole number of directors of each company, and the assent of one-half of the stockholders owning two-thirds of the stock of each, which assent in writing, attached to the agreement, is evidence of the assent of the stockholders.[1]

Upon filing such agreements or duplicates thereof, with the assent of the stockholders and approval of the Superintendent of the Insurance Department, in the office of the clerk of the county where the principal place of business of such company is located and in the office of the Superintendent of the Insurance Department, the corporations are merged and the details may be carried into effect, and the new corporation may require the return of the original certificates issued to the stockholders of the old corporations and issue new certificates for such number of shares of its own stock as such stockholders are entitled to receive.[2] Similar provisions as to corporate property and franchises and as to the rights of creditors are made as in the act for the consolidation of manufacturing corporations.[3]

Consolidation of Banks.—Any two or more banking associations organized under the general banking laws of this State, and located in the same city, village, or town may consolidate into a single association to be located in the same place.[4]

An agreement under their respective corporate seals must be made by the directors of the banks to be consolidated which shall prescribe the terms and conditions of the consolidation, the mode of carrying it into effect, the name and duration of the new association, the number of directors and the names of those who shall constitute the first board, the time and place of holding the first election of directors the manner of converting the shares of each into the new association, with such other details as may be deemed expe-

[1] Laws of 1878, chap. 98, § 2.
[2] Id. §§ 4 and 5. See *ante*, p. 71.
[3] Id. § 3.
[4] Laws of 1882, chap. 409, § 48.

dient not inconsistent with the Banking Act. Notice of the intention to consolidate must be served personally or by mail upon each stockholder of each association at least ten days before entering into the agreement.[1]

The written consent of stockholders owning at least two-thirds in amount of the capital stock of each association is requisite to the validity of the agreement.

Upon the presentation of the agreement duly proved or acknowledged, together with proof of the requisite consent of the stockholders, and proof of the service of notice upon each stockholder, to the Superintendent of the Banking Department, he will cause an examination of the books, property, effects and liabilities of such association to be made, and from the results of such examination determine the value, in his judgment, of such property and effects, above and beyond the debts and liabilities, and certify the same in writing, and the amount so determined will be the capital stock of the consolidated association;[2] and such certificate must be filed in the office of the clerk of the county where the association is located, and a certified copy in the Banking Department of the State.[3]

Recording the agreement and certificate perfects the consolidation, and the separate existence of the constituent associations ceases, and the new association becomes vested with all the property and effects and becomes subject to all the obligations and liabilities of the old.[4]

Similar provisions exist as to pending suits and outstanding liabilities as in the act for the consolidation of manufacturing corporations.[5]

Within twenty days after filing and recording the certificates in the county clerk's office any stockholder of any of the consolidated associations who has not signed the assent to the consolidation may object, in writing, to such consoli-

[1] Laws of 1882, chap. 409, § 49.
[2] Id. § 50.
[3] Id. § 51.
[4] Id. § 53.
[5] Id. §§ 54, 55.

dation and demand payment for his stock, and within three months of filing such dissent the association must pay to him the value of his stock as determined in the certificate of the Superintendent of the Banking Department; and upon such payment his interest in the property and effects of such association shall cease, and the stock so purchased may be held and disposed of by the association for its own benefit.[1]

Consolidation of Railroads.—Any railroad company organized under the laws of this state, or of this state and any other state, and operating a railroad or bridge either wholly within, or partly within and partly without this state, may be consolidated with any other railroad, similarly organized, or with a road organized under the laws of any other state, whenever such railroad or branch, or any part of the same, form or may form a continuous line by means of any intervening railroad, bridge or ferry.[2]

The directors of such companies may enter into an agreement under their corporate seals for the consolidation of the companies, prescribing therein the terms and conditions of such consolidation, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers, and who shall be the first directors and officers, and their places of residence, the number of shares of capital stock, the amount or par value of each share and the manner of converting the old stock into the new, and how and when directors and officers shall be chosen, with such other details as they may deem necessary to perfect the consolidation.

The capital stock of such new company may not exceed the par value of the capital stock of the companies consoli-

[1] Laws of 1882, chap. 409, § 56.

[2] Laws of 1869, chap. 917, § 1, as amended by Laws of 1881, chap. 685. As to what will constitute a "continuous line" within the meaning of the statute see *People* v. *Boston, etc., R'y. Co.*, 12 Abb. N. C. 230. For an act making this particularly applicable to railroads organized under the Laws of Pennsylvania, see Laws of 1875, chap. 256.

dated; nor may any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation.

Such agreement must be submitted to the stockholders of each of the companies at meetings called separately for the purpose of considering it, of which notice must be given by written or printed notices, stating the objects of such meeting, and delivered to such stockholders personally, or sent by mail when their post-office address is known, at least thirty days before the time of holding such meeting, and also by a general notice published daily, for at least four weeks, in the city, town or county where such company has its principal office or place of business.

At such meeting the voting must be by ballot, each share being entitled to one vote, and if two thirds of all the votes of all the stockholders are for the adoption of the agreement, that fact must be certified thereon by the secretaries of the respective companies,[1] under the corporate seal, and the agreement so adopted, or a certified copy, must be filed with the secretary of state, and from thence must be deemed and taken to be the agreement and act of consolidation of such companies;[1] and from the time of such filing the consolidation is perfected and the corporations that are parties to such agreement constitute one corporation by the name provided in such agreement.[2]

Upon the consummation of the act of consolidation all the rights, privileges, franchises, and property of the old corporations, including stock subscriptions and choses in action, vest in the new and it becomes entitled to the same without further act or deed.[3]

Similar provisions exist as to pending suits, the rights of creditors, etc., as in the act for the consolidation of manufacturing corporations.[4]

[1] Laws of 1869, chap. 917, § 2, as amended by Laws of 1880, chap. 94.
[2] Id. § 3.
[3] Id. § 4,
[4] Id. § 5, *ante*, 71.

Consolidation of Telegraph Companies.—Any telegraph company organized under the laws of this state may lease, sell, or convey all, or any part of, or interest in, its property, rights, privileges or franchises to any other telegraph company, organized under the laws of this or any other state; and it may likewise acquire by law, purchase or conveyance such interest in the property, rights, privileges or franchises of another company; and it may make payments therefor in its own stock, money or property, or may receive stock, money or property of such other company in payment for its own.

No such purchase, sale, lease or conveyance will be valid until it has been ratified and approved by a three-fifths vote of its board of directors, and also by a consent thereto in writing, or by a vote at a general meeting duly called for that purpose of three fifths in interest of the stockholders in such company present, or represented by proxy at such meeting.[1]

Rights of Creditors on Consolidation.—Most of the acts that have been considered contain provisions that the rights of creditors shall not be impaired by consolidation, and that the new company shall assume the obligations of the old.

This provision, however, does not constitute the new company the successor of all its components. So far as a creditor of one of the original companies is concerned, the consolidated company is the successor of such old company; but in respect to the property of the other companies, it is a new and independent company, and such creditor has no claim against it upon their original contract, but only by virtue of its assumption of the obligations of the old companies.[2]

[1] Laws of 1870, chap. 568.

[2] So held in a case where an action was begun against one of two companies before consolidation and judgment entered against such company after the consolidation was perfected without making the new company a party. *Prouty* v. *L. S. & M. S. R. Co.* 52 N. Y. 363. See also *Boardman* v. *Id.* 84 N. Y. 157. *Chase* v. *Vanderbilt*, 62 N. Y. 307.

The consolidation of two or more corporations is not a surrender of their personal identity and corporate existence to the extent of preventing their officers doing all necessary acts to vest the new company with the property of the old.[1]

II. REORGANIZATION.

We have seen heretofore[2] the provisions made for the extension of the time of existence limited in the charter of corporations.

In addition to these there are several provisions for the reorganization of corporations, either after foreclosure, or in cases where it becomes desirable to reorganize under the Business Act.

The latter act provides for two distinct classes of corporations known respectively as:

1. Full liability companies.
2. Limited liability companies.[3]

In "full liability companies" all the stockholders are severally individually liable to the creditors of the company for all the debts and liabilities of the company.[4] Such companies may reorganize as "Limited liability companies" as follows:

Reorganization as "Limited Liability Companies."—Any corporation organized and doing business as a "Full liability company" under the Business Act, whose debts, liabilities, or other obligations are not greater than the amount of its capital stock actually paid in and unimpaired, may reorganize as a "Limited liability company," with all the rights, privileges and duties, and subject to all the regulations and lia-

[1] Thus, where to satisfy the United States Patent Law, which requires every assignment of a patent to be in writing, a conveyance, executed by the officers of one of two companies consolidated under the general laws of this state, was made after the consolidation, in pursuance of the authority conferred before consolidation and in execution of the terms agreed upon, it was *held* by the United States Circuit Court that such conveyance was valid. *Edison Electric Light Co.* v. *New Haven Electric Co.*, 21 Abb. N. C. 119.

[2] *Ante*, p. 52.

[3] Laws of 1875, chap. 611, § 33.

[4] Id. § 34.

bilities pertaining to the same, together with the privilege and right of retaining and continuing the corporate name with the word "limited" as its last word.[1]

The directors must publish a notice signed by at least a majority of them in a newspaper published in the county in which the principal business office of the company is located, once a week for three successive weeks, calling a meeting of the stockholders, and mail a copy of the same to each stockholder at his last known place of residence, at least two weeks previous to the day fixed for holding such meeting. The notice must specify the object of the meeting and the time and place when and where the meeting will be held.

At the time and place specified in the notice the stockholders must organize by choosing one of the directors chairman of the meeting and a suitable person as secretary, and proceed to a vote of those present, either in person or by proxy, and if votes representing a majority of all of the stock of the company shall be in favor of the change, the chairman and secretary with two other directors must make a certificate of the proceedings, showing a compliance with the act, duly acknowledged and stating:

1. The name of the corporation.
2. The original object for which it was formed.
3. The amount and description of the capital stock, and into how many shares the same is divided.
4. The location of the principal business office.
5. The duration of the corporation (not exceeding fifty years).
6. The names of the directors for the ensuing year.

This certificate, with a copy of the by-laws, must be filed in the office of the secretary of state and of the clerk of the county in which the principal business office of the company is located, and from the time of such filing such corporation becomes a "Limited liability" corporation, as if

[1] Laws of 1885, chap. 535, §§ 1, 2.

originally organized as such, and may have and exercise all the rights and franchises it previously had and exercised, and no stockholder or officer will thereafter be subject to any greater liability than if such corporation had been originally organized as a limited liability company.[1]

If at the time of such reorganization the capital of such company has not been paid in full, it is provided that the time for payment shall begin to run from the time of such reorganization, and the time and manner of payment shall be the same as if such company were then originally organized as a "Limited liability" company.[2]

Reorganization under the Business Act.—It is provided in the Business Act,[3] that any corporation organized under the general laws of this state, except such corporations as are particularly excepted by the first section of the act from organizing under it,[4] may come under and avail itself of the privileges of the act.

The procedure is similar to that of the reorganization of "Full liability companies" as "Limited liability companies" (*supra*).

The directors must publish a notice of the stockholders' meeting, signed by at least a majority of them, in a newspaper published in the county where the principal business office of the company is located for at least three successive weeks, and deposit a written or printed copy thereof in the

[1] Laws of 1885, chap. 535, § 2.

[2] Id., § 3.

[3] Laws of 1875, chap. 611, § 32, as amended by Laws of 1885, chap. 540.

[4] The only companies expressly excepted from the right to organize under the provisions of this act are companies organized for the purpose of carrying on the business of banking, insurance, the construction and operation of railroads, or aiding in the construction thereof, and the business of savings-banks, trust companies, or corporations intended to derive profit from the loan or use of money, or safe-deposit companies, including the renting of safes in burglar- and fire-proof vaults. Id. § 1. In *People* ex rel. *Clauson* v. *Newburg, etc., Plank-road Co.*, 86 N. Y. 1, it was held that a plank-road company could reorganize under this act; it would seem, therefore, that the words of the statute would not be limited by judicial construction.

post-office, postage prepaid, addressed to each stockholder at his last known place of residence at least three weeks before the day for holding the meeting. The notice must specify the object of the meeting and the time and place when and where it is to be held.

At the time and place specified in the notice, the stockholders must organize by choosing one of the directors chairman and a suitable person for secretary, and proceed to a vote of those present, either in person or by proxy, and if votes representing a majority of all the stock of the company are given in favor of reorganization, the officers must make a certificate of the proceedings, showing a compliance with the act, duly acknowledged, in which shall be stated:

1. The name of the corporation.

2. The object for which it is formed, including the nature and locality of its business.

3. The amount and description of the capital stock.

4. The number of shares of which such capital stock consists.

5. The location of the principal business office.

6. The duration of the corporation (not exceeding fifty years).

7. The names of the directors for the ensuing year.

This certificate, with a copy of the by-laws, must be filed in the office of the secretary of state, who will thereupon issue to the directors named therein a certificate setting forth that such corporation is fully reorganized in accordance with the act. This will include a copy of the certificate of the proceedings (not including the by-laws), the date and place of the stockholders' meeting, the names of the directors elected, and a statement that all the provisions of the act have been duly observed in the reorganization.

Within ten days from the issuing of such certificate by the secretary of state it must be filed in the office of the clerk of the county in which the principal business office of such corporation is situated. From the time of such filing

the corporation will be deemed to be a corporation organized under the Business Act, and if originally organized under any general law of this state it may continue to have and exercise all the rights and franchises it had and exercised under the laws pursuant to which it was originally incorporated.

It is provided that the existing liabilities of a corporation shall in no way be affected, changed or diminished by such reorganization.

The fees for filing, etc., are the same as for the original organization under the act.

Reorganization after Foreclosure.[1]—Whenever the franchises, privileges, easements, rights and liberties of any corporation created by any act of the legislature of this state, or organized under any general law of the state and empowered by such act to mortgage its property or franchises, have been or may be sold by virtue of any mortgage executed by such corporation, and the purchaser or purchasers have acquired title to the same in the manner prescribed by law, such purchaser or purchasers may associate with themselves any number of persons, and upon making and filing articles of association as prescribed, they and their associates and their successors and assigns, "being residents of this state," may become a body corporate, and may take and receive a conveyance, and shall thereupon succeed to possess, exercise and enjoy all the rights, powers, franchises, privileges, easements, liberty, property, estate and effects of which the title shall have been so acquired and conveyed.[2]

If such corporation was organized under any general laws of the state the certificate must set forth the particulars

[1] Upon foreclosure of a mortgage given to secure its bonds, a holder of bonds pledged as collateral is not limited to proof of an amount simply equal to the amount of his debt, but may prove the whole amount of his bonds and share in the distribution accordingly up to the amount of his debt. *Duncomb* v. *N. Y., Housatonic, & North. R. R. Co.*, 84 N. Y. 190.

[2] Laws of 1873, chap. 469, § 1.

required by the act to be set forth in the original certificate of incorporation.[1]

If it was created by any special act the certificate must set forth the following particulars, namely:

1. The name of the corporation so to be formed.

2. The amount of capital stock (which cannot exceed the amount of capital stock of the former corporation authorized by law at the time of the sale) and the number of shares of which the stock shall consist.

3. The title and time of passage of the original act creating the former corporation, and any other act or acts relating thereto.

4. The number of directors who shall manage the concerns of the company, and the names of the first board of directors, who shall hold their offices for one year and until others are chosen in their places.[2]

The certificate must be executed in duplicate and properly acknowledged, and one of the duplicates must be filed in the office of the secretary of state and the other in the office of the clerk of the county in which the former corporation had its principal place of business.

Thereupon the corporation so formed shall exist for the time, and may and shall possess, exercise and enjoy all the powers, privileges, rights, liberties, easements and franchises possessed by the former corporation, and in the same manner and to the same extent, and with the same force and effect as they could have been exercised by the former corporation if such sale had not been made.

Whenever by the decree of the court having jurisdiction of the foreclosure proceedings it has been adjudged and determined what powers, privileges, rights, liberties, easements and franchises were possessed and enjoyed by such former corporation at the time of entering such decree, and were therein ordered to be sold, the same shall be possessed and enjoyed by the new corporation to which they have

[1] Laws of 1873, chap. 469, § 2. [2] Id. § 3.

been conveyed by virtue of the decree of foreclosure. But no omission in such decree to set forth or define any of the rights, privileges or franchises of such former corporation shall in any way impair the rights of such purchasers, or of such new corporation, to possess and enjoy all that was possessed by the former corporation at the time of such sale.[1]

The tax of one eighth of one per cent. on the capital stock must be paid on such reorganization, the same as for the original organization of a corporation.[2]

Same. *Railroads.*—Special provisions are made for the reorganization of railroads after foreclosure.

In case a railroad and property connected therewith, and the rights, privileges and franchises of any corporation (except a street-railroad company created under the general railroad law of this state, or existing under any special or general act of the legislature), shall be sold under a decree of foreclosure, the purchasers,[3] and such persons as they may associate with themselves, and their grantees or assignees, or a majority of them, may become a body politic and corporate, and take the title and property included in such sale, and have all the franchises, rights, powers, privileges and immunities which were possessed before such sale by the corporation whose property has been sold.

A certificate, duly executed and acknowledged, must be filed in the office of the secretary of state, in which must be described by name and by reference to the act or acts of the legislature of this state under which it was organized the corporation whose property and franchises have been

[1] Laws of 1873, chap. 469, § 4, as amended by Laws of 1880, chap. 113. By Laws of 1890, chap. 193, when the property of a corporation organized under the Manufacturing Act is sold under a decree of foreclosure, or under an execution or by a receiver on proceedings for dissolution, the creditors may purchase the property and reorganize the company, and may make such agreements in regard to common and preferred stock as may be desirable.

[2] *People* ex rel. *Mertens* v. *Cook*, 110 N. Y. 443.

[3] A mortgagee may be a purchaser on foreclosure sale. Laws of 1857, chap. 444, § 1. And a foreign corporation may purchase land mortgaged to it by a corporation of this state, and hold the same for five years. Laws of 1877, chap. 158, § 1.

acquired, and also the court by authority of which such sale was made; giving the date of the judgment or decree directing the same, together with a brief description of the property sold, and also:

1. The name of the new corporation.

2. The maximum amount of its capital stock, the number of shares into which the same is to be divided, specifying how much of the same shall be common and how much preferred, and the classes thereof, and the rights pertaining to each class.

3. The number of directors by whom the affairs of the new corporation are to be managed, and the names and residences of those selected to act as directors for the first year.

4. Any plan or agreement which may have been entered into pursuant to the second section of the act.

Such plan, agreement and articles may regulate voting on the part of the holders of the preferred and common stock of the company, and may provide for and allow voting at such meetings and for directors on the part of the bondholders of the old company, or of the new on such conditions as may be therein declared.

Upon filing such certificate in the office of the secretary of state, the persons executing the same and their successors and assigns, *provided that a majority of such persons are citizens and residents of this state*, become a body politic and corporate by the name specified in the certificate, and are vested with, and are entitled to enjoy all the rights, privileges and franchises which at the time of the sale belonged to or were vested in the corporation which last owned the property, or its receiver.[1]

Where purchasers have acquired the property and franchises of a railroad in pursuance of a plan of readjustment making provision for the representation of the interests of the former stockholders and creditors in the bonds or stock

[1] Laws of 1874, chap. 430. § 1, as amended by Laws of 1876, chap. 446.

of the new corporation, such new corporation may issue its bonds and stock in pursuance of such plan, and may at any time within six months after its organization compromise, settle, or assume the payment of any debt, claim or liability of the former company upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of such plan of reorganization, and may establish preferences in respect to the payment of dividends in favor of any portion of its capital stock.

The supreme court may direct a sale of the whole of the property, rights and franchises covered by a mortgage or mortgages foreclosed at any one time, either in case of non-payment of interest only, or of both principal and interest due and unpaid; but such sale and formation of new company will not interfere with the authority or possession of the receiver until his removal or discharge by order of the court.[1]

Every stockholder in a company whose property and franchises have been sold may assent to the plan of reorganization pursuant to which the same has been purchased at any time within six months after the organization of the new company, and by complying with the terms and conditions of the plan become entitled to his *pro rata* benefits therein according to its terms.[2]

This act repeals section 2 of chapter 502 of Laws of 1853, which gave to each stockholder of such a company, upon paying within six months after the sale under foreclosure to the purchaser a sum equal to such proportion of the price paid by him as his individual stock bore to the whole capital stock of the company, the right to have the same relative amount of stock or interest in the company and its road franchises and other property.[3]

After the foreclosure sale, the only property interest which a stockholder of the old company has left is in the

[1] Laws of 1874, chap. 430, § 2, as amended by Laws of 1876, chap. 446.

[2] Id. § 3.

[3] *Pratt* v. *Munson*, 84 N. Y. 582.

surplus, if any, after satisfying the mortgage and other preferential claims. The statute secures to him the option of joining the new company by a compliance with the terms of the plan. But this option must be exercised within six months, and if he fails within that time to exercise it, he loses the right to join or become interested in the new company, or to acquire any interest in the property.[1]

If the maximum amount of capital stock of any railroad company as set forth in the certificate of incorporation on file in the office of the secretary of state is insufficient to carry out any plan of reorganization set forth in such certificate, the majority of the directors may execute a new certificate setting forth such insufficiency and the additional amount of capital stock required to carry out such plan of reorganization, and may thereupon, with the approval of the state engineer and surveyor, issue such capital stock the same as if it had been mentioned in the original certificate.[2]

In the case of roads formed by the consolidation of roads lying partly in this state and partly in other states, where a decree of foreclosure has been made by a court of competent jurisdiction of the state or states in which the greater part of such line of railroad is situated, such judgment or decree and the sale thereunder may be confirmed by the supreme court of this state in the judicial district in which some part of such line is situated.

When so confirmed, the sale thereunder will operate to pass title to the purchaser of that part of the line of railroad lying in this state, with its appurtenances and franchises, with the same force and effect as if the sale had been made under the judgment and decree of a court of competent jurisdiction of this state; and if a receiver of the entire line has been appointed by such a court of the state where the greater part of the line is situated, he may perform within this state the duties of his office, not inconsistent with the

[1] *Vatable v. N. Y., L. E. & W. R. R. Co.*, 96 N. Y. 49.

[2] Laws of 1880, chap. 155, § 1.

laws of the state, and may sue and be sued in the courts of the state.[1]

Where a corporation is organized, after such sale and confirmation, in the state where the greater portion of the line is situated, for the purpose of taking title to the entire line of railroad so sold, it may operate that portion of the line within this state and have all the rights and franchises of the corporation executing the mortgage, such as are conferred upon railroad corporations organized under the laws of this state, and will be subject to all the duties and liabilities of such corporations. An exemplified copy of the charter, certificate of incorporation, or articles of association under and by virtue of which such corporation is created, and of the judgment or decree under which the entire line was sold and a certified copy of the order or judgment or decree of confirmation and approval must be filed in the office of the secretary of state.[2]

Reorganization of Plank-Road Companies.—When a plank road or turnpike road has been sold upon the foreclosure of a mortgage given by such a company upon its road and franchise, to secure the payment of any bonds of such company, the purchaser at such sale may maintain and operate such road in the same manner, and with the same privileges, and subject to the same restrictions as the original company at the time the sale was made.[3]

Such purchaser or purchasers, on associating with him or them not less than four persons, may organize a corporation for the purpose of maintaining such road in the manner prescribed for organizing plank-road companies.[4]

Any stockholder of such company has, for six months after such sale under foreclosure, the right, on paying to the purchaser or purchasers under such sale, or to the mortgagees named in such mortgage, for the use and benefit of such purchasers, a sum equal to such proportion of the

[1] Laws of 1879, chap. 505, § 1.
[2] Id. § 2.
[3] Laws of 1866, chap. 780, § 1.
[4] Id. § 2. (See *ante*, p. 34.)

price paid on such sale, and the costs and expenses thereof, as such stockholder's stock in such company bears to the whole capital stock, and upon such payment to have the same relative amount of stock or interest in such company and its road, franchises and property.[1]

Proceedings for the Sale of Corporate Real Property.—Whenever any corporation or joint stock association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor is as follows:[2]

The proceeding is instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation or association, applicant, of a petition setting forth the following facts:

1. The name of the corporation or association, and of its directors, trustees or managers, and of its principal officers, and their places of residence.

2. The business of the corporation or association, or the object or purpose of its incorporation or formation, and a reference to the statute under which it was incorporated or formed.

3. A description of the real property to be sold, mort gaged or leased, by metes and bounds, with reasonable cer tainty.

4. That the interests of the corporation or association will be promoted by the sale, mortgage or lease of the real property specified, and a concise statement of the reasons therefor.

5. That such sale, mortgage or lease has been authorized, by a vote of at least two-thirds of the directors, trustees or

[1] Laws of 1853, chap. 502, § 2. This section, so far as relates to railroad companies, has been repealed by implication by later statutes, (see *ante*, p. 85;) but as such statutes apply only to the foreclosure of railroads, and there is nothing repugnant to the section in later statutes relating to plank-roads, it is, so far as such companies are concerned, undoubtedly still in force.

[2] Code Civ. Proc., § 3390.

managers or the corporation or association, at a meeting thereof, duly called and held, and a copy of the resolution granting such authority.

6. The market value, of the remaining real property of the corporation or association, and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all.

7. The application proposed to be made of the moneys realized from such sale, mortgage or lease.

8. Where the consent of the shareholders, stockholders or members of the corporation or association is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition.

9. A demand for leave to mortgage, lease or sell the real estate described.

The petition must be verified in the same manner as a verified pleading in an action in a court of record.[1]

Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer or creditor of the corporation or association, or otherwise, in which case the application will be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court with his opinion thereon.[2]

Upon the hearing of the application, if it appear to the satisfaction of the court, that the interests of the corporation or association will be promoted thereby, an order may be granted authorizing it to sell, mortgage or lease the real property described in the petition, or any part thereof, for such sum and upon such terms as the court may prescribe,

[1] Code Civ. Pro., § 3391. [2] Id. § 3392.

and directing what disposition shall be made of the proceeds of such sale, mortgage or lease.

Any person whose interests may be affected by the proceedings, may appear upon the hearing and show cause why the application should not be granted.[1]

If the corporation or association is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application will not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application shall be heard.[2]

Service of notices may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mailing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.[3]

In all applications made, as above provided, where the mode or manner of conducting any or all of the proceedings thereon are not expressly provided for, the court before whom such application may be pending may make all the necesasry orders and give the proper directions to carry into effect the object and intent of this, or of any act authorizing the sale of corporate real property, and the practice in such cases must conform, as near as may be, to the ordinary practice in such court.[4]

MISCELLANEOUS SPECIAL POWERS AND PRIVILEGES.

Changing Place of Business. *Manufacturing Act.*—Any company organized under the Manufacturing Act may change its place of business by a vote of the stockholders representing two-thirds of the stock at any meeting of the stockholders

[1] Code Civ. Pro., § 3393.

[2] Id. § 3394.

[3] Id. § 3395.

[4] Id. § 3396. These provisions took effect May 1st, 1890, and do not affect any proceeding previously commenced. Id. § 3397.

regularly called, and executing and acknowledging an amended certificate specifying the name of the towns or cities from and to which the business location of the company is to be changed, and in other respects conforming to the original certificate.

Such amended certificate must be signed by the president and two thirds of the directors of the company and filed in the office of the secretary of state and in the office of the clerk of the county where the business operations of the company are to be carried on, and published weekly in two papers in the towns or cities from and to which the business operations have been removed, and are to be carried on, for the term of three months. But the property of such company is liable to taxation in any county where such property may be, or in which its business may be done, to the extent of its property in any such county.[1]

No company organized under the above act will be deemed or taken to have a principal office or place for transacting its financial concerns other than that at which the operations of the company are carried on, unless within the month of May in each year the president and treasurer, or a majority of the trustees, make a duplicate certificate, stating the amount of the then capital of such company, and the portion of such capital not invested in real estate, and stating that such company then has a principal office for transacting its financial concerns in a county other than that in which the operations of the company are carried on.

It must state the town or city in which such financial office is located, and that the president and treasurer and a majority of the trustees of such company are then actually residents of such town or city.

The duplicate certificates must be signed and sworn to by the persons making them and filed, the one in the clerk's office of the county where the operations of the company

[1] Laws of 1864, chap. 517, § 1.

are carried on and the other in the clerk's office of the county in which such financial office is located.[1]

Same. *Business Corporations.*—Corporations organized under the Business Act may change their place of business by the consent of the stockholders owning two thirds in amount of the capital stock. A certificate must be signed by such stockholders, either in person or by attorney duly authorized and acknowledged or proved, and filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated.

Upon the filing and recording of such certificates the principal business office of such corporation will be deemed to be changed as therein stated.[2]

Same. *Banks.*—Any bank or banking association organized under the laws of this state may apply at any special term of the supreme court held in the county in which its office of discount and deposit is located, for an order authorizing it to change its place of business to another place in the same or an adjoining county.[3]

Notice of intention to make such application, signed by the two principal officers of the bank, must be published once a week for four weeks in a newspaper published in the city of Albany, and for the same time in a newspaper published in the county in which the office of such bank or banking association is located. Such newspapers to be designated by the Superintendent of the Banking Department, and satisfactory proof of such publication must be made to the court upon the application for the change.

This application must be by a petition setting forth the grounds of the application, and must be signed by a majority of the board of directors, and be accompanied by the written

[1] Laws of 1861, chap. 170, § 2. The personal estate of such company for the year following the first day of June after filing such certificates, is taxable only in the town or ward named in the certificates as that in which such financial office is located. See Chap. IX., *post.*

[2] Laws of 1875, chap. 611, § 31.

[3] Laws of 1887, chap. 517, § 1.

assent to the proposed change of location of at least two thirds in amount of the shareholders of such bank, and also by the approval in writing of the Superintendent of the Banking Department.[1]

If the court is satisfied that there is no reasonable objection to such change it will make an order authorizing the corporation to change its place of business to the location designated in the petition.

A copy of such order must be filed in the office of the clerk of the county in which such corporation is located and also in the office of the superintendent of the banking department, and must be published once a week for four successive weeks in the newspapers in which the notice of application was published.[2]

When these requirements have been complied with, such corporation may, upon or after the day specified in the order of the court, remove its property and effects to the location designated in the order, and thereafter that will be its sole business location.

In the new location such corporation will have all the rights and powers to which it was entitled in its former location; but no liability incurred or existing at the time of such change shall be impaired thereby.[3]

Change of Name.—As we have seen,[4] the restrictions as to what name may be adopted by a corporation are very few. The laws are equally liberal in regard to the change of name.

It is provided that any corporation, except banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies may apply at any special term of the supreme court sitting in the county in which it has its principal business office for an order to authorize it to assume another corporate name.[5]

[1] Laws of 1887, chap. 517, § 2.
[2] Id. § 3.
[3] Id. § 4.
[4] Chap. I., *ante*.
[5] Laws of 1870, chap. 322, § 1, as amended by Laws of 1876, chap. 280.

Such application must be by petition, which must set forth the grounds of the application, and that it is made in pursuance of a resolution of the directors of the corporation, and must be verified by the chief officer thereof.

Notice of the application must be published for six weeks in a newspaper, designated by the court or a judge, published in the county where the order is required to be filed,[1] and also in a newspaper of every county in which the company has a business office, or, if it have no business office, of the county in which its principal corporate property is situated, such paper to be one of those designated to publish the session laws.[2]

If the court is satisfied that such application is made in pursuance of a resolution of the directors or managers of the corporation applying, and that the requisite publication has been made and that no reasonable objection to such a change exists, it will make an order authorizing such corporation to assume the proposed new corporate name.

A copy of the order must be filed in the office of the secretary of state and in the office of the clerk of every county in which such corporation has a business office, or if it have no business office, of the county in which its principal corporate property is situated, and it must also be published at least once a week for four weeks in some newspaper, to be designated by the court, in such county or counties.[3]

When these requirements have been complied with the corporation applying for the change of name may, from and after the day specified in the order of the court, be known by and use the new corporate name designated in such order.[4]

[1] As modified by Laws of 1884, chap. 133, § 2.

[2] Laws of 1870, chap. 322, § 2. Where there is no paper designated which publishes the session laws, it is usual to obtain an order from a judge designating both of the papers in which the notice shall be published.

[3] Id. § 3.

[4] Id. § 4. From the language of the act it would seem that a com-

No pending suits or legal proceedings are affected by such change, and they may be continued in the name in which they were commenced, or they may upon the application of either party, and by order of the court, be continued under the new name; and all obligations of such company may be enforced against it in the changed name.[1]

Same. *Banks.*—A bank, banking association, or trust company may apply at a special term of the supreme court sitting in the county in which it is located, by a petition setting forth the grounds of the application for an order authorizing it to assume another corporate name.

Such application must be approved by the Superintendent of the Banking Department, and notice thereof must be published for four weeks in two newspapers designated by him, one in the city of Albany and the other in the county in which such company is located.

If it appear to the satisfaction of the court that the notice has been so published, and that the application is made in pursuance of a resolution of the directors or trustees of such company and has been approved by the Superintendent of the Banking Department, and that there is no reasonable objection to such corporation changing its name, it will make an order authorizing it to assume the proposed new corporate name.

A copy of the order must be filed in the office of the Superintendent of the Banking Department and with the clerk of the county in which the corporation is located, and be published at least once in each week for four successive weeks in the newspapers in which the notice of application was published.

When these requirements have been complied with, such

pany could not assume its new name until the time of last publication had expired, and it is usual to insert a day in the order not less than four weeks after the order is made; but in some instances this practice has not been followed, and an earlier date has been named.

[1] Id. § 5.

corporation may, from and after the day designated in the order, be known by and use the new corporate name.

Similar provisions in regard to pending actions, etc., are made as in the case of the change of names of the corporations above given.[1]

Same. *Insurance Companies.*—Unless otherwise provided in its charter, a fire or inland navigation insurance company may change its name, by altering or amending its charter in this respect, with the written consent of the Superintendent of the Insurance Department, after notice of such intention has been given by publication for six weeks in the paper in Albany designated by the Superintendent of the Insurance Department for the publication of notices relating to that department, and also in some newspaper published in the county where such company is located, and with the written consent of three fourths in amount of its stockholders.

A copy of the charter so amended, together with a declaration under its corporate seal, signed by the president and directors of such corporation, of their desire to change the name, together with the consent of the Superintendent of the Insurance Department and the consent of the stockholders, must be filed in the office of the Superintendent of the Insurance Department; and the same proceedings must be taken in regard to the examination of the charter by the attorney-general and certification to the comptroller as in the organization of such corporations.[2]

Changing Number of Directors. *Manufacturing Corporations.*—The number of trustees of corporations organized under the Manufacturing Act may be increased to not more than thirteen, or may be reduced to not less than three. The existing trustees of any such corporation, or a majority of them, must make and sign a certificate declaring how many trus-

[1] Laws of 1887, chap. 518.

[2] Laws of 1853, chap. 466, § 19, as amended by Laws of 1875, chap. 208; see *ante*, p. 14, as to examination of charter, etc.

tees the corporation shall have in the future management of its business, and in case the number of trustees be increased, stating the names of the new or additional trustees, and in case the number be reduced, stating the number to which the trustees shall be reduced. The certificate must be acknowledged by the trustees signing the same, or proved by a subscribing witness, and filed in the office of the clerk of the county where the original certificate of incorporation was filed, and a duplicate or transcript thereof, duly certified under the official seal of such clerk, filed in the office of the secretary of state.

In case of an increase in the number of trustees, from the time of filing such certificate and duplicate the trustees will be increased to the number therein stated, and the persons so named in such certificate will be trustees until a new election is had.

In case of reducing the number of trustees, the number stated in such certificate will be the number of trustees to be elected at the next election and thereafter, after filing such certificate. In case a vacancy or vacancies occur in the board of trustees by resignation, or otherwise, after filing such certificate and duplicate, and before the next election, no election shall be had in the meantime to fill such vacancy or vacancies while the number of trustees remaining shall equal or exceed the number to which the trustees are reduced in such certificate.[1]

Same. *Business Act.*—The number of directors of business corporations may be changed to not less than three, nor more than thirteen, by a vote of a majority in interest of the stockholders present in person or by attorney duly authorized, at a meeting of such stockholders called pursuant to a notice specifying the purpose of such meeting, and given to each stockholder at least five days before the time fixed for such meeting. A statement of the change of

[1] Laws of 1860, chap. 269, § 2, as amended by Laws of 1878, chap. 316.

the number of directors so made, signed and verified by the president or a vice-president of the corporation, and by the secretary of the meeting at which the change was made, must be filed in the office of the secretary of state, and a copy in the office of the clerk of the county in which the principal business office of the company is situated, within ten days after such meeting.[1]

Same. *Insurance Companies.*—Any existing life, fire, casualty, or marine insurance company, organized under the laws of this state, may, by a vote of its board of directors at a meeting specially called for that purpose, the call specifying the object of the meeting, and upon a written notice to all of its stockholders with a written consent of a majority in amount, reduce the number of its directors to not less than thirteen, a majority of whom must be citizens of this state, by altering or amending its charter in respect to the number of its directors, and filing a copy of the charter so amended, together with a declaration under its corporate seal, signed by its president and two thirds in number of its directors, with such written consent of a majority of its stockholders, in the office of the Superintendent of the Insurance Department.

Such reduction of the number of directors may be made so as to take effect either immediately or gradually as vacancies may occur in the board of directors by death, resignation, disqualification, or otherwise; and when the number of directors is reduced to thirteen, seven of such number will constitute a quorum for all purposes.[2]

Same. *Title Guarantee Companies.*—The number of directors of such companies may be changed to not less than five nor more than thirteen, at a special meeting of the owners of a majority of the whole amount of the capital stock, called pursuant to notice specifying the purpose of such meeting,

[1] Laws of 1875, chap. 611, § 10, as amended by Laws of 1890, chap. 23.

[2] Laws of 1877, chap. 183, as amended by Laws of 1887, chap. 650.

and served on such stockholders by mail at least five days before such meeting. A vote of a majority of the stockholders in person or by attorney duly authorized for that purpose is necessary to effect such a change. A majority of the whole number of directors is necessary to constitute a quorum.[1]

[1] Laws of 1885, chap. 538, § 9.

CHAPTER III.

THE CAPITAL STOCK.

THE capital stock of a corporation is, generally speaking, the amount fixed by its charter to be contributed by the stockholders as the fund to be used in the prosecution of its business;[1] and there is no more justification for fixing such capital at a fictitious and exhorbitant valuation than for an individual or firm doing business to misrepresent the amount of his or its capital.

Persons dealing with a corporation have a right to assume that its nominal capital represents actual and not fictitious value;[2] and where the capital is paid up in cash such is the fact. But many corporations are organized with a capital issued for property, and, unless it is expressly prohibited, an issue for property, at a fair and reasonable valuation, is not only legal, but in many cases is the safest and most convenient method.[3]

Stock Issued for Property.—Persons may enter into an agreement to form a corporation, and they may provide how and in what manner property shall be transferred to the corporation and the value to be placed upon it, and such a contract will be sustained if there is no evidence that it is an attempt to evade the statute or to defraud the public by putting a valueless stock on the market at an excessive valuation.[4] And where one has contributed property as

[1] *Barry* v. *Merchants' Exchange Co.*, 1 Sandf. Chan. 280; *Burrall* v. *Bushwick R. R. Co.*, 75 N. Y. 211; *Williams* v. *Western Union Tel. Co.*, 93 id. 162.

[2] *Sagory* v. *Dubois*, 3 Sandf. Chan. 466; *Boynton* v. *Hatch*, 47 N. Y. 225; *Boynton* v. *Andrews*, 63 id. 93; *Van Cott* v. *Van Brunt*, 82 id. 535; *Blake* v. *Griswold*, 103 id. 429. See Chap. VII. *post*.

[3] *Van Cott* v. *Van Brunt*. 82 N. Y. 535; *Lake Superior Iron Co.* v. *Drexel*, 90 id. 87.

[4] *Lorillard* v. *Clyde*, 86 N. Y. 384.

payment for a subscription to the stock of a corporation, such property will pass to the corporation upon its organization without a formal transfer.[1]

While allowance is made for the difference of opinion as to the value of property for which stock may be issued, and even for the sanguine expectations of those interested in property like patent rights, or mining property, whose reasonable value depends upon many contingencies and which is difficult of estimation, yet, as we shall see in another chapter, in order to escape liability there must be a fair and honest attempt to appraise such property at a fair valuation.[2]

Under the Manufacturing Act.—This act as originally passed provided that nothing but money should be considered as payment of any part of the capital stock;[3] but subsequently the act was so amended as to provide that the trustees of such a company might purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and that the stock so issued should be declared and taken to be full stock and not liable to any further calls.[4]

The trustees are the sole judges of the necessity of such a purchase, and of the value of such property if it is purchased by them in good faith, and not as an evasion of the provision that the stock may be issued to the amount of the value of such property.[5]

Under the Business Act.—This act provides that no corporation organized under it shall issue either stock or bonds except for money, labor done, or property actually received for the use and legitimate purposes of such corporation at its fair value, and all fictitious increase of stock or indebtedness in any form shall be void.[6]

[1] *American Silk Works* v. *Salomon*, 6 T. & C. 352.

[2] Chapters V. and VII.

[3] Laws of 1848, chap. 40, § 14.

[4] Laws of 1853, chap. 333, § 2.

[5] *Schenck* v. *Andrews*, 57 N. Y. 133.

[6] Laws of 1875, chap. 611, § 14.

Title Guaranty Companies.—The act for the incorporation of companies to examine and guarantee bonds and mortgages and titles to real estate contains a provision essentially the same as that contained in the Business Act.[1]

Miscellaneous Companies.—As we have seen in the previous chapters it is required of certain corporations, as a condition of granting a certificate of organization, that an affidavit of the payment of the whole or a portion of the capital stock be first filed. When this is required it is a condition precedent of the organization which must be complied with before the organization can be perfected.

Preferred Stock.—The right of a corporation to issue preferred stock, unless expressly authorized so to do by its charter, is one that will not be implied. And even where a meeting is called for that purpose and all of the stockholders present vote to issue such stock, yet its issue will be enjoined on the application of a dissenting stockholder.[2]

It is not uncommon, however, for corporations in this state to issue preferred stock without authority being conferred by their charters, and under the present practice at the office of the secretary of state it can only be issued in such a manner in the greater number of cases;[3] and such an issue, if provided for in the by-laws at the time of organization of a corporation, would undoubtedly be sustained.

Kent v. *The Quicksilver Mining Co.*,[4] is the leading case in this state on the issue of preferred stock, and in that case Judge Folger in giving the opinion of the court thus clearly states what is undoubtedly the law in relation to the issue

[1] Laws of 1885, chap. 538, § 12.

[2] *Kent* v. *Quicksilver Mining Co.*, 12 Hun, 53; aff'd, 78 N. Y. 159.

[3] The Business Act provides that the certificate of incorporation shall state among other things "the amount and *description* of the capital stock." Laws of 1875, chap. 611, § 3. This would seem to authorize different kinds of stock such as common and preferred; but certificates containing such descriptions of stock are not, at present, filed in the office of the secretary of state.

[4] 78 N. Y. 159.

of preferred stock where it is not expressly authorizad by the charter of a corporation.

"We are not prepared to say that at the first the corporation might not have lawfully divided the interest in its capital stock into shares arranged in classes, preferring one class to another in the right it should have in the profits of the business. The charter gave power to make such by-laws as it might deem proper, consistent with constitution and law; and to issue certificates of stock representing the value of the property. We know nothing in the constitution or the law that inhibits a corporation from beginning its corporate action by classifying the shares in its capital stock, with peculiar privileges to one share over another, and thus offering its stock to the public for subscriptions thereto. No rights are got until a subscription is made. Each subscriber would know for what class of stock he put down his name, and what right he got when he thus became a stockholder. There need be no deception or mistake; there would be no trenching upon rights previously acquired. No contract, express or implied, would be broken or impaired."

This case came before the Court of Appeals on three appeals from judgments of the Supreme Court;[1] the one restraining the company from converting the common stock into preferred stock; the second decreeing a distribution of the earnings of the company between the existing preferred stockholders and the common stockholders, giving the preferred stockholders such a preference as their stock called for. The third was from a judgment dismissing the complaint in an action brought to restrain the company from paying the holders of the preferred stock any interest or dividends in excess of dividends paid on the common stock, and to have the preferred stock already issued declared illegal. These judgments were all affirmed, the preferred stock already issued being declared legal and entitled to the

[1] Reported below, 12 Hun, 53; 17 Hun, 169.

preference it purported to give, although the further issue was restrained.

The charter, in addition to the usual provisions in regard to by-laws, etc., provided that the company should have power "to issue certificates of stock; representing the value of their property in such form, and subject to such regulations as they may from time to time by their by-laws prescribe." It was contended by counsel for certain of the preferred stockholders that the company was authorized by its charter to create preferred stock, and that the act was not impaired by originally issuing common stock only. But this point was determined adversely by the court which in its opinion further says:[1]

"We are therefore of the opinion that there was no power in the corporate body, nor in a majority of the stockholders to provide by by-law for the creation of a preferred stock so as to bind a minority of the stockholders not assenting thereto."

The judgments as above stated were sustained so far as the legality of the preferred stock already issued was concerned solely and expressly on the ground of indefensible laches and estoppel on the part of those who subsequently objected to its issue; and the further issue of preferred stock was enjoined on the ground of want of authority in the corporation to make it.

On the same ground of estoppel this case would undoubtedly be authority to sustain the issue of preferred stock, if provided for in the by-laws, and made at the outset of the organization, and with the knowledge of all subscribers.

Change of Preferred for Common Stock.—Any corporation organized under the laws of this state which has, or which may, issue both preferred and common stock, forming part of the capital stock of such corporation, is authorized, whenever the directors of such corporation may by vote of two

[1] Page 183.

thirds of their number declare it for the interest of the corporation so to do, and the holder of any such preferred stock may request in writing the exchange of the same for the common stock, to exchange the preferred stock of such holder for common stock, and to issue certificates of common stock therefor, share for share, or upon such other valuation as may have been agreed upon in the scheme for organization of such company or the issue of such preferred stock. It is provided, however, that the total amount of the capital stock of such company shall not be increased by such transfer.[1]

INCREASING AND DECREASING CAPITAL STOCK.

A corporation has no implied power to increase or diminish its capital stock, and it can be changed only as authorized by the legislature.[2] The Revised Statutes expressly provide that it shall not be lawful for the directors or managers of any incorporated company in this state to reduce its capital stock without such consent.[3]

Reducing Capital Stock.—By a general act passed May 15th, 1878, any corporation organized under a general or special law of this state was authorized to diminish its capital stock, by complying with the provisions of the act, to any amount deemed sufficient and proper for the purposes of the corporation. It was provided that no holder or owner of stock in such corporation should be relieved by such reduction from any liability existing prior thereto, and it was also provided that the act should in no way interfere with or affect any law then in existence authorizing any corporation previously organized to reduce its capital stock.[4]

The act provides that whenever any company shall desire to call a meeting for the purpose of diminishing the amount of its capital stock, it shall be the duty of the trustees or directors to publish a notice signed by at least a majority of

[1] Laws of 1880, chap. 225, § 1.
[2] *Sutherland* v. *Olcott*, 95 N. Y. 93.
[3] Rev. Stat. part 1., chap. xviii., title 4, § 2.
[4] Laws of 1878, chap. 264, § 1.

them in a newspaper in the county in which the business of the company is carried on, or its principal office is located, if any, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time when and place where it shall be held, and the amount to which it is proposed to reduce the capital; and a vote of at least two thirds of all the shares of stock are necessary to the diminution of the capital.[1]

If at the time and place specified in such notice stockholders appear in person or by proxy in numbers representing not less than two thirds of all the shares of stock of the corporation, they may organize by choosing one of the trustees chairman of the meeting and a suitable person for secretary, and proceed to a vote of those present in person or by proxy; and if, in canvassing the votes, it is found that a sufficient number of votes has been given in favor of diminishing the amount of capital, a certificate of the proceedings showing a compliance with the provisions of the act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be diminished must be made, signed and verified by the chairman, and such certificate must be acknowledged by the chairman and filed in the office of the clerk of the county in which the business of the company is carried on, and a duplicate in the office of the secretary of state, with the approval of the comptroller indorsed thereon, to the effect that the reduced capital is sufficient for the proper purposes of the company, and is in excess of all debts and liabilities of the company, exclusive of debts secured by trust mortgages, and that the actual market value of the stock of the company, prior to the reduction,

[1] Laws of 1878, chap. 264, § 2.

was less than the par value of the same, and when so filed the capital stock of such corporation shall be reduced to the amount specified in the certificate.

The amount of capital left in the possession of the company over and above the amount to which the capital is reduced must be returned to the stockholders, *pro rata*, at such times and in such manner as the trustees or directors may determine.[1]

In order to enable the comptroller to indorse his approval on such a certificate, an affidavit that the proposed capital is sufficient for the proper purposes of the company, and that the actual market value of the stock prior to the reduction was less than the par value of the same, must be made and attached to the certificate.

Any corporation organized since the passage of this act (May 15th, 1878) can reduce its capital stock only in the manner therein provided, as it has been held to repeal by implication all former provisions in regard to the reduction of capital, and to furnish the only law upon the subject.[2]

It will be particularly noticed that the act contains two important provisions, viz., that under this act the capital can be reduced only when the actual market value of stock of the company prior to the reduction is less than the par value of the same; and, secondly, that any corporation organized prior to the passage of the act may continue to avail itself of any law then existing authorizing it to reduce its capital.

The special provisions which the above act supplants are generally contained in acts of incorporation of different classes of companies, and are usually simpler in their provisions and less elaborate than the one above. They will be considered in a later part of this chapter.

[1] Laws of 1878, chap. 264, § 3, as amended by Laws of 1882, chap. 306.

[2] *People* ex rel. *Eden Musée American Co.* v. *Carr*, 36 Hun, 488; aff'd on opinion of court below, 100 N. Y. 641.

Increasing Capital Stock.—In 1872 a general act in relation to increasing the capital stock of corporations was passed.[1]

It provided that any corporation formed under the laws of this state, excepting banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, railroad and navigation and gas companies, might increase its capital stock as provided by section twentieth of the Manufacturing Act. It was provided, however, that the act should not apply to corporations created by special act of incorporation, the capital stock of which originally exceeded two hundred thousand dollars, and that such increase should not exceed in the aggregate the amount of capital stock specified in the act of incorporation. And it was also provided that any corporation, the capital of which should be increased under the provisions of the act, and its stockholders should be subject to all the liabilities as regards such additional capital as is provided in the original act or charter in relation to its capital.[2]

The provisions of the Manufacturing Act in regard to the increase of capital stock apply also to diminishing stock and to changing the business of such companies. In regard to diminishing stock, as we have seen,[3] it applies only to corporations organized under the act prior to the 15th of May, 1878. And, *e converso*, the provisions in regard to the increase of stock would probably be held to be the only ones applicable to corporations organized subsequent to the adoption of chapter 611 of Laws of 1872, except those expressly omitted from its provisions.

The sections applicable to this subject are as follows:

Any corporation or company heretofore formed, either by special act or under the general law, and now existing for any manufacturing, mining, mechanical or chemical purposes, or any company which may be formed under this act, may increase or diminish its capital stock by complying with

[1] Laws of 1872, chap. 611.
[2] Id. § 1.
[3] *Ante*, p. 107,

the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining, mechanical or chemical business, subject to the provisions and liabilities of this act. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company, heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this act, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties, and liabilities of this act.[1]

Whenever any company shall desire to call a meeting of the stockholders, for the purpose of availing itself of the privileges and provisions of this act, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or

[1] Laws of 1848, chap. 40, § 20.

change of its business as aforesaid, or to enable a company to avail itself of the provisions of this act.[1]

If, at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if on canvassing the votes it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceeding showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished, to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this act, as the case may be.[2]

Increase and Decrease of Capital Stock: Gas-Light Companies and Navigation Companies.—The acts for the incorporation of gas-light companies,[3] and navigation,[4] and inland navigation[5]

[1] Laws of 1848, chap. 40, § 21.

[2] Id. § 22.

[3] Laws of 1848, chap. 37, §§ 20–22, as amended by Laws of 1875, chap. 120.

[4] Laws of 1852, chap. 228, §§ 11–14.

[5] Laws of 1854, chap. 232, §§ 19–21.

companies contain substantially the same provisions in regard to increasing and diminishing capital stock as those of the Manufacturing Act.

Decreasing Capital Stock of Insurance Companies.—When it shall appear to the Superintendent of the Insurance Department from an examination made by him in the manner prescribed by law, that the capital stock of any joint-stock fire or marine insurance company, organized pursuant to law, is impaired to an amount exceeding twenty-five per centum of such capital; or whenever, for any reason, three-fourths of the directors of such a company (with the consent of at least one-half of the stockholders owning not less than two-thirds of the capital stock) shall desire to reduce the amount of its capital stock, and the Superintendent of the Insurance Department is of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with a reduced capital, such company, with the permission of the Superintendent, may reduce its capital and the par value of its shares to such amount as the Superintendent may, under his hand and official seal, certify to be proper, and as shall, in his opinion, be justified by the assets and property of such company.

No part of such assets may be distributed to the stockholders; and it is also provided that the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company, under the general insurance laws for the transaction of business at the place where such company is located, and of the kind which such company is authorized to transact.

When any capital is reduced by this act all amounts added to the surplus account thereby must be held as a reserve for the protection of policy-holders, and may not be used in the payment of dividends to stockholders.[1]

[1] Laws of 1867, chap. 91, § 1, as amended by Laws of 1885, chap. 327, § 1. Laws of 1885, chap. 327, § 2, repeals all acts or parts of acts in-

No reduction of the capital of any such company shall be made except by a resolution of its board of directors, certified under its corporate seal, and signed by the president and at least two-thirds of its directors, and proved or acknowledged in the manner required for the proof or acknowledgment of conveyances, and that such certificate shall be filed in the office of the Superintendent of the Insurance Department.[1]

In case the Superintendent permits such reduction, he will execute certificates in duplicate, and deliver one to the officers of the company, who must forthwith file the same with the clerk of the county in which such company is located, and the other will be filed in the office of the Superintendent.[2]

Upon filing such certificate with the county clerk, such company, with such reduced capital, will possess the same rights and be subject to the same liabilities that it possessed or was subject to at the time of the reduction of its capital, and the charter of such company will be deemed to be amended in respect to the amount of capital and the par value of the shares so as to conform to such reduction.[3]

The company may require the return of the original certificate of stock, held by each stockholder, and in lieu thereof issue new certificates for such number of shares as such stockholder may be entitled to, in the proportion that the reduced capital may be found to bear to the original capital of the company.[4]

May Increase its Capital Stock.—Any company having so reduced its capital may increase it in the mode prescribed by the nineteenth section of chapter four hundred and sixty-six of the Laws of 1853.[5]

consistent with this act, and it would accordingly supersede Laws of 1878, chap. 264, as regards fire and marine insurance companies.

[1] Laws of 1867, chap. 91, § 2.

[2] Id. § 3. Sections 2 and 3 would seem in some points to be superseded by section 1 as amended.

[3] Id. § 4.

[4] Id. § 5.

[5] Id. § 6.

That section provided that any existing fire-insurance company, or any company formed under that act, might at any time, with the written consent of the Superintendent of the Insurance Department, increase the amount of its capital stock, after notice given once a week for six weeks in the state paper, and in any newspaper published in the county where such company was located, of such intentions, with the written consent of three-fourths in amount of its stockholders, unless otherwise provided in its charter, by altering or amending its charter in this respect, and filing such consent, a copy of its charter so amended, together with a declaration under its corporate seal, signed by its president and directors, of their desire so to do, with the written consent of three-fourths in amount of its stockholders to such increase in the office of the Superintendent.

The same requirements must be complied with in regard to the examination of the charter and proofs of publication by the attorney-general and certification by him as in the organization of a company.[1]

The above provisions as to the increase of capital stock are extended to any existing company incorporated by or authorized under the laws of this state, or to any company formed under that law to transact the business embraced in the second department of section one of the act to provide for the incorporation of a life and health and casualty insurance companies.[2]

Increase of Capital Stock by Credit Guaranty Companies.—Any company formed under the act for the incorporation of credit guaranty and indemnity companies may at any time increase the amount of its capital stock, after notice published once a week for six weeks successively in two newspapers published in the county where such company is located, of such intentions, with the written consent of three-

[1] Laws of 1853, chap. 466, § 19, as amended by Laws of 1875, chap. 208.

[2] Laws of 1853, chap. 463, § 21, as amended by Laws of 1880, chap. 427. See *ante*, p. 15.

fourths in amount of its stockholders, unless otherwise provided in its charter, by altering or amending its charter in this respect, and filing a copy of the charter, so amended together with a declaration under its corporate seal, signed by its president and directors, of their desire so to do, with the consent of the stockholders to such increase, in the office of the Superintendent of the Insurance Department.[1]

Increase or Decrease of Capital Stock by Title Guaranty Companies.—The capital stock of any corporation organized under the act to provide for the organization and regulation of corporations to examine and guaranty bonds and mortgages and titles to real estate may be increased to an amount not to exceed one million dollars, or reduced not below one hundred and fifty thousand dollars, by a vote of the majority of the stockholders in number, and representing a majority of the capital stock of such corporation at any meeting, convened for that purpose, pursuant to a notice specifying the object of such meeting, and served upon each stockholder by depositing in the post-office, properly addressed to his last known place of residence, postage prepaid, at least five days before the time of such meeting.

A statement of such increase or reduction must be filed in the office of the Superintendent of the Insurance Department and of the clerk of the county in which the principal business office of such corporation is situated, within ten days after such action.[2]

Reduction of Capital Stock by Banks.—Any banking association organized under the general banking laws of this state may reduce its capital stock to an amount which shall be equal to its property and effects above and beyond all its debts and liabilities, and the par value of its shares shall be reduced in the same proportion; but in no case may the capital be reduced below the amount required by law.[3]

[1] Laws of 1886, chap. 611, § 12.
[2] Laws of 1885, chap. 538, § 13.
[3] Laws of 1882, chap. 409, § 41, as amended by Laws of 1886, chap. 575.

Notice of such intention must be given to the Superintendent of the Banking Department, in writing, signed by a majority of its board of directors, and accompanied by the written assent to such reduction of at least two-thirds in amount of the shareholders.[1]

Upon filing such notice the Superintendent of the Banking Department will make an examination of the books, property, effects and liabilities of such banking association, and from the result thereof determine and certify the reduced amount of capital stock.[2]

The determination and certificate in writing so made of the amount to which the capital stock has been reduced must be recorded in the office of the clerk of the county in which such bank is located, and a certified copy filed in the Banking Department of the state, and must be published by the Superintendent of the Banking Department once a week for six weeks successively in the state paper, and at least one newspaper in the county where such bank is located.[3]

It is provided that the liability of the stockholders of such bank shall in no wise be affected by such reduction, nor the rights, remedies or security of any creditors impaired.[4]

Reduction of Capital Stock by other Moneyed Corporations.—Substantially the same provisions as those above stated in regard to banks are extended to trust companies and other moneyed corporations, organized under the laws of this state, and required to report to the Superintendent of the Banking Department.[5]

May Increase their Capital Stock.—Any such corporation, having reduced its capital, may, after such reduction has been made, increase its capital stock to an amount not exceeding the amount provided in its charter.

Such increase must be apportioned among the stock-

[1] Laws of 1882, chap. 409, § 42.
[2] Id. § 43.
[3] Id. § 44.
[4] Id. § 45.
[5] Id. §§ 228–231.

holders of such company, who must severally be notified in writing of such apportionment, and such notification mailed to or delivered at the last known residence of each shareholder; and if they or any of them shall not, within one month after service of such notice, accept the amount so apportioned, then such increase or the amount not accepted by the stockholders may be sold and distributed by the board of trustees in such manner as it may determine.

Upon the payment to the company in money of such increased capital, the board of trustees must certify the same to the Superintendent of the Banking Department, who will require satisfactory proof that the increased capital has been actually been paid in in money, and such proof must be in writing, and filed in the Banking Department.[1]

The attorney-general, in an opinion filed October twentieth, 1883, held that a bank might reduce its capital stock for the purpose of making good an impairment of its capital, even after a requisition had been made upon it by the Superintendent to make it good. And he further held that its own stock, held by it, should be counted as an asset of the bank, but that it could not be used in petitioning for such reduction.[2]

The act to provide for the organization of trust companies, etc., contains a provision that the capital stock of a trust company may be increased from time to time by a vote of two thirds of its stockholders, in number and amount, to a sum not exceeding two million dollars.[3]

The act contains no provisions as to the manner of increase, and trust companies are expressly excepted from the general act providing for the increase of capital stock by corporations,[4] nor does the act apply to trust companies chartered by special acts of the legislature and existing at the time of the passage of the act.[5]

[1] Laws of 1882, chap. 409, § 232.

[2] The opinion is given in full in Paine's Banking Laws, p. 120.

[3] Laws of 1887, chap. 546, § 19.

[4] *Ante*, p. 108.

[5] Laws of 1887, chap. 546, § 37.

Increase of Capital Stock by Safe-Deposit Companies.—Corporations organized under the act to authorize the formation of corporations for the safe-keeping and guarantying of personal property may increase their capital stock to an amount not to exceed one million dollars by the board of trustees, on application in writing signed by the stockholders representing a majority of the stock.

A statement of such increase must be filed in the office of the clerk of the county in which the business of the corporation is carried on, and duplicates thereof in the office of the secretary of state and in the Banking Department of the state.[1]

Increase of Capital Stock by Railroad Companies.—Any company, organized and existing under the laws of this state, in case the capital stock of the company is found to be insufficient for constructing and operating its road, may, with the concurrence of two-thirds in amount of all its stockholders, with the written approval of the board of railroad commissioners, increase its capital stock from time to time to any amount required for such purposes.

Such increase must be sanctioned by a vote, in person or by proxy, of two-thirds in amount of all the stockholders of the company at a meeting called by the directors for that purpose, by a notice in writing to each stockholder, served on him personally, or by mail, at least twenty days prior to such meeting. Such notice must state the time and place of such meeting, its object and the amount to which it is proposed to increase the capital stock.

The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and the capital stock may thereupon be increased to the amount sanctioned by a vote of two thirds in amount of all the stockholders.

A copy of such notice must also be published within the county wherein the main office of such company is located,

[1] Laws of 1875, chap. 613, § 1, as amended by Laws of 1883, chap. 273.

once a week for four weeks prior to such meeting, in a newspaper to be designated by the board of railroad commissioners.[1]

Increase in Case of Reorganization.—Whenever the maximum amount of capital stock mentioned in the certificate of incorporation of any railroad company on file in the office of the secretary of state shall be insufficient to carry out any plan or agreement of reorganization set forth in such certificate of incorporation, a majority of the directors may file an additional certificate with the secretary of state, setting forth the fact of such insufficiency and the additional amount of capital stock required to carry out such plan or agreement of reorganization; and thereupon, with the approval of the state engineer or surveyor, the company may issue such capital stock as fully as if the same had been mentioned or set forth in the original certificate of incorporation. Such additional certificate must be filed in the office of the secretary of state within two months *after the passage of the act.*[2]

Increase and Reduction of Capital Stock by Companies organized to operate Railroads in Foreign Countries.—Any corporation formed under this act may from time to time, at any regular or special meeting of the board of directors, reduce the amount of its capital stock or increase the same with the consent in writing of stockholders owning two-thirds of the capital stock. If any increase or reduction of the capital stock is made, a certificate of the fact, signed by the president and secretary of the corporation, must be filed in the office of the secretary of state within thirty days thereafter.[3]

Increase of Capital Stock by Bridge Companies.—The directors of every such corporation may at any time, with the consent of the majority in amount of the stockholders of such cor-

[1] Laws of 1850, chap. 140, § 9, as amended by Laws of 1889, chap. 426.

[2] Laws of 1880, chap. 155, § 1. While the language of the act is general, the last clause renders it somewhat uncertain whether it was intended to have an application to companies not then availing themselves of its provisions.

[3] Laws of 1881, chap. 468, § 11.

poration, provide for such increase of its capital stock as may be necessary for the completion or reconstruction of its bridge. The certificate of the amount of any such increase must, within thirty days thereafter, be filed in the offices of the state engineer and surveyor and the clerks of the counties where such bridge is located, which certificate must be authenticated by the signatures and oaths of a majority of the directors.[1]

Increasing and Decreasing Capital Stock by Building Companies.—Companies organized for the purpose of erecting buildings, etc., may increase or diminish their capital to any amount not less than three thousand dollars by proceedings substantially similar to those in the case of companies organized under the Manufacturing Act.[2]

Increasing and Decreasing Capital Stock by Business Corporations.—Section 15 of the Business Act provides that the capital stock of any corporation organized under the act may be increased to an amount not to exceed in the aggregate two million dollars, or reduced by a vote of a majority of the stockholders in number and representing a majority of the stock of such corporation, at any meeting thereof convened for that purpose, pursuant to notice thereof mailed to each stockholder at least five days before such meeting.

A statement of such increase or reduction must be filed in the office of the secretary of state and of the clerk of the county in which the principal business office of such corporation is situated, within ten days after such action. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities must be first satisfied and reduced so as not to exceed such diminished amount of capital.[3]

[1] Laws of 1848, chap. 259, § 13.

[2] Laws of 1853, chap. 117, §§ 20–22, as amended by Laws of 1883, chap. 238.

[3] Laws of 1875, chap. 611, § 15.

It will be noticed that this section provides only for an increase up to two million dollars, which is the amount of capital originally authorized by the act, but which has subsequently been increased to five million dollars. No particular formalities are prescribed, but as the section can be availed of in order to diminish the amount of capital stock only by corporations organized under the act prior to May 15th, 1878, and as even such corporations may avail themselves of the general act,[1] its provisions and limitations become of comparatively little importance.

Increasing Capital Stock of Ferry Companies.—The capital stock of ferry companies may be increased up to the limit specified in the certificate of incorporation by a vote of the stockholders representing a majority of the whole stock of the company, at any annual meeting or special meeting called for the purpose. When any increase is determined upon, a certificate thereof, signed by a majority of the directors, must, within ten days thereafter, be filed in the offices in which the original certificate has been filed.[2]

Increase of Capital Stock by Driving-Park Associations.—Such associations may increase their capital stock to any amount not exceeding that provided in the act of incorporation, at any annual meeting, by a vote of not less than two-thirds in amount of the stockholders. Twenty days' notice of such intention must have been given to each stockholder by mailing to him such notice, stating the time and place of such meeting and to what amount it is proposed to increase the capital stock.[3]

Increase of Capital Stock by Pipe-Line Companies.—The act for the incorporation of pipe-line companies contains the following provisions as to the increase of capital stock:

"In case the capital stock of any company formed under this act is found to be insufficient for constructing and oper-

[1] *Ante*, p. 107.

[2] Laws of 1853, chap. 135, § 15.

[3] Laws of 1872. chap. 248, § 7, as amended by Laws of 1886, chap. 140.

ating its pipe line, such company may, with the concurrence of two-thirds in amount of all its stockholders, and upon an order of the supreme court to be granted in the discretion of the court, upon the petition of the directors, and notice of such application, of not less than fifteen days, upon all stockholders appearing upon the stock book of said corporation, who shall not have consented to such increase (in such manner as the court shall direct), increase its capital stock from time to time, to any amount required for such purposes, and in all such cases the petition to the court shall be by affidavit, and shall show the amount of the proposed increase, and the reasons therefor; that two-thirds in amount of all the stockholders of such corporation entitled to vote at such meeting, personally or by proxy, had voted for such increase at a meeting of the stockholders, called by a resolution of the directors for that purpose, and notice thereof served upon each stockholder thereof at least twenty days previous to the time of such meeting, and that such notice contained the time, place and object of such meeting, and the amount to which such capital stock was proposed to be increased, and that the amount of the increase prayed for in the petition is not for a greater amount than that specified in such notices; and thereupon, upon the hearing, the court may make an order, in its discretion, increasing the capital stock of such company in the amount prayed for in such petition, or in such lesser sum or amount as the court may fix, and upon the filing and entry of such order the capital stock of such corporation may be increased in the amount mentioned therein, and the directors may proceed to take and receive subscriptions in the same manner as provided for in the original organization of such a corporation."[1]

[1] Laws of 1878, chap. 203, § 10. As this act is later than the general act for the increase of capital stock of corporations generally, and contains particular formalities to be taken, it would follow that this would undoubtedly be the only manner in which such corporations could effect an increase of their capital stock. See *ante*, p. 108.

Increase of Capital Stock by Stage-Coach Companies.—The capital stock of such companies may be increased to any amount required for their business. Such increase must be sanctioned by a vote of two-thirds in amount of all the stockholders of the company, at a meeting of the stockholders called by the directors for that purpose, by a notice served, personally or by mail, at least twenty days prior to such meeting. Such notice must state the time and place of such meeting and its object, and the amount to which it is proposed to increase the capital.[1]

Increase of Capital Stock by Telegraph Companies.—Telegraph companies may provide in their articles of association for an increase of their capital and number of shares. But if any such association has omitted so to do, it may increase its capital, after a notice of such intention has been published once a week for six weeks successively in the state paper, and in any newspaper of general circulation published in the county where the principal office of such company is located, and with the written consent of stockholders owning three-fourths in amount of the then capital stock, by making and executing an additional certificate, which must be proved and acknowledged by a majority of the board of directors and filed in the same manner as the original certificate.[2]

Increase of Capital Stock by Turnpike Companies.—The act for the incorporation of turnpike and plank-road companies provides that the directors of every such company may at any time, with the consent of a majority in amount of the stockholders of such company, provide for such increase of its capital stock as may be necessary to finish the making of a road actually commenced and partly constructed, but not to exceed five thousand dollars per mile for each mile of road.[3]

Increasing and Decreasing Capital Stock by Water-Works Companies.—Any company formed under the act in relation to

[1] Laws of 1867, chap. 974, § 9.

[2] Laws of 1848, chap. 265, § 8, as amended by Laws of 1875, chap. 319.

[3] Laws of 1847, chap. 210, § 40.

the creation and formation of water-works companies in towns and villages of the State of New York may increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the company, by a vote of the stockholders representing not less than two-thirds of the capital stock, at any meeting of the stockholders, duly called, and signing and acknowledging a certificate showing the amount of the capital stock of the company, the amount to which it is to be increased or diminished, and the amount of the capital stock owned or represented by each of the persons signing the certificate, which certificate must be signed by stockholders owning or representing not less than two-thirds of the capital stock of the company, and acknowledged before some officer competent to take the acknowledgment of deeds, and filed in the office of the clerk of the county in which the certificate of the organization of the company is filed, and a duplicate thereof in the office of the secretary of state; and when so filed, the capital stock of such company will be increased or diminished to the amount specified in such certificate; provided, if the amount of the debts and liabilities of the company exceeds the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.[1]

STOCK CERTIFICATES AND TRANSFERS OF STOCK.

The shares of stock of a corporation are personal property,[2] and a certificate is the evidence of the stockholder's title thereto.[3] In the absence of statutory provisions regu-

[1] Laws of 1881, chap. 77.

[2] *Weaver* v. *Barden*, 49 N. Y. 286. It is very common for an article to be inserted in acts of incorporation providing that the stock of such company shall be deemed personal estate (see Laws of 1848, chap. 40, § 8, and the acts of incorporation of the various companies referred to in Chapter I), but this is only declaratory of the law.

[3] *Jermain* v. *Lake Shore & Mich. South. Ry. Co.*, 91 N. Y. 483. As to the rights of stockholders to certificates, etc., see Chap. VI., *post.*

lating the number and par value of shares, they may be of any desired number and par value that the by-laws may prescribe, and shares may be divided and certificates issued for fractional shares; but, except as expressly authorized, the number and par value of the shares cannot be changed from the number and amount adopted at the organization.[1]

Nor can a company, except as authorized by its act of incorporation, impose a lien upon its shares for the indebtedness of the shareholder to the company;[2] nor can it, except as so authorized, declare the forfeiture of its shares for the non-payment of instalments of subscription.[3]

The several acts of incorporation generally contain provisions regulating the nature and transfer of stock, and also frequently in regard to the increase and decrease of number of shares, forfeiture, etc. The principal provisions are given below.

Under the Manufacturing Act.—This act provides that the stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon.[4]

It is further provided that the trustees may call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment

[1] *Oldtown R. R. Co.* v. *Veazie*, 39 Me. 571; *Salem Mill Dam Co.* v. *Ropes*, 6 Pick. 23.

[2] *Bank of Attica* v. *Manufacturers & Traders' Bank*, 20 N. Y. 501; *Driscoll* v. *West Bradley, etc., M. Co.*, 59 id. 96.

[3] In re *Long Island R. R. Co.*, 19 Wend. 37.

[4] Laws of 1848, chap. 40, § 8.

shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.[1]

The legal title to stock cannot be transferred after dissolution,[2] but the interest of the owner may be assigned subject to all existing equities.[3]

Any such company may increase the number of shares of which its capital stock consists, provided its capital stock shall not thereby be increased or diminished.[4]

Such increase must be made by a vote of the stockholders representing two-thirds of the capital stock, at any meeting of the stockholders called in the manner prescribed in the act, by executing and acknowledging an amended certificate specifying the number of shares of which the capital stock of the company shall thereafter consist and the par value of each share, and in other respects conforming to the original certificate. The amended certificate must be signed by the president and two-thirds of the directors of such company, and be filed in the office of the secretary of state and in the clerk's office of the county wherein the original certificate was filed.[5]

Each stockholder will be entitled to a certificate for such a number of shares of the capital stock, after the whole number has been increased, as shall at their par value be equal to the par value of the shares previously held by him in such company, on surrendering the old certificate to be cancelled. No such increase shall be made as to divide the shares, and give a fractional part of a share to any stockholder.[6]

Business Corporations.—The capital stock of corporations formed under this act must be divided into shares of not less than ten dollars, nor more than one hundred dollars

[1] Laws of 1848, chap 40, § 6.

[2] *James* v. *Woodruff*, 2 Den. 574.

[3] *Weaver* v. *Barden*, 49 N. Y. 286; *Driscoll* v. *West Bradley, etc., M. Co.*, 59 id. 96.

[4] Laws of 1866, chap. 73, § 1.

[5] Id. § 2.

[6] Id. § 3.

each. All subscriptions are made payable to the corporation, in such instalments and at such time or times as may be fixed by the by-laws, or by the directors acting under the by-laws. If default is made in any payment on subscription, an action may be maintained in the name of the corporation to recover any instalment remaining due and unpaid for the period of thirty days after the time fixed for its payment. And no stockholder is entitled to vote at any election or at any meeting of the stockholders on whose stock any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting.

Such a corporation may by its by-laws prescribe other penalties for a failure to pay instalments, not exceeding forfeiture of stock and the amount paid thereon. No such forfeiture can be declared against any stockholder before demand has been made for the amount due thereon either in person or by a written or printed notice mailed to such stockholders at least thirty days prior to the time when such forfeiture is to take effect. Upon such forfeiture the shares of stock held by such delinquent stockholder must be sold at public auction at the office of the corporation, after ten days' notice conspicuously posted in such office, and the proceeds of the sale, over and above the amount due on such shares and after deducting the expense of the sale, must be paid to the stockholder.[1]

The directors of such corporations must prepare certificates of stock and deliver them, signed by the president and treasurer and sealed with the seal of the corporation, to each person entitled to receive them according to the number of shares held. Such certificates must be transferable at the pleasure of the holder in person or by attorney duly authorized, subject, however, to all payments due or to become due thereon. The assignee to whom stock has been trans-

[1] Laws of 1875, chap. 611, § 11, as amended by Laws of 1883, chap. 102.

ferred will be a member of the corporation, and possess all the rights and privileges, and be subject to all the liabilities, of the original holder. But no certificate can be transferred so long as the holder is indebted to the corporation unless the directors consent thereto.[1]

Such companies may increase the number of shares of which their capital stock consists, provided the shares shall not be less nor more than the amounts fixed by the act, in the same manner as is provided for companies organized under the Manufacturing Act.[2]

Title Guaranty Companies.—The act for the incorporation of companies to examine and guaranty bonds and mortgages and titles to real estate, provides that an action may be maintained in the name of the corporation to recover any instalment remaining due and unpaid for thirty days after the time fixed for the payment thereof; and that no stockholder shall be entitled to vote at any meeting on whose shares any instalment has been due for thirty days preceding such meeting.

It also provides that the corporation may prescribe by by-law other penalties for a failure to pay instalments, not exceeding forfeiture of the stock and the amount paid thereon. But no forfeiture can be declared unless a demand shall have been made for the amount due, either in person or by a notice duly mailed to such stockholder at least thirty days before such forfeiture is to take effect; and in case of forfeiture the shares of such stockholder must be sold at public auction, and the proceeds of such sale, over and above the amount due on such shares and after deducting the expenses of such sale, if any, must be paid to such stockholder or his legal representatives.[3]

Certificates of stock of such companies, signed by the president and treasurer and sealed with the corporate seal;

[1] Laws of 1875, chap. 611, § 12.

[2] Laws of 1884, chap. 397. See *ante*, p. 125.

[3] Laws of 1885, chap. 538, § 10.

must be made and delivered to each stockholder, transferable at the pleasure of the holder or his duly authorized attorney. But no certificate may be transferred so long as the holder thereof is indebted to the corporation, unless the board of directors shall consent thereto.[1]

Railroads.—If any stockholder in a railroad, organized under chapter 140 of Laws of 1850, neglects to pay any instalment of his subscription to the capital stock, as required by a resolution of the board of directors, the board may declare his stock and all previous payments thereon forfeited for the use of the company, upon giving sixty days' notice, either personally or by mail, that if he fails to make such payment his stock and all previous payments thereon will be forfeited for the use of the company.[2]

It is further provided that the stock of such companies shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but that no shares shall be transferable until all previous calls thereon shall have been fully paid in.[3]

Banks.—The shares of banks are personal property, and are transferable on the books of the association in such manner as may be agreed on in the articles of association.[4]

Safe Deposit Companies.—The trustees of such companies may make calls upon the stockholders under the penalty of forfeiture of the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand of the same, or after a notice requiring such payment shall have been published for six successive weeks in

[1] Laws of 1885, chap. 538, § 11.

[2] Laws of 1850, chap. 140, § 7. The act for the formation of companies for the purpose of constructing and operating railroads in foreign countries contains a like provision as to forfeiture of shares, upon giving a like notice to the stockholder thirty days before such forfeiture. Laws of 1881, chap. 468, § 8.

[3] Laws of 1850, chap. 140, § 8.

[4] Laws of 1882, chap. 409, § 47.

a newspaper printed in the city or town where the business of the corporation is carried on.[1]

The act further provides that the stock of such corporation shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the corporation; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls.[2]

Miscellaneous Corporations.—The acts for the organization of the several corporations combined under the above head in the first chapter of this work, with the exception of telegraph companies, contain provisions as to the forfeiture of shares and the instalments paid thereon upon notice to the subscribers.[3]

[1] Laws of 1875, chap. 613, § 6.

[2] Id. § 8.

[3] See the several acts for the organization of such corporations given in Chapter I, Article VI, *ante*.

CHAPTER IV.

THE DUTIES OF OFFICERS AND DIRECTORS.

ART. I. ACTS REQUIRED.
ART. II. ACTS PROHIBITED.

ARTICLE I.

Acts required.

The acts required of corporations can only be performed by their chosen officers or agents, and the law casts upon such officers or agents certain duties which they are required to perform, either as the act of the corporation itself, or as their own act as such officers and agents. In most cases the performance of such duties is enforced by penalties for the failure, exacted either from the corporation itself, or certain of its officers or stockholders.

REPORTS.

One of the most important of the duties thus imposed is that of making corporate reports. With but few exceptions,[1] all corporations are required to make periodical reports, with greater or less fulness, of their financial condition. Some of these reports, as in the case of railroads and insurance companies, are made with great minuteness, while of others, as in the case of manufacturing and business corporations, much less is requisite.

Reports of Manufacturing Corporations.—*Annual Reports.*—Corporations organized under the Manufacturing Act are required, within twenty days from the first day of January, if

[1] There appears to be no provision for such reports by hotel companies, navigation companies, or stage-coach companies.

a year from the time of filing the certificate of incorporation shall then have expired, and if so long a time shall not have expired, then within twenty days from the first day of January in each year after the expiration of a year from the time of filing such certificate, to make a report, which shall be published in some newspaper published in the town, city or village, or if there be no newspaper published in such town, city or village, then in some newspaper published nearest the place where the business of the company is carried on, which shall state the amount of the capital, and of the proportion actually paid in, and the amount of its existing debts.

This report must be signed by the president and a majority of the trustees, and must be verified by the oath of the president or secretary of such company, and be filed in the office of the clerk of the county where the business of the company is carried on.[1]

How Executed.—Making such a report is a corporate duty to be discharged by making a report signed by the president and a majority of the trustees. The duty is not cast upon the trustees either as such or in their individual capacities. It is the duty of the company to make the report, and the act provides for the manner of performing it.[2] Thus the secretary of a company, while he is authorized to verify the report in place of the president, and may prepare the report for the signatures of the proper officers, has no authority to subscribe the names of the president and trustees. This can only be done by the persons designated.[3]

The object of the act is to require a statement of sufficient distinctness that, if untrue, perjury could be assigned.[4] For this reason acknowledgment is not sufficient. It must

[1] Laws of 1848, chap. 40, § 12, as amended by Laws of 1875, chap. 510. As to liability of trustees for failure to make report, see Chapter V, *post*.

[2] Andrews, J., in *Cornell* v. *Roach*, 101 N.Y. 373.

[3] *Bolen* v. *Crosby*, 49 N. Y. 183; *Sanborn* v. *Lefferts*, 58 id. 179.

[4] *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62.

be verified;[1] but the verification may be on information and belief.[2]

Where the president, who is a trustee of a corporation, and enough trustees to constitute with him a majority of the board sign the report, it is a compliance with the statute requiring "the president and a majority of the trustees" to sign.[3]

Form of Report.—The statute does not provide for the details of the reports of manufacturing corporations. The language is extremely concise, providing only that the report shall state "the amount of capital stock and of the proportion actually paid in, and the amount of its existing debts."

This conciseness, and perhaps indefiniteness, taken in connection with the severe penalty attached to the omission to file a report or the filing of a false report,[4] has given rise to much litigation, and this section has been the subject of frequent judicial construction.

As to what is a compliance with the law in the form of a report the courts have uniformly given a liberal construction. As was said by Allen, J., in *Whitney Arms Co.* v. *Barlow*:[5] "The reports of corporations should receive a reasonable interpretation, and excessive nicety or exactness should not be exercised in bringing them to the test of the statutes."

A substantial compliance with the statute is sufficient. While, therefore, clearness and exactness are certainly desirable in such reports, yet if from the report the amount of capital and the proportion actually paid in can reasonably be ascertained, and if the debts are not under-stated, the statute will be complied with.[6]

Where, however, any portion of the capital stock is

[1] *Brown* v. *Smith*, 13 Hun, 408; aff'd, 80 N. Y. 650.

[2] *Glens Falls Paper Co.* v. *White*, 18 Hun, 214.

[3] Id.

[4] See Chap. V (*post*) on the liabilities of officers and directors for a further consideration of this section and the liabilities growing out of it.

[5] 63 N. Y. 62.

[6] *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62; *Bonnell* v. *Griswold*, 80 id. 128; *Pier* v. *Hanmore*, 86 id. 95; *Whitaker* v. *Masterton*, 106 id. 277.

issued for property, this stock must not be stated or reported as being issued for cash paid into the company, but must be reported in this respect according to the fact.[1] But a statement in a report that a certain amount of capital has been paid in, without specifying that the alleged payment consists of the issue of stock for property purchased, is equivalent to a representation that such capital has been paid in in cash, and constitutes a false report if such be not the fact.[2]

It is not, however, essential that the exact amount of stock issued for property and the amount for cash be separately stated. It is sufficient if it appear that all the stock was issued for property, or for cash, or both.[3]

Where a report is susceptible of two different constructions, one of which would constitute a false report, while the other would be fairly and reasonably consistent with the facts, if there is no evidence of fraud in making the report, such construction will be given to it as was evidently intended.[4] But where it is impossible to gather from any construction of the report the facts required by the statute, it will constitute a failure to comply with it.

When Report must be made.—The statute directs that the report be made within twenty days from the first day of January, if a year from the time of filing the certificate of incorporation shall then have expired, and if so long a time shall not have expired, then within twenty days from the first day of January in each year after the expiration of such time.

[1] Laws of 1853, chap. 333, § 2.

[2] *Pier* v. *Hanmore*, 86 N. Y. 95.

[3] *Whitaker* v. *Masterton*, 106 N.Y. 277. In this case the report was as follows: "Amount of capital of the company, $50,000, amount of the capital paid in, $50,000, all of which has been paid in in cash, patent rights, merchandise, machinery, accounts, etc., necessary to the business, and for which stock to the amount of the value thereof has been issued by the company; amount of the existing debts of the company does not exceed $38,500." It was *held* sufficient.

[4] *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62.

The report must be made within twenty days after the first day of January. Making and filing a report before that date is not sufficient.[1]

It is no excuse for not making the report that the company has not commenced business;[2] nor that it is closing up its affairs.[3] But if the corporation has never commenced business, and before the time for making the report the object for which it was formed becomes impossible of accomplishment and there is neither ability nor intention to prosecute business, it is not required to make such report.[4]

And if, before the time for filing the annual report, a company becomes insolvent and its property is sold out under an execution, or a receiver of all its property is appointed, the corporation becomes so far dissolved that the duty to file an annual report no longer exists.[5] So where the business was discontinued and not resumed and no debts were contracted and no elections held, and the corporation had no trustees or officers who could manage its affairs, it was held that it was practically abandoned, if not technically dissolved, and that the statutory requirement of making a report did not apply.[6]

Publishing and Filing.—The report must be published in some newspaper published in the town, city or village, or if there be no newspaper published in such town, city or village, then in some newspaper published nearest the place where the business of the company is carried on, and must be filed in the office of the clerk of the county where the business of the company is carried on.[7]

Where no paper is published in the town, city or village

[1] *Cincinnati Cooperage Co.* v. *O'Keefe*, 44 Hun, 64.
[2] *Jones* v. *Barlow*, 62 N. Y, 202.
[3] *Sanborn* v. *Lefferts*, 58 N. Y. 179.
[4] *Kirkland* v. *Kille*, 99 N. Y. 390.
[5] *Garrison* v. *Howe*, 17 N. Y. 458; *Huguenot Nat. Bank* v. *Studwell*, 74 id. 621; *Bonnell* v. *Griswold*, 80 id. 128; *Bruce* v. *Platt*, id. 379.
[6] *Losee* v. *Bullard*, 79 N. Y. 404.
[7] Laws of 1848, chap. 40, § 12, as amended by Laws of 1875, chap. 510.

where the company carries on its business, it is not essential that it select a newspaper nearest its own office or works. The town, city or village is the "place" of business within the meaning of the statute, and a publication in a newspaper published nearer to a point in the town than any other newspaper is to the same point is a substantial compliance with the statute, although some other newspaper may be nearer to some other point in the town.[1]

If a company prepares its report within the twenty days limited by the statute, the filing and publication may be within a reasonable time thereafter. The words "make a report" refer to the preparation, signing and verification, the provisions as to filing and publishing being directory merely. Where, therefore, the publishing and filing follow within what under the circumstances would be a reasonable time, it will be sufficient even though the twenty days have expired.[2]

The provisions of the Manufacturing Act are followed, and the foregoing decision, are also applicable in regards to the annual reports of building companies.[3] and gas-light companies.[4]

Certificate of Payment of Stock.—Within thirty days after the payment of the last instalment of the capital stock fixed and limited by a company, the president and a majority of the trustees must make, sign, and swear to a certificate stating the amount of capital so fixed and paid in, and within the said thirty days they must record the same in the office of the county clerk of the county wherein the business of the

[1] *Cameron* v. *Seaman*, 69 N. Y. 396.

[2] Id.; *Butler* v. *Smalley*, 101 N. Y. 71. In the latter case the report was not filed until the 13th of February, and an order was obtained on that day that the report should be filed *nunc pro tunc* as of January 18th, the date, on which it was made. The Court of Appeals, in reversing a judgment in favor of plaintiff, said that such an order did not relieve the defendant, but *held* that whether the report was filed within a reasonable time would depend upon the circumstances of the case.

[3] Laws of 1853, chap. 117, § 12.

[4] Laws of 1848, chap. 37, § 12.

company is carried on.[1] If any of the capital stock is issued for property, the certificate must so state.[2]

Such a certificate must also be made upon any increase in the amount of capital stock.[3]

The provision as to recording the certificate is directory merely, and where a certificate is made and given to a county clerk for record, the duty imposed by the statute is performed.[4]

It will be noticed that this certificate must be signed and sworn to by the president and a majority of the trustees, in this respect differing from the annual report, which must be signed by the president and a majority of the trustees and verified by the oath of the president or secretary.

Reports of Business Corporations.— *Annual Report.* — Every corporation organized under the Business Act must annually, within twenty days after the first day of January, or, in case of such corporation doing business without the United States, then within twenty days after the first day of April, make a report, as of the said first day of January, which shall state the amount of capital and the proportion actually paid in, the amount and, in general terms, the nature of its existing assets and debts, and the names of its then stockholders, and the dividends, if any, declared since its last report; which report must be signed by the president and a majority of the directors, and verified by the oath of the president or secretary of such corporation, and filed in the office of the secretary of state. And any corporation doing business without the United States will still be required to make such report within twenty days after the first day of January in each year, unless such corporation shall make and file in the office of the secretary of state within twenty days after the first day of January in each year a certificate, verified by the oath of the president, secretary, or treasurer of such cor-

[1] Laws of 1848, chap. 40, § 11.
[2] Laws of 1853, chap. 333, § 2.
[3] *Veeder* v. *Mudgett*, 95 N. Y. 293.
[4] Id.

poration, stating that said corporation is at the date of such certificate doing business without the United States.[1]

This section, in terms, requires the report to be filed with the secretary of state (instead of the county clerk, as in the Manufacturing Act), and the amount and nature of its existing assets, as well as debts, and the names of its then stockholders, and the dividends, if any, declared since its last report, to be stated. It must be made although a year has not elapsed since the organization of the corporation, as was formerly held under the Manufacturing Act.[2] But it does not require the publication of the report. The decisions cited under that act as to the persons by whom it should be executed, and probably as to the directory character of the requirement as to filing, would be equally applicable to this section.

Certificate of Payment of Capital Stock.—The directors of every such company, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate stating the amount of the capital so paid in, which certificate must be signed and sworn to by the president and a majority of the directors; and they must within the said thirty days record the same in the office of the secretary of state, and of the county in which the principal business office of such corporation is located.[3]

Reports of Marine Insurance Companies.—It is the duty of the president, or vice-president, and secretary of each marine insurance company incorporated by or organized under any law of this state, annually on the first day of January, or within one month thereafter, to prepare under their own oath, and deposit in the office of the Insurance Department, a statement of the condition and affairs of such company for the year ending on the thirty-first day of December then next preceding, exhibiting the total amount of premiums

[1] Laws of 1875, chap. 611, § 18, as amended by Laws of 1884, chap. 208.

[2] *Garrison* v. *Howe*, 17 N. Y. 458.

[3] Laws of 1875, chap. 611, § 37.

received and the total amount of losses paid and ascertained, including expenses during the year; also the amount of debts owing by the company at the date of the statement, and the amount of claims which then exist against the company for losses accrued, showing what amount is payable on demand, what amount is considered fair or legal, the payment of which has not then matured, and what amount is resisted on account of alleged fraud, or for which the company do not consider themselves legally liable; also a statement of the securities representing the capital stock and all funds of the company, and also whether any of the securities held or owned by such company are considered bad or doubtful, and if so, specifying the amount of such securities and the gross amount of outstanding risks thereon; and exhibiting also the assets and liabilities of the company, its income and expenditures during the year, scrip issued and redeemed, and other miscellaneous items, in such form and manner as may from time to time be prescribed by the Superintendent of the Insurance Department, who may make such changes in the form of such annual statement as shall seem to him best adapted to elicit from such companies a true exhibit of their condition, situation and affairs.[1]

Reports of Fire and Inland Navigation Insurance Companies.—It is the duty of the president, or vice-president, and secretary of such companies annually on the first day of January, or within one month thereafter, to prepare under their own oath, and deposit in the office of the Superintendent of the Insurance Department, a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items:

First. The amount of the capital stock of the company.

Second. The property or assets held by the company.

Third. The liabilities of the company.

Fourth. The income of the company during the preceding year.

[1] Laws of 1849, chap. 308, § 13, as amended by Laws of 1864, chap. 425.

Fifth. The expenditures during the preceding year.

These reports are required in great detail, and printed forms of the statement are furnished by the Superintendent of the Insurance Department, who may make such changes in the form of such statements as may seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points enumerated. He is also empowered to address any inquiries to any insurance company in relation to its doings or condition, or any other matter connected with its transactions. A failure to make and deposit such statement, or to reply to any inquiry of the Superintendent of the Insurance Department, will subject the company to a penalty of five hundred dollars, and an additional five hundred dollars for every month that such company shall continue thereafter to transact any business of insurance.[1]

Reports of Life, Health, and Casualty Insurance Companies.—It is the duty of the president or vice-president, and secretary or actuary, or a majority of the trustees of each of such companies organized under the laws of this state, annually on the first day of January, or within sixty days thereafter, to prepare under oath, and deposit in the office of the Superintendent of the Insurance Department, a statement showing the number of policies issued during the year, the amount of insurance effected thereby, the amount of premiums received, the amount of interest and all other receipts; the amount of losses paid during the year, and the amount unpaid; the amount of expenses; the whole number of policies in force; the amount of liabilities or risks thereon, and all other liabilities; the amount of capital stock; the amount of accumulation; the amount of assets, and manner in which they are invested; the amount of dividends paid and unpaid; and a tabular statement of the policies in force during each

[1] Laws of 1853, chap. 466, § 22, as amended by Laws of 1854, chap. 369, and as modified by Laws of 1859, chap. 366, § 3, as amended by Laws of 1866, chap. 514.

year of the existence of the company up to the time of making such statement.

The Superintendent of the Insurance Department will furnish to each company required to make such reports printed forms of the statements required, and he may make such changes from time to time in the form of the same as may seem to him best adapted to elicit from such companies a true exhibit of their condition in respect to the several points above enumerated.[1]

Reports of Guaranty Companies.—Title guaranty companies and credit guaranty companies are required to make annual reports to the Superintendent of the Insurance Department, on the first day of January of each year, or within one month thereafter, of a form substantially like that of the reports of fire-insurance companies.[2] It is the duty of the president, or vice-president, and secretary of such corporations to prepare under their oath, and deposit in the office of the Superintendent of the Insurance Department, a statement of the condition of such corporations on the thirty-first day of December next preceding, exhibiting the following facts and items in detail:

First. The amount of capital stock and the proportion actually paid in.

Second. The property or assets held by the corporation.

Third. The liabilities of the corporation.

Fourth. The income of the corporation during the preceding year.

Fifth. The expenditures during the preceding year.

The Superintendent of the Insurance Department has the same power in regard to changing the form of such annual statements and making additional inquiries as in the case of fire and life insurance companies.[3]

[1] Laws of 1853, chap. 463, § 12, as modified by Laws of 1866, chap. 843, and by Laws of 1859, chap. 366, § 3, as amended by Laws of 1866, chap. 514.

[2] *Ante*, p. 138.

[3] Laws of 1885, chap. 538, § 18, and Laws of 1886, chap. 611, § 16.

Reports of Banks.—The Superintendent of the Banking Department will, at least once in each quarter of a year, fix and designate some Saturday in such quarter in respect to which quarterly reports shall be made; and it is the duty of every incorporated bank or banking association in the state, on or before the first days of February, May, August and November of each year, to make and transmit to the Superintendent a quarterly report, which report must be made on the oath of the president and cashier, and contain a true statement of the condition of such bank or banking association on the morning of the day specified by the Superintendent next preceding the date of such report, in respect of the following items and particulars, namely: loans and discounts; over-drafts due from banks, due from the directors of the bank or banking association making the report, due from brokers; real estate, specie, cash items, stock and promissory notes, bills of solvent banks, bills of suspended banks, loss and expense account, capital, circulation (distinguishing that received from the Superintendent from the old outstanding bills), forfeits, amount due to banks, amount due to individuals and corporations other than banks, amount due to the treasury of the state, amount due to Commissioners of Canal Fund, amount due to depositors on demand, amount due not included under either of the above heads.

Such reports, in addition to publication by the Superintendent of the Banking Department in the newspaper in Albany designated for such purposes, must be published in a newspaper published in the city or town in which such bank is situated, or if there be no such paper, in a newspaper published in the county.[1]

In case of the neglect of a bank to make such report within five days from the mailing of a notice by the Superintendent of the Banking Department, he will cause an ex-

[1] Laws of 1882, chap 409, § 20.

amination of the affairs of such bank to be made and charge the expense to the bank, and it is his duty to prosecute such bank in any court of record and recover the sum of one hundred dollars for such neglect or refusal.[1] And if such bank fails to furnish such report in time for publication by the Superintendent of the Banking Department, it shall forfeit the sum of one hundred dollars; and if it shall neglect or refuse to make the quarterly report for two successive quarters, it shall forfeit its charter.[2]

Every such banking company or association must, on or before the first day of September of each year, cause to be published for six successive weeks in one public newspaper printed in the county in which such company or association may be located, and in the state paper, a true and accurate statement, verified by the oath of the cashier, treasurer or presiding officer, of all deposits made with such company or association, and of all dividends and interest declared and payable upon any of the stock, bonds or other evidence of indebtedness of such company or association which at the date of such statement shall have remained unclaimed by any person or persons authorized to receive the same for two years then next preceding.[3]

Such statement must set forth the time that every such deposit was made, its amount, the name, and residence if known, of the person making it, the name of the person in whose favor the dividend may have been declared or interest accrued, its amount, and upon what number of shares and on what amount of stock, bonds or other evidence of indebtedness of any such company or association.[4]

Every report directed to be made by any law of this state from such an association must be verified by the oath of the president and cashier of such association that the usual business of such association has been transacted at the

[1] Laws of 1882, chap. 409, § 21.
[2] Id. § 22.
[3] Id. § 25.
[4] Id. § 26.

location designated as its place of business and not elsewhere.[1]

It seems that notes discounted at a place other than the usual place of business would be void.[2]

Reports of Safe Deposit Companies.—All companies organized under the laws of this state for the safe-keeping and guaranteeing personal property must semi-annually make a full report in writing of the affairs and conditions of such corporations at the close of business on the last business days of June and December in each year to the Superintendent of the Banking Department, verified by oath, in such form and by such officers of such corporations as the Superintendent may designate, which report shall be in place of any report which any such corporation was previously required to make to the Supreme Court, the comptroller or otherwise.

Every such report must be made within twenty days after the day to which it relates, and must be in such form and contain such statements, returns and information as the Superintendent may from time to time prescribe or require; and he may, if he be of the opinion that it is desirable, require that a like report, either wholly or in part as to the particulars above mentioned, be made to him at any time by any such corporation, within such period as he may designate.[3]

Reports of Trust Companies.—It is the duty of the trustees of every trust company, by a committee of not less than three of such trustees, on or about the first days of January and July in each year, to thoroughly examine the books, vouchers and assets of such trust company and its affairs generally; and the statement or schedule of assets reported to the Superintendent of the Banking Department for the first days of January and July in each year shall be based

[1] Laws of 1882, chap. 409, § 28. [2] *Potter* v. *Bank of Ithaca*, 7 Hill, 530.
[3] Laws of 1875, chap. 613, § 10.

upon such examination; but this shall not be construed as prohibiting such trustees from requiring such examination at such other times as they may prescribe.[1]

Such statements must be verified by the oaths of a majority of the trustees who make the examination.[2]

Reports of Railroad Companies.—Every corporation owning, leasing or operating a railroad or railroad cars wholly or partially within this state is required to make an annual report to the Board of Railroad Commissioners of its operations for the year ending with the thirtieth day of June of each year, and of its condition on that day, in accordance with the forms prescribed by such Board. The report must be verified by oath of the president or treasurer and the general manager or acting superintendent, and must be filed in the office of the Board of Railroad Commissioners by the first day of September. Such corporation must also make a quarterly report for the quarters ending on the last of September, December, March and June in each year, in accordance with the forms prescribed by the Board of Railroad Commissioners, and such reports must be filed in the office of the Board within six weeks from the date of the expiration of the quarter.[3]

Any such corporation failing to make such annual and quarterly reports within the time above prescribed, or failing to correct such report within ten days after notice by the Board of Railroad Commissioners, is liable to a penalty of two hundred and fifty dollars, and an additional penalty of twenty-five dollars for each day's neglect; but the Board of Railroad Commissioners may extend the time so limited for causes shown.[4]

Reports of Bridge Companies.—It is the duty of the president and secretary of bridge companies to report annually to the

[1] Laws of 1887, chap. 546, § 32.

[2] Id. § 33.

[3] Laws of 1850, chap. 140, § 31, as amended by Laws of 1890, chap. 98, § 1.

[4] Id. § 32, as amended by Laws of 1890, chap. 98, § 2.

state engineer and surveyor, and the county clerk where the papers are filed, under oath, the cost of their bridge; the amount of all money expended; the amount of their capital stock, and how much paid in, and how much actually expended; the amount received during the year for tolls, and from all other sources, stating each separately; the amount of dividends made, and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued; and such other particulars in respect to the business affairs of such corporation as the state engineer and surveyor, or the legislature, or either branch thereof, require to be so reported.[1]

Such reports must be made in the month of January, and must show, in respect to the particulars required to be set forth, the affairs and business of such corporation at the close of the year ending on the thirty-first day of December next preceding the time of making, and must be published in the nearest newspaper four weeks. Any corporation neglecting to make such report shall forfeit to the people of the state for every such neglect the sum of two hundred dollars, and for every week such corporation shall neglect to make such report after the time within which it is required to be made it shall forfeit the further sum of fifty dollars.[2]

Reports of Ferry Companies.—The directors of ferry companies must at each annual meeting of the stockholders, and at every special meeting where directors are to be elected, submit to the stokholders a report showing the amount of capital stock of the company actually paid in, the property and effects of the company on hand, the debts due from the company, and the names and places of residence of the stockholders as nearly as the same can be ascertained; and must, within ten days thereafter, cause such report, with an affidavit sworn to by a majority of them, to be filed in the

[1] Laws of 1848, chap. 259, § 16. [2] Id. § 19.

offices in which the original certificates of incorporation have been filed.[1]

Reports of Guano Companies.—Every such company must annually, within twenty days from the first day of January, make a report, which shall be published in two daily news papers in the county where the principal office of the company is located, which shall set forth the number of shares of full-paid stock issued; the number of shares the avails of which have been used for the purchase of real estate and guano islands; the number of shares on which instalments are due and unpaid, and the amount of the same; the number of shares held and owned by the company, and the amount actually employed as working capital; and the names and residences of the stockholders, and the number of shares held by each.

This report must be signed by the president and a majority of the trustees, and verified by the oath of the president and secretary, and copies filed in the offices where the original certificates were filed.[2]

Reports of Inland Navigation Companies.—Such corporations must make an annual report to the state engineer and surveyor of the operations of the year ending December 15th, which report must be verified by the oaths of the treasurer or president, and be filed in the office of the state engineer and surveyor by the fifteenth day of January in each year, and shall state the amount of capital by charter; the amount of stock subscribed; the amount of stock paid in at the time of reporting; the amount of floating debt of the company, and whether the same be secured by mortgage of their property; the number of boats, and the nature of the same, owned by the company; the waters upon which they do business; the average number of men employed by the company during the year; the gross receipts of the year for freight; the gross receipts from other sources; the dividends on stock, amount

[1] Laws of 1853, chap. 135, § 16. [2] Laws of 1857, chap. 546, § 12.

and rate per cent.; the amount paid for damage to or for loss of freight; the amount paid for new moving stock, including all expenditures for the purchase of new outfits for the business of the company; the amount charged to depreciation of their property used in the business of transportation; the place of the principal office of the company.[1]

Reports of Skating-Park Associations.—It is the duty of the president and secretary of every such corporation to report annually to the state engineer and surveyor and the county clerk in whose office the certificate of incorporation is filed, under oath, the cost of their ground, the amount of all money expended, the amount received during the year from subscriptions and from all other sources, stating each separately, the amount of dividends made, and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued, and such other particulars in respect to the business affairs of such corporation as the state engineer and surveyor or either branch of the legislature may require to be so reported.[2]

Reports of Driving-Park, Park and Agricultural Associations.—The president, secretary, and treasurer of every such association must annually prepare a full statement of the receipts and expenditures of such association during the year preceding the day of the annual election, with a schedule of its property, debts, and obligations, which statement and schedule must be verified by the affidavits of two of said officers, and must be filed in the county clerk's office of the county in which such association is located within one week after such annual election, and otherwise published as the by-laws of the association may prescribe.[3]

Reports of Pipe-Line Companies.—*Monthly Statements.*—It is the duty of every such corporation to make monthly a specific statement showing the amount of all commodities re-

[1] Laws of 1854, chap. 232, § 24.
[2] Laws of 1861, chap. 149, § 9.
[3] Laws of 1872, chap. 248, § 10.

ceived, the amount delivered during the month, and the stock on hand on the last day of each month of the year, and how much of said stock is represented by outstanding certificates, vouchers, receipts or orders, and how much in credit balances on the books of the corporation. Such statement must be made on or before the tenth day of the succeeding month, and sworn to by the president and secretary of the corporation that the same is in all respects true and correct, and must be filed, within three days thereafter, in the county clerk's office in the county where the principal office of such corporation is located, and a true copy of the same posted in a conspicuous place in the office of such corporation for at least thirty days thereafter.[1]

Same.—*Annual Reports.*—It is the duty of the president and secretary of such corporations to report annually in the month of January in each year to the state engineer and surveyor, under oath, the amount of the capital stock of the company; the amount actually paid in; the amount of all money expended during the year ending on the thirty-first day of December next preceding the time of making such report, specifying the purposes for which such moneys have been expended; the amount received during such year from all sources, specifying such sources; the amount of dividends made; the amount of the indebtedness of such company, stating the object for which the indebtedness accrued; a detailed statement of all the property of such company, stating the nature and value thereof; and such other particulars in respect to the business affairs of such company as the state engineer and surveyor, or the legislature, or either branch thereof, require to be so reported.

Any such corporation which shall neglect to make such report shall forfeit to the people of this state, for every such neglect, the sum of two hundred dollars; and for every week such corporation shall neglect to make such report

[1] Laws of 1878, chap. 203, § 41.

after the expiration of the time within which it is required to make the same, it shall forfeit the further sum of fifty dollars.[1]

Reports of Turnpike and Plank-Road Companies.—It is the duty of the directors of every such company to report annually to the secretary of state, under the oath of any two of such directors, the cost of their road; the amount of all money expended; the amount of their capital stock, and how much paid in, and how much actually expended; the whole amount of tolls or earnings expended on such road; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made, and the amount set apart for a reparation fund; and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued.[2]

Reports of Certain Moneyed Corporations.—Every trust, loan, mortgage, security, guarantee or indemnity company or association, and every corporation or association having the power and receiving money on deposit, existing or incorporated under any law of this state, or any corporation or association not incorporated under the laws of this state which receives deposits of money or assumes obligations in this state (other than banks, institutions for savings and insurance companies), must semi-annually make a full report in writing of the affairs and conditions of such corporation at the close of business on the last business days of June and December in each year to the Superintendent of the Banking Department, verified by oath, in such form and by such officers of the corporation as the Superintendent may designate, which report shall be in place of any report which any such corporation has been heretofore required to make to the Supreme Court, the comptroller, or otherwise.

Every such report must be made within twenty days after the day to which it relates, and must be in such form,

[1] Laws of 1878, chap. 203, § 44.

[2] Laws of 1847, chap. 210, § 41.

and contain such statements, returns and information as to the affairs, business, condition and resources of such corporation as the Superintendent may from time to time prescribe or require; and he may, if he be of the opinion that it is desirable, require that a like report, either wholly or in part, as to such particulars, be made to him at any time, by any such corporation, within such period as he may designate.[1]

Under this provision it was held that a company whose charter authorized it to establish a public exchange and mart for receiving deposits of, and transferring, earnest moneys, stocks, bonds and other securities, and for the procurement and making of loans on the same, and guaranteeing the payment of bonds and other obligations, was required to make such report to the Superintendent of the Banking Department.[2]

BOOKS REQUIRED TO BE KEPT.

The book or books of any incorporated company in this state in which the transfer of stock is registered, and the books containing the names of the stockholders, shall at all reasonable times during the usual hours of transacting business be open to the examination of every stockholder of the company for thirty days previous to any election of directors.[3]

It is the duty of the trustees of every corporation organized under the Manufacturing Act to cause a book to be kept by the treasurer or clerk containing the names of all persons, alphabetically arranged, who are, or who within six years have been, stockholders of such company, and showing their places of residence, the number of shares of stock held

[1] Laws of 1882, chap. 409, § 219.

[2] *People* v. *The Mutual Trust Co.*, 96 N. Y. 10.

[3] Rev. Stat., part I. chap. xviii. title 4, § 1.

by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in. Such books must, during the usual business hours, be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the county where its business operations are located. In addition to the liability incurred by the officer neglecting or refusing to make any proper entry in such books, or to exhibit the same, it is provided that a company that neglects to keep such books open for inspection shall forfeit to the people the sum of fifty dollars for every day it shall so neglect.[1]

Substantially the same provisions exist as to keeping and exhibiting the books of stockholders of the following corporations: Business corporations,[2] building companies,[3] hotel companies,[4] navigation companies,[5] turnpike and plank-road companies,[6] title guarantee companies.[7]

It is the duty of the directors of business corporations[8] and of title guarantee companies[9] to cause to be kept at the principal office or place of business correct books of account of all business and transactions, which may at all reasonable times be examined by any stockholder either in person or by attorney.

The president and cashier of every banking association organized under the laws of this state are required to keep a true and correct list of the names of all the shareholders of such association, and to file a copy of such list in the office of the clerk of the county where any office of such association may be located, and also in the office of the Super-

[1] Laws of 1848, chap. 40, § 25.
[2] Laws of 1875, chap. 611, § 17.
[3] Laws of 1853, chap. 117, § 25.
[4] Laws of 1874, chap. 143, § 14. The right to examine is limited to stockholders and judgment creditors and their representatives.
[5] Laws of 1852, chap. 228, § 10.
[6] Laws of 1847, chap. 210, § 43.
[7] Laws of 1885, chap. 538, § 17.
[8] Laws of 1875, chap. 611, § 16.
[9] Laws of 1885, chap. 538, § 16.

intendent of the Banking Department, on the first Monday of January and July in each year.[1]

ARTICLE II.

Acts Prohibited.

Generally corporations are prohibited from exercising any powers other than those expressly given by law or in their charters, and such powers as incidentally flow from, and are necessary to, the use of these.[2]

BANKING POWERS PROHIBITED.

No corporation not expressly incorporated for banking purposes shall by any implication or construction be deemed to possess the power of discounting bills, notes or other evidences of debt, of receiving deposits, of buying gold and silver, bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money;[3] nor shall it employ any of its funds for such purposes;[4] and any note so discounted will be void;[5] and any director or officer violating the above provisions shall forfeit one thousand dollars.[6]

In *The New York State Loan and Trust Co.* v. *Helmer*,[7] where a company not authorized by its charter to carry on the business of banking or to discount notes, sued on notes discounted by it, on demurrer to the answers setting up such unauthorized banking it was held by the Court of Appeals, reversing the General Term of the Supreme Court in the

[1] Laws of 1882, chap. 409, § 46.

[2] *Ante*, p. 50.

[3] Rev. Stat., part I. chap. xviii. title 3, § 4.

[4] Laws of 1882, chap. 409, § 299.

[5] Id. § 301.

[6] Id. § 300. Sections 297 and 298 provide penalties for any person unauthorized by law becoming a member of, or interested in, any association or company formed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money.

[7] 77 N. Y. 64.

First Department, that plaintiff's charter did not confer upon it banking powers, or authorize it to discount commercial paper, and this being prohibited by statute to any corporation not expressly incorporated for banking purposes, the notes were void, and the answers set up a good defence.

While, however, the security itself is void, and furnishes no ground of action, yet the plaintiff in such a case is entitled to recover the money received by the defendant upon such void security, in an action properly brought for that purpose.[1]

CERTAIN TRANSFERS PROHIBITED.

Whenever any incorporated company shall have refused the payment of any of its notes, or other evidences of debt, in lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company to any officer or stockholder of such company directly or indirectly for the payment of any debt; and it shall not be lawful to make any transfer or assignment in contemplation of the insolvency of such company to any person or persons whatever; and every such transfer and assignment to such officer, stockholder or other person, or in trust for them or their benefit, shall be utterly void.[2]

This statute forbids any transfer in contemplation of insolvency; and the payment of a debt to a *bona fide* creditor under such circumstances is prohibited, equally with a general transfer of the property, or an assignment in trust for creditors;[3] and the same is true of a confession of judgment, or an offer to allow judgment to be taken.[4]

But, on the other hand, insolvency, either existing or un-

[1] *Pratt* v. *Short*, 79 N. Y. 437; *Pratt* v. *Eaton*, id. 449.

[2] Rev. Stat., part I. chap. xviii. title 4, § 4. This section was repealed by Laws of 1882, chap. 402, § 39, but was restored by Laws of 1884, chap. 434.

[3] *Robinson* v. *Bank of Attica*, 21 N. Y. 406. But see *Varnum* v. *Hart*, 23 North East. Rep. 183.

[4] *Kingsley* v. *First Natl. Bank of Bath*, 31 Hun, 329.

avoidable, and known at the time to the officers of a corporation, is not of itself sufficient to bring a transfer within the prohibition of the statute. While the prohibition applies to existing as well as to future contemplated insolvency,[1] yet the test is whether the act itself was, as a matter of fact, done in contemplation of insolvency; in other words, upon what was passing in the minds of the officers at the time the transfer was made. Actual insolvency, at the time of the transfer, is not of itself conclusive evidence that it was made in contemplation of such insolvency; and unless the act is done on account of such existing or contemplated insolvency, it is not prohibited.

Therefore where a mortgage was made in pursuance of a prior contract by which the company was bound, and under such circumstances that it could not have a choice, the condition of insolvency becomes of no moment.[2] And where, in the usual course of business, a bank known by its managing officers and agents to be insolvent, but continuing business, pays the check of a depositor ignorant of its financial condition, such a payment cannot be recovered back by an assignee of the bank.[3]

It seems that the above prohibitions are for the benefit of creditors and not of stockholders, and that such transfers may be impeached only by creditors or persons representing creditors.[4]

Transfers by Moneyed Corporations.—Certain corporations, denominated "moneyed corporations," are subject to many restrictions not imposed upon others; among these are several additional prohibitions in regard to transfers of property. It is not quite certain just what corporations are included among "moneyed corporations." The statute defines them as being "every corporation having banking powers, or hav-

[1] *Robinson* v. *Bank of Attica* (*supra*).

[2] *Paulding* v. *The Chrome Steel Co.*, 94 N. Y. 334.

[3] *Dutcher* v. *Importers and Traders' Natl. Bank*, 59 N. Y. 5.

[4] *Sheldon Hat Blocking Co.* v. *Eickemeyer Hat Blocking M. Co.*, 90 N. Y. 607.

ing the power to make loans upon pledges or deposits, or authorized by law to make insurances."[1] This language is clear and intelligible, and broad enough to include banks within its provisions; but whether it does apply to any except such as were chartered prior to the Banking Act of 1838 is a question that cannot be said to be fully settled.[2]

In addition to the above provisions, no moneyed corporation is permitted to make any conveyance, assignment or

[1] Laws of 1882, chap. 409, § 214.

[2] In his work on the Banking Laws of the State of New York (p. 219) Mr. Willis S. Paine, former Superintendent of Banking, says that the provisions probably do not apply to banks organized under chapter 409 of Laws of 1882; and such was undoubtedly the construction that the courts gave to the provisions of the Revised Statutes relating to moneyed corporations as applied to banks organized under the general banking law of 1838. *Leavitt* v. *Blatchford*, 17 N. Y. 521; *Belden* v. *Meeker*, 47 id. 307; *McLean* v. *Eastman*, 21 Hun, 312. But in 1880 the legislature passed an act to provide for the compilation and revision of the laws affecting banks, banking and trust companies, under which a commission was appointed and all of the laws relating to those subjects were compiled and revised, and such revision became a law July 1, 1882 (Laws of 1882, chap. 409), as "An Act to Revise the Statutes of this State relating to Banks, Banking and Trust Companies;" and on the same day the provisions of the Revised Statutes above referred to regulating and prohibiting certain transfers by moneyed corporations were repealed (Laws of 1882, chap. 402), and those regulations, with others, were included in sections 179 to 194, inclusive, of the above act. In view of the fact that these sections form part of an act expressly devoted to a revision of the banking laws, it seems hardly safe to assume, in the absence of any decision upon this subject since the passage of this act, that they would be held not to apply to banks organized under it. Some force is lent to the argument that they do not apply to banks from the fact that section 57 specially provides that certain sections other than the above relating to elections, transfer books, etc., shall apply to banking associations, thereby perhaps implying an intent on the part of the legislature to exclude them from the provisions of the above sections.

For cases holding that banks organized under the general banking law of 1838 were subject to these provisions, but which were overruled by *Leavitt* v. *Blatchford* (*supra*), see *Warner* v. *Beers*, 23 Wend. 103; *Supervisors of Niagara* v. *The People*, 7 Hill, 504; *Gillet* v. *Moody*, 3 N. Y. 487; *Talmage* v. *Pell*, 7 N. Y. 328; *Gillet* v. *Phillips*, 13 N. Y. 114.

The case of *Curtis* v. *Leavitt*, 15 N. Y. 9, contains an elaborate and exhaustive statement of the purposes of the general banking law, and of the powers and duties of banks organized under it.

transfer of any of its real estate, unless authorized by a previous resolution of its board of directors, nor of any of its effects exceeding the value of one thousand dollars without like authorization; but this does not apply to the issuing of promissory notes, or other evidences of debt, by the officers of the company in the transaction of its ordinary business, nor to the payments in specie, or other current money, or in bank bills made by such officers; nor will a transfer to a purchaser for a valuable consideration and without notice be affected.[1]

No such conveyance, assignment or transfer, nor any payment made, judgment suffered, lien created or security given by any such corporation when insolvent, or in contemplation of insolvency, with the intent of giving a preference to any particular creditor over other creditors of the company, will be valid in law; and every person receiving by means of any such conveyance, assignment, transfer, lien, security or payment, any of the effects of the corporation is bound to account therefor to its creditors or stockholders or their trustees, as the case shall require.[2]

The transferee of a note for more than one thousand dollars which was on its face payable to such corporation, and was transferred without the authority of the board of directors, cannot recover on it against the makers unless he can prove that he took it in good faith and for value.[3] But if the note were for less than one thousand dollars, although transferred as a part of securities making, together, more than that sum, it seems the prohibition would not apply.[4]

Special provisions in a charter granted subsequent to a general law will govern the mode of transfer.[5]

[1] Laws of 1882, chap. 409, § 186.

[2] Id. § 187.

[3] *Houghton* v. *McAuliff*, 2 Abb. App. Dec. 409.

[4] *Ogden* v. *Raymond*, 3 Abb. App. Dec. 396.

[5] Where the charter of an insurance company granted subsequent to the Revised Statutes provided that notes might be transferred in a manner different from that prescribed by the Revised Statutes, the rule prescribed by the charter would govern transfers. *Wood* v. *Wellington*, 30 N. Y. 218; *Brookman* v. *Metcalf*, 32 id. 591.

While the statute has no application in the case of a transfer to a *bona fide* holder for value, or in the usual and customary course of business,[1] yet, as the object of the statute is to secure an equal distribution of the effects of the company in case of insolvency, a payment made by such a corporation when actually insolvent, or in contemplation of insolvency, and with the intent of giving a preference to creditors, is void, and may be recovered back by a receiver of the company, even though the creditor had no knowledge of the condition of the company at the time of such payment.[2]

For such a payment, however, to be prohibited, not only must insolvency actually be contemplated by the officers, but the transfer must be made with the intent of giving a particular creditor a preference over other creditors.[3]

[1] *Ogden* v. *Raymond* (*supra*); *Robinson* v. *Bank of Attica*, 21 N. Y. 406; *Houghton* v. *McAuliff* (*supra*); *Dutcher* v. *Importers & Traders' Nat. Bank*, 59 N. Y. 5; *Marine Bank* v. *Clements*, 31 N. Y. 33.

[2] *Brouwer* v. *Harbeck*, 9 N. Y. 589.

[3] *Marine Bank* v. *Clements*, 31 N. Y. 33; *Curtis* v. *Leavitt*, 15 N. Y. 9.

CHAPTER V.

THE LIABILITIES OF OFFICERS AND DIRECTORS.

THE names directors and trustees are used interchangeably in the statutes of this state to denote those persons who have the control and management of the affairs of a corporation. Such persons occupy a position of trust, not only towards the stockholders of the corporation, but also towards its creditors.[1]

As is said by Finch, J., in *Duncomb* v. *The New York, Housatonic & Northern Railroad Co.* (*supra*), "Whether a director of a corporation is to be called a trustee or not in a strict sense, there can be no doubt that his character is fiduciary, being entrusted by others with powers which are to be exercised for the common and general interests of the corporation and not for his own private interests, and he falls therefore within the doctrine by which equity requires that confidence shall not be abused by the party in whom it is reposed, and which it enforces by imposing a disability, either partial or complete, upon the party entrusted to deal on his own behalf in respect to any matter involving such confidence."

The statutes recognize this fiduciary position of officers and directors by imposing upon them certain liabilities and penalties for the neglect or failure to perform the duties devolving upon their office, or for performing such duties negligently or fraudulently.

Liability for Withdrawing Capital, etc.—The Revised Statutes provide[2] that it shall not be lawful for the directors or man-

[1] *Hoyle* v. *Plattsburgh & Montreal R. R. Co.*, 54 N. Y. 314; *Barnes* v. *Brown*, 80 id. 527; *Duncomb* v. *New York, Housatonic & Northern R. R. Co.*, 84 id. 190.

[2] Revised Statutes, part 1. chap. xviii. title 4, § 2.

agers of any incorporated company in this state "to make dividends excepting from the surplus profits arising from the business of such corporation; and it shall not be lawful for the directors of any such company to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of such company, or to reduce the said capital stock, without the consent of the legislature; and it shall not be lawful for the directors of such company to discount or receive any note, or other evidence of debt, in payment of any instalment actually called in and required to be paid, or any part thereof, due or to become due on any stock in the said company; nor shall it be lawful for such directors to receive or discount any note, or other evidence of debt, with the intent of enabling any stockholder in such company to withdraw any part of the money paid in by him on his stock.[1]

"In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, or were not present when the same did happen, shall, in their individual and private capacities, jointly and severally be liable to the said corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock of the said company so divided, withdrawn, paid out or reduced, and to the full amount of the notes or other evidences of debt so taken or

[1] The above provisions are made specially applicable to moneyed corporations (Laws of 1882, chap. 409, § 179); and by the Penal Code it is made a misdemeanor for a director to concur in any vote by which it is intended to do any of the above acts; or by which it is intended to apply any portion of the funds of such corporation except surplus profits directly or indirectly to the purchase of shares of its own stock; or to receive any such shares in payment or satisfaction of a debt due to such corporation; or to receive in exchange for the shares, notes, bonds or other evidences of debt of such corporation, shares of the capital stock, or notes, bonds or other evidences of debt issued by any other stock corporation. Penal Code, § 594.

discounted in payment of any stock, and to the full amount of any notes or evidences of debt so discounted with the intent aforesaid, with legal interest on the said respective sums, from the time such liability accrued; and no statute of limitations shall be a bar to any suit at law or in equity against such directors for any sums for which they are made liable by this section: *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of such company which shall remain after the payment of all its debts, upon the dissolution of such company or the expiration of its charter."

The Same of Moneyed Corporations.—In addition to the above prohibitions, the directors of moneyed corporations are forbidden to make any loans or discounts if the corporation have banking powers by which the whole amount of the loans and discounts of the company shall be made to exceed three times its capital stock then paid in and actually possessed; or to make any loans or discounts to the directors of such corporation, or upon paper upon which such directors, or any of them, shall be responsible to an amount exceeding in the aggregate one-third of the capital stock of such corporation actually paid in and possessed; but no securities taken for any such loans or discounts shall be invalid.[1]

In the calculation of profits of moneyed corporations previous to a dividend, debts or interest accrued and unpaid may not be included;[2] and all interest on debts due and unpaid, and all losses, must be deducted from the actual profits;[3] and if the losses sustained exceed the undivided profits, they must be charged as a reduction of the capital stock, and no dividend may thereafter be made on the shares of such stock until such deficit is made good;[4] and if in consequence of such reduction the whole amount of the loans and

[1] Laws of 1882, chap. 409, § 179. And concurrence in such a vote is a misdemeanor. Penal Code, § 595.

[2] Laws of 1882, chap. 409, § 180.

[3] Id. § 181.

[4] Id. § 182.

discounts made by any corporation having banking powers shall exceed three times the amount to which its capital is or ought to be reduced, enough of such loans must be called in without delay to reduce the whole amount within the prescribed limit.[1]

If any share of its own capital stock shall be hypothecated or pledged to any moneyed corporation, and the debt is not paid when due, such shares must be sold within sixty days thereafter; and if not so sold, and the debt remains unsatisfied, they must be charged at the amount actually paid thereon, as a reduction of the capital stock of the company, and no dividend may be made until such deficit is made good.[2]

This section does not make it the absolute duty of the directors to sell the stock in such a case, but the making a dividend is precluded until the deficit is made good.[3]

Any director violating any of the above provisions is liable, personally, to the creditors or stockholders, respectively, for any loss they may sustain.[4]

The Same.—*Manufacturing Corporations.*—If the trustees of any company organized under the Manufacturing Act declare and pay any dividend when the company is insolvent, or one the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they will be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted while they continue in office. If, however, any of the directors object to the declaring of such dividends, or to the payment of the same, and before the time fixed for such payment shall file a certificate of their objection in writing with the clerk of the company and with the clerk of the county, they shall be exempt from such liability.[5]

The Same.—*Miscellaneous Corporations.*—Those directors

[1] Laws of 1882, chap. 409, § 183.
[2] Id. § 184.
[3] *Butterworth* v. *Kennedy*, 5 Bosw. 143.
[4] Laws of 1882, chap. 409, § 188.
[5] Laws of 1848, chap. 40, § 13.

of business corporations who vote for such dividends are liable as in the case of manufacturing corporations.[1]

The directors of gas-light companies are so liable, provided that if a certificate of objection be filed within thirty days after such payment, they shall be exempt.[2]

The directors of guano companies[3] and inland navigation companies[4] are liable in this respect in the same manner as the directors of manufacturing corporations, except that in the case of inland navigation companies, to free them from such liability, a certificate of the claims and demands in favor of and against such companies must first be made by a majority of the trustees, and verified by the president and secretary, and filed in the same manner as the original certificate; and no dividend may be paid unless the net value of the property, claims and demands of such company, as shown in such certificate, is as much as the capital stock.[5]

Construction of the Above Statutes.—The object of the prohibitions contained in such statutes as the above is to prevent the dissipation of the fund designed for the security of creditors and all who have occasion to deal with such corporations; and courts will look at the substance of the act rather than to the mere form for a test of the liability. Therefore any act on the part of the directors which has the effect of dividing the assets of a company among the stockholders, and thus impairing the fund available for creditors, makes the directors liable under the statute.[6] But such prohibitions are for the benefit of the creditors and not of the stockholders, and therefore a receiver of a corporation cannot recover from the directors dividends so declared for the benefit of the stockholders.[7]

[1] Laws of 1875, chap. 611, § 19.
[2] Laws of 1848, chap. 37, § 13.
[3] Laws of 1857, chap. 546, § 13.
[4] Laws of 1854, chap. 232, § 14.
[5] Id. § 13.
[6] *Gillet* v. *Moody*, 3 N. Y. 479; *Rorke* v. *Thomas*, 56 id. 559.
[7] *Butterworth* v. *O'Brien*, 39 Barb. 192.

Where a remedy against the directors of a corporation for the impairment of the capital is given by a general act, and a subsequent act for the incorporation of companies for certain specific purposes contains a provision relating to the same matter and establishing a different penalty, the directors of such corporations can be held liable only under the act under which the corporation was organized. Accordingly it was held that the trustees of a corporation organized under the Manufacturing Act[1] were not liable under the Revised Statutes for declaring and paying a dividend which diminished the amount of the capital stock, but that the liability was solely under section 13 of the Manufacturing Act, which imposed a different penalty from that imposed by the Revised Statutes and prescribed different modes of escaping from the results of the same act.[2]

Loans to Stockholders Prohibited.—The provisions in respect to loans by moneyed corporations to their directors have been considered above.[3]

In certain corporations all loans to stockholders are prohibited, and the officers who make such loans, or who assent thereto, become jointly and severally liable, to the extent of such loans and interest, for all the debts of the company contracted before the repayment of the sums so loaned. The following corporations are subject to the same provision: corporations organized under the Manufacturing Act;[4] corporations organized under the Business Act;[5] building companies organized under chapter 117 of the Laws of 1853.[6]

The liability under this statute is not to the company nor to the general creditors of the company, but only to those

[1] Laws of 1848, chap. 40.

[2] *Excelsior Petroleum Co.* v. *Lacey*, 63 N. Y. 422.

[3] *Ante*, p. 160.

[4] Laws of 1848, chap. 40, § 14.

[5] Laws of 1875, chap. 611, § 20.

[6] Laws of 1853, chap. 117, § 14.

who were creditors prior to the repayment of the loan; and it seems, therefore, that the receiver of a corporation cannot maintain an action against a director for having participated in making such a loan.[1] And in any event there must have been an actual loan of money, in such a form as to create an indebtedness and liability for repayment on the part of the stockholder in order to sustain the action. It was accordingly held in the case last cited, where stock had been voted to a stockholder in payment for patents, and subsequently a portion of the stock was retained and a money payment made instead, the stock to be delivered to him whenever he should repay the money, that this constituted, at most, an option or privilege to take the stock upon the repayment of the money, but that it was in no sense a loan and created no obligation to pay the money on his part, and directors assenting thereto were not liable.[2]

Where a loan is in fact made, the directors assenting thereto are not freed from liability by informing the other officers and stockholders of the loan.[3]

Liability for Failure to make Annual Report.—The Manufacturing Act provides that if any company organized under the act shall fail to file and publish its annual report as required by the act,[4] all of the trustees of the company shall be jointly and severally liable for all of the debts of the company then existing, and for all that shall be contracted before such report shall be made; but whenever under this section a judgment shall be recovered against a trustee severally, all the trustees of the company shall contribute a ratable share of the amount paid by such trustee on such judgment, and such trustee shall have a right of action against his co-trustees, jointly or severally, to recover from them their proportion of the amount so paid on such judgment.[5]

[1] *Billings* v. *Trask*, 30 Hun, 314.
[2] Id.
[3] *Clark* v. *Acosta*, 9 Bosw. 158.
[4] *Ante*, p. 130.
[5] Laws of 1848, chap. 40, § 12, as amended by Laws of 1875, chap. 510.

This provision is contained literally or substantially in the acts for the incorporation of the following companies: business corporations;[1] building companies;[2] and gas-light companies.[3]

Construction of the Statute. —We have seen in the preceding chapter what constitutes a sufficient report under the above section, and the necessary acts to be done in regard to filing and publishing the same; and if a report is made which conforms with these requirements no liability exists.[4]

The liabilities imposed by this section are wholly created and regulated by the special provisions of the act.[5] If the act is in form complied with, no liability attaches under this section, even though there might be a liability under some other section of the act.[6]

Therefore in an action under this section for failure to file a report it was held that trustees were not liable for filing a false report, as the penalties imposed in that case are different, and the liabilities are incurred by different persons;[7] but in so far as they are against the same persons, the two causes of action may probably be joined.[8]

[1] Laws of 1875, chap. 611, § 18, as amended by Laws of 1884, chap. 208.

[2] Laws of 1853, chap. 117, § 12. This act does not contain the last clause providing for a contribution among the trustees; and without such provision no contribution can be compelled. *Andrews* v. *Murray*, 33 Barb. 354.

[3] Laws of 1848, chap. 37, § 12. No provision for contribution; see preceding note.

[4] See pp. 130–135 and notes.

[5] *Blake* v. *Griswold*, 104 N. Y. 613.

[6] *Bonnell* v. *Griswold*, 80 N. Y. 128; *Whitney Arms Co.* v. *Barlow*, 68 id. 34.

[7] *Bonnell* v. *Griswold*, 80 N. Y. 128.

[8] *Bonnell* v. *Griswold*, 68 N. Y. 294; *Butler* v. *Smalley*, 17 J. & S. 492, reversed on other grounds, 101 N. Y. 71. In *Bonnell* v. *Griswold* the question arose on a demurrer, but not being necessary to the decision of the case the court suggests the question without deciding it. In *Butler* v. *Smalley* the General Term of the Superior Court held that the two causes of action might be joined; but there being no finding of a fraudulent intent in the case, the claim for liability for filing a false report was not urged on the appeal to the Court of Appeals and the question is not passed upon, although the court refers to the abandonment of that portion of the case without intimating that the two causes of action could not be joined.

It is not necessary that all the liabilities be enforced by one action. There may be as many different actions against the trustees as would lie against the corporation; and the actions may be brought against one, some or all of the trustees, and be prosecuted at the same time.[1] Nor is it necessary that an action be first brought against the corporation.[2]

The foundation of the action is a debt existing at the time of the failure to file the report. And the penalty is imposed upon all who were trustees at the time of the default for the debts then existing,[3] or for such debts as may be

[1] *Roach* v. *Duckworth*, 95 N.Y. 391.

[2] *Esmond* v. *Bullard*, 16 Hun, 65; *Miller* v. *White*, 50 N.Y. 137; *Rorke* v. *Thomas*, 56 id. 559;

[3] *Garrison* v. *Howe*, 17 N. Y. 458; *Boughton* v. *Otis*, 21 id. 261; *Jones* v. *Barlow*, 62 id. 202; *Bruce* v. *Platt*, 80 id. 379.

As to whether a judgment against a corporation is in any case an "existing debt" within the terms of the statute is a question of some perplexity. It seems to be pretty well settled that such a judgment is not even *prima facie* evidence of such a debt as against a trustee who was not a party to the action. *Miller* v. *White*, 50 N. Y. 137; *McMahon* v. *Macy*, 51 id. 155; *Rorke* v. *Thomas*, 56 id. 559; *Whitney Arms Co.* v. *Barlow*, 63 id. 62.

In *Miller* v. *White* an action was brought against the defendants as trustees of a corporation for failure to make the annual report. The complaint set forth the recovery of a judgment against the company, that the execution had been returned unsatisfied, and the judgment was still unpaid and in full force. Upon the trial a motion was made to dismiss the complaint on the ground that it did not set forth any original cause of action against the company. The motion was denied and exception taken. The judgment roll was offered in evidence, and the court held the judgment conclusive against the defendants and directed a verdict for plaintiff. No evidence of any default in making the report subsequent to the entry of the judgment was given, though subsequent defaults were alleged. The Court of Appeals in reversing the judgment in this case did so on the ground, as stated in the opinion, that "the principles of law are better sustained by holding this judgment not evidence against these defendants; that they are neither parties nor privies to it, and that they should not be bound by it; that for this as for other claims they should be personally served with process, and given an opportunity of trying the question of debt." The authorities upon this question are collated in the opinion.

In *Esmond* v. *Bullard*, 16 Hun, 65, the question as to whether a judgment was such a debt was discussed, and it was held that a judgment against a corporation for a tort was not a liability for which the trustees

incurred while the default continues; and a person who becomes a trustee after the twenty days from the first of January, if there has been default in making such report, is liable for all debts incurred while he is trustee until such

could be held. This case was affirmed on other grounds, *sub nomine Losse* v. *Bullard*, 79 N. Y. 404.

In *Lewis* v. *Armstrong*, Supreme Court, Special Term, 1880, 8 Abb. N. C. 385, it was held, on a demurrer to the complaint, that a judgment against the corporation on a contract was an existing debt within the meaning of the statute.

In *Rorke* v. *Thomas*, 56 N. Y. 559, which was an action against trustees for paying a dividend when the company was insolvent, based on a judgment against the corporation for damages for breach of contract and costs, the judgment was modified by striking out costs and interest on the judgment against the company and, as modified, affirmed, on the ground, as expressed in the opinion, that "the costs are not within the terms of the statute."

In *Allen* v. *Clarke*, 43 Hun, 377, it was held, relying upon *Miller* v. *White*, that a judgment for costs against a plaintiff corporation, recovered in an action for trespass commenced by it, is not such a debt of the corporation as will make a trustee liable for failure to make a report. This case was reversed in the Court of Appeals (108 N. Y. 269); Earl, J., in giving the opinion of the court, saying:

"The sole question for our determination is whether the judgment for costs in favor of [the plaintiffs] in an action brought against them by the company for a tort is a debt which can be enforced against the defendant as a trustee of the company, by reason of its failure to make, publish and file the report required by section 12. . . .

"This judgment for costs was in every sense a debt of the company which it was under precisely the same obligation to pay as any other debt. It is true it was not a debt existing antecedently to the judgment, but it was a debt created by the judgment itself; and as it was a debt against the corporation which it was bound to pay, it could be enforced against the defendant.

"It may be that the judgment is not collusive as against the defendant, and it is undoubtedly open to him to show that the recovery was either collusive or fraudulent. But it is a debt created by the judgment itself. It is proved by the production of the judgment, and that is at least *prima facie* evidence of its existence. It is unlike the case of *Miller* v. *White*, where the judgment was upon a debt antecedently existing, in which case it was held that the judgment was neither conclusive nor *prima facie* evidence of the debt, and that it was the duty of the plaintiff to prove and establish his debt independently of the judgment. The reason upon which that decision is based can have no application to a case like this, where there was no liability on the part of the company to pay the costs antecedently to or independently of the judgment."

The distinction in these cases, which is certainly narrow, is that where an antecedent debt against the corporation exists, a judgment

report is made.[1] But his liability is limited to debts contracted while he remains a trustee.

Therefore a person who was a trustee when default was made is not liable for debts contracted after he ceased to be a trustee, although the default continued.[2] And where a trustee resigned after the debt was incurred but before the time for making the report, it was held that he was not liable for the failure to make such a report, nor was it necessary for him to give notice of his resignation to any one other than his associates.[3] But, on the other hand, if a person participates in the meetings and in the business transactions of the company, and so acts generally as to induce the public to consider him an officer of the company, he may, as a *de facto* trustee, become liable for such a default, even if he were never legally elected;[4] so in like manner a trustee who holds over without election and continues to act as such trustee is liable;[5] and it being proved or admitted that he was a trustee prior and subsequent to the de-

based on such a debt is no evidence against the trustees, and does not constitute a debt for which they are liable; but if there be no antecedent debt, one may be created by a judgment; but whether under circumstances essentially different from those in the last case, where the judgment was incurred by the affirmative act of the corporation, is doubtful.

[1] *Chandler* v. *Hoag*, 2 Hun, 613; aff'd. 63 N. Y. 624.

[2] *Shaler & Hall Quarry Co.* v. *Bliss*, 27 N. Y. 297.

[3] *Bruce* v. *Platt*, 80 N. Y. 379.

But a mere statement made by a trustee to a fellow-trustee, that he would have no more to do with the company, cannot be construed as a resignation. The intention to resign must be brought home to the corporation. *Kindburg* v. *Mudgett*, Sup. Ct., Gen'l. Term., 24 Wk. Dig. 229. And declarations by a director to the secretary and treasurer of a company at the time of assigning his stock to the latter individually that he severed all connections with the company and would have nothing to do with it, but without any request that his resignation be communicated to the board is not sufficient; and evidence that such director, after assigning his stock, consented to take back a new certificate of the requisite number of shares to entitle him to continue a director, is sufficient to justify the inference that he intended to remain one. *Chemical Natl. Bank* v. *Colwell*. Common Pleas, Gen. Term., 9 N.Y. Supp. 285, 288.

[4] *Easterly* v. *Barber*, 65 N. Y. 252.

[5] *Craw* v. *Easterly*, 54 N. Y. 679; *Deming* v. *Puleston*, 55 id. 655; *Van Amburgh* v. *Baker*, 81 id. 46.

fault, it will be presumed that he continued to act as such.[1] But where his term of office had expired before contracting the debt for which it is sought to make him liable, it is necessary for plaintiff to prove that he held over and continued to act as trustee. This will not be presumed, and any circumstances that tend to show that he was not in fact a trustee at the time of the default, such as bankruptcy and an assignment of his stock to an assignee, are admissible to show that he was not.[2] Nor is it sufficient to show that a person is a stockholder and was elected a trustee. If there were no acceptance of the office and no conduct indicating an intention to accept it, no liability attaches.[3]

A debt imposed upon a corporation by the fraud of a creditor or his agent will not render the trustees liable under this section;[4] nor are they liable where bonds issued by the corporation were, to the knowledge of the plaintiff, diverted from the purpose for which they were intended;[5] nor where recovery is sought for the tortious act of the corporation;[6] nor where the action is on an unliquidated claim for damages;[7] nor where the obligation to pay is contingent;[8] nor, perhaps, where an action has previously been brought against the corporation and judgment has been rendered for defendant.[9]

Pleadings and Proofs.—The plaintiff in these actions is held to a strict proof of all the facts necessary to constitute his

[1] *Reed* v. *Keese*, 60 N. Y. 616.

[2] *Phil. & Read. Coal and Iron Co.* v. *Hotchkiss*, 82 N. Y. 471.

[3] *Cameron* v. *Seaman*, 69 N. Y. 396.

[4] *Adams* v. *Mills*, 60 N. Y. 533.

[5] *Kirkland* v. *Kille*, 99 N. Y. 390.

[6] *Esmond* v. *Bullard*, 16 Hun, 65.

[7] *Victory Webb Co.* v. *Beecher*, 26 Hun, 48; aff'd, 97 N. Y. 651.

[8] *Whitney Arms Co.* v. *Barlow*, 68 N. Y. 34.

[9] *Tyng* v. *Clark*, 9 Hun, 269. In this case the court held the proposition as above stated on the ground that, having brought an action against the corporation and it having been adjudged that the corporation was not indebted to plaintiff, any claim that plaintiff might have had against the corporation was extinguished by such judgment. It is difficult to reconcile this decision with the cases above cited, and it would seem, as intimated in *Kraft* v. *Coykendall*, 34 Hun, 285, that the dissenting opinion of Mr. Justice Daniels in this case is more in conformity with the law as now settled.

cause of action. It must be alleged in the complaint that the debt was existing at the time of the default in making the report, or that it was contracted afterwards and before such report was published.[1] Every fact necessary to establish the liability must be affirmatively proved by the plaintiff, even though it involve proving a negative, such as failure to publish.[2]

Where a defendant attempts to rely upon a default made more than three years prior to the commencement of an action, and in his answer sets up an affirmative defence which alleges that the defendants, three in number, had failed to file a report for more than three years, and that more than three years had elapsed since any penalty or claim had arisen against them as trustees in plaintiff's favor, it constitutes no defence in law; for, as the Manufacturing Act provides that corporations organized under it may have thirteen trustees, it will not be assumed that three constituted a majority of the board.[3] If the prior default had been alleged as a default by the corporation instead of the default of trustees that might constitute less than a majority of the whole number, it would be a good defence, as when a trustee has once become liable for a particular debt, the statute of limitations begins to run in his favor from that time as to that debt, notwithstanding the default may be continued during successive years.[4]

The action to enforce the liability of a trustee under this section is not based upon the theory of affording compensation to the injured party for damages sustained by the default complained of, but is highly penal in its nature, and the amount of the debts then existing is the measure of the penalty imposed.[5]

[1] *Chambers* v. *Lewis*, 28 N. Y. 454.

[2] *Whitney Arms Co.* v. *Barlow*, 68 N. Y. 34.

[3] *Cornell* v. *Roach*, 101 N. Y. 373.

[4] *Losee* v. *Bullard*, 79 N. Y. 404; *The Rector, etc., of Trin. Ch.* v. *Vanderbilt*, 98 N. Y. 170; *Cornell* v. *Roach*, 101 N. Y. 373.

[5] *Merchants' Bank* v. *Bliss*, 35 N. Y. 412; *Jones* v. *Barlow*, 62 id. 202; *Losee* v. *Bullard*, 79 id. 404; *Bruce* v. *Platt*, 80 id. 379; *Bonnell* v.

All the attributes of an action to recover a penalty follow it. It must be commenced within three years from the time the cause of action accrues;[1] it abates upon the death of either party, and cannot be revived by or against their personal representatives;[2] it cannot be interposed as a counterclaim in an action;[3] nor can the cause of action be joined with an action against defendant to charge him with a liability as a stockholder because of the failure of the corporation to file a certificate of payment of capital stock;[4] and it is no defence that the corporation is indebted to the trustee.[5]

A trustee sued to enforce this liability is entitled to have the action tried in the county where the cause of action arose, irrespective of the convenience of witnesses;[6] and he may serve an unverified answer to a verified complaint.[7]

All of the trustees being equally chargeable with the duty of making a report, one trustee, being a creditor, cannot recover from his co-trustees under this section, nor can his assignees nor a firm with which he is connected.[8] But such duty not being imposed upon the stockholders, a stockholder who is a creditor may enforce the remedy as well as an outside creditor;[9] and the action may be maintained by the assignee of a creditor.[10]

The liability of the trustee is coextensive with that of the corporation, and he may avail himself of any defence

Griswold, id. 128; *Duckworth* v. *Roach*, 81 id. 49; *Veeder* v. *Baker*, 83 id. 156; *Pier* v. *George*, 86 id. 613; *Stokes* v. *Stickney*, 96 id. 323; *Gadsen* v. *Woodward*, 103 id. 242.

[1] *Merchants' Bank* v. *Bliss*, 35 N. Y. 412; *Losee* v. *Bullard*, 79 id. 404; *Duckworth* v. *Roach*, 81 id. 49; *Rector, etc., Trin. Ch.* v. *Vanderbilt*, 98 id. 170.

[2] *Stokes* v. *Stickney*, 96 N. Y. 323; *Brackett* v. *Griswold*, 103 id. 425; *Boyle* v. *Thurber*, 50 Hun, 259. In the case of *Blake* v. *Griswold*, 104 N. Y. 613, where the plaintiff died after judgment but pending appeal to the Court of Appeals, the representatives of the deceased were substituted in his place.

[3] *Clapp* v. *Wright*, 21 Hun, 240.

[4] *Wiles* v. *Suydam*, 64 N. Y. 173.

[5] *Morey* v. *Ford*, 32 Hun, 446.

[6] *Veeder* v. *Baker*, 83 N. Y. 156.

[7] *Gadsen* v. *Woodward*, 103 N. Y. 242.

[8] *Easterly* v. *Barber*, 65 N. Y. 252; *Knox* v. *Baldwin*, 80 id. 610.

[9] *Sanborn* v. *Lefferts*, 58 N. Y. 179.

[10] *Bolen* v. *Crosby*, 49 N. Y. 183; *Pier* v. *George*, 86 id. 613.

which would be a valid defence to an action brought against the corporation; but he cannot set up any defence which would not constitute a legal or equitable defence in such an action.[1] In such an action the declarations of the president of the corporation in a matter affecting its business and in respect to which he was acting for it are competent evidence against the trustees to prove the indebtedness of the company.[2]

The strictness with which this section is construed by the courts is well illustrated in the case of *Bonnell* v. *Griswold*,[3] where it was held that, under the Manufacturing Act, no penalty attaches for failure to make the annual report if all of the capital stock was issued for property purchased. This on the ground that the statute empowering such corporations to issue stock in payment for property was an independent act,[4] not amending any particular section of the Manufacturing Act, and that the penal provisions of section 12 could not be extended by implication so as to cover it. This, of course, has no application to companies which are authorized by their acts of incorporation to issue stock for property.

Liability for False Reports under the Manufacturing Act.—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of the above act, is false in any material representation, all the officers who have signed the same, knowing it to be false, are jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.[5]

The cause of action under this section, like that for failing to file a report, is highly penal in its nature and does not affect or concern any property-right or interest, and is not

[1] *Jones* v. *Barlow*, 62 N. Y. 202; *Whitney Arms Co.* v. *Barlow*, 63 id. 62; *Roach* v. *Duckworth*, 95 id. 391.

[2] *Hoag* v. *Lamont*, 60 N. Y. 96.

[3] 80 N. Y. 128.

[4] Laws of 1853, chap. 333, § 2.

[5] Laws of 1848, chap. 40, § 15. It is also made a misdemeanor by the Penal Code, § 603.

in any way based upon the theory of compensation for injury suffered.[1] The decisions cited under the former section, so far as relates to its penal character, are applicable to this and will not be repeated here.[2]

Those trustees only who sign the report are liable under this section,[3] and the gist of the action is the fraudulent intent of the officers making it. As is said by Judge Rapallo, in giving the opinion of the court in the case last cited: "We are of the opinion that the words 'knowing it to be false' import a wilful misrepresentation with actual knowledge of its falsity, and not merely such constructive knowledge as can be imputed from the presumption that the officer signing the report knew the law and comprehended the precise import of the language used, when construed with reference to statutory provisions. . . . To charge the officer with the severe penalty imposed for signing a false report, knowing it to be false, some fact or circumstance must be shown indicating that it was made in bad faith, wilfully or for some fraudulent purpose, and not ignorantly or inadvertently; and this is a question of fact which must be passed upon before the liability can be adjudged."[4]

In this case a portion of the capital stock was issued for property, but was reported as "capital paid in;" the court, following *Bonnell* v. *Griswold*,[5] held that this implied the payment of the capital in cash, and, as such, contained an untrue representation as to the amount of capital paid in, and that this representation was material; yet as there was no evidence which would warrant a finding of bad faith or intention to deceive, or of a fraudulent purpose, and it appearing, rather, that the report was signed heedlessly and carelessly, the judgment of the General Term affirming a judgment in favor of plaintiff was reversed, and a new trial ordered.

[1] *Stokes* v. *Stickney*, 96 N. Y. 323; *Brackett* v. *Griswold*, 103 id. 425.

[2] *Ante*, p. 164 *et seq.*

[3] *Bonnell* v. *Griswold*, 80 N. Y. 128; *Pier* v. *Hanmore*, 86 id. 95.

[4] *Pier* v. *Hanmore*, 86 N. Y. 95.

[5] 80 N. Y. 128.

The case of *Bonnell* v. *Griswold*[1] was based upon a similar state of facts, and it was held that, as there was no proof of a wilful or fraudulent intent on the part of the trustees signing the report, they were not liable under the above section. But in *Blake* v. *Griswold*,[2] upon the same pleadings and the same state of facts, but where the finding of the trial court was that the defendant signed the report in bad faith, knowing it to be false, it was held that the facts justified such a finding, and that he was liable to a creditor. The statement was: "That the capital stock of said company is two millions of dollars; that said capital stock has been paid up in full."

It appeared that one half of the stock had been issued to another company for property worth not over sixty thousand dollars, and that the other moiety had been issued to one of the trustees, without consideration, and by him distributed

[1] 89 N. Y. 122.

[2] 103 N. Y. 429. These cases were heard together and were four times before the Court of Appeals. The actions were originally brought against the trustees of a corporation organized under the Manufacturing Act for failure to file a report, and for filing a false report. Demurrers to the complaints were sustained, on the ground that the two causes of action did not affect all the parties equally, as some of them had not signed the report (68 N. Y. 294). The cases again coming before the court (80 N. Y. 128, 631), on appeal by defendants from judgments in favor of plaintiffs for failure to file a report, the judgments were reversed and new trials granted on the ground that the section imposing a liability for failure to file a report did not apply where stock was issued for property (see *ante*, p. 172). On the third appeal from judgments of the General Term of the Supreme Court, affirming a judgment of the Special Term on the ground that the report was false in a material representation, the Court of Appeals reversed the judgments and granted new trials on the grounds above stated (89 N. Y. 122). The plaintiff, Bonnell, having died pending the action, an order was made reviving and continuing the action in the name of the administrator, and judgment again rendered against defendant for making a false report. On appeal from the judgment and order, it was again reversed on the ground that the action abated upon the death of the plaintiff (*Brackett* v. *Griswold*, 103 N. Y. 425). But in *Blake* v. *Griswold* on the last appeal (103 N. Y. 429) the judgment was affirmed as above stated; and on a motion to substitute the administrator of the plaintiff for the plaintiff who died pending the appeal, the motion was granted. 104 N. Y. 613.

among other trustees and stockholders, and that the defendant, as a trustee, signed the report, knowing these facts to be true.[1]

In *Arthur* v. *Griswold*[2] (one of the same series of cases) the cause of action against defendant as trustee for making a false report was joined with a cause of action for obtaining money by false and fraudulent representations by issuing a false prospectus. One of the defendants had not signed the annual report, and the court charged the jury that, as a matter of law, plaintiff was entitled to a verdict against those defendants who had signed the report,[3] and if they found that the defendants had assented to the making and circulation of representations known by them to be false and fraudulent, then they should find a verdict against all the defendants; but if they found no fraud on the part of the defendants in these representations, then their verdict should be in favor of the defendant who had not signed the report and against the others. The jury rendered a verdict against all. Errors in the admission of evidence regarding the false representations made a new trial necessary, and the only remaining question was whether a new trial should be granted as to all or only as to the one who had not signed the report. The court held that the judgment should be reversed, and a new trial granted as to all the defendants.[4]

The history of the different appeals in the above cases shows that it is the fraudulent purpose on the part of the trustees signing a report which renders them liable. Unintentional error or inadvertence is not enough, even though there be a false material representation. The fact that certain liabilities of the company were omitted in stating the

[1] See same case on a former appeal, 89 N. Y. 122.

[2] 55 N. Y. 400.

[3] Under the later decisions in *Bonnell* v. *Griswold*, cited above, it is not probable that defendants could be held liable, as a matter of law, under the circumstances of this case.

[4] An appeal from an order reviving this action against the representatives of one of the defendants was subsequently dismissed as not affecting a substantial right. S.C., 60 N.Y. 143.

indebtedness, and that it was known to the trustee at the time the report was made, is not sufficient to render him liable, unless there be a fraudulent intent or facts showing actual fraud.[1]

The cause of action under this section arises in the county where the report is filed; and if the action is brought in a different county, defendants are entitled to have it removed. It is no defence to a motion to change the venue in such a case that the convenience of witnesses or the ends of justice would be promoted by retaining the place of trial in the county in which the action was originally brought.[2] The records of a corporation are admissible at the trial to the extent of showing the corporate acts;[3] but whether to the extent of charging a defendant in an action of this nature with knowledge of the facts recorded is doubtful.

The language of this section in regard to the liability of officers for making a false report is followed in the acts for the incorporation of gas-light companies[4] and guano companies,[5] and substantially the same in the act for the incorporporation of ferry companies, except that in the latter act it refers only to "directors," and the liability is limited to debts contracted while they are directors.[6]

Liability under the Business Act.—The Business Act provides that if any certificate or report made or public notice given by the officers of any such corporation shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the corporation contracted while they are officers thereof.[7]

This section does not, as does the corresponding section of the Manufacturing Act, restrict its application to cases where trustees have signed a report with a knowledge of its

[1] *Butler* v. *Smalley*, 101 N. Y. 71.
[2] *Veeder* v. *Baker*, 83 N. Y. 156.
[3] *Blake* v. *Griswold*, 103 N. Y. 429.
[4] Laws of 1848, chap. 37, § 14.
[5] Laws of 1857, chap. 546, § 15.
[6] Laws of 1853, chap. 135, § 17.
[7] Laws of 1875, chap. 611, § 21.

falsity. The words "knowing it to be false" are omitted, and thus the liability would be incurred if any report was as a matter of fact false in any material representation, irrespective of the fraudulent intent of the officers signing the same.[1]

It was accordingly held in *Torbett* v. *Eaton*[2] that the fact that defendant had signed a false report in good faith, having no knowledge or information that it was in any respect untrue, and that he did not have any reason to believe it to be untrue in any respect, and that he exercised proper care and diligence before he signed the report to ascertain the facts set forth and to which it related, constituted no defence. Judge Daniels, in giving the opinion of the court in this case, says that the omission of the words "knowing it to be false" from the corresponding section of the Manufacturing Act must be presumed to have been intentional on the part of the legislature, and it follows from such omission that the design was to render the officers of corporations formed under this act liable for the payment of its debts when a report proves false in a material representation, and it was also held that directors were officers within the meaning of the statute.

In the case of *Huntington* v. *Attrill*,[3] recently decided in the Court of Appeals, it was held that knowledge of the falsity of a report signed by directors was not necessary in order to render them liable under the provisions of this act; nor would the jury in an action brought against directors to charge them with this liability be required to give the defendants the benefit of all reasonable doubts, in the sense applicable to criminal cases, but should decide by a fair preponderance of evidence.

In *Hatch* v. *Attrill*,[4] decided at the same time, it was held that a report of commissioners that one-half of the

[1] *Van Ingen* v. *Whitman*, 62 N.Y. 513.

[2] 49 Hun, 209; aff'd, 113 N.Y. 623.

[3] 23 North East. Rep. 544.

[4] 23 North East. Rep. 549.

capital stock had been subscribed and ten per cent. thereon paid in in cash, which report was false in fact, was competent evidence against the directors in such an action.

The language of the Business Act is followed substantially in the acts for the incorporation of building companies[1] and inland navigation companies,[2] except that in these acts the liability is extended to any debts contracted while the persons signing the false report or certificate are stockholders or officers of the corporation.

Liability Independently of Statute.—Independently of any statutory provisions, a director of a corporation who knowingly makes or publishes false reports or statements whereby others are injured is liable for loss occasioned by such acts.[3]

Liability for Debts in Excess of Capital.—If the total amount of the debts which any incorporated company shall at any time owe, whether for deposits or by bond, bill, note or other contract, over and above the actual deposits with such company, shall exceed three times the amount of the capital stock actually paid in, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to have been entered at large on the minutes of the directors at the time, and except the directors who were not present when the same happened, are, in their individual and private capacities, jointly and severally liable for such excess to the corporation, and in the event of its dissolution, to any of its creditors, to the full amount of such excess, with legal interest from the time such liability accrued; and no statute of limitations is a bar to any suit at law or in equity against such directors for any sums of money for which they are thus liable.[4]

[1] Laws of 1853, chap. 117, § 15.

[2] Laws of 1854, chap. 232, § 15.

[3] *Wakeman* v. *Dalley*, 51 N.Y. 27; *Morgan* v. *Skiddy*, 62 N. Y. 319. And directors losing or wasting the corporate funds in consequence of gross negligence on their part are liable personally therefor. *Hun* v. *Cary*, 82 N. Y. 65; *Brinckerhoff* v. *Bostwick*, 88 id. 52. But not so if they acted without negligence. *Excelsior Petroleum Co.* v. *Lacey*, 63 id. 422.

[4] Rev. Stat., part 1. chap. xviii. title 4, § 3.

The acts for the incorporation of certain companies provide that if the indebtedness of any such company shall at any time exceed the amount of its capital stock, the directors or trustees of such company assenting thereto are personally and individually liable for such excess to the creditors of such company.

The acts which contain this provision are those for the incorporation of the following companies: manufacturing companies;[1] business companies;[2] building companies;[3] park associations.[4]

The liability under these sections is not penal in its nature, but contractual.[5] When the debts exceed the amount of the capital in the four classes of corporations last named, or three times the amount of the capital of other corporations, the liability of the trustee begins. He becomes a surety for the debts of the corporation for such excess. His liability, however, does not extend to any particular debt. It is a general liability, and when once discharged does not revive. Thus it is a good defence to an action to enforce this liability that the trustee has already paid the amount of the excess, or that he is a creditor of the corporation to that extent.[6] And it also follows from its contractual nature that the cause of action survives, and the action may be continued, against the representatives of an assenting trustee.[7]

The liability is joint, not several, and all of the assenting trustees must be joined in an action to enforce it.[8] And all creditors must be made parties to the action in order to

[1] Laws of 1848, chap. 40, § 23.

[2] Laws of 1875, chap. 611, § 22; the language of this section "the directors of such corporation creating such indebtedness," etc.

[3] Laws of 1853, chap. 117, § 23.

[4] Laws of 1861, chap. 149, § 2.

[5] *Corning* v. *McCullough*, 1 N. Y. 47; *Story* v. *Furman*, 25 id. 214; *Patterson* v. *Robinson*, 36 Hun, 622, 37 id. 341; *Hornor* v. *Henning*, 93 U. S. 228.

[6] *Tallmadge* v. *The Fishkill Iron Co.*, 4 Barb. 382.

[7] *McComb* v. *Kellogg*, Sup. Ct. Genl. Term, 1 N. Y. Supp. 206.

[8] *McClave* v. *Thompson*, 36 Hun, 365.

establish the excess of indebtedness over capital, and in order that all may participate ratably in the distribution.[1]

In estimating the indebtedness, bonds still in the treasury of the company do not comprise a part of it;[2] nor does a judgment against the company in favor of a co-trustee.[3]

In the case of *Patterson* v. *Robinson*,[4] where the debts of a corporation exceeded its capital, but an arrangement was made by certain of the trustees of the company with the creditors to suspend such indebtedness and go on with the business, and apply the proceeds of its manufactures to current expenses, and no part to such suspended debt until all outstanding subsequent claims were paid, it was held that a bank receiving notes and drafts of such a company subsequently drawn could not hold them, after presentation and payment, on account of the former indebtedness, and by that means increase the debts of such company beyond its capital, and thus render the trustees liable for them.

Liability for Debts Generally.—The officers of driving-park associations are jointly and severally liable for every debt of such associations contracted while they are officers thereof, provided a suit for its collection be brought within one year after it becomes due.[5]

The act for the incorporation of trust companies provides that for all losses of money which the capital stock shall not be sufficient to satisfy, the trustees shall be responsible in the same manner and to the same extent that trustees are responsible in law or equity.[6]

[1] *Anderson* v. *Speers*, 21 Hun, 568. In *Chambers* v. *Lewis*, 28 N. Y. 454, there is a remark to the effect that a trustee would be liable to a single creditor if that creditor alleged in his complaint that the excess of indebtedness over capital was equal to or exceeded his debt. This decision was on a demurrer which was sustained, but it could as well have been sustained on other grounds, as is stated in the dissenting opinion in the case.

[2] *McClave* v. *Thompson*, 36 Hun, 365.

[3] *Knox* v. *Baldwin*, 80 N. Y. 610; *McClave* v. *Thompson*, 36 Hun, 365.

[4] 116 N. Y. 193.

[5] Laws of 1872, chap. 248, § 8.

[6] Laws of 1887, chap. 546, § 30; see, as to liability independently of statute, *ante*, p. 178.

Where the capital of a fire-insurance company or of a marine-insurance company becomes impaired, and the Superintendent of the Insurance Department directs the officers of such a company to require the stockholders thereof to pay in the amount of such deficiency within a period named, in the event of any additional losses accruing upon risks taken after the expiration of the period so limited, and before the deficiency has been made up, the directors of such a company are individually liable to the extent of such losses.[1]

Miscellaneous Liabilities and Prohibitions.—It is a misdemeanor, punishable by fine and imprisonment, for any director or officer of a railroad corporation to sell or to agree to sell, or to be directly or indirectly interested in the sale or agreement to sell, any shares of the stock of the corporation of which he is such officer or director, unless at the time of the sale or agreement to sell he is the actual owner of such shares;[2] or for such director or officer to vote for, sign or certify to any bond secured by mortgage or pledge of the corporate property, without the issue thereof having been sanctioned by a majority in amount of its stockholders, voting in person or by proxy at a meeting duly called for that purpose.[3]

A person who signs the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation, existing or proposed; and a person who signs, to any subscription or agreement, the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.[4]

[1] Laws of 1853, chap. 466, § 24, and Laws of 1866, chap. 577.

[2] Laws of 1884, chap. 223.

[3] Laws of 1850, chap. 140, § 28, subdiv. 10, as amended by Laws of 1887, chap. 724.

[4] Penal Code, § 590.

An officer, agent or other person in the service of any joint-stock company, or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud, either—

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or to cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or

2. Re-issues, sells, pledges or disposes of, or causes to be re-issued, sold, pledged or disposed of, any surrendered or cancelled certificates, or other evidence of the transfer or ownership of any such share or shares,—

Is punishable by imprisonment for not less than three years nor more than seven years, or by a fine not exceeding three thousand dollars, or by both.[1]

An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of

[1] Penal Code, § 591.

its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years and not less than three years.[1]

A person who, without authority, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.[2]

A director of a stock corporation who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended—

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or

3. To discount or receive any note or other evidence of debt in payment of an instalment of capital stock actually called in and required to be paid, or with intent to provide the means of making such payment; or

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock; or

6. To receive any such shares in payment or satisfaction of a debt due to such corporation; or

[1] Penal Code, § 592.

[2] Id. § 593.

7. To receive in exchange for the shares, notes, bonds or other evidences of debt of such corporation, shares of the capital stock, or notes, bonds or other evidences of debt issued by any other stock corporation,—

Is guilty of a misdemeanor.[1]

A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either—

1. To make a loan or discount, by which the whole amount of the loans and discounts of the corporation shall be greater than the amount allowed by law, or, where there is no express statutory limitation of the amount, greater than three times its capital stock then paid in and actually possessed; or

2. To make a loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, to an amount exceeding the amount allowed by statute, or, where there is no express statutory limitation of the amount, exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed,—

Is guilty of a misdemeanor.[2] But this will not render any loan made by the directors of any such corporation, in violation thereof, invalid.[3]

An officer or agent of any corporation having banking powers who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges, or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation;[4] or who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such cor-

[1] Penal Code, § 594.
[2] Id. § 595.
[3] Id. § 596.
[4] Id. § 597.

poration to an amount which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.[1]

An officer or agent of any banking corporation who makes or delivers any guaranty or endorsement on behalf of such corporation whereby it may become liable on any of its discounted notes, bills or obligations in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.[2]

An officer, agent, teller or clerk of any banking association or savings-bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes or funds of such bank,[3] or who receives any deposits knowing that such bank or association is insolvent, is guilty of a misdemeanor.[4]

A director, officer or agent of any corporation or joint-stock association who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association; and a director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in a

[1] Penal Code, § 598.
[2] Id. § 599.
[3] Id. § 600.
[4] Id. § 601.

state prison not exceeding ten years and not less than three years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisoment.[1]

A director, officer or agent of any corporation or joint-stock association who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere by the Penal Code specially made punishable, is guilty of a misdemeanor.[2]

The insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.[3]

In every case of the fraudulent insolvency of a moneyed corporation, every director thereof who participated in such a fraud, if no other punishment is prescribed therefor by the Penal Code or any special statute, is guilty of a misdemeanor.[4]

A director of any moneyed corporation who wilfully does any act, as such director, which is expressly forbidden by law, or wilfully omits to perform any duty expressly imposed upon him as such director by law, the punishment for which act or omission is not otherwise prescribed by the Penal Code or by some special statute, is guilty of a misdemeanor.[5]

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of these provisions.[6]

A director of a corporation or joint-stock association

[1] Penal Code, § 602.
[2] Id. § 603.
[3] Id. § 604.
[4] Id. § 605.
[5] Id. § 606.
[6] Id. § 609.

who is present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of these provisions occurs is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors;[1] and although not present at such a meeting of the directors, he will be deemed to have concurred therein if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter without causing, or in writing requiring, his dissent from such illegality to be entered in the minutes of the directors.[2]

A director, trustee or other officer of a joint-stock association or corporation, upon whom a notice of application for an injunction affecting the property or business of such joint-stock association or corporation is served, who omits to disclose to the other directors, officers or managers thereof the fact of such service, and the time and place of such application, is guilty of a misdemeanor.[3]

It is no defence to a prosecution for a violation of these provisions that the corporation was one created by the laws of another state, government or country, if it carried on business, or kept an office therefor, within this state.[4]

The term "director," as here used, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or are known in law.[5]

[1] Penal Code, § 610.
[2] Id. § 611.
[3] Id. § 612.
[4] Id. § 613.
[5] Id. § 614.

CHAPTER VI.

THE RIGHTS OF STOCKHOLDERS.

QUESTIONS regarding the rights of stockholders oftenest come before the courts on applications addressed to the equitable power of the courts to enforce such rights. There are, however, certain statutory rights, and summary methods of relief, given in certain cases which form the subject of this chapter.

Right to Certificate of Stock.—Unless the act of incorporation or the by-laws of a company require it, a certificate of stock is not necessary to constitute one a stockholder. Entering the name of a subscriber on the books of a company as a stockholder is sufficient.[1]

In case, however, of the loss or destruction of a certificate of stock of a corporation organized under the laws of this state, the owner, or his legal representatives, may apply at a Special Term of the Supreme Court in the judicial district where he resides for an order requiring the corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed.

The application must be by petition, duly verified by the owner, in which shall be stated the name of the corporation, the number and date of the certificate if known, or if it can be ascertained by the petitioner, the number of shares of stock named therein and to whom issued, and as particular a statement of the circumstances attending such loss or

[1] *Thorp* v. *Woodhull*, 1 Sand. Ch. 411; *Van Allen* v. *Illinois Cent. R. R. Co.*, 2 Keyes, 673; *Buffalo, etc., R. R. Co.* v. *Dudley*, 14 N. Y. 336; *N. Y. & N. H. R. R. Co.* v. *Schuyler*, 34 id. 30; *Rutter* v. *Kilpatrick*, 63 id. 604.

destruction as the petitioner may be able to give. Upon the presentation of said petition, the court will make an order requiring such corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in the petition. A copy of such petition and order must be served upon the president or other head of such corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in the order for showing cause.[1]

At the time and place specified in the order, and on proof of due service thereof, the court will proceed in a summary manner and in such mode as it may deem advisable to inquire into the truth of the facts stated in the petition, and to hear such proofs and allegations as may be offered by or in behalf of the petitioner, or by or in behalf of the corporation or other party, relative to the subject-matter of inquiry, and if, upon such inquiry, the court shall be satisfied that such petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it will make an order requiring such corporation or other party, within such time as shall be therein designated, to issue and deliver to such petitioner a new certificate for the number of shares of the capital stock of such corporation which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed. In making such order the court will direct that the petitioner deposit such security, or file such a bond in such form and with such sureties, as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter

[1] Laws of 1873, chap. 151, § 1.

appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct the publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper. Any person or persons who shall thereafter claim any rights under such certificate so alleged to have been lost or destroyed shall have recourse to such indemnity, and the corporation shall be discharged of and from all liability to such person or persons by reason of compliance with such order; and obedience to the order may be enforced by the court by attachments against the officer or officers of such corporation, on proof of his or their refusal to comply with the same.[1]

This is not the proper proceeding in case there is any controversy as to the ownership of the shares. To entitle him to the order it must appear that the petitioner is the legal owner of the shares and that the certificate has been lost or destroyed.[2]

Compelling Transfer.—Mandamus will not lie to compel a corporation to transfer stock on its books.[3] The common remedy for a refusal on the part of the corporation to make such transfer is an action for damages;[4] but where adequate relief cannot be obtained in this manner, as, for instance, where the stock is of little value and the purchaser desires to hold it as an investment, he may bring an equitable action to compel its transfer on the books of the company.[5]

A corporation may defend an action to compel the issue of a certificate by showing that plaintiff is only a trustee for the real owner.[6]

Where the act of incorporation provides, as does the

[1] Laws of 1873, chap. 151, § 2.

[2] Matter of *Biglin* v. *Friendship Assn.*, 46 Hun, 223.

[3] *People* v. *Brandon*, Sup. Ct. Sp. Term, Lawrence, J., Daily Reg. Dec. 11, 1889; citing *Kortright* v. *Buffalo Com. Co.*, 20 Wend. 90; *Matter of Firemen's Ins. Co.*, 6 Hill, 243; *People* v. *Parker*, 10 How. 544.

[4] *Com. Bank of Buffalo* v. *Kortright*, 22 Wend. 348; *Holbrook* v. *N. J. Zinc Co.*, 57 N. Y. 616.

[5] *Cushman* v. *Thayer Mfg. Jewelry Co.*, 76 N. Y. 365.

[6] *Jackson* v. *Twenty-Third Street Ry. Co.*, 88 N. Y. 520.

Manufacturing Act, that no transfers shall be valid until entered on the books of the company, a vendor of stock continues the nominal owner until the transfer is completed on the books;[1] and if transferred by him fraudulently to a *bona fide* purchaser, such purchaser would get a good title, although the corporation might be liable to a prior vendee if it negligently allowed a transfer of the stock on its books without requiring a delivery of the certificate for cancellation;[2] and the same is true where it transfers stock after notice of an adverse claim;[3] and where the act of incorporation does not contain a provision that a transfer can be made only on the books, an assignment of stock and payment of dividends to the assignee will constitute a valid transfer of such stock.[4]

Right to Dividends.—A stockholder has no legal right to any of the property or of the profits of a corporation until a division is made. It is immaterial from what source or during what time the funds divided were acquired by the corporation,[5] and it is justified in continuing to pay dividends to the person in whose name the stock stands on its books, or to his legal representatives, until notified of the transfer;[6] but after notification of a transfer of the stock it is liable to the real owner, even though no transfer has been made on the books of the company.[7]

Where a person claims to be a stockholder but is not recognized as such by the corporation, and he brings an action against the corporation for the conversion of his shares, he cannot, during the pendency of such an action, sue it for dividends.[8]

[1] *Johnson* v. *Underhill*, 52 N. Y. 203.

[2] *N. Y. & N. H. R. R. Co.* v. *Schuyler*, 34 N. Y. 30.

[3] *Hawes* v. *Gas Consumers' Benefit Co.*, Com. Pleas, Genl. Term, 9 N.Y. Supp. 490.

[4] *Cutting* v. *Damerel*, 88 N. Y. 410.

[5] *Hyatt* v. *Allen*, 56 N. Y. 553; *Jermain* v. *Lake Shore & Mich. So. Ry. Co.*, 91 id. 483.

[6] *Brisbane* v. *Del., Lack. & W. R. R. Co.*, 94 N. Y. 204.

[7] *Robinson* v. *Nat'l Bank of New Berne*, 95 N. Y. 637.

[8] *Hughes* v. *Vermont Copper Mining Co.*, 72 N. Y. 207.

While, as a general rule, the officers of a corporation are the sole judges of the propriety of declaring dividends, and the courts will not interfere with a proper exercise of their discretion, yet in the case of dividends on preferred stock a different condition of affairs sometimes arises. Certificates of preferred stock usually contain provisions that dividends shall be paid on them at a certain rate from the first earnings of the company. This constitutes a contract of the company to pay the dividend guaranteed, including all arrears of dividends before holders of the common stock are entitled to any, and this right may be enforced by an equitable action to compel the directors to make such a dividend.[1]

If stock is sold after a dividend is declared but before it is payable, the dividend belongs to the owner of the stock at the time it is declared;[2] and the same rule holds even though the dividend is declared payable at a future time at the option of an agent of the corporation.[3]

Right to Examine Books.—As we have seen in a former chapter,[4] corporations are required to keep certain of their books open to the inspection of their stockholders at all reasonable times during business hours. In case of refusal mandamus will lie to compel such inspection,[5] and an officer of a corporation unreasonably refusing to allow a stockholder to examine the stock transfer books, and to make extracts from them, is liable to the penalty prescribed in the statutes.[6]

The law will receive a liberal interpretation, however, and where there is no intention of excluding a stockholder from an examination of the books, the penalty will not be enforced simply on account of a technical violation of the law.[7]

[1] *Boardman* v. *Lake Shore & Mich. So. Ry. Co.*, 84 N. Y. 157.

[2] *Lombard* v. *Case*, 45 Barb. 95.

[3] *Hill* v. *Newichawanick Co.*, 8 Hun, 459; aff'd, 71 N. Y. 593.

[4] Chap. IV, *ante*.

[5] *People* v. *Throop*, 12 Wend. 183; *Matter of Sage*, 70 N. Y. 220.

[6] *Cotheal* v. *Brouwer*, 5 N. Y. 562.

[7] Thus where a stockholder visited the office of a company during the temporary absence of the custodian of the books and was told to call the next business day, and he did, when he examined them, it was *held* that it was error to refuse to nonsuit the plaintiff in an action to recover the penalty. *Kelsey* v. *Pfaudler Process*

Wherever stockholders, in a company organized under the Manufacturing Act, owning five per cent. of the capital stock of a company with a capital not exceeding one hundred thousand dollars, or three per cent. of the capital stock of a company with a capital exceeding that amount, present a written request to the treasurer of such company that they desire a statement of its affairs, it is the duty of the treasurer to make a statement of the affairs of such company under oath, embracing a particular account of all its assets and liabilities, in minute detail, and to deliver such statement to the person presenting such request within twenty days thereafter. At the same time he must place and keep on file in his office, for six months thereafter, a copy of such statement, which, at all times during business hours, must be exhibited to any stockholder demanding an examination of it.

Such a statement shall not be demanded, however, oftener than once in six months.

If a treasurer of such a company neglects or refuses to comply with these requirements, he is liable to a penalty of fifty dollars, and a further sum of ten dollars for every twenty-four hours thereafter until such statement is furnished.[1]

If no such statement has been demanded during the year preceding the annual meeting of the stockholders for the election of directors, it is the duty of the treasurer to prepare and exhibit a general statement of the assets and liabilities of the company at such meeting.[2]

Any stockholder of a corporation organized under the Business Act,[3] or a stockholder of a title guaranty company,[4] may at all reasonable times, either in person or by

Co. 41 Hun, 20. Upon a subsequent trial of this case, when it appeared that the custodian of the books was present at the office at the time the request to examine them was made, a judgment for plaintiff was sustained, and it was held that the subsequent examination was no waiver of the right when it accrued. S. C. 3 N. Y. Supp. 723.

[1] Laws of 1854, chap. 201, and Laws of 1862, chap. 472, § 1.

[2] Laws of 1862, chap. 472, § 2.

[3] Laws of 1875, chap. 611, § 16.

[4] Laws of 1885, chap. 538, § 16.

attorney, examine the records and books of account of such corporations.

Except as provided by statute, the right on the part of a stockholder to demand an examination of the books of a company is not absolute, but is discretionary with the court, and will be granted only for some good and sufficient reason shown; and such discretion, when exercised, will not be reviewed by the Court of Appeals.[1]

Rights at Elections.—Generally speaking, each share of stock standing on the books of a company is entitled to a vote at all elections; and married women may vote, at elections of directors or trustees, by proxy or otherwise, in any company organized under the laws of this state in which they are stockholders.[2]

In all cases where the right of voting upon any share of the stock of any incorporated company of this state is questioned, it is the duty of the inspectors of the election to require the transfer books of such company as evidence of stock held; and all such shares as may appear standing thereon in the name of any person may be voted upon either in person or by proxy, subject to the provisions of the act of incorporation.[3]

The inspectors who may be appointed to conduct an election are required before entering on the duties of their appointment to take or subscribe an oath or affirmation to the effect that they will execute the duties of inspector with strict impartiality and according to the best of their ability.[4]

If at any time the election for directors is not held on the day designated by its act of incorporation, it is the duty of the president and directors to cause an election to be held within sixty days thereafter; and at such election no share may be voted on except by such persons as may ap-

[1] *People* ex rel. *Hatch* v. *Lake Shore & Mich. So. R. R. Co.*, 11 Hun, 1; aff'd *sub nom. Matter of Sage*, 70 N. Y. 220.

[2] Laws of 1851, chap. 321, § 1.

[3] Rev. Stat., part 1. chap. xviii. title 4, § 6.

[4] Id. § 7.

pear on the transfer books of the company to have had the right to vote on the day when the election should have been held.[1]

Upon the application of any one aggrieved by, or complaining of, any election or any proceeding, act or matter touching the same, the Supreme Court, upon reasonable notice given to the adverse party or to those who are to be affected thereby, may proceed in a summary way to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and thereupon to establish the election so complained of, or to order a new election, or make such order and give such relief in the premises as right and justice may require.

The court in such a case may either order an issue or issues to be made up in such manner and form as it may direct, in order to try the respective rights of the parties to the office or franchise in question, or may give leave to exhibit or direct the attorney-general to exhibit an information or informations in the nature of a *quo warranto*.[2]

The Same. *Moneyed Corporations.*—At every election of directors of a moneyed corporation three persons must be chosen by the stockholders as inspectors at the next succeeding election.[3] The vacancies in the office of such inspectors are filled by the directors;[4] but in no case may a director or officer be chosen as an inspector.[5]

Every such inspector before entering on the duties of his office must take and subscribe an oath that he will execute the duties of his office with strict impartiality and according to the best of his ability.[6]

At every election of directors the transfer books of the corporation must be produced to test the qualifications of the voters, and no person be permitted to vote directly or by proxy except those in whose names shares of stock of

[1] Rev. Stat., part I. chap. xviii. title 4, § 8.
[2] Id. § 5.
[3] Laws of 1882, chap. 409, § 195.
[4] Id. § 196.
[5] Id. § 197.
[6] Id. § 198.

the corporation shall have stood for at least thirty days previous to the election.[1]

At such elections no persons can vote on any shares of stock belonging to or hypothecated to the corporation, nor on any shares hypothecated or pledged as collateral security to any other person or company;[2] nor on any shares which have been transferred to him for the sole purpose of enabling him to vote thereon at the election then to be held; nor upon any shares which he shall have previously contracted to sell or transfer after the election upon any condition, agreement or understanding in relation to his manner of voting at such election.[3]

Any person offering to vote may be challenged by any other person authorized to vote at the same election. To any person so challenged one of the inspectors must administer the following oath:

"You do swear (or affirm as the case may be) that the, shares on which you now offer to vote do not belong and are not hypothecated to the (name the corporation for which the election is held), and that they are not hypothecated or belong to any other corporation or person whatsoever; that such shares have not been transferred to you for the purpose of enabling you to vote thereon at this election and that you have not contracted to sell or transfer them upon any condition, agreement or understanding in relation to your manner of voting at this election."[4]

No person will be permitted to vote on the proxy of a stockholder unless he produce, annexed to his proxy, an affidavit of such stokholder stating the same facts to which the oath of such stockholder might have been required upon a challenge had he offered to vote in person upon the shares mentioned in the proxy.[5]

If any person offering to vote upon a proxy is chal-

[1] Laws of 1882, chap. 409, § 199.
[2] Id. § 200.
[3] Id. § 201.
[4] Id. § 202.
[5] Id. § 203.

lenged by an elector the following oath must be administered to him by one of the inspectors:

"You do swear (or affirm) that the facts stated in the affidavit annexed to the proxy upon which you now offer to vote are true according to your belief, and that you have made no contract or agreement whatever for the purchase of transfer of the shares or any portion of the shares mentioned in such proxy."[1]

If any person duly challenged refuse to take the proper oath his vote must be rejected and not afterwards received at the same election; if he take the oath his vote must be received.[2]

If any election in any moneyed corporation is not held on the day appointed by law it is the duty of the directors to notify and cause such election to be held within sixty days after the day appointed; and on the day so notified no person will be admitted to vote except those who would have been entitled had the election taken place on the day when by law it ought to have been held.[3]

If any person conceive himself agrieved by an election or any proceeding concerning an election of directors or officers in any such corporation, he may apply to the Supreme Court for redress giving a reasonable notice of his intended application to the party to be affected thereby.[4]

Upon such application the court may proceed in a summary way to hear the proofs and allegations of the parties or otherwise to inquire into the cause of complaint and thereupon to make such order and grant such relief as the circumstances and justice of the case require. If the election complained of is set aside the court may order a new election at such time and place as it may appoint.[5]

If it cannot otherwise arrive at a satisfactory result, the court may order an issue as between the parties to

[1] Laws of 1882, chap. 409, § 204.
[2] Id. § 205.
[3] Id. § 206.
[4] Id. § 210.
[5] Id. § 211.

be made up in such manner and form and to be tried in such court as it may select; or may permit or direct the attorney-general to file an information in the nature of a *quo warranto* if the case be one in which that proceeding would be competent and effectual.[1]

If any such issue is ordered, or information permitted or directed to be filed, the court may make such further orders in relation to the time and mode of pleading, the examination of witnesses or the parties, the production of books and papers, and the time and place of trial or hearing, as in its judgment may seem effectual for expediting the proceedings, saving expense to the parties, and causing a final determination to be had with as little delay as the nature of the controversy will permit.[2]

The Same. *Business Corporations.*—The annual election of directors of corporations organized under the Business Act must be held at such time and place as is designated by the by-laws and public notice of such meetings must be published not less than ten days previous thereto in a newspaper published in the place in which the principal business office of the corporation is situated, if a newspaper be published therein, and otherwise, in the newspaper published nearest to such office.

The election must be made by such of the stockholders as attend for that purpose either in person or by proxy. No person may vote upon the proxy of a stockholder in any such corporation after the lapse of eleven months from the date of such proxy, unless the stockholder specifies therein that it is to continue in force for a longer time.

All elections must be by ballot, and each stockholder is entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected, and he may distribute his vote among those to

[1] Laws of 1882, chap. 409, § 212. [2] Id. § 213.

be voted for as he sees fit. And the persons receiving the greatest number of votes shall be directors.[1]

By this system of cumulative voting all the votes to which any stockholder is entitled multiplied by the whole number of directors to be elected may in his discretion be cast for one director or divided among any number. It is thus possible for a minority of the stockholders to elect such a portion of the directors as their proportion of stock in the corporation entitles them to.

In case an election is not made on the day designated it may be held on any other day within three months thereafter upon giving notice of such meeting to each stockholder by mail at least five days before the time.[2]

Every person acting as an inspector of elections must, before entering upon the duties of his office, take and subscribe his oath or affirmation that he will discharge the duties of his office with fidelity, and that he will not receive any vote but such as he believes to be legal.[3]

The Same. *Title Guaranty Companies.*—The act for the incorporation of title guaranty companies contains the same provisions regarding elections as are contained in the Business Act.[4]

The Same. *Safe Deposit Companies.*—The act for the incorporation of safe deposit companies contains the provision that no proxy shall be voted on after the lapse of eleven months unless the stockholder shall have specified therein that it is to continue in force for some longer time.[5]

The Same. *Railroads.*—In the elections of directors of railroads organized under chapter one-hundred-and-forty of Laws of 1850, each stockholder is entitled to one vote per-

[1] Laws of 1875, chap. 611 § 26.
[2] Id. § 27.
[3] Id. § 28.
[4] Laws of 1885, chap. 538, § § 20, 21, 23. This act also provides (§ 22), that there shall be three inspectors of elections chosen by the stockholders in the same manner as directors are elected.
[5] Laws of 1875, chap. 613, § 3 as amended by Laws of 1883, chap. 338.

sonally or by proxy on every share held by him thirty days previous to any such election.[1]

Before entering upon his duties each inspector of elections at a meeting of stockholders of any railroad company of this state, must take and subscribe before some officer authorized to administer oaths an oath or affirmation that he will well and truly do and perform the duties of the office of an inspector at such election, according to the best of his ability, and must file the same in the office of the clerk of the county in which such election shall be held, together with a certificate of the result of the vote taken at such meeting.[2]

No person may vote or issue a proxy to any other person to vote at any meeting of stockholders or bondholders of any railroad corporation in this state for the election of directors or for any other purpose upon any stock or bonds where the certificates are not in his possession or under his control, if he has ceased to retain the title to such stock or bonds as owner in his own right or in his capacity of executor, administrator or trustee, notwithstanding such stock or bonds may still stand in his name on the books of such corporation.

No person having the right to vote upon stock or bonds shall sell his vote or, for any valuable consideration, issue a proxy to vote upon such stock or bonds to any person, and any one offering to vote upon stock or bonds registered or standing in his name may be required by any inspector of election to take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that in voting at this election I have not either directly or impliedly received any promise or any sum of money or anything of value whatever to influence the giving of my vote or votes at this election; and that I have not sold or otherwise disposed

[1] Laws of 1850, chap. 140, § 5 as amended by Laws of 1854, chap. 282 and Laws of 1873, chap. 710.

[2] Laws of 1880, chap. 510, § 1.

of my interest in, or title to, any share or bonds in respect to which I offered to vote at this election, but that all such shares and bonds still remain in my possession or subject to my control."

Any person offering to vote as agent, attorney or proxy for any other person may be required to take and subscribe to the following oath or affirmation:

"I do solemnly swear (or affirm) that the title to the stock or bonds upon which I now offer to vote is, to the best of my knowledge and belief, truly and in good faith, vested in the persons in whose name they now stand, and that the said persons still retain control of the said shares and bonds and that I have not either directly or indirectly or impliedly given any promise or any sum of money or anything of value whatever to induce the giving of authority to vote upon such stock or bonds to me."

The inspectors are authorized to administer these oaths which, with the proxies, must be filed in the office of the company.[1]

A majority of the stockholders of a railroad company may change the time and place of its annual meeting to any other incorporated village or city in the State of New York, in which the executive officer of the company is located, to some day in the month of December preceding the date or time at which such election would otherwise have been held.[2]

The Same. *Generally.*—No meeting of the stockholders of a corporation organized under the laws of this state for the election of directors or for the purpose of any other corporate action can be held outside of the state.[3] Nor can a valid election be held unless notice is given to the stockholders in the manner prescribed by the by-laws of the cor-

[1] Laws of 1880, chap. 510, § 2.

[2] Laws of 1885, chap. 498. See also Laws of 1881, chap. 317.

[3] *Ormsby* v. *Vermont Copper Mining Co.*, 56 N. Y. 623.

poration, or the act under which it is organized.[1] But where no particular form or time of notice is thus prescribed, any actual notice is sufficient. Thus a written notice deposited in the postoffice, will in the absence of proof showing that all stockholders did not in fact receive the notice so sent be presumed to have been received.[2]

Where no elections have been held, and there is no provision in the charter or by-laws of a corporation for the officers holding over, the stockholders may meet on any regular day for the election of directors, and hold such election, although no notices of such meeting had been sent.[3]

At all elections the right of a stockholder to vote is determined, subject to the provisions in its charter or by-laws, by the names appearing on the transfer books, and the inspectors cannot go beyond the names there appearing.[4]

Most of the acts for the incorporation of companies, under the laws of this state, provide that executors, administrators, guardians or trustees, shall represent the shares of stock in their hands at all meetings, and vote as stockholders thereon; but even in the absence of such a provision they are entitled to vote upon the stock which they represent.[5] The pledgee of stock, however, stands in a different position, and has no right to vote upon stock held by him in pledge, unless he has been expressly authorized to do so and to transfer the stock to his own name on the transfer books.[6]

Where Directors wrongfully hold over.—Whenever the directors named in articles of association of any corporation

[1] *Matter of Long Island R. R. Co.*, 19 Wend. 37; *People* v. *Batchelor*, 22 N. Y. 128.

[2] *People* ex rel. *Swinburne* v. *Albany Medical College*, 26 Hun, 348; aff'd 89 N. Y., 635.

[3] *People* v. *Twaddell*, 18 Hun, 427.

[4] *Matter of Barker*, 6 Wend. 509.; *Strong* v. *Smith*, 15 Hun, 222.

[5] *Matter of North Shore, etc., Ferry Co.*, 63 Barb. 556.

[6] *McHenry* v. *Jewett*, 26 Hun, 453. This case was reversed on the ground solely that an injunction would not lie to restrain a pledgee from voting on stock standing in his name. s. c., 90 N. Y. 58.

organized under any general law of this state, neglect or refuse during the first year of the corporate existence to adopt the by-law required by law to enable stockholders to hold the annual election for directors, and where, by such neglect, the said directors hold over and continue to be directors after the expiration of the first year of the corporate existence, all acts and proceedings of the directors, when so holding over, done for and in the name of the company, and designed to charge upon the company any liability or obligation for the past services of any director so holding over, or for the past services of any officer or attorney or counsel appointed by them, such liability or obligation is considered fraudulent and void.[1]

When directors of such a corporation are holding over by their wrongful neglect of duty beyond the term for which they were appointed or elected, and an action has been brought against the company by the procurement of any of them to enforce any claim or obligation declared void as above, and such action is in the interest or for the benefit of any director so holding over, and the company has by their connivance made default in such action or consented to the validity of the claim or obligation so sought to be enforced against the company, any stockholder of the company may apply to the Supreme Court, by affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, the Supreme Court may stay such proceedings or set aside or vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party who, without notice of such wrong-doing and for a valuable consideration, has acquired rights under such proceedings.[2]

Stockholders may Call Meetings.—When the directors of a corporation neglect to adopt a by-law providing for the annual election of directors for sixty days after the first

[1] Laws of 1885, chap. 489, § 1. [2] Id. § 2.

year of the corporate existence, the stockholders may elect directors in the place of those holding over.

The stockholders entitled to vote for directors may meet after a previous notice in writing, given by them to all stockholders at least fifteen days before such meeting, of the time and place when and where such meeting will be held for the purpose of electing directors; and any officer or other person having charge of the books of the corporation containing the names of the stockholders must allow the same to be examined by any stockholder or his attorney, for the purpose of giving such notice.

The place of such meeting must be the principal office of the company, or in case it has no such office, at the place in the city where its principal business has been transacted, or in case such office or place is denied, then at some other place to be designated in such notice in the city or town where the principal office of such company is or was last located. At such meeting the stockholders must elect two or more inspectors of election. If a majority of the votes cast shall be for one ticket for directors the persons so named and voted for as directors thereupon become the directors until the next annual election and until others are elected and qualified in their stead, and without reference to the time when they become stockholders. In the absence at such meeting of the books of the corporation showing who were stockholders, each stockholder in order to be entitled to vote must present a statement in writing, signed and verified by him under oath, setting forth the number of shares of stock standing in his name on its books, and upon which he is entitled to vote, and which is then owned by him, and if known to him, he shall also state the whole number of shares of stock issued by the corporation at the time when the election ought to have been held, and on filing such affidavit with the inspectors he will be entitled to vote on such stock.

The inspectors must return and file such verified state-

ments, together with the certificate of the results of the election, which must be verified by them, with the clerk of the county in which such election is held.[1]

In addition to electing directors the stockholders at such a meeting may adopt a by-law providing for the annual meetings and election of directors. Such by-laws must be adopted in the same manner and by the same number of votes as is prescribed for the election of directors, and has the same effect as if it had been adopted by the directors of the company.[2]

[1] Laws of 1885, chap. 489, § 3. [2] Id. § 4.

CHAPTER VII.

THE LIABILITIES OF STOCKHOLDERS.

WHERE the capital stock of a corporation has not been paid in full and the amount paid is insufficient to satisfy the claims of its creditors, each stockholder is liable on each share held by him to the extent of the amount necessary to complete such share as fixed by the charter of the company, or such proportion of that sum as may be required to satisfy the debts of the company.[1]

In addition to this liability, which is general to all the corporations organized under the laws of this state, many of the acts for the formation of corporations impose upon their stockholders certain special liabilities.

Under the Manufacturing Act.—All the stockholders of companies incorporated under this act, are severally individually liable to the creditors of the company to an amount equal to the amount of stock held by them respectively for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company has been paid in and a certificate thereof has been made and recorded in the office of the clerk of the county where the business of the company is carried on.[2]

Stock which has been issued for property purchased, however, is not liable under this section.[3]

Under this act, also, stockholders are jointly and severally individually liable for all debts that may be due and owing to all their "laborers, servants and apprentices" for services performed for such corporation.[4]

[1] Rev. Stat., part I. chap. xviii. title 3, § 5.

[2] Laws of 1848, chap. 40, § 10.

[3] Laws of 1853, chap. 333, § 2.

[4] Laws of 1848, chap. 40, § 18.

No person, however, holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, is personally subject to any liability as stockholder of such company; but the person pledging such stock is considered as holding the same and is liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian or trustee, are liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name.[1]

No stockholder is personally liable for the payment of any debt contracted by any company formed under this act which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt is brought against the company within one year after the debt becomes due; and no suit may be brought against any stockholder for any debt of such company unless it is commenced within two years from the time he may have ceased to be a stockholder; nor until an execution against the company has been returned unsatisfied in whole or in part.[2]

Under the Business Act.—Under this act the corporations are, as we have seen, of two classes, namely: full liability companies, and limited liability companies.

In full liability companies all the stockholders are severally individually liable to the creditors of the company for all debts and liabilities of such compauy, and may be joined as defendants in any action against the company, but no execution can issue against any stockholder individually until execution has been issued against the company and has been returned unsatisfied; and whenever a judgment is recovered against a stockholder individually, all the stockholders must

[1] Laws of 1848, chap. 40, § 16.

[2] Id. § 24. *Handy* v. *Draper*, 89 N. Y. 334.

contribute a proportionate share of the amount paid by such stockholder on such judgment, proportionate to the number of shares of stock owned by each of them, and such stockholder will have a right of action against the other stockholders in the corporation jointly or severally to recover from them the proper portion due by them of the amount so paid.[1]

In limited liability companies all the stockholders are severally individually liable to the creditors of the company to an amount equal to the amount of stock held by them for all debts and contracts made by the company, until the whole amount of capital stock fixed and limited by such company has been paid in and a certificate thereof made and recorded.

The term stockholder as here used applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same may appear on such books in the name of another person, and also to every person who may have advanced the instalments of purchase money of any stock in the name of any person under twenty-one years of age, and while such person remains a minor to the extent of such advance; and also, to every guardian or other trustee who has voluntarily invested any trust funds in such stock; and no trust funds in the hands of such guardian or trustee are in any way liable under the provisions of this act by reason of such investment, nor is the person for whose benefit any such investment may be made responsible in respect to this stock until thirty days after the time when he became competent and able to control and dispose of the same, but the guardian or other trustee making such investment will continue responsible as a stockholder until such responsibility devolves upon the person beneficially interested. In respect to stock held by a guardian or other trustee under a transfer of the same by

[1] Laws of 1875, chap. 611, § 34.

a third person, or under positive directions by a third person for such investment, the person making such transfer or giving such direction will be deemed a stockholder and his estate be responsible for the debts and liabilities chargeable on such stock.

No execution can issue against any stockholder individually until execution has been issued against the corporation and returned, unsatisfied; and whenever a judgment is recovered against a stockholder all the stockholders must contribute a proportionate share of the amount paid by such stockholder on such judgment, proportionate to the number of shares of stock owned by each of them; and such stockholder will have a right of action against the other stockholders jointly or severally to recover from them the proportion due by them and each of them of the amount so paid.[1]

The act contains a similar provision in regard to trustees of stock as is contained in the Manufacturing Act.[2]

No stockholder is personally liable for the payment of any debt contracted by any corporation formed under this act which is not to be paid within two years from the time the debt is contracted, nor unless an action for the collection of such debt be brought against such corporation within two years after the debt became due. No action can be brought for any such debt against any stockholder who has ceased to be a stockholder unless it be commenced within two years from the time he has ceased to be such stockholder.[3]

It is not necessary, under this act, that a judgment be first obtained against the company in order to maintain an action against a stockholder. An action may be commenced and judgment obtained against a stockholder at any time pending an action against the company, but execution cannot

[1] Laws of 1875, chap. 611, § 37.
[2] Id. § 23.
[3] Id. § 25.

issue on such judgment until execution has been returned unsatisfied against the company. The remedy against the stockholder is simply suspended until that is done.[1]

Insurance Companies.—The general rule may probably safely be laid down that stockholders of insurance companies are not personally liable in any event for the debts of the company except to the extent of the instalments due and unpaid upon their stock, and the liability to the forfeiture of their shares, in whole or in part, for the failure to make good a deficit in the capital when the same is impaired.[2]

In the case of *Chase* v. *Lord*[3] the question of the liability of stockholders of insurance companies, organized under chapter three hundred and eight, of laws of 1849, until the whole amout of the capital raised by the company is paid in, was very fully discussed by the court, and it was held that such liability attached only to the corporators, and that, as the functions of the corporators ceased with the organization of the company, they could not thereafter be held liable.

It seems, therefore, that the only remedy given to a creditor of an insurance company against its stockholders, individually, where the whole capital has not been paid in, is found in that provision of the revised statutes, in relation to corporations, which obligates each stockholder to pay on each share of his stock the sum necessary to make it full paid, or such portion thereof as is required to pay the corporate debts, and that the liability of the stockholder is limited by this provision.

Banks.—The Banking Act provides that whenever default shall be made in the payment of any debt or liability contracted by any corporation or joint stock association, for banking purposes, issuing bank notes or any kind of

[1] *Walton* v. *Coe*, 110 N. Y. 109.

[2] Laws of 1849, chap. 308, § 13 as amended by Laws of 1864, chap. 425. Laws of 1853 chap. 466, § 24. Laws of 1853, chap. 463, § 17 as amended by Laws of 1879, chap. 161, § 2.

[3] 77 N. Y. 1.

paper credits to circulate as money, the stockholders of such corporation or association shall be individually responsible, equally and ratably, for the amount of such debt or liability with interest to the extent of their respective shares of stock in any such corporation or association.[1]

The law of the United States imposing a tax of ten per cent. on the circulation of state banks is practically prohibitory, and there are no banks at present organized under the state laws which issue bank notes or any kind of paper credits to circulate as money.

The question arose, and was submitted to the attorney general by the Superintendent of the Banking Department, whether in view of such prohibition, the stockholders of state banks were liable as provided in the above section, or whether the liability attached only upon the issue of circulating notes.

In an opinion filed in the Banking Department, September 3rd, 1884, the attorney general decided that the stockholders of state banks not issuing bank notes or paper credits intended to circulate as money are not liable to the creditors of those institutions.[2]

In his opinion he cites the unreported case of *Matter of the Merchant's Bank of Watertown*, in which the same view of the question is taken. In that case, although the amount involved was large, no appeal was taken from the decision, and while a Special Term case it may undoubtedly be taken as a correct statement of the law.

Safe Deposit Companies.—The stockholders of any corporation, organized under the provisions of the act authorizing the formation of corporations for the safe keeping and guaranteeing of personal property, are jointly and severally liable for all debts that may be due and owing by such corporation to an amount equal to the par value of their stock in

[1] Laws of 1882, chap. 409, § 125.

[2] Paine's Banking Laws 182, where this opinion is given in full.

such corporation over and above such stock, to be recovered of the stockholders, who were such when the debt was contracted, or loss or damage sustained, or of any subsequent stockholder. Any stockholder who may have paid any demand against such company either voluntarily or by compulsion may resort to the rest of the stockholders who are liable to contribution.

The dissolution of such a corporation does not release or affect the liability of any stockholder which may have been incurred before such dissolution.[1]

Trust Companies.—Whenever default is made in the payment of any debt or liability contracted by any trust company, organized under the general laws, the stockholders thereof are individually responsible, equally and ratably for the then existing debts of the corporation; but no stockholder is liable for such debts to an amount exceeding the par value of the stock held by him at the time of such default; and no person holding such stock as an executor, trustee, etc., or as collateral security is liable as a stockholder, and the estate and funds in his hands only are liable.[2]

Railroads.—Each stockholder of any company formed under the act to authorize the formation of railroad corporations, is individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him for all the debts and liabilities of such company, until the whole amount of the capital stock so held by him shall have been paid to the company; and all the stockholders are jointly and severally liable for all debts due or owing to any of its "laborers and servants other than contractors" for personal services for thirty days' service performed for such company, but are not liable to an action therefore before an execution has been returned un-

[1] Laws of 1875, chap. 613, § 9.

[2] Laws of 1887, chap. 546, § 29, as amended by Laws of 1889, chap. 558.

satisfied in whole or in part against the corporation, and the amount due on such execution is the amount recoverable with costs against the stockholders.

Before such laborer or servant can charge a stockholder for such services, he must give him notice in writing within twenty days after the performance of the services that he intends to hold him liable, and must commence an action therefor within thirty days after the return of the execution; and every stockholder against whom any such recovery is had may recover the same of the other stockholders in such corporation in ratable proportion to the amount of stock they respectively hold.[1]

Bridge Companies.—The stockholders of bridge companies are liable to an amount equal to the amount of capital stock held by them to the creditors of such companies, until the whole amount of the capital stock is paid in and a certificate of such payment filed.[2]

Building Companies.—The stockholders of companies incorporated for the purpose of erecting buildings, buying and selling lands, using elevators, etc., are jointly and severally liable to the creditors of the company to an amount equal to the amount of stock held by them respectively for all debts of the company until the whole amount of the capital is paid in and the certificate thereof recorded[3]; and they are also jointly and severally liable for the debts that may be due and owing to all their "laborers, servants and apprentices" for services performed for such corporation.[4]

No stockholder is liable for the payment of any debt which is not to be paid within one year from the time the debt was contracted, nor unless a suit for its collection is brought against the company within one year after the debt becomes due; nor can a suit be brought against a stockholder until an execution against the company has been returned unsatis-

[1] Laws of 1850, chap. 140, § 10. as amended by Laws of 1854, chap. 282.

[2] Laws of 1848, chap. 259, § 2.

[3] Laws of 1853, chap. 117, § 10.

[4] Id. § 18.

fied, nor unless the suit is commenced within three months from the return of such execution.[1]

Gas-Light Companies.—The stockholders of gas-light companies are individually liable to the creditors of such companies to an amount equal to the amount of stock held by them for all debts of the company until the whole amount of capital stock has been paid in and a certificate recorded[2]; and they are also jointly and severally individually liable for all debts that may be due and owing to all their "laborers, servants and apprentices" for services performed for such corporation.[3]

No stockholder is personally liable for the payment of any such debt of the company which is not to be paid within one year from the time the debt is contracted, nor unless a suit for its collection is brought against the company within one year after the debt becomes due; and no suit can be brought against a stockholder unless it is commenced within two years from the time he has ceased to be a stockholder in such company, nor until an execution against the company has been returned unsatisfied.[4]

Guano Companies.—The stockholders of companies incorporated for the purpose of mining guano are liable to the creditors of the company to an amount equal to the stock subscribed by them until the whole amount of the capital has been paid in[5]; and they are jointly and severally individually liable for all debts that may be due and owing to all their "laborers, servants and apprentices" for services performed for such corporation.[6]

No stockholder is personally liable for the payment of any debt if he has ceased to be a stockholder in such company, unless a suit for the same has been commenced within two years from the time he has ceased to be a stockholder,

[1] Laws of 1853, chap. 117, § 24.
[2] Laws of 1848, chap. 37, § 10.
[3] Id. § 15.
[4] Id. § 17.
[5] Laws of 1857, chap. 546, § 11.
[6] Id. § 18.

nor until an execution against the company has been returned unsatisfied.[1]

Hotel Companies.—Stockholders of hotel companies are jointly, severally and individually liable to the creditors of, or those holding claims against such company to an amount equal to the amount of stock held by them, for all the debts and liabilities of the company; but such stockholder is not liable to an action therefor before an execution has been returned unsatisfied against the company, and then the amount due on such execution is the amount recoverable with costs against the stockholder.[2]

Persons holding stock as executor or trustee or pledgee are not personally liable but only to the extent of the estate in their hands.[3]

Navigation Companies.—The stockholders of navigation companies are severally, individually liable to the creditors of such companies to an amount equal to the amount of stock held by them until the whole amount of capital stock has been paid in and the certificate recorded[4]; and they are jointly and severally individually liable for all the debts that may be due and owing to all their "laborers and operatives" for services performed for such corporation.[5]

No stockholder is personally liable for the payment of any debt contracted by such corporation unless a suit for its collection is brought against the corporation within six years after the debt becomes due, nor until an execution has been returned unsatisfied against the company.[6]

The term stockholder as used in this act applies not only to such persons as appear on the books of the corporation to be such, but also to every equitable owner of stock although the same may appear on such books in the name of another person; and also to every person who has advanced the instalments for purchase money of any stock in

[1] Laws of 1857, chap. 546, § 20.
[2] Laws of 1874, chap. 143, § 13.
[3] Id. § 10.
[4] Laws of 1852, chap. 228, § 6.
[5] Id. § 5.
[6] Id. § 8.

the name of any person under twenty-one years of age and while such person remains a minor to the extent of such advance; and also to every guardian or other trustee who has voluntarily invested any trust funds in such stock; and no trust funds in the hands of such guardian or trustee are in any way liable by reason of such investment; nor is the person for whose benefit any such investment is made responsible in respect to such stock until thirty days after the time when he shall become competent and able to control and dispose of the same; but the guardian or other trustee making such investment continues responsible as a stockholder until such responsibility devolves upon the person beneficially interested; and in respect to stock held by a guardian or other trustee under a transfer by a third person or under directions by a third person for such investment, the person making such transfer or giving such directions is deemed a stockholder and his estate, if he be deceased, is responsible for all debts and liabilities chargeable on such stock.[1]

Inland Navigation Companies.—The stockholders of inland navigation companies are jointly and severally liable to the creditors of such companies to an amount equal to the amount of stock held by them respectively for all debts and contracts made by these companies, and for all claims and demands against them until the whole amount of capital stock is paid in and a certificate thereof made and recorded.[2] They are also jointly and severally individually liable for all debts that may be due and owing to all "laborers and servants" of such company for services performed; but no action can be brought for any such debt until it has been due and unpaid thirty days.[3]

No stockholder is in any case personally liable for the payment of any debt contracted by, or claim or demand against, such company unless an action for its collection is

[1] Laws of 1852, chap. 228, § 9.
[2] Laws of 1854, chap. 232, § 10.
[3] Id. § 18.

brought against the company within one year after it has become due, nor until an execution against the property of the company has been returned unsatisfied.[1]

The act also contains a provision that no person holding stock as executor, administrator or trustee shall be personally subject to any liability as stockholder.[2]

Park Associations.—The stockholders of park associations are individually liable to an amount equal to the amount of the capital stock held by them for all debts contracted by the directors or agents of such companies until the whole amount of capital stock is paid in and a certificate of payment recorded.[3]

Pipe-Line Companies.—Stockholders of pipe-line companies are individually liable to the creditors of such companies to an amount equal to the amount unpaid on the stock held by them until the whole amount of the capital stock has been paid in; and they are jointly and severally liable for debts due or owing to any of the "laborers and servants, other than contractors," for personal services for thirty days' services performed for such company; but are not liable to an action therefor before an execution has been returned unsatisfied against the company, and the amount due on such execution is the amount that may be recovered with costs against such stockholder by such laborer or servant.[4]

No person holding stock as executor or administrator or trustee is personally liable as such stockholder.[5]

Stage-Coach Companies.—The stockholders of stage-coach companies are jointly and severally individually liable to the creditors of such companies for all the debts and liabilities, but are not liable to an action therefor before an execution is returned unsatisfied against the corporation, and then the

[1] Laws of 1854, chap. 232, § 12.
[2] Id. § 16.
[3] Laws of 1861, chap. 149, § 2, and Laws of 1872, chap. 248, § 3.
[4] Laws of 1878, chap. 203, § 11.
[5] Id. § 12.

amount due on such execution is the amount recoverable with costs against such stockholders.[1]

No person holding stock as executor, administrator, trustee or pledgee is personally subject to any liability as a stockholder of such company.[2]

Telegraph Companies.—The act for the incorporation of telegraph companies provides that the stockholders shall be jointly and severally personally liable for the payment of all debts and demands against such association which shall be contracted, or which shall become due, during the time of their holding such stock, but such liability shall not exceed twenty-five per cent. in amount the amount of stock held by him; and it further provides that such stockholder shall not be proceeded against until judgment and execution unsatisfied had been returned against the company, unless such association had been dissolved.[3]

By an amendment to this act, however, it is provided that the liability of any stockholder shall apply only to the amount due and unpaid on his stock.[4] Thus the liability of stockholders of telegraph companies is now limited to the general liability of the amount due and unpaid on such stockholder's subscriptions.

Turnpike Companies.—The stockholders of turnpike and plank-road companies are liable, in their individual capacity, for the payment of the debts of such companies to an amount equal to the amount of stock they severally have subscribed for or hold over and above such stock to be recovered of the stockholder who is such when the debt was contracted, or of any subsequent stockholder. Any stockholder who has paid any demand against such company, either voluntarily or by compulsion, has a right to resort to the rest of the stockholders who are liable to contribution. The dissolution of any such company does not release or affect the liability of

[1] Laws of 1867, chap. 974, § 10.
[2] Id. § 11.
[3] Laws of 1848, chap. 265, § 10.
[4] Laws of 1853, chap. 471, § 4.

any stockholder which may have been incurred before such dissolution.[1]

The law provides a summary method of enforcing the individual liability of stockholders in such companies after an execution against the property of such corporation has been returned unsatisfied. An action may be brought by any creditor on behalf of himself and of other creditors of such corporation against all the stockholders and any former stockholder for the purpose of enforcing their respective individual liabilities.

In such an action the court may enforce the payment of all arrears due from, and owing by, any stockholder, and also ascertain all the debts of the corporation which the stockholders are individually liable to pay, and assess and apportion the total amount of such indebtedness, and may apply the same to the payment and extinguishment of the debts of the corporation which may be established and proved in such action to be debts for which the stockholders are liable individually.[2]

Liability on Unpaid Stock.—The capital stock of a corporation is, as we have seen, the fund available to creditors in case of insolvency, and all stockholders are liable on each share to the amount necessary to complete such share as fixed by charter of the company.

In order to incur the liability one must be a subscriber to the stock or a stockholder in the company. It is not, however, necessary in order to make one liable as a stockholder, that he actually have a certificate of stock issued in his name. If he has acted as a stockholder or as an officer of the company in such a manner as to hold himself out to those dealing with the company as a stockholder, it is sufficient to make him liable, even though he has never paid any instalment on the stock, nor has had a certificate issued

[1] Laws of 1847, chap. 210, § 44. [2] Laws of 1855, chap. 390.

to him.[1] So, too, one to whom stock has been apportioned is a stockholder although no certificate has been issued and the apportionment was made for him to an agent who subscribed at his request.[2]

A creditor bringing an action for unpaid subscriptions has a double remedy. He may maintain an action after exhausting his remedy against the corporation to reach the liability of any stockholder, and be subrogated to the rights of the company without joining other stockholders or creditors; or he may, after the return of an execution unsatisfied against the company, maintain an action in the nature of a creditor's bill on behalf of himself and other creditors who may choose to come in and make all the stockholders parties to the action.[3]

The right to collect the subscriptions is a right belonging to the company, and where an action has been commenced prior to the appointment of a receiver it may be continued for the benefit of the receiver.[4]

It is not necessary that shares be allotted to the subscriber before bringing an action upon the subscription;[5] and where subscribers sign a paper stating that they thereby associate themselves together to form a corporation for the purposes therein stated, a promise to take and pay for shares set opposite their respective names is implied, and becomes binding upon such subscribers although no cash payment is made.[6]

As a general rule, a legal and effectual formation of a corporation is a condition precedent to the obligation of a subscriber,[7] although such organization may be waived on

[1] *Eaton* v. *Aspinwall*, 19 N. Y. 119; *Burr* v. *Wilcox*, 22 id. 551; *Buffalo, etc., R. R. Co.* v. *Cary*, 26 id. 75; *Wheeler* v. *Millar*, 90 id. 353.

[2] *Burr* v. *Wilcox*, 22 N. Y. 551.

[3] *Bartlett* v. *Drew*, 57 N. Y. 587; *Wheeler* v. *Millar*, 90 id. 353.

[4] *Rankine* v. *Elliott*, 16 N. Y. 377; *Tracy* v. *First Natl. Bank of Selma*, 37 id. 523; *Phœnix Warehousing Co.* v. *Badger*, 67 id. 294.

[5] *Buffalo, etc., R. R. Co.* v. *Dudley*, 14 N. Y. 336.

[6] *Lake Ontario, etc., R. R. Co.* v. *Mason*, 16 N. Y. 451.

[7] *Dorris* v. *Sweeney*, 60 N. Y. 463.

the part of the subscriber by dealing with the company as a regularly organized corporation.[1] And while a change in the charter of a company, or the act under which it organized, will not as a general rule release the subscriber,[2] yet if there is a change in the objects for which it is organized and a material departure from the original purpose, the subscriber is not bound.[3]

Where a stockholder whose stock has not been fully paid in in good faith makes an absolute and valid transfer of his stock to another, he is not liable for debts made after such transfer.[4]

That a mortgage of the property of a corporation is foreclosed, and its property and franchises sold, is no defence to an action brought to recover instalments due on the stock;[5] nor is the power of the company to cause the shares to be forfeited for non-payment of instalments, as this is simply a cumulative remedy, given to the corporation.[6] But when shares have been actually forfeited for non-payment of subscription the subscriber ceases to be a stockholder, and is no longer liable either to the company or to its creditors for unpaid instalments.[7]

Where the articles of incorporation provide that at the time of subscribing every subscriber shall pay ten per cent. on the amount subscribed by him, and that no subscription shall be received or taken without such payment, the payment is a condition precedent to the obligation;[8] and in an action by the corporation against a subscriber to recover

[1] *Buffalo & Allegany R. R. Co.* v. *Cary*, 26 N. Y. 75; *Sodus Bay. etc., R. R. Co.* v. *Hamlin*, 24 Hun, 390.

[2] *Schenectady & S. Pl. R. Co.* v. *Thatcher*, 11 N. Y. 102; *Buffalo, etc., R. R. Co.* v. *Dudley*, 14 id. 336; *Matter of Lee & Co.'s Bank*, 21 id. 9; *Union Hotel Co.* v. *Hersee*, 79 id. 454.

[3] *Dorris* v. *Sweeney*, 60 N. Y. 463.

[4] *Billings* v. *Robinson*, 94 N. Y. 415.

[5] *Buffalo & Jamestown R. R. Co.* v. *Gifford*, 87 N. Y. 294.

[6] *Mann* v. *Currie*, 2 Barb. 294.

[7] *Small* v. *Herkimer Mfg. Co.*, 2 N. Y. 330; *Mills* v. *Stewart*, 41 id. 384; *Wheeler* v. *Millar*, 90 id. 353.

[8] *Perry* v. *Hoadly*, 19 Abb. N.C. 76.

the amount subscribed, the latter is not estopped from denying such payment because of a statement in the subscription paper that the amount has been paid, and such subscriber incurs no liability on his subscription. If, however, such subscriber subsequently pays the ten per cent. required by the act, the statute requirement becomes fully complied with and the subscription is thereby made valid.[1]

Liability until Capital is Paid in.—Many of the acts, as we have seen, contain a provision that all stockholders shall be liable to the creditors of the company to an amount equal to the amount of stock held by them respectively for all the obligations of the company until the whole amount of capital stock shall have been paid in.

Under this provision each stockholder is liable to an amount equal to the stock owned by him individually, in addition to his liability to pay in full for the stock subscribed for, or bought by him, until each and every other stockholder has paid for his stock in full, and a certificate of such payment has been made and recorded as required in the act of incorporation.[2]

The liability is in the nature of a liability as co-partner with the corporation,[3] and continues notwithstanding the abandonment or dissolution of the corporation [4] or the death of the stockholder, and an action against the stockholder may be revived against his personal representatives.[5] It does not partake at all of the nature of an action to recover a penalty, and there is no connection between it and the liability of a trustee for failure to file a report, or for filing a false report. The two causes of action have no affinity and cannot be joined.[6] It follows that an action brought against one as a trustee for the recovery of penalty exacted

[1] *Black River, etc., R. R. Co.* v. *Clarke*, 25 N. Y. 208; *Beach* v. *Smith*, 30 id. 116; *N. Y. & Oswego Mid. R. R. Co.* v. *Van Horn*, 57 id. 473.

[2] *Pfohl* v. *Simpson*, 74 N. Y. 137.

[3] *Corning* v. *McCullough*, 1 N. Y. 47; *Wiles* v. *Suydam*, 64 id. 173.

[4] *Kincaid* v. *Dwinelle*, 59 N. Y. 548.

[5] *Cochran* v. *Weichers*, Court of Appeals, 23 No. East. Rep. 803.

[6] *Wiles* v. *Suydam*, 64 N. Y. 173.

for the failure to file a report or for filing a false report is no bar to an action to charge the same person on his liability as a stockholder under this section.[1]

Where the statute provides certain conditions precedent to enforcing the liability of the stockholders, such as a provision that the debt must be one payable within a year from the time it was contracted; that suit against the company must have been brought within a time specified; that an execution against the company must have been returned unsatisfied; they must all be performed, unless such performance is rendered useless or impossible by the dissolution or insolvency of the company, before an action can be maintained against a stockholder.[2] The cause of action then accrues, and the statute of limitations begins to run against a stockholder from that time.[3]

The provision is not for the benefit of all creditors. It applies only to those who bring themselves within its terms, and is for their benefit alone.[4] It is an individual liability of stockholders directly to such of the creditors as have complied with the requisite conditions precedent, and it follows that it is not a liability in favor of the corporation itself, or for the benefit of all its creditors, and unlike the liability on unpaid instalments, it cannot therefore be vested in, or enforced by, a receiver of the corporation.[5]

The right of a creditor to enforce such a liability is a several and a distinct right, and not a joint right of the creditors generally, and he may therefore sue alone to enforce it, although there are other creditors similarly situated; and he may bring this action against one stockholder or all.[6]

On the other hand in a proper case, and to prevent a multiplicity of actions, a court of equity will restrain sepa-

[1] *Douglass* v. *Ireland*, 73 N. Y. 100.

[2] *Shellington* v. *Howland*, 53 N. Y. 371; *Kincaid* v. *Dwinelle*, 59 id. 548; *Handy* v. *Draper*, 89 id. 334.

[3] *Knox* v. *Baldwin*, 80 N. Y. 610; *Handy* v. *Draper*, 89 id. 334.

[4] *Cuykendall* v. *Corning*, 88 N. Y. 129.

[5] *Farnsworth* v. *Wood*, 91 N. Y. 308.

[6] *Weeks* v. *Love*, 50 N. Y. 568; *Mathez* v. *Neidig*, 72 id. 100.

rate and individual actions at law, in the same or other courts, where there are many such actions pending against stockholders, and bring all the litigation into one suit.[1]

Where the property of a corporation has been divided among its stockholders before all its debts have been paid, a judgment creditor, after the return of an execution unsatisfied, may maintain an action against any individual stockholder to reach any funds of the corporation that have been received by him, and it is immaterial whether he receive them by fair agreement with his associates or by wrongful act. Such a creditor is not obliged to bring an action against all the stockholders to enforce their liability, but may pursue the remedy against any one who has property of the corporation which ought to be applied in payment of its debts.[2]

A statute which imposes upon the stockholders of a corporation a personal liability for the corporate debts is in derogation of the common law, and will be construed strictly and not extended beyond its literal terms.[3] It follows that all the facts necessary to establish a creditor's cause of action must be alleged and proved. It must be shown that the stockholder holds an amount of stock in the company equal to the amount of the debt; and that the debt was one existing while the defendant was a stockholder, as well as the other necessary facts in regard to an action against a corporation and a return of an execution unsatisfied.[4]

While all of the above allegations are essential as proof of the performance of the conditions precedent without

[1] *Pfohl* v. *Simpson*, 74 N. Y. 137.

[2] *Bartlett* v. *Drew*, 57 N. Y. 587; *Hastings* v. *Drew*, 76 id. 9. And where the managing members of an embarrassed corporation unite in forming a new one, and transfer to it the property of the former for the purpose of hindering, delaying and defrauding its creditors, the property thus transferred is still liable to be taken on execution as the property of the former corporation. *Booth* v. *Bunce*, 33 N. Y. 139.

[3] *Lowry* v. *Inman*, 46 N. Y. 119; *Chase* v. *Lord*, 77 id. 1.

[4] *Chambers* v. *Lewis*, 28 N. Y. 454; *Wheeler* v. *Millar*, 90 N. Y. 353.

which a judgment against a stockholder, enforcing his personal liability, cannot be recovered, such proofs are available only for this purpose, and the cause of action must be proved anew against the stockholder.[1] Where, however, a creditor of a corporation claims directly through the corporation for a liability of the stockholder to the corporation for unpaid instalments of his stock, it has been held that the record of a judgment against the corporation was competent evidence of plaintiff's *status* as a creditor, and of the amount due, and that such evidence was binding and conclusive against the stockholder.[2]

Where the requirements as to the payment of stock have been fully complied with, a stockholder's liability is ended so far as the amount of stock thus fixed and limited is concerned; but in case of an increase of the capital, the liability again attaches to the extent of such increase, and stockholders purchasing or owning the new stock are liable to the extent of the stock so held until the statute is complied with.[3] As the words "fixed and limited" are not confined to the original amount of stock but extend to any increase, although the question has not been directly adjudicated upon in the Court of Appeals, it is probable that the same reasoning would apply to a reduction of the capital stock, and that when such reduction had been made, and the capital as thus "fixed and limited" had been paid in, and a certificate filed, the liability of a stockholder would thus be terminated.[4]

In a recovery against a stockholder interest will usually be allowed only from the time of the commencement of the suit

[1] *Miller* v. *White*, 50 N. Y. 137; *McMahon* v. *Macy*, 51 id. 155; *Kincaid* v. *Dwinelle*, 59 id. 548· *Wheeler* v. *Millar*, 24 Hun, 541. Aff'd. 90 N. Y. 353.

[2] *Hastings* v. *Drew*, 76 N. Y. 9; *Stephens* v. *Fox*, 83 id. 313.

[3] *Veeder* v. *Mudgett*, 95 N. Y. 295.

[4] *Randall* v. *Havemeyer*, 49 Super., (J. & S.) 520; *Sutherland* v. *Olcott*, 95 N. Y 93.

against him;[1] but where the entire principal and interest of the debt does not exceed the limit of the liability of a stockholder, interest may be allowed from the time the debt became due from the corporation.[2]

Where a stockholder has been held liable under this provision and has paid a debt of the corporation he can enforce contribution from the other stockholders. It is held that the liability is the same in effect as if every stockholder had executed a separate bond binding himself to pay the debts upon the conditions specified in the act. In such a case equity compels contribution.[3]

A Stockholder's Defences.—That a stockholder is himself a creditor of the company is generally a good defence to the extent of the indebtedness of the corporation to him;[4] but, as is said in *Wheeler* v. *Millar*,[5] the stockholder must really be a creditor of the company; he must stand in a relation to it which in equity and justice is as strong as that of the assailant. If he himself is indebted to the company for unpaid instalments on his stock, he must first pay his indebtedness, and if the company still owe him, to the extent of that balance he would have an equitable defence.

To an action at law it might be a good defence on the part of a stockholder that the plaintiff was also a stockholder, on the ground that the separate liabilities of stockholders could not be adjusted in such an action. But if the stockholder as a creditor of the company is precluded from bringing such an action against a fellow-stockholder, it is probable that he would be entitled to the remedy of contribution in an action properly brought for that purpose.[6]

[1] *Burr* v. *Wilcox*, 22 N. Y. 551; *Shellington* v. *Howland*, 53 id. 371; *Handy* v. *Draper*, 89 id. 334.

[2] *Wheeler* v. *Millar*, 90 id. 353.

[3] *Aspinwall* v. *Sacchi*, 57 N. Y. 331.

[4] *Garrison* v. *Howe*, 17 N. Y. 458; *Mathez* v. *Neidig*, 72 id. 100; *Agate* v. *Sands*, 73 id. 620; *Wheeler* v. *Millar*, 90 id. 353. Where, however, the stockholders are made liable in any event for all the debts of the corporation, it is obvious that such a defence is not available. See *Matter of Empire City Bank*, 18 N. Y. 199; *Matter of Hollister Bank*, 27 id. 393.

[5] 90 N. Y. 353, 369.

[6] *Mathez* v. *Neidig*, 72 N. Y. 100;

Holders of stock issued for property purchased under the Manufacturing Act are not liable under this statute.[1] If however, fraudulent over-valuation be shown, and that the stock greatly exceeded in amount the value of the property for which it was issued, and that the trustees issued it with knowledge of the real value of the property, such facts are sufficient to sustain a finding of fraudulent intent which will render the stockholders liable.[2] These are questions of fact to be submitted to a jury and their verdict is generally conclusive as to such intent.[3]

Even where the common device is resorted to of issuing stock for property purchased, as paid-up stock, and of returning a portion of it to the company as a working capital, it is not conclusive of a fraudulent over-valuation, even where no estimate of the value of such property is made, but the question of the intent of the trustees in issuing the stock, and whether it was for the purpose of evading the statute is a question for the jury to determine.[4]

Where the capital has been issued for property, a stockholder to whom the stock has been delivered for an adequate consideration by the corporation cannot be compelled to pay the difference between the par value of the stock and the value of the property for which it was originally issued, for

Andrews v. *Murray*, 33 Barb. 354; *Richardson* v. *Abendroth*, 43 id. 162; *Woodruff, etc., Iron Works* v. *Chittenden*, 4 Bosw. 406; *Deming* v. *Puleston*, 33 N. Y. Super. (J. & S.) 231.

[1] Laws of 1853, chap. 333, § 2; *Bonnell* v. *Griswold*, 80 N. Y. 128.

[2] *Schenck* v. *Andrews*, 57 N. Y. 133; *Boynton* v. *Andrews*, 63 id. 93; *Douglass* v. *Ireland*, 73 id. 100.

[3] *Lake Superior Iron Co.* v. *Drexel*, 90 N. Y. 87; *Blake* v. *Griswold*, 103 id. 429.

[4] *National Tube Works Co.* v. *Gilfillan*, 46 Hun, 248; *Knowles* v. *Duffy*, 40 id. 485. It was so held in this case in the Supreme Court, First Department, reversing a judgment in favor of plaintiff entered on a trial before a referee on the ground that the facts were not sufficient to establish a fraudulent over-valuation and intent to evade the statute. Upon the same state of facts, however, the General Term of the Second Department affirmed a judgment against the same defendant. See *Thurston* v. *Duffy*, 38 Hun, 327.

the benefit of the creditors of the company, where the same has been received by him in good faith.[1]

A stockholder is not liable for debts falling due before he became a stockholder,[2] although he may be on instalments of a debt becaming due while he is a stockholder, although the debt was contracted before he became one.[3]

The liability of stockholders cannot be revived or extended by any renewal or extension of the indebtedness which the creditors may make with the corporation. Thus where, by the acceptance of a note, the time of payment of an original indebtedness is extended, and the plaintiff does not bring an action against the corporation within one year from the time the original debt became due, it was held that a stockholder was not liable.[4]

It is no defence to an action of this kind that the time to file a certificate of payment of stock had not expired, as the liability attaches at once upon incurring the debt.[5] But where the statute requires that the action shall be commenced within a certain time after one has ceased to be a stockholder, it is a good defence to an action seeking to charge him with the liability for the corporate debts that before that time a judgment had been rendered against the corporation sequestrating its property and appointing a permanent receiver, and that the corporation had not since transacted any business, and that the receiver had taken possession of its property and distributed the proceeds among its creditors pursuant to an order of the court. In such a case it was held that the stockholder ceased to be such at the date of such judgment.[6]

[1] *Van Cott* v. *Van Brunt*, 82 N. Y. 535.

[2] *Johnson* v. *Underhill*, 52 N. Y. 203; *Phillips* v. *Therasson*. 11 Hun, 141.

[3] *McMaster* v. *Davidson*, 29 Hun, 542.

[4] *Parrott* v. *Colby*, 6 Hun, 55; aff'd on opinion below, 71 Y. Y. 597; *Jagger Iron Co.* v. *Walker*, 76 N. Y. 521; *Hardman* v. *Sage*, 47 Hun, 230.

[5] *King* v. *Duncan*, 38 Hun, 461.

[6] *Hollingshead* v. *Woodward*, 107 N. Y. 96.

Liability to Laborers, etc.—The question as to what persons constitute the class of "laborers, servants and apprentices," as contained in the statute, was discussed in the case of *Wakefield* v. *Fargo*,[1] and Judge Danforth, in giving the opinion of the Court, thus states the true rule of construction: "The clause in question creates a privileged class into which none but the humblest employees are admitted, and the distinction, which in practical life is easily discernable between president, director, officer, agent and laborer, at once disappears in the face of such a judgment as we have before us. Clearly a distinction is made by the statute. The stockholder must pay, not debts due to all employees of the company, but those due to 'laborers, servants and apprentices,' and not all debts due to them, but only such as are due for 'services' performed for such corporation. It is plain, we think, that the services referred to are menial or manual services,—that he who performs them must be of a class whose members usually look to the reward of a day's labor, or service, for immediate or present support, from whom the company does not expect credit, and to whom its future ability to pay is of no consequence; one who is responsible for no independent action, but who does a day's work, or a stated job, under the direction of a superior." After stating Blackstone's definition of the different classes of servants, he says: "The word used is no doubt broad enough, and might, without exaggeration, represent all persons connected with the administration or furtherance of the affairs of a corporation; in this instance, from the one who dips, or bottles the water, to the president, but this would manifestly be too general. 'Laborer or apprentice,' are words of limited meaning, and refer to a particular class of persons employed for a defined and low grade of service performed, as before suggested, without responsibility for the acts of others, themselves directed to the accomplishment of an appointed task, under the supervision of another. They

[1] 90 N. Y. 213.

necessarily exclude persons of higher dignity, and require that one who seeks his pay as servant should be of no higher grade than those enumerated as laborers or of lesser quality. A statute which treats of persons of an inferior rank cannot by any general words be so extended as to embrace a superior; the class first mentioned is to be taken as the most comprehensive. '*Specialia generalibus derogant!*'" It was accordingly held, in that case, that one who was employed at a yearly salary as a bookkeeper and general manager was not a "servant" of the corporation within the meaning of the statute.

It is not sufficient that the services involve some manual labor, if these are incidental to the general employment. It has, therefore, been held that the secretary of a company does not come within the provisions of the statute;[1] nor a consulting engineer;[2] nor a bookkeeper and general manager;[3] nor a general manager;[4] nor a general agent;[5] nor a salesman selling goods on salary and on commissions;[6] nor a contractor.[7]

Where, however, manual labor comprises the general element of a person's employment, it has been held that he could enforce the liability of stockholders under this section, even though he might incidentally perform some services of a higher character.[8]

In many of the earlier cases the distiction given above has been overlooked, and the decisions, given in such cases, could not be safely followed at the present time.[9]

A cause of action accruing to a laborer under this pro-

[1] *Coffin* v. *Reynolds*, 37 N. Y. 640.

[2] *Ericsson* v. *Brown*, 38 Barb. 390.

[3] *Wakefield* v. *Fargo*, 90 N.Y. 213. In a late case it has been held that one rendering services strictly as a bookkeeper came within the provisions of the statute. *Chapman* v. *Chumar*, Sup. Ct. Genl. Term, 7 N. Y. Supp. 230.

[4] *Hill* v. *Spencer*, 61 N. Y. 274.

[5] *Dean* v. *De Wolf*, 16 Hun, 186, aff'd 82 N.Y. 626; *Krauser* v. *Ruckel*, 17 id. 463.

[6] *People* v. *Remington*, 45 Hun, 329.

[7] *Aikin* v. *Wasson*, 24 N. Y. 482.

[8] *Short* v. *Medberry*, 29 Hun, 39.

[9] See *Williamson* v. *Wadsworth*, 49 Barb. 294; *Hovey* v. *Ten Broeck*, 3 Robt. 316.

vision may be enforced by his assignee;[1] but not probably by a laborer who is himself a stockholder, as he and the stockholder whom he seeks to charge are copartners so far as such liability is concerned, and are equally liable.[2]

[1] *Kincaid* v. *Dwinelle*, 59 N. Y. 548; *Krauser* v. *Ruckel*, 17 Hun, 463; *Pilcher* v. *Brayton*, id. 429.

[2] *Richardson* v. *Abendroth*, 43 Barb. 162. By Laws of 1889, chap. 381, it was provided that every manufacturing, mining or quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone corporation, and every incorporated express company and water company, not municipal, must pay the wages of their employees in cash. Laws of 1890, chap. 388, contain the following provisions in regard to the weekly payment of wages by certain corporations:

"SECTION 1. Every manufacturing, mining or quarrying, lumbering, mercantile, railroad, surface, street, electric and elevated railway (except steam surface railroads), steamboat, telegraph, telephone and municipal corporation, and every incorporated express company and water company shall pay weekly, each and every employee engaged in its business, the wages earned by such employee to within six days of the date of such payment: provided, however, that if at any time of payment any employee shall be absent from his regular place of labor, he shall be entitled to said payment at any time thereafter upon demand.

"SEC. 2. Any corporation violating any of the provisions of this act shall be liable to a penalty not exceeding fifty dollars and not less than ten dollars for each violation, to be paid to the people of the state and which may be recovered in a civil action: provided an action for such violation is commenced within thirty days from the date thereof. The factory inspectors of this state, their assistants or deputies, may bring an action in the name of the people of the state as plaintiff against any corporation which neglects to comply with the provisions of this act for a period of two weeks, after having been notified in writing by such inspectors, assistants or deputies, that such action will be brought. On the trial of such action, such corporation shall not be allowed to set up any defence for a failure to pay weekly any employee engaged in its business the wages earned by such employee to within six days of the date of such payment other than a valid assignment of such wages or a valid set-off against the same, or the absence of such employee from his regular place of labor at the time of payment, or an actual tender to such employee at the time of payment of the wages so earned by him, or a breach of contract by such employee, or a denial of the employment. No assignment of future wages, payable weekly, under the provisions of this act shall be valid if made to the corporation from whom such wages are to become due, or to any person on behalf of such corporation, or if made or procured to be made to any person for the purpose of relieving such corporation from the obligation to pay weekly under the provisions of this act. Nor shall any of said corporations require any agreement from any employee to accept wages at other periods than as provided in section 1 of this act as a condition of employment.

"SEC. 3. The provisions of sections 263 and 384 of the Code of Civil Procedure shall apply to and govern any proceedings brought to enforce the provisions of this act, and it is hereby made the duty of the attorney-general of this state to appear in behalf of such proceedings brought hereunder by the factory inspectors of this state, their assistants or deputies.

"SEC. 4. This act shall take effect on the first day of July, eighteen hundred and ninety."

CHAPTER VIII.

LEGAL ACTIONS AND PROCEEDINGS.

THE right to sue and be sued in the courts of this state is one conferred, with certain restrictions, upon all corporations.[1] The practice governing such actions is generally regulated by the Code of Civil Procedure.[2]

An action may be maintained by a foreign corporation in like manner and subject to the same regulations as where the action is brought by a domestic corporation, except as otherwise especially prescribed by law. But a foreign corporation cannot maintain an action founded upon an act or upon a liability or obligation express or implied, arising out of, or made and entered into in consideration of, an act which the laws of the state forbid a corporation or association of individuals to do, without express authority of law.[3]

A foreign corporation may enforce any remedy given to it by the statutes of the state to the same extent and in the same manner as a citizen of the state, even where such a course may give it an advantage which it might not be able to secure in the courts of the state where it has its domicile.[4]

[1] Rev. Stat., part I. chap. xviii. title 3, § 1.

[2] Corporations may be proceeded against criminally, upon information against the corporation, and upon the return of the summons the magistrate must investigate the charges in the same manner as in the case of a natural person, so far as such proceedings are applicable; and if he return a certificate that there is sufficient cause to believe the corporation guilty of the offence charged, the grand jury may proceed and indict it in the same manner as a natural person.

Where a fine is imposed upon a corporation on conviction, it may be collected by the sheriff in the same manner as upon an execution in a civil action.

Code of Criminal Procedure, §§ 675–682.

[3] Code Civ. Proc., § 1779.

[4] *Hibernia Nat'l Bank* v. *Lacombe*, 84 N. Y. 367; *Diamond Match Co.* v. *Roeber*, 106 id. 473.

And it may assign its cause of action to a resident of this state, in order to obtain a remedy available to a resident, which it, as a non-resident, could not acquire.[1] Such assignment, however, must be made before an action is commenced by the foreign corporation. It cannot have the retroactive effect of creating a right to enforce a cause of action which did not exist in favor of the assignor when the suit was commenced.[2]

An action against a foreign corporation may be maintained by a resident of the state or by a domestic corporation for any cause of action, irrespective of where the cause of action arises, or of whether the corporation have a place of business or any property within the state.[3] An exception, apparent, however, rather than real, lies in the case of a purely statutory cause of action, given by the laws of this state, such as the right of the personal representatives of a deceased person to bring an action for causing his death. In such a case no recovery can be had where the death was caused beyond the limits of the state, unless it is proved that similar statutes exist in the state where the death was caused; and it is the same whether defendant is a foreign or a domestic corporation.[4]

An action against a foreign corporation may be maintained by another foreign corporation or by a non-resident in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract made within the state, or relating to property situated within the state at the time of making thereof.

2. Where it is brought to recover real property situated

[1] *McBride* v. *The Farmers' Bank*, 26 N. Y. 450; *Petersen* v. *Chemical Bank*, 32 id. 20.

[2] *Ervin* v. *Oregon Ry. & Nav. Co.*, 28 Hun, 269.

[3] Code Civ. Proc., § 1780; *Palmer* v. *Phœnix Mutual Life Ins. Co.*, 84 N.Y. 63; *Pope* v. *Terre Haute Car & Mfg. Co.*, 87 id. 137.

[4] *Whitford* v. *Panama R. R. Co.*, 23 N. Y. 465; *Leonard* v. *Columbia Steam Nav. Co.*, 84 id. 48; *Parker* v. *Stroud*, 98 id. 379.

within the state or a chattel which is replevied within the state.

3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state.[1]

A foreign corporation can be sued by another foreign corporation or a non-resident only in the cases above stated;[2] although where the court has jurisdiction of the subject-matter of the action, appearance by attorney, and answering generally in the action, will confer jurisdiction upon the court.[3]

A domestic corporation is defined by the Code as a corporation created by or under the laws of the state, or located in the state, and created by or under the laws of the United States, or by or pursuant to the laws in force in the colony of New York before the 19th day of April in the year 1775. Every other corporation is a foreign corporation.[4]

A corporation is a citizen of the state under whose laws it is incorporated, and has no legal existence beyond the bounds of the sovereignty by which it is created, and possesses in another jurisdiction only those rights which the comity of states confers upon it.[5]

It has been held in this state that a national bank organized and doing business in the state is a domestic corporation;[6] and so is a corporation consolidated under the laws of this state from several foreign corporations.[7]

The principles upon which foreign corporations may sue and be sued in the courts of this state were discussed in the

[1] Code Civ. Proc., § 1780.

[2] *Robinson* v. *Oceanic Steam Nav. Co.*, 112 N. Y. 315; *Ervin* v. *Oregon Ry. & Nav. Co.*, 28 Hun, 269; *Duquesne* v. *Penn Bank*, 35 id. 390.

[3] *McCormick* v. *Penn. Cent. R. R. Co.*, 49 N. Y. 303; *Attorney-General* v. *Guardian Mutual Life Ins. Co.*, 77 id. 272.

[4] Code Civ. Proc., § 3343, subdiv. 18.

[5] *Merrick* v. *Van Santvoord*, 34 N. Y. 208; *Stevens* v. *Phœnix Ins. Co.*, 41 id. 149; *People* v. *Fire Ass'n of Phila.*, 92 id. 311.

[6] *Market Nat'l Bank* v. *Pacific Nat'l Bank*, Sup. Ct., Sp. Term, 2 Civ. Proc. Rep. 330.

[7] *Matter of Sage*, 70 N. Y. 220.

case of *Plimpton* v. *Bigelow*,[1] and it was said by Andrews, J., in giving the opinion of the court, that "suits by or against foreign corporations are not maintained on the theory that the corporation litigant is here in person, or that the corporate entity attends its officers in their migrations from one state to another, or that it is itself present wherever its property may be or its business may be transacted. The jurisdiction rests upon the ground that as a corporation must act by agents, it may, through its agents, subject itself to the jurisdiction of a foreign tribunal. . . . . Where a foreign corporation sends its agents into another state or transacts its business there, availing itself of the protection of the laws of such state, there is no just reason why it should not be deemed to have subjected itself, through its agents, to the jurisdiction of the courts of that state, and be held to respond to an action brought against it therein, upon process served on its representatives."

Jurisdiction of the Courts. *Of the Supreme Court.*—The Supreme Court has general jurisdiction, in law and equity, over all actions by and against domestic and foreign corporations.[2]

Same. *Of Superior City Courts.*—The Superior City Courts, which are the Court of Common Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City Court of Brooklyn,[3] have jurisdiction in an action affecting real property, where the real property to which it relates is situated within the city where the court is located; or in an action for any other cause, where the cause of action arose within that city; or where the defendant is a resident of that city; or where the action is to recover damages for an injury to real property, or a chattel real, or for the breach

[1] 93 N. Y. 592.
[2] Code Civil Proc. §, 217.
[3] Id. § 3343, subdv. 1.

of a contract express or implied, relative to real property, or a chattel real, where the real property is situated within that city, or where the defendant is a resident of that city; or in an action to recover a chattel, or to foreclose or enforce a lien upon personal property, or to recover damages for an injury to personal property, where the property to which the action relates is situated within that city at the time when the action is commenced. If the property consists of one or more shares of the capital stock of a domestic corporation, whose principal place of business is located or established within that city, or of a debt due from, or money, or a thing in action, in the possession or under the control of, such a corporation, it is deemed to be situated within that city.

They also have jurisdiction in an action brought by a resident of that city against a foreign corporation either (one) to recover damages for the breach of a contract express or implied, or a sum of money payable by the terms of a contract express or implied, where the contract was made, executed or delivered within the state or where the cause of action arose within the state; or (two) where a warrant of attachment, granted in the action, has been actually levied within that city upon the property of the corporation; or (three) where the summons is served by the delivery of a copy thereof within that city to an officer of the corporation as prescribed by law.

They also have jurisdiction in an action for the sale or other disposition of the property, or the voluntary dissolution of a domestic corporation, whose principal place of business is located or established within that city; or for the sale or other disposition of the real property, situated within that city, of a domestic corporation, wherever it is located.[1]

For the purpose of determining the jurisdiction of a

[1] Code Civ. Proc., § 263.

Superior City Court, in one of the cases above specified, a domestic corporation, whose principal place of business is established by or pursuant to a statute, or by its articles of association, or is actually located within the city where the court is located, is deemed a resident of that city; and personal service of a summons made within that city, as prescribed in the Code, or personal service of a mandate whereby a special proceeding is commenced made within that city as prescribed in the Code for personal service of a summons, is sufficient service thereof upon a domestic corporation, wherever it is located.[1]

Where a Superior City Court has jurisdiction of an action or special proceeding, it possesses the same jurisdiction, authority and power as is possessed by the Supreme Court in a like case; and it may render any judgment or grant either party any relief which the Supreme Court might render or grant in a like case, and may enforce its mandates in the same manner as the Supreme Court.[2]

Same. *Of Superior Court of Buffalo.*—In addition to the jurisdiction given to the Superior City Courts generally, the Superior Court of Buffalo is expressly given jurisdiction in an action against a domestic corporation which transacts its general business in that city, or has an office or agency in that city for the transaction of business; or against a foreign corporation which has property in that city, or an agency therein.[3]

Same. *Of City Court of New York.*—The City Court of New York has jurisdiction in an action against a foreign or domestic corporation, where the complaint demands judgment for a sum of money only, or to recover one or more chattels, with or without damages for the taking or detention thereof,[4] subject to the limits of its moneyed jurisdiction.[5] A summons from this court can only be served personally with the limits of the City of New York.[6]

[1] Code Civ. Proc., § 264. [2] Id. § 267. [3] Id. § 292.
[4] Id. § 315. [5] Id. § 316. [6] Id. § 338.

Same. *Of County Courts.*—For the purpose of determining the jurisdiction of a County Court a domestic corporation whose principal place of business is established by or pursuant to a statute, or by its articles of association, or is actually located within the county, is deemed a resident of the county, and a personal service of a summons made within the county, or personal service of a mandate whereby a special proceeding is commenced, made within the county as prescribed for personal service of a summons, is sufficient service upon a domestic corporation wherever it is located.[1]

Same. *Of City Court of Yonkers.*—The jurisdiction of the City Court of Yonkers extends to an action against a foreign or domestic corporation wherein the complaint demands judgment for a sum of money only, or to an action to recover a chattel,[2] but subject to the limits of its moneyed jurisdiction.[3] A summons from this court can be served at any place within the County of Westchester, but not elsewhere.[4]

Same. *Of Courts of Justices and District Courts of New York.*—Subject to the limits of its jurisdiction a corporation may sue or be sued in a Justice's Court,[5] or in a District Court of the City of New York where it has an office in that city,[6] or in the Municipal Court of the City of Rochester.[7]

Same. *Of Courts of Inferior Jurisdiction Generally.*—The jurisdiction of the superior city courts, or other courts of inferior jurisdiction, is local and confined to causes of action in which the property affected is within the limits of the territorial jurisdiction of the court, or where the cause of action arose within such limits, or to cases in which the defendant resides, within the jurisdiction of the court; and such a court has no jurisdiction of an action against a corporation where the cause of action arises, and the business

[1] Code Civ. Proc., § 341. See *infra*.
[2] Id. § 3203.
[3] Id. § 3204.
[4] Id. § 3205.
[5] Id. § 2865.
[6] Id. § 3215.
[7] Id. § 3226.

of the corporation is transacted, outside of the limits of the city in which such court is located.[1] It is not necessary to raise the question of jurisdiction by answer, but it may be taken at any time, and the court will, when its attention is called to the fact, dismiss the action; nor can the court in such a case acquire jurisdiction by consent of the parties.[2]

Service of Summons.—Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the state, to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.[3]

Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof within the state, as follows:

1. To the president, treasurer or secretary, or, if the corporation lacks either of those officers, to the officer performing corresponding functions under another name.

2. To a person designated for the purpose by a writing under the seal of the corporation and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated and filed in the office of the secretary of state. The designation must specify a place within the state as the office or residence of the person designated; and if it is within a city, the street and street number, if any, or other suitable designation of the particular locality. It remains in force until the filing in the same office, of the written revocation thereof, or of the consent executed in like manner; the person designated may from time to time change the place specified as his office or residence to some other place within the state by a writing executed by him and filed in like manner. The secretary of state may require the execution

[1] *Landers* v. *Staten Island R. R. Co.* 53 N. Y. 450.

[2] *Davidsburgh* v. *Knickerbocker Life Ins. Co.* 90 N. Y. 526; *Robinson* v. *Oceanic Steam Nav. Co.* 112 id. 315.

[3] Code Civ. Proc., § 431.

of any instruments so specified to be authenticated as he deems proper, and he may refuse to file it without such authentication. An exemplified copy of a designation so filed accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated nor an officer specified in sub-division first can be found with due diligence, and the corporation has property within the state, or the cause of action arose therein, to the cashier, a director or a managing agent, of the corporation within the state.[1]

Authorities upon the subject of bringing actions against foreign corporations are collated and discussed in the case of *Gibbs* v. *The Queen Insurance Company*,[2] and it was there held that, when a foreign corporation has designated an agent in compliance with the provisions of the laws of this state upon whom process may be served, it thereby submits itself to the jurisdiction of the courts of this state, having authority to act, and, by service of a summons upon a person so designated, the court acquires jurisdiction and may render a judgment valid and capable of being enforced upon any property of the defendant within its jurisdiction.

In an action in the Supreme Court, where the summons is served by delivering a copy within the state to the president, secretary or treasurer of a corporation, it is not essential that the officer should be here in his official capacity, or engaged in the business of the corporation, or that the cause of action should have arisen within the state, and a judgment against a foreign corporation, in an action so commenced, will be valid for every purpose within this state, and can be enforced against any of its property at any time found within the state.[3]

[1] Code Civ. Proc., § 432.

[2] 63 N. Y. 114.

[3] *Hiller* v. *Burlington, etc., R. R. Co.* 70 N. Y. 223; *Pope* v. *Terre Haute Car & Mfg. Co.* 87 id. 137.

If the summons is not served upon any of the officers above named, and there is no person within the state designated for the purpose of accepting a service of summons, it may be served upon a cashier, a director or a managing agent of the corporation within the state, provided that the cause of action arose in the state,[1] or that the corporation has property within the state.[2] The Code does not specify the extent of the agency required to bind a corporation by service of process, but the agent must be of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made.[3] Thus where it appears that the agent is of inferior rank, having no close relations with the company sought to be served, service of a summons upon such an agent or servant will be set aside on motion, and an appearance, for that purpose only, will not confer jurisdiction.[4]

Same. *Justices' Courts.*—A summons out of Justice's Court may be served upon a corporation by delivering a copy thereof to an officer or person to whom a copy of the summons in an action brought against the corporation in the Supreme Court might be delivered, or to any director or trustee of the corporation by whatever official title he is called.[5] Where the defendant to be served is a domestic railroad corporation, and no officer thereof resides in the county to whom a copy of the summons may be delivered as above prescribed, it may be personally served by delivering a copy thereof to a local superintendent of repairs, freight agent, agent to sell tickets, or station-keeper of the corporation, residing in the county, unless, at least thirty days before it was issued, the corporation has filed in the office of

[1] *Childs* v. *Harris. Mfg. Co.* 104 N. Y. 477.

[2] *Barnes* v. *Mobile & N. W. R. R. Co.* 12 Hun, 126.

[3] *Palmer* v. *Pennsylvania Co.* 35 Hun, 369. Affirmed 99 N. Y. 679.

[4] *Sterett* v. *Denver and Rio Grande R. Co.* 17 Hun, 316; *Reddington* v. *Mariposa Land & M. Co.* 19 id. 405.

[5] Code Civ. Proc. § 2879.

the clerk of the county a written instrument designating a person residing in the county upon whom process issued by a justice of the peace against it may be served; in which case the summons may be personally served by delivering a copy to the person so designated.[1]

Where the defendant to be served is a corporation doing business in the state as an express company, and no person resides in the county to whom a copy of the summons may be delivered as prescribed above, it may be served by delivering a copy thereof to any local or general agent, agent to receive freight or parcels, route agent or messenger of the defendant residing in the county, unless at least thirty days before it was issued, the defendant has made a designation similar to that provided for railroad corporations above.[2]

Where a person has been so designated, and the designation has been revoked, or it appears by affidavit, or return of the constable to whom a summons has been duly delivered for service, that the person is dead, or has ceased to reside within the county, or that he cannot after due diligence be found within the county so as to deliver a copy of the summons to him, it may be served as if the designation had not been made. Such a designation may be revoked by a writing executed and filed in like manner as required for the purpose of making the designation.[3]

Service by Publication.—An order directing the service of a summons upon a defendant without the state, or by publication, may be made where the defendant to be served is a foreign corporation; or, being a domestic corporation, where an attempt was made to commence the action against the defendant before the expiration of the limitation applicable thereto, and the limitation would have expired within sixty days next preceding the application if the time had not been extended by the attempt to commence the action.[4]

[1] Code Civil Proc., § 2880.
[2] Id. § 2881.
[3] Id. § 2882.
[4] Id. § 438.

The order must be founded upon a verified complaint, showing a sufficient cause of action against the defendant to be served, and proof by affidavit of the additional facts required to obtain it; and, where the application is made upon the ground that the defendant is a foreign corporation, that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons.[1]

Pleadings.—In an action brought by or against a corporation, the complaint must aver that the plaintiff or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation, or a foreign corporation, and if the latter, the state, country, or government, by or under whose laws it was created; but the plaintiff need not set forth, or specially refer to any act or proceeding by or under which the corporation was created.[2]

A complaint which states only that plaintiff or defendant is a foreign corporation, without alleging the state or country under whose laws it was created, is not sufficient; and a demurrer thereto will be sustained;[3] although if it does not appear by the face of the complaint that the plaintiff is a corporation, the objection must be taken by answer, and not by demurrer, as it will not be assumed in aid of a demurrer that plaintiff is a corporation;[4] and where one deals with an association bearing a corporate name, and contracts with it in such name, he is thereby estopped from disputing its legal incorporation.[5]

In an action brought by or against a corporation the plaintiff need not prove upon the trial the existence of the corporation, unless the answer is verified and contains an

[1] Code Civ. Pro., § 439.

[2] Id. § 1775.

[3] *Clegg* v. *Chicago Newspaper Union*, Sup. Ct., Sp. Term, 8 Civ. Pro. Rep., 401; *First Nat'l Bank of Northampton* v. *Doying*, Com. Pleas, Gen'l Term, 11 id. 61; *contra*, see *Hafner & Schoen Furniture Co.* v. *Grumme*, Sup. Ct., Sp. Term, 10 id. 176.

[4] *Irving Natl. Bank* v. *Corbett*, Sup. Ct., Sp. Term, 10 Abb. N. C., 85; *Phœnix Bank* v. *Donnell*, 40 N. Y. 410.

[5] *Commercial Bank of Keokuk* v. *Pfeiffer*, 108 N. Y. 242.

affirmative allegation that the plaintiff or defendant, as the case may be, is not a corporation.[1]

As to what constitutes an "affirmative allegation" sufficient to raise the issue of the existence of a corporation, within the meaning of the Code, does not seem to be fully settled. A denial of knowledge or information sufficient to form a belief is not such an affirmative allegation;[2] nor, probably, is a general denial.[3] As to whether an affirmative allegation, upon information and belief that plaintiff or defendant is not a corporation, is sufficient to raise the issue, has not been definitely decided.[4]

In an action or special proceeding brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer or other pleading in the defendant's behalf.[5] The objection is waived unless

[1] Code Civ. Proc., § 1776.

[2] *Concordia Savings & Aid Ass'n.* v. *Read*, 93 N. Y. 474; *Matter of Petition of N. Y. L. & W. R. R. Co.*, 99 id. 12.

[3] *Concordia Savings & Aid Ass'n.* v. *Read*, 93 N. Y. 474; *Commercial Bank of Keokuk* v. *Pfeiffer*, 108 id. 242.

[4] *East River Bank* v. *Rogers*, 7 Bosw., 493; *Bengston* v. *Thingvalla Steamship Co.*, 3 Civ. Pro. Rep., 263; Affd. 31 Hun, 96. Neither of the above cases holds directly that an affirmative allegation by defendant, upon information and belief, that plaintiff is not a corporation, is insufficient to put plaintiff to his proof of the fact. The first case was an allegation that defendant "is informed and believes," etc., which is hardly the equivalent of an affirmative allegation upon information and belief that plaintiff is not a corporation. Moreover, as appears by the head-note of that case made by the learned Chief Justice of the court, the case could have been upheld on the ground that defendant, having contracted with plaintiff as a corporation, was estopped from denying that it was one. *Commercial Bank of Keokuk* v. *Pfeiffer*, 108 N. Y. 242.

In the last of the cases above cited, the denial was on information and belief that defendant was "a foreign corporation as is alleged in the complaint," obviously a negative pregnant, and an allegation upon information and belief as to a fact that was presumably within the knowledge of the party pleading.

As the incorporation of a plaintiff is rarely within the personal knowledge of a defendant, it would seem the fact should be put in issue by the only allegation which, in most cases, a defendant can truthfully make. See *Bennett* v. *Leeds Mfg. Co.*, 110 N. Y. 150.

[5] Code Civ. Proc., § 1777.

pleaded, and this as well when the corporation suffers a default as when it appears and answers.[1]

Verification of Pleadings.—The verification of a pleading by a domestic corporation must be made by an officer thereof;[2] and this must appear in the verification. Thus, in a recent case, it was held that the verification of an answer of a domestic corporation by one who simply affirms that he is a "General Manager" thereof, stating nothing in regard to his duties, was defective and insufficient.[3] In another case a verification was held defective, when it was made by one who stated in the affidavit that he was the former president of the defendant, and that all the officers, including deponent, had tendered their resignations, and that no other officers had yet been elected or chosen in their places.[4]

Where the party is a foreign corporation the verification may be made by the agent of, or attorney for, the party.[5] Where the pleading of a domestic corporation is verified by an officer, it is held to be a verification by a party, and it is not, therefore, necessary to set forth the grounds of belief as to all matters not stated upon knowledge, nor why the verification is not made by the party.[6]

Cannot Plead Usury.—A corporation cannot interpose the defence of usury in an action, and this prohibition applies equally to foreign and domestic corporations,[7] and also to any endorser or other surety upon a note made by such a corporation.[8]

[1] *Whittlesey* v. *Frantz*, 74 N.Y. 456.

[2] Code Civ. Proc., § 525.

[3] *Meton & Sons* v. *Isham Wagon Co.*, Sup. Ct., Sp. Term, 4 N.Y. Supp., 215. In view of the fact that the term "general manager" has so well-defined meaning, and is recognized in some of the statutes and in one case (that of title guaranty companies, *ante*, p. 57) as an officer required to be appointed, the correctness of this decision may be questioned.

[4] *Kelley* v. *Woman Publishing Co.*, City Ct., Sp. Term., 4 N.Y. Supp., 99.

[5] Code Civ. Proc., § 525.

[6] *American Insulator Co.* v. *Bankers' and Merchants' Tel. Co.*, Com. Pleas, Gen. Term, 7 Civ. Pro. Rep., 443.

[7] Laws of 1850, chap. 172; *Southern Life Ins. Co.* v. *Packer*, 17 N. Y. 51; *Butterworth* v. *O'Brien*, 23 id. 275; *Belmont Branch Bank* v. *Hodge*, 35 id. 65.

[8] *Rosa* v. *Butterfield*. 33 N. Y. 665; *Union Nat. Bank* v. *Wheeler*, 60 id. 612; *Stewart* v. *Bramhall*, 74 id. 85.

Statute of Limitations.—The statute of limitations cannot be pleaded by a moneyed corporation in an action to enforce the payment of a bill, note, or other evidence of debt issued by such a corporation, or issued, or put in circulation as money;[1] nor can the statute of limitations be pleaded by a foreign corporation sued in this state. Such a corporation is in the same position as a natural person absent from the state.[2] This rule is carried so far that it has been held that a foreign corporation cannot claim the benefit of the statute of limitations even though it had continuously operated a railway within the state, and had a large amount of property within the state, and a managing agent resident therein.[3]

An exception, however, to this rule is made in the case of an action by an administrator against a foreign corporation to recover damages for causing a death within the state. Such an action, it is held, must be commenced within two years after the decedent's death.[4]

An attempt to commence an action in a court of record is equivalent to the commencement thereof within the meaning of the provision of the statute of limitations, when the summons is delivered with the intent that it shall actually be served to the sheriff of the county in which the corporation defendant is established by law, or wherein its general business is, or was last transacted, or wherein it keeps or last kept an office for the transaction of business.[5]

Preparations for Trial.—A foreign corporation suing in the courts of this state may be compelled to give security for costs the same as any other non-resident.[6]

In an action against a foreign or domestic corporation

[1] Code. Civ. Proc., § 393.

[2] *Olcott* v. *Tioga Railroad Co.* 20 N. Y. 210.

[3] *Rathbun* v. *Northern Cent. Ry. Co.*, 50 N. Y. 656; *Boardman* v. *Lake Shore Mich. So. Ry. Co.*, 84 id. 157.

[4] Code Civ. Proc., § 1902; *Londriggan* v. *New York & N. H. R. R. Co.*, Supr. Ct., Sp. Term, 12 Abb. N. C., 273.

[5] Code Civ. Proc., § 399.

[6] Id. § 3268.

to recover damages for the non-payment of a promissory note, or other evidence of debt for the absolute payment of money upon demand, or at a particular time, an order extending the time to answer or demur will not be granted except by the court upon notice to the plaintiff's attorney;[1] and an action of this kind is entitled to a preference on the calendar.[2]

In such an action, unless defendant serves with a copy of his answer or demurrer a copy of an order of a judge directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in the case of default in pleading, at the expiration of twenty days after service of a copy of the complaint either personally with the summons or upon defendant's attorney pursuant to his demand therefor; or if the service of the summons was otherwise than personal, at the expiration of twenty days after this service is complete.[3]

This section applies equally to a demurrer or to an answer.[4] But it is only instruments which admit on their face an existing debt payable absolutely that come within its provisions and not a conditional contract, like a policy of life insurance.[5] Nor does it apply where the corporation is an indorser upon a note;[6] nor where a cause of action on an instrument for the absolute payment of money is joined with another cause of action of a different nature.[7]

The production upon a trial of a book or paper belonging to or under the control of a corporation may be compelled in like manner as if it were in the hands or under the control of a natural person. For that purpose a subpœna *duces tecum*, or an order of the court must be directed

[1] Code Civ. Proc., § 1778.
[2] Id. § 791, subdv. 8.
[3] Id. § 1778.
[4] *Ford* v. *Binghamton Hydraulic Power Co.*, 54 Hun, 451.
[5] *N. Y. Life Ins. Co.* v. *Universal Life Ins. Co.*, 88 N. Y. 424.
[6] *Shorer* v. *Times Print. & Pub. Co.*, 23 North East Rep., 979.
[7] *Bradley* v. *Albemarle Fertilizing Co.*, City Ct., Sp. Term, 2 Civ. Pro. Rep., 50.

to the president or other head of the corporation, or to the officer thereof in whose custody the book or paper is.[1]

In such a case the subpœna or order is deemed to be sufficiently obeyed if the book or paper is produced by subordinate officer or employee of the corporation, who possesses the requisite knowledge to identify it and to testify respecting the purposes for which it is used. If the personal attendance of a particular officer of the corporation is required a subpœna without a *ducès tecum* clause must also be served upon him.[2]

Where it is desired to take the deposition of a corporation before trial the affidavit must state the names of the officers or directors thereof, or any of them, whose testimony is necessary and material, or the books and papers, as to the contents of which an examination or inspection is desired. And the order to be made in respect there to must direct the examination of such persons, and the production of such books and papers.[3]

Evidence.—When it is necessary to prove the incorporation of a party plaintiff or defendant, it is enough to prove the existence of a corporation *de facto* without proving formal compliance with the requirements of the law or charter in respect to perfecting its organization if the opposing party has had dealings with it in its corporate name.[4]

The statutes generally provide that a certified copy of the certificate of organization of a domestic corporashall be *prima facie* evidence of its existence as such. In regard to corporations organized under the laws of any other state, territory, or the Dominion of Canada, a copy of the certificate of organization or incorporation, or any other certificate certified or exemplified by any officer or officers in such state or territory or dominion, is *prima facie* evidence of the due formation, creation, existence, organization, or capacity, of any such corporation or of a corporation

[1] Code Civ. Proc., § 868.
[2] Id. § 869.
[3] Id. 872, subdv. 7.
[4] *Bank of Keokuk* v. *Pfeiffer*, 108 N. Y. 272.

claiming so to be, and such certificate duly exemplified, or a duly exemplified copy thereof, will be received in all actions and proceedings in this state, in or before all courts and officers, with the same force and effect, in all respects, as such *prima facie* evidence, as in such other state, territory or dominion.[1] Courts will take judicial notice of the usages of business of certain corporations, such as railroads, telegraph companies, banks, etc.[2]

It is held in this state that the by-laws of a corporation are admissible in evidence for the purpose of showing the power of its officers, and that it is immaterial whether the opposing party has had actual notice of such by-laws, as every one dealing with the corporation is chargeable with notice of the purpose for which it was formed, and is bound to know the powers and extent of the authority of its agents.[3]

Where a party wishes to prove an act or transaction of a foreign corporation the book or books of the corporation may be used for that purpose as presumptive evidence, whether any or all of the parties are or are not members of the corporation.[4] If an original book is not produced at the trial a copy thereof or an entry therein may be used with like effect as the original, providing that the party intending to use the copy gives the adverse party at least ten days' notice of its intention, specifying briefly the nature of the evidence proposed to be given; but this does not apply where the foreign corporation is a party to the action and seeks to prove its own act or transaction in its own behalf.[5] The copy must be verified by the deposition taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined it and compared it with the original book, or the entry therein. The witness must testify that the copy produced

[1] Laws of 1877, chap. 311, § 1.

[2] *Eaton, Cole & Burnham Co.* v. *Avery*, 83 N. Y. 31; *Merchants' Nat. Bank* v. *Hall*, id. 338; *Isaacson* v. *N. Y. C. & H. R. R. Co.*, 94 id. 278.

[3] *Dabney* v. *Stephens*, 10 Abb. N. S. 39; aff'd, 46 N. Y. 681; *De Bost* v. *Albert Palmer Co.*, 35 Hun, 386; *Alexander* v. *Cauldwell*, 83 N. Y. 480.

[4] Code Civ. Proc., § 929.

[5] Id. § 930.

is correct; that he made it or compared it with the original; and that he then knew that the original book so copied or containing the entry was the book of the corporation; or that it was then acknowledged to him to be such by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgment; and he must specify where and in whose custody the original was then kept.[1]

The admission of a member of an aggregate corporation who is not a party will not be received as evidence against the corporation unless it was made concerning, and while engaged in, a transaction in which he was the authorized agent of the corporation.[2]

The declarations of an officer of a corporation which is a party to an action are not admissible as evidence to bind the corporation without proof that the officer was authorized to make such declarations. Evidence simply that he was an officer of the corporation is not sufficient.[3]

Provisional Remedies. *Attachments.*—A warrant of attachment in a proper case may be granted where the defendant is a foreign corporation or if a domestic corporation, when it has removed or is about to remove property from the state with intent to defraud its creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with a like intent.[4]

Under a warrant of attachment against a foreign corporation, other than a corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation made by a person within the county; or upon one or more shares of stock therein held by such a person, or transferred by him for the purpose of avoiding payment thereof.[5]

[1] Code Civ. Proc., § 931.

[2] Id. § 839.

[3] *Niagara Falls Susp. Bridge Co.* v. *Backman*, 66 N. Y. 261; *Alexander* v. *Cauldwell*, 83 id. 480.

[4] Code Civ. Proc., § 636.

[5] Id. § 646.

The rights or shares which the defendant has in the stock of a corporation together with the interests and profits thereon, may be levied upon, and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges with respect thereto which the defendant had when they were so attached.[1]

The attachment may also be levied upon a cause of action arising upon contract, including a bond, promissory note or other instrument for the payment of money only, negotiable or otherwise, whether past due, or yet to become due, executed by a foreign or domestic corporation, either within or without the state, which belongs to the defendant and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debt represented thereby.[2]

A levy under a warrant of attachment made upon a right or share in the stock of a corporation, or interest or profits thereon, must be made by leaving a certified copy of the warrant and a notice showing the property attached, with the president, or other head of the corporation, or the secretary, cashier, or managing agent thereof.[3]

Upon the application of a sheriff holding a warrant of attachment, the president or other head of a corporation, or the secretary, cashier, or managing agent thereof, must furnish to the sheriff a certificate under his hand specifying the rights or number of shares of the defendant in the stock of the corporation with all dividends declared, or incumbrances thereon.[4]

The property of a foreign corporation within this state is liable to attachment to the same extent as is the property of any other other non-resident, even though a receiver of such corporation had previously been appointed in another state; and the title acquired by a receiver, subsequently ap-

[1] Code Civ. Proc., § 647.
[2] Id. § 648.
[3] Id. § 649.
[4] Id. § 650.

pointed here, is subject to any lien that may have been acquired by an attaching creditor.[1]

The bonds of a foreign corporation placed in the hands of an agent resident in this state for purposes of sale do not acquire any validity until delivered by the company, or with its consent and such property is not liable to seizure under attachment against the corporation.[2] Nor can shares owned by a non-resident in the stock of a foreign corporation be reached and levied upon by virtue of an attachment, although the officers of the corporation are within the state, engaged in carrying on the corporate business here. In such a case the stock is regarded as being present for the purpose of judicial proceedings only at the place of residence of the owner, or of the corporation, and where an attempt has been made to levy upon such shares, by leaving a certified copy of the attachment with the secretary of the corporation, the non-resident defendant may move to have the levy set aside and vacated.[3]

National banks form an exception to the class of foreign corporations whose property may be attached. It has been held in a recent case, following the decision of the Supreme Court of the United States, that property of a national bank, whose domicile was in another state, cannot be attached in this state.[4]

Injunction.—A corporation may be restrained by an injunction in the same manner and to the same extent as natural persons;[5] and in an action brought by the attorney-

[1] *Dunlop* v. *Patterson Fire Ins. Co.*, 12 Hun, 627; affd, 74 N. Y. 145; *Hibernia Nat. Bank* v. *Lacombe*, 84 N. Y. 367; *Woerishoffer* v. *North River Construction Co.*, 99 id. 398, affg. s. c., 7 Civ. Pro. Rep. 113.

[2] *Coddington* v. *Gilbert*, 17 N. Y. 489.

[3] *Plimpton* v. *Bigelow*, 93 N. Y. 592.

[4] *Bank of Montreal* v. *Fidelity Nat. Bank*, 1 N. Y. Supp. 852; affd. 112 N. Y. 667, following *Pacific Nat. Bank* v. *Mixter*, 124 U. S. 721, and overruling *Robinson* v. *Nat. Bank of Newberne*, 81 N. Y., 385. See also *Nat. Shoe & Leather Bank* v. *Mechanics' Nat. Bank*, 89 id. 440, and *Raynor* v. *Pacific Nat. Bank*, 93 id. 371.

[5] *Mayor, etc.*, v. *N. Y. & Staten Island Ferry Co.*, 64 N. Y. 622.

general to restrain persons from acting as a corporation within the state, without being duly incorporated, or from exercising any corporate rights, privileges or franchises not granted to them by the laws of the state, an injunction may be granted.[1]

Among the cases in which an injunction against a corporation has been issued, it has been held that a corporation might be restrained from completing an unlawful sale of all its property;[2] from the payment of an unearned dividend;[3] from issuing bonds as part of a fraudulent design to increase stock, and from converting the bonds so issued into stock[4] from effecting a consolidation with another corporation;[5] and in one case where it was shown that the cost of building branch lines and bridges would amount to a very large sum and without immediate or future advantage to the company an injunction was issued to restrain such acts.[6]

An injunction may issue in an action brought for the dissolution of a corporation, to restrain the corporation and its officers from collecting and receiving, or paying out any of the money or property or effects of the corporation during the pendency of the action;[7] or in an action by the people brought by the attorney-general to annul a corporation;[8] and such injunction may restrain creditors of the corporation from bringing actions against the defendant or from taking any further proceedings in actions previously commenced.[9]

An injunction order suspending the general and ordinary business of a corporation, or suspending from office or restraining from the performance of his duties a trustee, director, or other officer thereof, can be granted only by the

[1] Code Civ. Proc., § 1955.

[2] *Abbott* v. *American Hard Rubber Co.*, 33 Barb. 578.

[3] *Carpenter* v. *New York & N. H. R. R. Co.*, 5 Abb. Pr. 277.

[4] *Belmont* v. *Erie Railway Co.*, 52 Barb. 637.

[5] *Blatchford* v. *Ross*, 54 Barb. 42.

[6] *Ives* v. *Smith*, Sup. Ct., Sp. Term, 3 N. Y. Supp. 645.

[7] Code Civ. Proc., § 1787.

[8] Id. § 1802.

[9] Id. § 1806.

court, upon notice of the application therefor to the proper officer of the corporation or to the trustee, director, or other officer enjoined; if such an injunction order is made otherwise than is thus prescribed it is void;[1] and this is so even though the general and ordinary business of the corporation be illegal.[2]

Service of an injunction order upon a corporation may be made in the manner prescribed for making personal service of a summons upon a corporation. Where it is granted by the court it must be served by delivering a certified copy thereof; where it is granted by a judge it must be served by showing the original order and delivering a copy thereof.[3] A director, trustee, or other officer of a corporation upon whom a notice of application for an injunction affecting its property or business is served, who fails to disclose to the other directors or officers the fact of such service, and the time and place of such application, is guilty of a misdemeanor.[4]

Receivers.—A receiver of the property of a corporation can be appointed only by the court and in one of the following cases:

1. In an action brought as prescribed in Articles II., III., and IV. of Title Second of Chapter Fourteenth of the Code for the supervision, dissolution, or annulling of a corporation.

2. An action brought for the foreclosure of a mortgage upon the property of which the receiver is appointed, where the mortgage debt or the interest thereupon has remained unpaid at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income of the property is specifically mortgaged or the property itself is probably insufficient to pay the mortgage debt.

[1] Code Civ. Proc., § 1809.

[2] *City of N. Y.* v. *Starin*, Super. Ct., General Term. 2 N. Y. Supp. 346.

[3] Code Civ. Proc., § 610.

[4] Penal Code, § 612.

3. An action brought by the attorney-general or by a stockholder to preserve the assets of a corporation having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.[1]

In an action brought to secure the dissolution of a corporation, or to enforce the individual liability of the officers, a receiver may be appointed at any stage of the action.[2]

In proceedings for the voluntary dissolution of a corporation, if it appears to the satisfaction of the court that the corporation is insolvent, it may, on motion of the petitioners, on notice to the attorney-general, or on motion of the attorney-general, on notice to the corporation, appoint a temporary receiver of the property. The court may also, in its discretion, at any stage of the proceedings, grant an injunction restraining the creditors of the corporation from bringing any action against it, or from taking any further proceedings in such an action theretofor commenced.[3]

A receiver of a life insurance company will not be appointed, if such company has actual funds invested according to law, of a net cash value equal to its outstanding liabilities and the required reserve on policies and claims not mature.[4]

Every application made for the appointment of a receiver of a corporation must be made at a Special Term of a court held in and for the judicial district in which the principal business office of the corporation was located at the

[1] Code Civ. Proc., § 1810.

[2] Id. § 1788.

[3] Id. § 2423.

[4] Laws of 1887, chap. 328. Certain provisions as to the appointment of receivers of banks (Laws of 1882, chap. 409, §§ 131–135), are omitted as applicable only to banks issuing bills to circulate as money ; *ante*, p. 211.

commencement of the action wherein such receiver is appointed, or in and for a county adjoining such district; and any order appointing a receiver otherwise made is void.[1] This, however, relates only to statutory receivers appointed to wind up corporations and distribute their assets, and not to receivers appointed in actions for the foreclosure of a mortgage, to hold the property and receive the profits thereof until the entry of a final judgment. In such an action the order appointing the receiver may be made in any county where the action may be tried.[2]

A copy of all motions and all motion papers and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding for the dissolution of a corporation, or a distribution of its assets, must be served on the attorney-general in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications would but for this law be *ex parte*, or upon notice; and it is provided that no order or judgment granted shall vary in any material respect from the relief specified in such copy or order, unless the attorney-general appears on the return day and is heard in relation thereto; and any order or judgment granted in such an action or proceeding without such service of papers upon the attorney-general is void.[3]

Where the application is brought before the court on an order to show cause, a copy of such order and the order proposed to be entered must be served upon the attorney-general, but it is not necessary to serve upon him a notice of the application for the order requiring cause to be shown.[4]

Unless these provisions are strictly complied with, an

[1] Laws of 1883, chap. 378, § 1.

[2] *U. S. Trust Co.* v. *N. Y. W. S. & B. R. Co.*, 101 N. Y. 478.

[3] Laws of 1883, chap. 378, § 8.

[4] *Greason* v. *Goodwillie-Wyman Co.* 38 Hun, 138.

order appointing a receiver of a corporation in such a case is void and should be vacated.[1]

Judgment and Execution.—If defendant is a foreign corporation, and the summons was served without the state or otherwise than personally, in case of default in pleading, the court must require the plaintiff or his agent or attorney to be examined on oath respecting any payments to the plaintiff, or to any one for his use on account of his demand; and before rendering judgment, the court may, in its discretion, require the plaintiff to file an undertaking to abide the order of the court touching the restitution of any property in case the defendant or its representative applies, and is admitted to defend the action and succeeds in its defence.[2] A judgment will not be rendered for a sum of money only upon an application so made, except in an action in which an attachment can issue.

Where the defendant is a foreign corporation and has not appeared in such an action, the plaintiff, in the application for judgment, must procure and file the following papers:

1. Proof by affidavit that a warrant of attachment granted in the action has been levied upon property of the defendant.

2. A description of the property so attached, verified by affidavit, with a statement of the value thereof according to the inventory.

3. The undertaking referred to above, if one has been required.[3]

Where the defendant is a foreign corporation, and has not appeared in the action, and the summons was served without the state, or by publication, pursuant to an order obtained for that purpose, the judgment can be enforced only against the property which has been levied upon by

[1] *Whitney* v. *N. Y. & Atlantic R. R. Co.*, 32 Hun, 164.

[2] Code Civ. Proc., § 1216.

[3] Id. § 1217.

virtue of the warrant of attachment at the time when the judgment is entered;[1] and the execution must require the sheriff to satisfy the judgment out of the personal property attached, and if that is insufficient, out of the real property attached.[2]

A corporation cannot be examined in proceedings supplemental to execution concerning its property;[3] nor can a judgment creditor maintain an action against a corporation created by or under the laws of this state, to compel the discovery of any thing in action, or other property belonging to the judgment debtor.[4] But a judgment creditor may maintain an action against a domestic corporation, to procure a judgment sequestrating the property of the corporation and providing for a distribution thereof.[5]

Where a judgment against a foreign corporation has been obtained upon a summons served otherwise than personally, such a judgment, being founded upon an attachment of its property, is a proceeding *in rem* against the property attached, and is not a judgment upon which a judgment creditor's action can be founded;[6] but where a judgment had been obtained in an action, after personal service of the summons, or appearance by the corporation in such a manner as to confer jurisdiction, there seems nothing to prevent the judgment creditor, after execution has been returned unsatisfied, maintaining an action against such a corporation for the discovery of property belonging to it, as the prohibition contained in section one thousand eight hundred and seventy-nine of the Code applies only to domestic corporations created by or under the laws of this state.

[1] Code Civ. Proc., § 707.

[2] Id. § 1370.

[3] Id. § 2463. This does not apply however, where a corporation has property of a judgment debtor. In such a case it may be examined and compelled to answer under the oath of one of its officers. Id. §§ 2441 and 2444.

[4] Id. § 1879.

[5] Id. § 1784.

[6] *Thomas* v. *Merchants' Bank*, 9 Paige, 216.

CHAPTER IX.

TAXATION.

ART. I. MUNICIPAL TAXATION.
ART. II. STATE TAXATION.

WITH but few exceptions[1] the property of domestic corporations is taxable the same as that of individuals resident in the state;[2] and it is no reason for exemption, under the provision of the Revised Statutes that all moneyed or stock corporations deriving an income or profit from their capital or otherwise shall be liable to taxation on their capital, that the income of such a corporation is not equal to its expenditures.[3]

ARTICLE I.

Municipal Taxation.

Real Estate.—The real estate of allin corporated companies, liable to taxation, is assessable in the town or ward in which it is situated, in the same manner as the real estate of indi-

[1] The personal property of gas-light companies may be exempted from taxation for a period not exceeding three years from their organization (Laws of 1848, chap. 37, § 18, as amended by Laws of 1871, chap. 95); and corporations owning vessels engaged in foreign commerce, all of whose vessels are employed between foreign ports and ports of the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings for the period of fifteen years. (Laws of 1881, chap. 433.)

A corporation organized for the purpose of furnishing a city with water does not thereby become a governmental agency and thus escape taxation. *People* ex rel. *Mills Water Works Co.* v. *Forrest*, 97 N. Y. 97.

[2] Rev. Stat., part I. chap. xiii. title 1, § 1.

[3] Id. title 4., § 1; *People* ex rel. *Com. Ins. Co.* v. *Supervisors*, 18 Wend. 605.

viduals.[1] As real estate, are included such portions of telegraph, telephone or electric light lines as lie in any town or ward ;[2] and the lines and road-beds of railroads,[3] including the structures of elevated railways ;[4] and the road-bed and railway laid upon or under any street ;[5] and a pier ;[6] and a toll-bridge ;[7] and structures or buildings on the land of another.[8]

Personal Property.—The personal property of a corporation is construed to include such portion of the capital of companies, liable to taxation on their capital, as is not invested in real estate.[9]

This is assessable in the town or ward where the principal office or place for transacting the financial concerns of the company is located ; or if such company have no principal office or place for transacting its financial concerns, then in the town or ward where the operations of such company are carried on.[10]

This, however, does not apply to the personal property of fire and marine insurance companies. These are exempt from all assessment or taxation except the tax payable to the state.[11]

For the purposes of taxation, the designation in a certificate of incorporation of the place in which the principal office is located is conclusive as to the location in which the personal property of the corporation can be taxed ; and this is probably true, even where its principal office is located,

[1] Rev. Stat., part 1. chap. xiii. title 2, § 6; *Hudson River Bridge Co.* v. *Patterson*, 74 N. Y. 365.

[2] Laws of 1886, chap. 659, § 1.

[3] *People* ex rel. *Dunkirk, etc., R.R. Co.* v. *Cassity*, 46 N. Y. 46; *Buffalo, etc., R. R. Co.* v. *Supervisors*, 48 id. 93.

[4] *People* ex rel. *N. Y. Elevated R. R. Co.* v. *Commrs.*, 82 N. Y. 459.

[5] *People* ex rel. *N. Y. & Harlem R. R. Co.* v. *Commrs.*, 101 N. Y. 322.

[6] *Smith* v. *The Mayor*, 68 N. Y. 552.

[7] *Hudson River Bridge Co.* v. *Patterson*, 74 N. Y. 365.

[8] *People* ex rel. *Van Nest* v. *Commrs.*, 80 N. Y. 573 ; *People* ex rel. *Muller* v. *Assessors*, 93 id. 308.

[9] Rev. Stat., part 1. chap. xiii. title 1, § 3.

[10] Id. title 2, § 6.

[11] Laws of 1886, chap. 679, § 4.

by its certificate, with a view to avoid taxation, in one place, while the principal business of the company is carried on in another.[1]

The method of arriving at the value of personal property of a corporation for purposes of taxation, is to ascertain the actual value of the capital stock, whether above or below par, and deduct from that the assessed value of its real estate, and all shares of stock in other corporations which are taxable on their capital under the laws of this state, actually owned by such company, and the remainder will be the personal property subject to taxation.[2]

The system of taxation of the personal property of corporations cannot be more clearly or more concisely stated than in the following language of Judge Earl, in the case of *People* ex rel. *Knickerbocker Fire Insurance Co.* v. *Coleman.*[3]

He there says: "The law does not prescribe how the actual value of the capital stock of a corporation is to be ascertained. That is left to the judgment of the assessors, and in appraising the actual value they have a right to resort to all the tests and measures of value which men ordinarily adopt for business purposes in estimating and measuring values of property. They may take into account the business of the corporation, its property, the value of its actual assets, the amount and nature of its present and contingent liabilities, the amount of its dividends and the market value of its shares of stock in the hands of individuals. They may resort to any or all of these as to them seems best, and they are not confined to one of them. They may take that test which they think will be most likely to give them the actual value of the stock, and they may dis-

[1] *Western Transportation Co.* v. *Scheu*, 19 N. Y. 408; *Oswego Starch Factory* v. *Dolloway*, 21 id. 449; *Union Steamboat Co.* v. *Buffalo*, 82 id. 351.

[2] Laws of 1857, chap. 456, § 3; *People* ex rel. *Twenty-third Street R. R. Co.* v. *Commrs.*, 95 N. Y. 554; *People* ex rel. *Panama R. R. Co.* v. *Commrs.*, 104 id. 240.

[3] 107 N. Y. 541.

regard all the others. They are not bound to seek for all the evidence which bears upon value; that would be impracticable. The law commits the matter to their judgment and when they have exercised that, it is subject to no review or correction except as prescribed by law.

"One mode of arriving at the actual value of the capital stock of a corporation is to take what is sometimes called the book value, which is reached by estimating all the assets as they appear upon the corporate books, and deducting all the liabilities and other matters required to be deducted by law, and taking the balance as the measure of value for assessment. This seems to be a proper method for arriving at the value of the capital stock in the case of a corporation which is about to discontinue business, wind up its affairs and distribute its assets among its shareholders. But it cannot always, or usually, be a fair or correct method of assessment in the case of a going corporation whose assets are to remain at the risk of its business. In the case of an insurance company, the actual value of its capital stock must usually be less than the book value, and the same must frequently be true of other corporations which are engaged in business attended with many hazards and fluctuations. In the case of a corporation the value of whose capital stock is largely made up of its franchise, good will and business advantages, the book value of its capital stock will be less than the actual value. Hence it would not be just for assessors always, or even generally, to take the book value of the capital stock of going corporations as the measure of value for the purpose of assessment.

"So the market value of the shares of capital stock may sometimes be above and sometimes below the actual value. Such value may be greatly enhanced or depressed for speculative purposes without any change in the actual value. But the market value of any stock which is listed at the stock exchange in New York, and largely dealt in from day

to day for a series of months will usually furnish the best measure of value for all purposes. The competition of sellers and buyers, most of them careful and vigilant to take account of everything affecting value of stock in which they deal, and each mindful of his own interests, and seeking for some personal gain and advantage, will almost universally, if time sufficient be taken, furnish the true measure of the actual value of stock. But there is no law which compels assessors to resort to market value to find the actual value of capital stock. That standard is sometimes illusory and untrustworthy. The buyers or sellers may be too few and the transactions not sufficiently numerous to furnish a real test of value."

The value of the franchise of a corporation is a proper subject of estimation and forms an important element in determining the value of its capital stock.[1]

The indebtedness of a corporation should be considered in estimating the value of the stock, but when that value has been once fixed, the indebtedness will not then be deducted from the capital in order to ascertain the amount of personal property subject to taxation.[2]

Nor does it follow from the fact that the whole amount of the capital of a company was expended in real estate, that that there is no personal property subject to taxation. If the actual value of the capital stock is greater than the assessable value of its real estate, the difference between these amounts will be the value of the personal property to be taxed.[3]

Where a corporation has real estate situated out of the state the amount to be deducted on account of such real estate should be measured by its actual value, which may be based upon the assessed value of such real estate where it is

[2] *People* ex rel. *Panama R. R. Co.* v. *Commrs.*, 104 N. Y. 240.
People ex rel. *Butchers' Hide & Melting Co.* v. *Asten*, 100 N. Y. 597.

[3] Ibid.

located, or, in the absence of other and better evidence, the price paid for it may be taken as representing such value.[1]

The fact that the capital of a company, organized under the laws of this state, is represented by personal property located beyond the limits of the state, is no reason for its exemption from taxation.[2]

Where a corporation owns a building or other structure on leased land, the value of such building or structure only, and not that of the land upon which it is located, is assessable as real estate of the corporation, to be deducted from the value of its capital stock in order to ascertain its personal property subject to taxation.[3]

Statements Required.—The president, cashier, secretary, treasurer or other proper officer of every moneyed corporation is required, on or before the first day of July in each year, to make and deliver to the assessors of the town or ward in which such company is liable to be taxed a written statement specifying:

1. The real estate, if any, owned by such company, the town or wards in which the same is situated, and the sums actually paid therefor;

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the state and by any incorporated literary or charitable institution;

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated; or if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed.[4] Such statements are not conclu-

[1] *People* ex rel. *Twenty-third Street R. R. Co.* v. *Commrs.*, 95 N. Y. 554; *People* ex rel. *Panama R. R. Co.* v. *Commrs.*, 104 id. 240; *People* ex rel. *Fairfield Chemical Co.* v. *Coleman*, 115 id. 178.

[2] *People* ex rel. *Pacific Mail Steamship Co.* v. *Commrs.*, 64 N. Y. 541; *People* ex rel. *Zulia Steam Nav. Co.* v *Commrs.*, 51 Hun, 312.

[3] *People* ex rel. *Van Nest* v. *Commrs.*, 80 N. Y. 573; *People* ex rel. *Muller* v. *Assessors*, 93 id. 308.

[4] Rev. Stat., part I. chap. xiii. title 4, § 2.

sive upon the assessors, but are intended simply as an aid to them in forming their judgment, and the omission to furnish such a statement will not relieve a company from taxation.[1]

Foreign Corporations.—Foreign corporations are taxed on all sums invested in any manner in business conducted in this state, in the same manner that the personal estate of domestic corporations is taxed. The assessment must be made in the town or ward where the principal office or place of business of such a company is located, without regard to the location of its property.[2]

Shares of Stock.—It is a general rule that the owner or holder of stock in any incorporated company liable to taxation on its capital stock shall not be taxed as an individual for such stock.[3] And the same rule applies to shares of stock of foreign corporations, as the presumption is that such corporations are taxed upon their capital in the states of their domicile.[4]

The stockholders of banks, however, both state and national, are assessed and taxed on the value of their shares of stock in the city, town or ward where such bank is located, whether such stockholder resides in that place or not.[5]

In the assessment of such shares each stockholder is allowed all the deductions and exceptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this state, and the assessments and taxations cannot be at a greater rate than is made or as-

[1] *People* ex rel. *Manhattan Fire Ins. Co.* v. *Commrs.*, 76 N. Y. 64; *People* ex rel. *Mutual Union Tel. Co.* v. *Commrs.*, 99 id. 254.

[2] Laws of 1855, chap. 37; *British Com. Life Ins. Co.* v. *Commrs*, 1 Keyes, 303; 1 Abb. App. Dec. 199; *People* ex rel. *Parker Mills* v. *Commrs.*, 23 N. Y. 242; *People* ex rel. *Bay State Shoe and Leather Co.* v. *McLean*, 80 id. 254.

[3] Rev. Stat., part 1. chap. xiii. title 1, § 7.

[4] *People* ex rel. *Trowbridge* v. *Commrs.*, 4 Hun. 595, affd, 62 N. Y. 630.

[5] Laws of 1882, chap. 409, §§ 318, 319; *Matter of Appln. of McMahon* v. *Palmer*, 102 N. Y. 176; *Mercantile Natl. Bank* v. *The Mayor*, 121 U. S. 138.

sessed upon other moneyed capital in the hands of individual citizens of the state. There must also be deducted from the value of such shares the same proportion of such value as the assessed value of the real estate of the bank, in which such shares are held, bears to the whole amount of its capital.[1] The assessors must ascertain the value of such shares, taking into consideration everything that gives them value,—the surplus, and the circumstances of the bank, its franchises, and the advantages and disadvantages under which it exists.[2] They must then deduct from the actual value of each share a sum bearing the same proportion to such value as the assessed value of the real estate of the bank bears to the actual value of all the capital stock.[3]

When the owner of stock in any bank does not reside in the place where the bank is located the collector and county treasurer respectively have the same power as to collecting the tax to be assessed, that they have by law when the person assessed has removed from the town, ward, or county in which the assessment is made;[4] and the managing officer or officers of such bank must retain so much of any dividend or dividends belonging to such stockholder as may be necessary to pay any taxes assessed until it is made to appear to such officers that they have been paid.[5]

ARTICLE II.

State Taxation.

In 1880 a very important act was passed providing for a tax for the use of the state upon certain corporations, joint-stock companies and associations.[6] The whole act was

[1] Laws of 1882, chap. 409, § 312.

[2] *People* ex rel. *Gallatin Natl. Bank* v. *Commrs.*, 67 N. Y. 516.

[3] *People* ex rel. *Tradesmen's Natl. Bank* v. *Commrs.*, 69 N. Y. 91.

[4] Laws of 1882, chap. 409, § 314.

[5] Id. § 315.

[6] Laws of 1880, chap. 542.

amended in 1881,[1] and it has been subjected to such frequent and radical changes since, as to render valueless many of the decisions construing it.

This law is said, in one of the cases cited below, to constitute a new system for collecting from these corporations, which come within its provisions, so much of the burdens laid upon them as inure exclusively to the use of the state, by a tax on their franchises alone, and is the first time, in the history of the state taxation that an attempt has been made, by a general scheme, to impose taxes exclusively upon the franchises and business of corporations organized under its laws, and it exacts their payment as a condition of the exercise of the privileges granted them by the state.

Corporations that are liable to taxation under its provisions, are exempt from all other assessment and taxation for state purposes, except upon their real estate. It leaves them, however, subject to the same obligations, so far as relates to local taxation, as before.[2]

Companies Subject to the Tax.—Every corporation organized pursuant to law in this state, or in any other state or country, and doing business in this state, except only savings banks and institutions for savings, life-insurance companies, banks, foreign insurance companies, manufacturing or mining corporations, or companies wholly engaged in carrying on manufacture, or mining ores within this state, and agricultural and horticultural societies or associations, which exceptions, however, shall not include gas companies, trust

[1] Laws of 1881, chap. 361.

[2] Laws of 1880, chap. 542, § 8, as amended by Laws of 1881, chap. 361; *People* ex rel. *Westchester Fire Ins. Co.* v. *Davenport*, 91 N. Y. 574; *People* v. *Home Ins. Co.*, 92 id. 328. The words "for state purposes" were added to section eight by the amendment of 1881, but this was held, in the cases cited, simply declaratory of the law as it previously existed. The constitutionality of this law has been sustained in numerous cases. *People* v. *Home Ins. Co.*, 92 N. Y. 328; *People* v. *Equitable Trust Co.*, 96 id. 387; *People* v. *The Gold and Stock Tel. Co.*, 98 id. 67; *People* v. *Horn Silver Mining Co.*, 105 id. 76.

companies,[1] electric, or steam-heat, lighting and power companies, is liable to a tax upon its franchise or business, to be paid annually into the city treasury.

If the dividend or dividends made or declared by such corporation during any year ending with the first day of November amounts to six or more than six per cent upon the par value of its capital stock, then the tax is at the rate of one-quarter mill upon the capital stock for each one per cent. of dividends.

If no dividend has been made or declared, or if the dividends do not amount to six per cent. upon the par value of its capital stock, then the tax is at the rate of one and a half mills upon each dollar of the valuation of the capital stock.

In case any such corporation has more than one kind of capital stock, as, for instance, common and preferred stock, and upon one of such stocks a dividend amounting to six or more than six per cent. upon its par value has been made or declared, and upon the other no dividend has been made or declared, or if made amounts to less than six per cent. upon its par value, then the tax is at the rate of one-quarter mill for each one per cent. dividend made or declared upon the capital stock upon which the dividends amount to six or more per cent., and in addition thereto a tax at the rate of one and one-half mills upon each dollar of the valuation of the capital stock upon which no dividend was declared, or upon which the dividend did not amount to six per cent.[2]

The amount of capital stock taken as the basis for the above tax is the amount employed within this state.[3]

It is the duty of the treasurer or other officer having charge of any corporation upon which such a tax is imposed,

[1] As to trust companies, see also Laws of 1882, chap. 409, § 324.

[2] Laws of 1880, chap. 542, § 3, as amended by Laws of 1889, chap. 353.

[3] Id. § 11, added by Laws of 1882, chap. 151, and as amended by Laws of 1885, chap. 501.

to transmit the amount of such tax to the treasury of the state within fifteen days after the first day of January in each year.[1]

Determining Valuation.—It is the duty of the president or treasurer of every such company to report in writing to the comptroller annually, on or before the fifteenth day of November, stating specifically the amount of capital paid in, the date, amount and rate per cent of each and every dividend declared during the year ending with the first day of that month; and in case no dividend is made or declared upon either the common or preferred stock of such company during the year, or in case such dividends amount to less than six per cent. upon the par value of its stock, the treasurer and secretary, after being sworn or affirmed to perform the duty with fidelity according to the best of their knowledge and belief, must, between the first and fifteenth days of November, estimate and appraise the capital stock of such company at its actual value in cash, not less, however, than the average price which such stock has sold for during the year, and they must forward to the comptroller a certificate thereof, accompanied by a copy of their oath or affirmation, signed by them and duly attested.

If the comptroller is not satisfied with the valuation so made and returned, he may make a valuation himself, and settle an account upon the valuation so made by him for the taxes, penalties and interest due to the state.

Any such corporation which is dissatisfied with the account so settled may, within ten days, appeal therefrom to a board consisting of the secretary of state, the attorney-general and state treasurer, which board, on such appeal, may affirm or correct the account so stated by the comptroller, and the decision of such board will be final. Such appeal will not stay proceedings unless the full amount of the taxes, penalties and interest as due on such account, settled by the comp-

[1] Laws of 1880, chap. 542, § 4, as amended by Laws of 1881, chap. 361.

troller, be deposited with the state treasurer.[1] In making to the comptroller such report or certificate of estimation and appraisal, the amount of capital stock employed within this state must be stated specifically, and the comptroller may ascertain, fix and determine the amount of capital so employed, and settle an account for the taxes and penalties due to the state thereon.[2]

Penalties.—If such officers neglect or refuse to furnish the comptroller with such report at the time required, or if the certificate of appraisement and oath, or affirmation, as the case may be, or to pay the tax imposed on such corporation within fifteen days after the first of January, it is the duty of the comptroller to add ten per cent. to the tax of such corporation for each and every year for which such report or certificate was not furnished, and for which such tax has not been paid. This percentage will be assessed and collected with the tax in the usual manner of assessing and collecting such taxes.

If such officers intentionally fail to comply with the above provisions for one year it is the duty of the comptroller to report the fact to the governor, who, if satisfied that such failure was intentional, will thereupon direct the attorney-general to take proceedings in the name of the people of the state to declare the charter or privileges of such corporation forfeited and at an end, and for such failure duly found the charter and privileges of every such corporation will cease, end, and be determined.[3]

Construction of the Act.—That provision of the act, which excepts manufacturing corporations from the tax, is not limited to corporations organized under the Manufacturing Act, but includes all corporations under whatever act incorporated,

[1] Laws of 1880, chap. 542, § 1, as amended by Laws of 1881, chap. 361.

[2] Id. § 11, added by Laws of 1882, chap. 151, and as amended by Laws of 1885, chap. 501.

[3] Id. § 2, as amended by Laws of 1881, chap. 361.

whose chief and principal business is the manufacture and sale of artificial products.[1]

On the other hand, a corporation is not exempt from the tax simply because it was organized under the Manufacturing Act, and it was, accordingly, held in *People* v. *Knickerbocker Ice Co.*[2] that a corporation formed for the purpose of collecting, storing and preserving ice, of preparing it for market, of transporting it and of vending the same, and whose business was confined to the purposes thus expressed, was not a manufacturing corporation, and so was not exempt from the tax upon its franchise. So it was held, in another case, that a company, incorporated for the purpose of "constructing, using and providing one or more dry docks, or wet docks, or other conveniences and structures for building, raising, repairing or re-coppering vessels or steamers of every description," was not a "manufacturing corporation" within the meaning of this law.[3]

It is not always easy to determine what is sufficient presence within the state to bring a corporation within the law as a company "doing business in this state." In one case where a company, organized under the laws of Utah, for the purpose of carrying on the business of mining, mined its ore in that territory, which was manufactured into base bullion and then was shipped to New York, where it was refined and sold and the proceeds deposited, some portion being loaned, and other portions paid out for the company's purposes in that city, and its president, secretary and treasurer had their offices in New York, and the directors held their annual meetings there; it was held that such a substantial part of the regular business of the corporation was

[1] *Nassau Gas-Light Co.* v. *City of Brooklyn*, 89 N. Y. 409. So far as gas-light companies are concerned, this case is overruled by amendments to section three of the act which expressly exclude gas companies from the exemptions of other manufacturing companies; but the principles of the decision are not affected.

[2] 99 N. Y. 181.

[3] *People* v. *N. Y. Floating Dry-Dock Co.*, 92 N. Y. 487.

carried on within the state as to bring it within the provisions of the act.[1]

In the case of *People* v. *The American Bell Telephone Co.*,[2] it was held that that corporation which was organized under the laws of Massachusetts and engaged in manufacturing telephones under its patents and licensing their use by others, and which leased its instruments and licensed their use in New York to local corporations, and which had no office in New York other than such local companies, and received from them as compensation for the use of such instruments, at its office in Boston, a royalty payable monthly, was not "doing business in this state" within the meaning of this law.

Insurance Companies.—It is the duty of the president, secretary or other proper officer of insurance companies, organized under any law of this state, with the exception of life insurance companies and fire and marine insurance companies organized under the laws of this state or of foreign countries,[3] to make a report in writing to the comptroller annually, upon the first day of August in each year, setting forth the entire amount of premiums received on business done in this state by such company during the year ending with the preceding thirtieth day of June, whether the said premiums were in money, or in the form of notes, credits or any other substitutes for money. And every such company must pay into the state treasury, upon that day, a tax as a tax on its corporate franchise or business, at the rate of eight-tenths of one per cent. upon the gross amount of such premiums.

[1] *People* v. *Horn Silver Mining Co.*, 105 N. Y. 76.

[2] 117 N. Y. 241. The amendment to section three (Laws of 1889, chap. 353) changes the phraseology of the exception of "manufacturing or mining corporations, carrying on manufacture or mining ore within this state" to that of "manufacturing or mining corporations, *or* companies wholly engaged in carrying on manufacturing, or mining ores within the state," etc.

[3] The taxes of fire and marine insurance companies are now regulated by Laws of 1886, chap. 679 (*post* p. 278).

Every such company organized under the laws of any other state or country, must pay into the treasury on the first day of August in each year a tax of eight-tenths of one per cent. upon their gross premiums received by them, upon business transacted in this state during the year ending with the preceding thirtieth day of June, whether such premiums were in money, or in the form of notes, credits, or any other substitutes for money. And every such company, or the agents and officers thereof, in this state, must make a report in writing to the comptroller annually, upon the first day of August in each year, setting forth the entire amount of premiums received during such period. Such reports must be made under oath or affirmation.

It is the duty of the comptroller of the state to add ten per cent. to the account of any company which neglects or refuses for a period of thirty days to make such report, or to pay into the state treasury such tax.[1]

Railway, Express and Telegraph Companies, etc.—In addition to the taxes above provided for, every corporation formed for railway, canal, steamboat, ferry, express, navigation or transportation purposes, and every elevated railway company and every other corporation organized under any law of this state, or of any other state, or country, doing business in this state, and renting, operating or leasing to or from another corporation, joint-stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe line, or transportation route or line, or elevated railway or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freights, or passengers, and every telegraph company, or telephone company incorporated under the laws of this or any other state, and doing business in this state, and every express company or association, palace-car or sleeping-car company or association doing business in this state,

[1] Laws of 1880, chap. 542, § 5, as amended by Laws of 1881, chap. 361.

must pay to the state treasurer, for the use of the state, as a tax upon its corporate franchise or business in this state, a tax at the rate of five-tenths of one per cent upon the gross earnings in this state, of such corporation or company, or association, for tolls, transportation, telegraph, telephone, or express business transacted in this state.[1] Such tax must be paid annually on the first day of August.

It is the duty of the president, secretary, or other proper officer of such corporations, to transmit to the comptroller, on the first day of August in each year, a statement, under oath or affirmation, of the amount of the gross earnings of such company, derived from all sources, during the year ending with the preceding thirtieth day of June, together with the amount of tax imposed thereon. And if any such corporation neglects or refuses for a period of thirty days after any tax imposed as above becomes due, to make returns or to pay the same, the amount thereof, with the addition of ten per cent. will be collected as other taxes are recoverable by law from such corporations.[2]

Corporations subject to the provisions of this act are liable for the tax, although the company has been in existence for less than a year. The burden is imposed on account of the future business of such company, and it is not limited to past transactions.[3]

The tax is based upon the business of such a corporation done within this state, and not upon its whole capital.[4] It was accordingly held that the tax upon premiums received in the business of a company referred only to business done

[1] Laws of 1880, chap. 542, § 6, as amended by Laws of 1881, chap. 361.

[2] Id. § 7, as amended by Laws of 1881, chap. 361.

[3] *People* v. *Spring Valley Hydraulic Gold Co.*, 92 N. Y. 383.

[4] *People* v. *Equitable Trust Co.*, 96 N. Y. 387. The case of *People* v. *Horn Silver Mining Co.* (105 N. Y. 76), in which it was held that a foreign mining company doing business in this state was liable to the tax upon its whole capital, was prior to the amendment of 1885, which limits the tax to "capital stock employed within this state."

within the state.[1] And a telephone company is not liable to taxation on its whole capital stock, because it is a stockholder in local corporations doing business here.[2]

The amount of dividends made or declared during the year are the measure of the annual value of the franchises upon which the tax is to be paid. If a corporation earning more than six per cent. should withhold its dividends and pay less than that amount, and accumulate its earnings to increase the value of its capital, it would not thereby escape taxation, for it would then be taxable according to the actual value of its capital stock, and that value would be increased by the amount of surplus thus accumulated. But if, for the purpose of evading the taxes, it should divide less than its actual earnings in any one year, and thus create a surplus, which it subsequently divided, such dividend would be the statutory measure of the value of the franchises which the corporation had enjoyed for the previous year.[3]

Penalties.—If any corporation neglect or refuse to pay this tax, it may be sued for in the name of the people of the state, and recovered in any court of competent jurisdiction, in an action to be brought by the attorney-general at the instance of the comptroller.[4] But in such an action no interest can be recovered as damages, as no other penalty for default in payment will be allowed than that imposed by the statute.[5]

If any corporation, liable to make reports or certificates of estimate and appraisal to the comptroller, as above provided, neglects or refuses to make such report within the time prescribed, or makes such report or certificate as may be unsatisfactory to the comptroller, the latter may examine the books and reports of such company and fix and deter-

[1] *People* v. *National Fire Ins. Co.*, 27 Hun, 188.

[2] *People* v. *American Bell Tel. Co.*, 117 N. Y. 241.

[3] *People* v. *Albany Ins. Co.*, 92 N. Y. 458.

[4] Laws of 1880, chap. 542, § 9, as amended by Laws of 1881, chap. 361.

[5] *People* v. *Gold and Stock Tel. Co.*, 98 N. Y. 67.

mine the amount of tax and penalty due thereon, either from such books and records, or from any other data in his possession, which may be satisfactory to him. And he may settle an account for such tax and penalty, together with the expenses of the examination.[1]

If he deem it necessary to examine any person as a witness upon any matter relating to the amount of capital stock of such corporation, or to use, examine or inspect any book, account, voucher or document in possession of any officer of such corporation, or of any other person, or under his control, relating to such capital stock and tax, he may issue a subpœna commanding such person to appear before him or some person designated as commissioner by an appointment in writing filed in the office of the comptroller, at the place where the principal office of such corporation is situated within the state, and at the time specified in such subpœna, to be examined as a witness. And the subpœna may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the capital stock of such corporation, and the amount thereof employed within this state.

The comptroller or the commissioner so designated may administer oaths to all such persons and examine them on oath in relation to any matter which may in anywise be material in determining the amount of tax to be paid. And any person neglecting or refusing to obey such subpœna, or refusing to testify or to answer any proper or pertinent question, shall be deemed in contempt, and may, upon motion of the comptroller and upon application to a justice of the Supreme Court, be punished therefor for contempt.[2]

Accounts settled by the comptroller bear interest from a

[1] Laws of 1881, chap. 361, § 12, added by Laws of 1882, chap. 151, and as amended by Laws of 1885, chap. 501.

[2] Id. § 13, added by Laws of 1882, chap. 151, and as amended by Laws of 1885, chap. 501.

date thirty days after sending notice of settlement and until full payment is made.[1] And it is the duty of the comptroller after making such settlement to send a notice thereof to such corporation.[2]

No writ of *certiorari* to review the decision of the comptroller will be granted unless application is made within thirty days after the service of the above notice, and not then, unless the papers upon which the motion is made, including the notice of motion, have been served upon the comptroller at least eight days before such motion, nor unless the corporation applying therefor has previously deposited with the state treasurer, the full amount of taxes, penalties and charges so settled and adjusted by the comptroller, and filed with him an undertaking approved by one of the justices of the Supreme Court, to the effect that if the writ is vacated and the determination of the comptroller sustained, the applicant will make payment of all costs and charges which may accrue against it, including costs on all appeals.[3]

If an appeal has been taken, or if no deposit has been made within the time prescribed, the comptroller may issue his warrant, directed to the sheriff of any county in the state, commanding him to levy upon any property of such company. And such warrant will be a lien upon and bind the personal estate of such corporation from the time an actual levy is made.[4]

The comptroller may, at any time, revise and readjust any account previously settled, whenever it may appear to him that such tax has been illegally paid, or that it had been so made as to include taxes which could not have been lawfully demanded.[5] And such re-settlement may be reviewed both upon the law and upon the facts upon *certiorari* by

[1] Laws of 1881, chap. 161, § 15, added by Laws of 1885, chap. 501.

[2] Id. § 16, added by Laws of 1885, chap. 501.

[3] Id. § 17, added by Laws of 1885, chap. 501.

[4] Id. § 18, added by Laws of 1885, chap. 501

[5] Id. § 19, added by Laws of 1889, chap. 463.

the Supreme Court, at the instance either of the parties making such application, or of the attorney-general in the name and in behalf of the people of the state.[1]

Any person having knowledge of the evasion of taxation by any company liable thereto may report such fact to the comptroller together with such information as may be in his possession as may relate to the recovery of such taxes. And whenever in the opinion of the attorney-general or comptroller the interests of the state require it, either of them is authorized to employ the person reporting such information, to assist in the collecting and preparing of evidence and in the prosecution and trial of suits for such taxes, and may agree to pay such person for such services a sum not exceeding ten per cent. of the amount so collected.[2]

Fire and Marine Insurance Companies.—Every fire and marine insurance company, incorporated under the laws of this state, or incorporated under the laws of any foreign country, and doing business in this state, is required on or before the first day of August in each year to pay to the treasurer of the state a tax on its corporate franchises for business in this state a sum equal to one-half of one per cent. upon the gross amount of premiums received by such company during the year ending the preceding thirtieth day of June, on business done in this state by such company, whether such premiums were in money, or in the form of notes, credits, or any other substitute for money:[3] and before the time of such payment must make a return to the comptroller signed and sworn to by its president, secretary or manager, giving the total amount of premiums received by such company during the year so ending.[4] If any officer of any such company refuses or wilfully neglects to make and execute such a return he will be deemed guilty of a misde-

[1] Laws of 1881, chap. 361, § 20, added by Laws of 1889, chap. 463.

[2] Laws of 1886, chap. 266, § 1.

[3] Laws of 1886, chap. 679, § 1.

[4] Id. § 2.

meanor, and if he makes a wilfully false statement therein, will be subject to the pains and penalties of perjury.

All taxes not paid by such company when due, may be collected by actions brought in the Supreme Court in the name of the people of the state by the attorney-general, at the instance of the comptroller, and in such action the court may issue an injunction restraining the further prosecution of the business of the corporation until such tax together with interest and costs are paid, and until the return is made.[1]

The real estate of such companies is still liable to assessment and taxation where situated for all purposes; but the personal property, franchises and business of such companies, incorporated under the laws of this state or of any other state or country, and doing business in this state, and the shares of stock of such company are exempt from all assessments or taxation, except as above provided, and with the exception of the fire department tax of two per cent.[2]

Banks.—Every corporation organized under the laws of any other state or country, and which receives deposits, loans money, sells bills of exchange or issues its credit, or is in any other manner engaged in the business of banking in this state, is required annually on or before the first day of February, to pay to the comptroller a state tax, as a tax on its business in this state, at the rate of one-half of one per cent. on the average of all sums of money received on deposit, and of all sums received on account of such business, or used or employed in such business, in this state during the year ending the preceding thirty-first day of December.[3]

Every such corporation must make a return to the comptroller in writing, on or before the first day of February in each year, setting forth the amount of the state tax to and

[1] Laws of 1886, chap. 679, § 3.

[2] Id. § 4. In addition to these taxes, however, fire insurance companies are subject to certain local taxes on their franchises in support of the fire departments in the several towns and cities of the state.

[3] Laws of 1882, chap. 409, § 321,

for which it is liable, and of the average of deposit in, and of moneys received and used in or on account of such business in this state respectively on which such tax is based. This return must be verified by oath or affirmation, and for any neglect or failure to make such return, or to pay such tax, a penalty of ten per cent. on the amount of the tax will be imposed, and which may be recovered, together with the tax, in an action brought in the name of the people in any court of competent jurisdiction, by the attorney-general, at the instance of the comptroller.[1]

The managers or agents of any such company must keep at all times in the office where its principal business is transacted in this state a full and accurate account of the moneys used or employed in its business and of its deposits, which account will be subject to the inspection of the comptroller or of any clerk designated by him to inspect the same during the business hours of any day on which business may be legally transacted.[2]

Any moneyed or stock corporation deriving income or profit from its capital must add to the dividends declared upon any stock owned by the state or by any literary or charitable society or institution a sum equal to the assessment for taxes paid upon an equal amount of the stock of such corporation not exempt from taxation;[3] and the provisions of the revised statutes, whereby certain stocks are exempt from taxation, are for the benefit of the state or the institutions so exempt, and not for the benefit of such corporations.[4]

[1] Laws of 1882, chap. 409, § 322, as amended by Laws of 1889, chap. 12.

[2] Id. § 323, as amended by Laws of 1889, chap. 12.

[3] Id. § 325.

[4] Id. § 326.

CHAPTER X.

DISSOLUTION.

ART. I. VOLUNTARY DISSOLUTION.
ART. II. INVOLUNTARY DISSOLUTION.
ART. III. RECEIVERS.

THERE is no general power in a court of equity to dissolve a corporation. The proceedings are wholly statutory, and must be conducted in strict accordance with the methods provided by law.[1] Thus although the abandonment or insolvency of the corporation may sometimes work a practical dissolution, yet it will not operate as a legal dissolution;[2] nor will a resolution of the directors of a corporation that it be dissolved and go into liquidation, and that its business cease and franchises be surrendered, be sufficient to constitute a legal dissolution of the corporation.[3]

ARTICLE I.

Voluntary Dissolution.

If a majority of the directors, trustees or other officers having the management of the concerns of a corporation created by or under the laws of this state, discover that its stock, effects and other property are not sufficient to pay all just demands for which it is liable, or to afford a reasonble security to those who may deal with it; or if for any reason they deem it beneficial to the interests of the stock-

[1] *Verplanck* v. *Mercantile Ins. Co.*, 1 Edw. ch. 84; *Denike* v. *N. Y. & Rosendale Lime and Cement Co.*, 80 N. Y. 599; *U. S. Trust Co.* v. *N. Y., West Shore and B. R. Co.*, 101 id. 478; *Chamberlain* v. *Rochester Seamless Paper, etc., Co.*, 7 Hun, 557.

[2] *New England Iron Co.* v. *Gilbert El. R. Co.*, 91 N. Y. 153.

[3] *Lake Ontario Natl. Bank* v. *Onondaga County Bank*, 7 Hun, 549.

holders that the corporation be dissolved, they may present a petition to the supreme court, or to a superior city court of the city where the principal office of the corporation is located, praying for a final order dissolving the corporation.[1]

If a corporation, created under a general statute of the state for the formation of corporations, has an even number of trustees or directors who are equally divided respecting the management of its affairs, and the entire stock of the corporation at that time is owned by the trustees or directors, or is so divided that one-half is owned or controlled by persons favoring the course of one-half of the trustees or directors, and one-half by persons favoring the course of the other half of them, the trustees or directors, or one or more of them, may present a petition to the court for its dissolution. This, however, does not apply to a savings-bank, a trust company and safe-deposit company, or a corporation formed to rent safes in burglar and fire proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.[2]

Contents of the Petition.—The petition must show that the case comes within one or the other of the provisions above given, and must state the reasons which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition containing the following matters, as far as such petitioners know or have the means of knowing the same:

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements entered into by and subsisting against the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made and to whom it is to be performed, if known; or if either is not known, a statement of that fact.

[1] Code Civ. Proc. § 2419. [2] Id. § 2420.

3. A statement of the sum owing to each creditor or other persons specified in the last subdivision, and the nature of each debt, demand or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just and true inventory of all the property of the corporation, and of all the books, vouchers and securities relating thereto.

6. A statement of each encumbrance upon the property of the corporation by judgment, mortgage, pledge or otherwise.

7. A full, just and true account of the capital stock of the corporation, specifying the name of each stockholder, his residence, if it is known, or if it is not known, stating that fact, the number of shares belonging to him, the amount paid in upon his share, and the amount still due thereupon.[1]

An affidavit made by each of the petitioners to the effect that the matters of fact stated in the petition and the schedule are just and true so far as the affiant knows, or has the means of knowing the same, must be annexed to the petition and schedule.[2]

While this statute will be strictly construed, and no intendment will be made in behalf of the petitioners beyond what naturally arises from the contents of the petition and the schedules, yet a mere technical and accidental omission in the inventory of some item of property, or of some book relating to property, showing no lack of good faith, or evidence of a fraudulent purpose, will not defeat the proceeding, but can be cured by evidence at the hearing before the referee.[3]

The petition must show that the dissolution would be beneficial to the interests of the stockholders, and a petition

[1] Code Civ. Proc. § 2421.

[2] Id. § 2422.

[3] *Matter of Santa Eulalia Silver Mining Co.*, 4 N. Y. Supp. 174; 51 Hun, 640.

which fails to set forth such facts is not sufficient to warrant a court in granting it.[1] Where it is addressed to the supreme court, the papers must be presented at a term of that court held within the judicial district embracing the county where the principal office of the corporation is located.

Proceedings upon Application.—Where a corporation, created under a general statute, has an even number of trustees or directors, who are equally divided respecting the management of its affairs, and one-half of the stock is owned by those who are in favor of dissolution and one-half by those who are opposed, the court may, in its discretion, entertain or dismiss the application. If the court entertains the application, in such a case, or if a majority of the stock holders deem it beneficial to the interests of the stockholders that the corporation should be dissolved, it may make an order requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than three months after the granting of the order, why the corporation should not be dissolved. The order must be entered and the papers must be filed within ten days after the order is made with the clerk of the court, or in the Supreme Court, with the clerk of the county where the principal office of the corporation is located.

If it is made to appear to the satisfaction of the court that the corporation is insolvent, the court may, at any stage of the proceedings, before final order on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice to the corporation, appoint a temporary receiver of the property of the corporation, who will have all the powers and be subject to all the duties of receivers appointed in an action for the dissolution of the corporation, brought by the attorney-general, or by a creditor or stockholder as prescribed in section seventeen hundred and eighty-eight of the Code.

[1] *Matter of Pyrolusite Manganese Co.*, 29 Hun, 429.

The court may also, in its discretion, at any stage in the proceeding, after such appointment, and upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders before final order in the proceedings, unless he is specially directed so to do by the court.

If such receiver be appointed the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before final order, grant an injunction restraining the creditors of the corporation from bringing any action against it for the recovery of a sum of money, or from taking any further proceedings in such an action previously commenced, and such injunction will have the same effect and be subject to the same provisions of law as if each creditor, upon whom it is served, was named therein.[1]

A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause in the newspapers printed in Albany, in which legal notices are required to be published, and also in one or more newspapers specified in the order, published in the city or county wherein the order is entered.[2]

A copy of the order must also be served upon each of the persons specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown or to be without the United States. Such service must be made either personally at least twenty days before the time appointed for the hearing, or by depositing a copy of the order at least forty days before the time so ap-

[1] Code Civ. Proc. § 2423. [2] Id. § 2424.

pointed, in the post-office, enclosed in a post-paid wrapper, addressed to the person to be served at his residence as stated in the schedule.[1]

At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court or the referee will hear the allegations and proofs of the parties and determine the facts. If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when, or after, the order is returnable.

The decision of the court or the report of the referee must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits and other property, and of the debts and other engagements of the corporation, and of all other matters pertaining to its affairs;[2] and a report or decision omitting such a statement is defective, and will not be sustained.[3]

The court or referee is entitled to use upon the hearing the original petition and all schedules annexed thereto, and the clerk must transmit them accordingly upon the written order of the judge or of the referee. In that case they must be returned with the decision or report.[4]

The order to show cause made after the presentation of the petition is in the nature of a process for bringing persons interested before the court, and the statutory provisions in regard to it must be strictly complied with. Thus, it was held that an order to show cause why the prayer of the petition should not be granted, there being no provision made therein for service of a copy of the petition, was not sufficient.[5]

Where the hearing is before a referee, a motion for a final order must be made to the court upon notice to each person who has made himself a party to the proceeding, by

[1] Code Civ. Proc. § 2425.

[2] Id. § 2426.

[3] *Matter of E. M. Boynton Saw and File Co.*, 34 Hun, 369.

[4] Code Civ. Proc. § 2427.

[5] *People* v. *Seneca Lake Grape and Wine Co.*, 52 Hun, 174.

filing with the clerk before the close of the hearing a notice of his appearance in person or by attorney, specifying a post-office within the state where such notice may be served. And such notice may be served in the manner prescribed for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such time and upon such notice as the court prescribes.[1]

Upon an application for a final order, if it appears to the court in a case where the majority of the directors favor dissolution, that the corporation is insolvent, or in any other case that for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not injurious to the public interests, the court will make a final order dissolving the corporation, and appointing one or more receivers of the corporation, and upon the entry of the order the corporation is dissolved; and it may, in its discretion, appoint a director, trustee or other officer, or a stockholder of the corporation, a receiver of its property.[2]

It does not seem to be mandatory upon the court in such a case to dissolve a corporation, but it will look to the interests of the stockholders, and determine for itself whether a dissolution will be beneficial to them.[3]

Transfers Prohibited.—A sale, assignment, mortage, conveyance, or other transfer of any property of the corporation made after the filing of a petition, as above prescribed, in payment of, or as security for, an existing or prior debt, or for any other consideration, or a judgment thereafter rendered against the corporation by confession or upon the acceptance of an offer, is absolutely void as against the receiver appointed in the special proceedings and as against the creditors of the corporation.[4] But this is not intended to prevent a corporation collecting debts due it, or from

[1] Code Civ. Proc. § 2428.

[2] Id. 2429.

[3] In re *Importers' and Grocers' Exchange*, Com. Pleas Sp. Term. 2 N. Y. Supp. 257.

[4] Code Civ. Proc. § 2430.

paying or cancelling notes or choses in action becoming due thereafter, but was intended to prohibit transactions designed to favor one or more creditors or to give them a preference over others.[1] And such a proceeding will not prevent a corporation enforcing a claim due to it after the proceeding is commenced.[2]

ARTICLE II.

Involuntary Dissolution.

Action to Procure Dissolution.—An action to procure a judgment dissolving a corporation created by or under the laws of this state, and forfeiting its corporate rights, privileges and franchises, may be maintained—

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused for at least one year to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurance, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act by or under which it was incorporated, or of any other act binding upon it.[3]

Such an action may be maintained by the attorney-general in the name and in behalf of the people; whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts verified by oath, showing grounds for an action, as above stated, and the attorney-general omits for sixty days after this submission to commence an action, then and not otherwise such creditor or stockholder may apply to the proper court for

[1] *Sands* v. *Hill*, 55 N. Y. 18; In re *Waterbury*, 8 Paige, 380.

[2] *Kingsley* v. *First National Bank*, 31 Hun, 329.

[3] Code Civ. Proc. § 1785.

leave to commence such an action, and on obtaining leave may maintain the same accordingly.[1]

The Code provides two systems of procedure against corporations. Under the one system the action may be commenced without leave of the court and tried as an equitable action. Under the other system the action can be commenced only with such leave.[2] It is not a bar to such an action that proceedings for the voluntary dissolution of the corporation have already been commenced.[3]

It is sufficient in such an action if it is alleged in the complaint that the debts of the company have remained unsatisfied for many years, and that it is without means of payment, and has become insolvent and unable to pay its debts, and has remained insolvent for one year, together with the necessary facts to substantiate the general allegations as above stated.[4]

May grant an Injunction in such an Action.—The court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order restraining the corporation, its trustees, directors, managers and other officers, from collecting or receiving any debt or demand, and from paying out or in any way transferring or delivering to any person any money, property or effects of the corporation, during the pendency of the action, except by express permission of the court. And it may also restrain the corporation from exercising any of its corporate rights, privileges or franchises during the pendency of the action, except by such permission. Such an injunction can be granted, however, only by the court.[5]

May appoint a Receiver.—The court may also, at any stage of such an action, appoint one or more receivers of the property of the corporation. A receiver so appointed

[1] Code Civ. Proc. § 1786.

[2] *Herring* v. *N. Y., Lake Erie & W. R. R. Co.*, 105 N. Y. 340.

[3] *People* v. *Seneca Lake Grape & Wine Co.*, 52 Hun, 174.

[4] *Swords* v. *Northern Light Oil Co.*, Sup. Ct. Gen. Term, 17 Abb. N. C. 115; *Medbury* v. *Rochester Frear Stone Co.*, 19 Hun, 498.

[5] Code Civ. Proc. § 1787.

before final judgment is a temporary receiver until final judgment is entered, and as such has power to collect and receive the debts, demands and other property of the corporation, to preserve the property and the proceeds of the debts and demands collected, to sell or otherwise dispose of the property as directed by the court, to collect, receive and preserve the proceeds thereof, and to maintain any action or special proceeding for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. But unless additional powers are specially conferred upon him, he has no others than the above and those which are incidental to the exercise thereof.

A receiver appointed by or pursuant to a final judgment in an action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred and is subject to all the duties and liabilities imposed upon a receiver appointed upon the voluntary dissolution of a corporation.[1]

A temporary receiver appointed as above is in all respects subject to the control of the court, and it may by the order or interlocutory judgment appointing him or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority and subject him to the duties and liabilities of a permanent receiver, or so much thereof as it thinks proper, except that he may not make any distribution among the creditors or stockholders before final judgment, unless he is specially directed so to do by the court.[2] And such court may forbid any interference by way of levy and seizure by attachment or execution of the property in his possession.[3]

A creditor cannot maintain such an action until he has obtained judgment against the corporation.[4] And the court

[1] Code Civ. Proc. § 1788.

[2] Id. § 1789.

[3] *Woerishoffer* v. *North River Construction Co.*, 99 N. Y. 398.

[4] *Byrne* v. *N. Y. Brick & Cement Co.*, Sup. Ct. Genl. Term, 16 Wk. Dig. 139.

has no power to appoint a receiver of the property of a corporation in an action brought by a creditor at large on behalf of himself and others similarly situated.[1]

A judgment creditor who has no lien upon the property of a corporation is not entitled to notice of application for the appointment of a receiver.[2]

Action for Sequestration of Property of a Corporation.—An action that partakes of many of the characteristics of an action to dissolve a corporation, and one controlled by many of the provisions regulating such actions, and which suspends the ordinary business of a corporation but does not necessarily affect its corporate franchises, is the action for the sequestration of the property of a corporation brought against it by a judgment creditor.[3]

The Code provides that where a final judgment for a sum of money has been rendered against a corporation created by or under the laws of this state, and an execution issued thereupon to the sheriff of the county where the corporation transacts its general business or where its principal office is located, has been returned wholly or partly unsatisfied, a judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation and for the distribution thereof.[4]

In such an action the court may grant an injunction order restraining the corporation and its trustees, directors, managers and other officers from collecting or receiving any debt or demand, and from paying out or in any way transferring or delivering to any person, any money, property or effects of the corporation during the pendency of the action, except by express permission of the court;[5] and it may at any stage of such an action appoint one or more receivers of

[1] *Lehigh Coal & Navigation Co.* v. *Central R. R. of N. J.*, 43 Hun, 546.

[2] *Morrison* v. *Menhaden Co.*, 37 Hun, 522.

[3] *Mann* v. *Pentz*, 3 N. Y. 415; *Kincaid* v. *Dwinelle*, 59 id. 548; *Pringle* v. *Woolworth*, 90 id. 502. *Hollingshead* v. *Woodward*, 35 Hun, 410.

[4] Code Civ. Proc. § 1784.

[5] Id. § 1787.

the property of the corporation, and such receivers have the power of, and are subject to, the provisions regulating receivers appointed in actions for the dissolution of corporations.[1]

If in such an action, based upon a judgment obtained against a corporation by default, a receiver is appointed and the default is subsequently opened and the corporation allowed to come in and defend, the order appointing a receiver in the action for sequestration should be vacated and set aside as there is no longer any adjudication that anything is due from the corporation, and this is so although the judgment and execution have been allowed to stand as security upon opening the default.[2]

Officers and Stockholders may be made Parties.—Where either of the above actions has been brought by a creditor of a corporation, and the stockholders, directors, trustees or other officers or any of them are made liable by law in any event or contingency for the payment of the debt, the persons so made liable may be made parties defendant by the original or by a supplemental complaint, and their liability may be declared and enforced by the judgment in the action.[3] Where they are not made parties defendant the plaintiff may maintain a separate action against them to procure a judgment declaring, apportioning and enforcing their liability.[4]

In either of such cases the court will, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and the liability of the defendants will be apportioned accordingly. But if it affirmatively appears that the corporation is insolvent and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.[5]

[1] Code Civ. Proc. § 1788.

[2] *Radbourn* v. *Utica, Ithaca & E. R. Co.*, 28 Hun, 369.

[3] Code Civ. Proc. § 1790.

[4] Id. § 1791.

[5] Id. § 1792.

What the Judgment must Provide.—A final judgment in an action for the dissolution of a corporation brought as above, or for the sequestration of its property, separately or in conjunction with its stockholders, directors, trustees or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors in the order and in the proportions prescribed by law in case of the voluntary dissolution of a corporation.[1]

Where the stockholders are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.[2]

If it appears that the property of the corporation, and the sums collected or collectible from the stockholders upon their stock subscriptions are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums for which the directors, trustees or other officers or the stockholders of the corporation, being parties to the action, are liable, and must adjudge that the same be paid into court to be applied in such proportions and in such order as justice requires to the payment of the debts of the corporation.[3]

Where, in such an action, stockholders were in possession of assets of the corporation which were necessary to pay the debts and expenses, and which they had no right to retain, and such facts were so determined by a referee before whom they appeared without questioning his right to determine the amount of assets which they should restore, it was

[1] Code Civ. Proc. § 1793.

[2] Id. § 1794.

[3] Id. § 1795. The above provisions do not affect any special provisions affecting the cessation of the existence of particular corporations, nor the manner of enforcing the liability of their stockholders. Id. § 1796.

held that although such judgment entered upon the report of the referee went beyond the legitimate and regular purposes of the action, yet as they might have been brought in by a supplementary complaint, by their voluntary appearances they had rendered this unnecessary, and the court had power to make a final determination of the question, and that they then could not be heard to complain.[1]

Judicial Supervision of Corporations.—An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. Compelling them to pay to the corporation which they represent, or to its creditors, any money and the value of any property which they have acquired to themselves, or transferred to others, or lost, or wasted by a violation of their duties.

3. Suspending a defendant from exercising his office where it appears that he has abused his trust.

4. Removing a defendant from his office upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the Governor, who may, with the advice and consent of the Senate, fill the vacancies.

5. Setting aside an alienation of property made by one or more trustees, directors, managers, or other officers of a corporation contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation where

[1] *People* v. *Hydrostatic Paper Co.*, 88 N. Y. 623.

it is threatened, or where there is good reason to apprehend that it will be made.[1]

Such an action may be brought by the attorney-general in behalf of the people of the state, or, except where it is brought for the purposes specified in subdivisions third and fourth as given above, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation having a general superintendence of its concerns.[2] But such an action does not divest any visitorial power over a corporation which is vested by statute in the corporate body or a public officer.[3]

Such an action cannot be maintained by the attorney general where it is brought solely for the purpose of enforcing or protecting private rights, as the state has no interest in the property of private business corporations, and without showing that the action is for the public benefit and not for that of private individuals, it cannot be maintained.[4]

Action to Annul a Corporation.—The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state to procure a judgment vacating or annulling the act of incorporation or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion or the concealment of a material fact made by or with the knowledge and consent of any of the persons incorporated.[5] But the fact that the attorney-general is instructed by the legislature to bring such an action does not determine its validity, and the court may dismiss the complaint, or make such other disposal of the case as it may deem proper.[6]

[1] Code Civ. Proc. § 1781.

[2] Id. § 1782.

[3] Id. § 1783.

[4] *People* v. *Ballard*, Sup. Ct. Genl. Term, 8 N. Y. Supp. 918. See S. C. Sp. Term, and authorities cited in opinion of Ingraham, J., 3 N. Y. Supp. 845. See also *People* v. *Brooklyn, etc., R., Co.*, 89 N. Y. 75; *People* v. *Lowe*, 117 N. Y. 175.

[5] Code Civ. Proc. § 1797.

[6] *Attorney-Genl.* v. *Bank of Niagara*, Hopk. Ch. 354.

Upon leave being granted by the court, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment vacating the charter or annulling the existence of the corporation upon the ground that it has either—

1. Offended against any provision of an act by or under which it was created, altered, or renewed, or an act amending the same, and applicable to the corporation; or,

2. Violated any provision of law whereby it has forfeited it charter, or become liable to be dissolved by the abuse of its power; or,

3. Forfeited its privileges or franchises by a failure to exercise its powers; or

4. Done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

5. Exercised a privilege or franchise not conferred upon it by law.[1]

The court upon application for leave to bring such an action will not inquire whether bringing the proposed action is a wise administrative act, but only whether the attorney-general alleges a *prima facie* case, or a case of such gravity that it should be judicially determined.[2] And it is not sufficient foundation for a judgment against a corporation in such an action forfeiting its franchises that there is merely a breach of the letter of some requirement of the law under which it is organized, but there must be a breach of the intent and the meaning of the law. It was held, therefore, that the fact that a turnpike company was required by the act under which it was incorporated to keep its road in the same condition required in its original construction, was not brought within the provisions of the act on account of a technical breach of the provision, but it

[1] Code Civ. Proc. § 1798.

[2] In re *Applic. of Attorney-General*, Sup. Ct. Genl. Term, 3 N. Y. Supp. 464.

must be shown that there was such a want of repair as would render the road dangerous or inconvenient to travellers.[1]

In a recent and very important case[2] it was held that the action of the trustees and stockholders of a company in transferring its capital stock to persons in control of a combination of all the corporations engaged in business of the same nature, and thereby placing the control of its business in the hands of such persons, was such an abandonment of the authority to manage its affairs, vested in it by statute, as would sustain an action brought by the attorney-general against it to annul its charter. By such a course it was held that it had violated the law, and forfeited its charter, and should be dissolved for such abuse of its powers.

A party which would be directly affected by the dissolution of a corporation is entitled to notice of the application, and if his interest is sufficient, to be made a party defendant to the action. This was so held where an action was brought by the attorney-general to vacate the charter of a railroad company which had leased a portion of its road to another company, and the lessee, upon its application, was made a party to the action.[3]

Before granting leave to bring such an action the court may, in its discretion, require such previous notice of the application as it thinks proper to be given to the corporation or any officer thereof, and may hear the corporation in opposition thereto.[4] But whether or not notice of such application shall be given rests entirely in the discretion of the court, and its failure to require any notice to be given does not render an order subsequently made in the action invalid.[5]

[1] *People* v. *Williamsburgh Turnpike, etc., Co.*, 47 N. Y. 586.

[2] *People* v. *North River Sugar Refining Co.* Sup. Ct. Genl. Term, 7 N. Y. Supp. 406. See S. C. Sp. Term, and authorities cited in opinion of Barrett, J., 3 N. Y. Supp. 401; 22 Abb. N. C. 164; 16 Civ. Proc. Rep. 1; 19 St. Rep. 853.

[3] *People* v. *Albany & Vermont R. R. Co.*, 77 N. Y. 232.

[4] Code Civ. Proc. § 1799.

[5] *People* v. *Boston, Hoosac Tunnel, etc., R. Co.*, 27 Hun, 528.

Such an action is triable of course, and of right by a jury and without procuring an order for that purpose.[1]

Upon establishing the facts above stated, the court may render final judgment that the corporation and each officer thereof be perpetually enjoined from exercising any of its corporate rights, privileges and franchises, and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application.[2]

An injunction order may be granted at any stage of such an action, restraining the corporation and any or all of its directors, trustees and other officers from exercising any of its corporate rights, privileges or franchises, or from exercising certain of its corporate rights, privileges or franchises specified in the injunction order, or from exercising any franchise, liberty or privilege, or transacting any business not allowed by law.[3]

Where final judgment is rendered in such an action the attorney-general must cause a copy of the judgment roll to be forthwith filed in the office of the secretary of state, and will cause a notice of the substance and effect of the judgment to be published for four weeks in the newspaper printed in Albany in which legal notices are required to be published, and also in a newspaper printed in the county wherein the principal place of business of the corporation was located.[4]

GENERAL PROVISIONS APPLICABLE TO THE ABOVE ACTIONS.

In the above actions a stockholder, officer, alienee or agent of a corporation is not excused from answering a question relating to the management of a corporation, or

[1] Code Civ. Proc. § 1800.
[2] Id. § 1801.
[3] Id. § 1802.
[4] Id. § 1803.

the transfer or disposition of its property on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offence, or to subject him to a penalty or forfeiture, but his testimony cannot be used as evidence against him in a criminal action or special proceeding.[1]

In such an action the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions theretofore commenced. Such an injunction has the same effect, and except as otherwise expressly prescribed as above, is subject to the same provisions of law as if each creditor upon whom it is served was named therein and was a party to the action in which it is granted.[2] And the court may make an order requiring all the creditors of the corporation to exhibit and prove their claims and thereby make themselves parties to the action in such a manner and in such reasonable time, not less than six months from the first publication of the notice of the order, as the court directs, and that the creditors who make default in so doing shall be precluded from all benefit of the judgment and from any distribution which may be made thereunder, and notice of such order must be given by publication in such newspapers and for such a length of time as the court directs.

It is provided, however, that notwithstanding such an order, any such creditor who may exhibit and prove his claim in the manner directed thereby, with proof by affidavit or otherwise that he has had no notice or knowledge thereof in time to comply therewith any time before an order is made directing a final distribution of the assets of such cor-

[1] Code Civ. Proc. § 1805. [2] Id. § 1806.

poration, shall be entitled to have his claim received and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.[1]

Except where the atorney-general is directed by the legislature to bring an action against a corporation, he must if he has good reason to believe that an action can be maintained in behalf of the people of the state, as prescribed above, bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires, if in his opinion the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director or trustee of the corporation applies to the attorney-general for that purpose and furnishes the security required by law, the attorney-general must bring the action or apply for leave to bring it, if he has good reason to believe that it can be maintained.

Where such an application is made on the relation or information of such a person having an interest in the question, the complaint must allege and the title of the action must show that the action is brought upon the relation of that person, who must give satisfactory security to indemnify the people against the costs and expenses thereof. And the attorney-general is entitled to compensation for his services, to be paid by the relator in like manner as the attorney and counsel for a private person.[2]

When Injunction may Issue.—An injunction order suspending the general and ordinary business of a corporation, or suspending from office, or restraining from the performance of his duties, a trustee, director or other officer thereof, can be granted only by the court upon notice of the application therefor to the principal officer of the corporation, or to the

[1] Code Civ. Proc. § 1807.

[2] Id. §§ 1808, 1986.

trustee, director or other officer enjoined, and if otherwise made, such an injunction is void.[1]

A trustee, director or other officer of a corporation cannot be suspended or removed from office by a court or judge otherwise than by the final judgment of a competent court, in an action brought by the attorney-general for that purpose.[2]

These provisions apply to an action or special proceeding against a corporation created by or under the laws of this state, or a trustee, director, or other officer thereo ; or against a corporation created by or under the laws of another state, government or country, or a trustee, director or other officer thereof, where the corporation does business within the state, or has within the state a business agency, or a fiscal agency, or an agency for the transfer of its stock.[3]

Where an action authorized by a law of the state is brought against one or more persons as stockholders of a corporation, an objection to any of the proceedings cannot be taken by a person properly made a defendant in the action, on the ground that the plaintiff has joined with him as a defendant in the action a person whose name appears on the stock books of the corporation or association, as a stockholder thereof, by the name so appearing, but who is misnamed, or dead, or is not liable for any cause. In such a case the court may at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead or not liable, and in a proper case inserting the name of his representative or successor.[4]

Winding up Corporations Dissolved by the Legislature.—Whenever any corporation organized under the laws of this state is annulled and dissolved by an act of the legislature, it is

[1] Code Civ. Proc. § 1809.
[2] Id. § 1811.
[3] Id. § 1812.
[4] Id. § 1813.

the duty of the attorney-general immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation.[1]

Such suit must be brought in the Supreme Court, in the name of the people of the state, in any county which the attorney-general may select. The president, or vice-president, or secretary, or treasurer of such dissolved corporation, who may have been in office at the time of the dissolution thereof must be named as such officer as defendant in such suit, and the summons and complaint served upon him. If at the time of such annulment and dissolution there is not one of the above designated officers of such corporation, then such suit may be brought against and the summons and complaint therein served upon any one of the persons who were last acting as directors of such corporation.[2]

Upon the presentation of a certified copy of the act of the legislature annulling and dissolving a corporation, and of the summons and complaint found thereon, it is the duty of the Special Term of the Supreme Court in the county designated by such summons and complaint, or of any judge of such court who resides in the judicial department in which such county is situated, immediately to appoint a receiver of the assets and property of such dissolved corporation, and the person so appointed will be both the temporary and permanent receiver thereof, but no one of the officers, directors or stockholders of such corporation may be appointed such receiver.[3]

An issue raised by answer or demurrer or otherwise to the complaint in such action will not be permitted to stay a proceeding of the receiver, or court, or a judge thereof.[4]

Upon the expiration of the term of the existence of a corporation as limited by its charter, it becomes extinct without

[1] Laws of 1886, chap. 310, § 1.
[2] Id. § 2.
[3] Id. § 3.
[4] Id. § 7.

any formal decree of dissolution, and a judgment thereafter rendered against it in an action then pending is void, unless such action be continued by order of the court.[1] And such an action will abate unless so continued.[2]

ARTICLE III.

Receivers.

When a Receiver will be Appointed.—A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action brought as prescribed in the last article for the dissolution, annulling or supervision of a corporation, or for the sequestration of its property.

2. An action brought for the foreclosure of a mortgage upon the property of which the receiver is appointed, where the mortgage debt or the interest thereupon has remained unpaid at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general or by a stockholder to preserve the assets of a corporation having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

Where the receiver is appointed in an action otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.[3]

These provisions apply to an action or a special proceeding against a corporation created by or under the laws of the state, or a trustee, director, or other officer

[1] *Sturges* v. *Vanderbilt*, 73 N. Y. 384.

[2] *McCulloch* v. *Norwood*, 58 N. Y. 562.

[3] Code Civ. Proc. § 1810.

thereof; or against a corporation created by or under the laws of another state, government or country, or a trustee, director or other officer thereof, where the corporation does business within the state, or has within the state a business agency, or a fiscal agency, or an agency for the transfer of its stock.[1] But the court may, in its discretion, attach such conditions as it may see fit to such an order, and such discretion will not be reviewed.[2]

The appointment of a receiver is a proceeding against the corporation, and if the appointment in such proceeding is binding upon the corporation it cannot be attacked collaterally, as no one else can question it.[3]

The order appointing a receiver must designate one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited, and no deposits or investments of such trust funds may be made elsewhere except upon the order of the court upon due notice given to the attorney-general.[4]

The receiver represents both the corporation and the creditors and stockholders, and in his character as trustee for the stockholders he may disaffirm and maintain an action to set aside any illegal or fraudulent transfers of the property of the corporation made by its officers or agents, or for the purpose of the recovery of any of its funds or securities misapplied by them.[5]

All Property to Vest in Receiver.—Except in the case of insurance companies, in all cases where receivers of corporations are appointed on application by the attorney-general, all property real and personal and all securities of every kind and nature, belonging to such corporation, no matter where located or by whom held, must be transferred to-

[1] Code Civ. Proc. § 1812.

[2] *Syracuse Savings Bank* v. *Syracuse, C. & N. Y. R. R. Co.*, 88 N. Y. 110.

[3] *Whittlesey* v. *Frantz*, 74 N. Y. 456; *Attorney-General* v. *Guardian Mutual Life Ins. Co.*, 77 id. 272.

[4] Laws of 1883, chap. 378, § 3.

[5] Laws of 1858, chap. 314; *Attorney General* v. *Guardian Mut. Life Ins. Co.*, 77 N. Y. 272.

vested in, and held by such receiver. It is provided, however, that such transfer shall only be made when directed by an order of the Supreme Court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.[1]

In the case where a life insurance or annuity company is dissolved, and a receiver thereof appointed upon the application of the attorney-general or by an action begun in the name of the people of the State of New York, each and every security and fund, which has been deposited by such company prior to its dissolution, with the Superintendent of the Insurance Department for the security and protection of its policy-holders, or any class of such policy-holders under the statutes in such cases made and provided, may, by an order of the Supreme Court made at a Special Term thereof held within the judicial district in which the principal office of such company was located prior to its dissolution, upon the application of the attorney-general, after service of eight days' written notice of such application upon the Superintendent of the Insurance Department, be transferred from him to the receiver, and he will thereupon deliver such funds and securities to the receiver, and in him the title thereto will immediately vest.

It is the duty of the receiver to convert such securities and funds into money and distribute the proceeds thereof among the respective holders of valid policies of such company for whose benefit and security the deposits were originally made, proportionately to the respective valuations of such policies as shall be ascertained in proceedings taken by such receiver for the valuation of policies, and the determination of the liabilities of such company under the statutes in such cases made and provided, and the course and practice of the Supreme Court in cases of insolvent corporations, until such valuation shall have been paid in full. If any

[1] Laws of 1884, chap. 285, § 1.

portion of such proceeds shall then remain, the balance may, under an order of the Supreme Court duly made at Special Term, be made a part of the general assets of such receivership, and be distributed by the receiver in payment of or upon the general liabilities of such dissolved company, according to law.[1]

A court having the power to appoint receivers of the assets of an insolvent corporation may in aid of their appointment forbid any after interference by way of levy or seizure by attachment and execution of the property in his possession.[2]

Attorney-General may Apply for the Removal of a Receiver.—The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors, or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the Supreme Court at a Special Term thereof, in any judicial district, for an order removing a receiver and appointing another in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of any such receivership, and any appeal from such an order must be to the General Term of the department in which such motion is made.[3]

Receivers in Voluntary Proceedings for Dissolution.—By the repealing act of 1880, it was provided that sections sixty-six to eighty-nine inclusive, of article third, chapter eighth of part third of the Revised Statutes should be and remain applicable to receivers appointed in proceedings for the voluntary dissolution of corporations.[4]

These sections provide that any of the directors, trustees or other officers of such corporation or any of its stock-

[1] Laws of 1884, chap. 285, § 2

[2] *Woerishoffer* v. *North River Construction Co.*, 99 N. Y. 398.

[3] Laws of 1883, chap. 378, § 7.

[4] Laws of 1880, chap. 245.

holders may be appointed receivers, and that before entering upon the duties of their appointment they must give such security, conditioned for the faithful discharge of their duties, as the court may direct,[1] and that thereupon they shall be vested with all the estate of such corporation, and shall be trustees for the benefit of its creditors and stockholders,[2] and have all the power and authority conferred by law upon trustees of insolvent debtors,[3] and may bring actions to recover any instalments due upon any shares of stock subscribed in such corporation.[4]

Immediately upon their appointment they must give notice thereof, which notice, in addition to the matters required by law in notices of trustees of insolvent debtors, must require all persons holding any open or subsisting contract of such corporation to present the same in writing and in detail to such receivers at the time and place in such notice specified. And such notice must be published for three weeks in the state paper and in a newspaper printed in the county where the principal place of conducting the business of such corporation has been situated.[5]

All sales, assignments, transfers, mortgages and conveyances of any part of the estate of such corporations made after filing the petition for a dissolution, in payment of, or as security for, any existing or prior debt, or for any other considerations, and all judgments confessed by such corporation are absolutely void as against receivers, and as against the creditors.[6]

After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation must account and answer for the amount of such debt, and for the value of such property,

[1] Rev. Stat., part III. chap. viii. title 4, art. 3, § 66.
[2] Id. § 67.
[3] Id. § 68.
[4] Id. § 69.
[5] Id. § 70.
[6] Id. § 71.

to the receivers. And the provisions of law in respect to trustees of insolvent debtors, and the collection and preservation of the property of such debtors and the concealment and discovery thereof, and the means of enforcing such discovery, are applicable to receivers so appointed.[1] And they have the same power to settle any controversy arising between them and any debtor or creditor of the corporation by a reference as trustees of insolvent debtors have. And the same proceedings for that purpose may be had.[2]

The receivers must call a general meeting of the creditors of such corporation within four months from the time of their appointment, when all accounts and demands for and against such corporation, and all its open and subsisting contracts, must be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.[3]

If there are any open and subsisting engagements or contracts of such corporation which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as may be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk. And upon such amount being paid by such receivers to the person holding, or being the legal owner of such engagement, it will be deemed cancelled and discharged as against the receivers;[4] and they must retain in their hands a sufficient amount to pay such sums.[5]

If any suit be pending against the corporation or against the receivers for any demand, they may retain the proportion which would belong to such demand if established, and

[1] Rev. Stat., part III. chap. viii. title 4, art. 3, § 72.
[2] Id. § 73.
[3] Id. § 74.
[4] Id. § 75.
[5] Id. § 77.

the necessary costs and proceedings, to be applied according to the event of such suit, or to be distributed in a second or other dividend.[1]

The receivers must distribute the residue of the moneys in their hands among all those who have exhibited their claims as creditors and whose debts have been ascertained, as follows:

1. All debts entitled to a preference under the laws of the United States.

2. Judgments actually obtained against such corporation to the extent of the value of the real estate on which they are respectively liens.

3. All other creditors of such corporation in proportion to their respective demands without giving any preference to debts due on specialties.[2]

If the whole of such estate be not distributed on the first dividend, the receivers within one year thereafter and within sixteen months after their appointment must make a second dividend of all the moneys in their hands among the creditors entitled thereto. Notice of which and that the same will be a final dividend must be inserted once in each week for three weeks in the state paper and in a newspaper printed in the county where the principal place of business of such corporation was situated.[3] And such dividend must be made in all respects in the same manner as the first dividend, except that every creditor who has neglected to exhibit his demand before the first dividend, and who may deliver his account to the receiver before such second dividend, is entitled to receive the sum he would have been entitled to on the first dividend before any distribution is made to the other creditors.[4]

After such second dividend has been made the receivers will not be answerable to any creditor of such corporation,

[1] Rev. Stat., part III. chap. viii. title 4, art. 3, § 78.
[2] Id. § 79.
[3] Id. § 80.
[4] Id. § 81.

or to any person having claims against it by virtue of any open or subsisting engagement, unless such demands have been exhibited and the engagements upon which such claims are founded have been presented to the receivers in detail and in writing, before or at the time specified in their notice of a second dividend.[1] And if after the second dividend is made there remains any surplus in the hands of the receivers, they must distribute the same among the stockholders of the corporation in proportion to the respective amounts paid in by them severally upon their shares of stock.[2] And when any suit, pending at the time of the second dividend, is terminated, they must apply the moneys retained in their hands for that purpose to the payment of the amount recovered and their necessary charges and expenses, and if nothing has been recovered, they must distribute such moneys after deducting their expenses and costs, among the creditors and stockholders of the corporation in the same manner as directed in respect to a second dividend.[3]

All receivers are subject to the control of the court, and may be compelled to account at any time, or may be removed by the court, and any vacancy created by such removal, by death or otherwise, may be supplied by the court.[4]

Within three months after the time prescribed for making a second dividend, the receivers must render a full and accurate account of all their proceedings to the court on oath, which account will be sent to a referee to examine and report thereon.[5]

Previous to rendering such account the receivers must insert a notice of their intention to present the same once in each week for three weeks in the state paper and the newspaper of the county in which notices of dividends are

[1] Rev. Stat., part III. chap. viii. title 4, art. 3, § 82.
[2] Id. § 83.
[3] Id. § 84.
[4] Id. § 85.
[5] Id. § 86.

required to be inserted, specifying the time and place at which such account will be rendered.[1]

The referee will hear and examine the proofs, vouchers and documents offered for or against such account, and report thereon fully to the court.[2] And upon the coming in of such report the court will hear the allegations of all concerned therein, and allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it upon any open or subsisting engagement, and upon all its stockholders. The receivers must also from time to time account in the same manner and with the like effect for all moneys which may come to their hands after the rendering of such account, and for all moneys which have been retained by them for any of the purposes before specified, and must pay all unclaimed dividends into court.[3]

Receivers appointed in Proceedings for Involuntary Dissolution. —By the Repealing Act of 1880, the provisions of the Revised Statutes regulating the duties of receivers in proceedings brought against corporations in equity[4] were made applicable to permanent receivers appointed in actions brought for the involuntary dissolution of corporations.[5]

It was provided in that section that such a receiver should possess all the power and authority conferred, and be subject to all the obligations and duties imposed, upon receivers appointed in the case of the voluntary dissolution of a corporation. It was also made his duty to keep an account of all moneys received by him, and on the first days of January, April, July, and October in each and every year to make and file a written statement verified by his oath, that such statement is correct and true, showing the amount of moneys received by such receiver, his agents or attorneys, the amount he has a right to retain, and the items for which he claims to

[1] Rev. Stat., part III. chap. viii. title 4, art. 3, § 87.

[2] Id. § 88.

[3] Id. § 89.

[4] Id. art. 2, § 42, as amended by Laws of 1858, chap. 348.

[5] Laws of 1880, chap. 245.

retain the same, and the distributive share due each person interested therein, and to pay such distributive share to the person or persons entitled thereto on demand at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver must at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by statute, the Supreme Court, at either a General or a Special Term, may, upon the application of the party aggrieved, unless such neglect or refusal is satisfactorily explained to the court, forthwith remove such receiver and appoint some suitable person in his place; but such removal would not vitiate or annul any legal proceedings had by him, but they must be continued by his successor as if no removal had been made. Such receiver is also liable to pay to the party interested interest at the rate of ten per cent. per annum on all moneys due to such party and retained by him more than one day after such demand is made.

Receivers of Life-Insurance Companies.—If at any time the affairs of any life-insurance company, which has deposited securities under the act for the organization of such companies, appear in the opinion of the Superintendent of the Insurance Department in such a condition as to render the issuing of additional policies and annuity bonds by it injurious to the public interest, the Superintendent must report that fact to the attorney-general, whose duty it will then be to apply to the Supreme Court for an order requiring such company to show cause why its business should not be closed. The court will thereupon proceed to hear the allegations and proofs of the respective parties, and in case it appear to the satisfaction of the court that the assets and funds of the company are not sufficient to justify the further continuance of the business of insuring lives, granting annuities, and incurring new obligations as authorized by

its charter, it will issue an order enjoining and restraining such company from the further prosecution of its business, and appoint a receiver of all its assets and credits. Such receiver, upon filing his bond in an amount and with sureties approved by the court conditioned for the faithful performance of his duties, must take possession of all the assets and credits of such company except the securities deposited in the Insurance Department.[1]

Immediately upon entering upon the duties of his office the receiver must appoint a competent actuary approved by the Superintendent of the Insurance Department, who must make a careful investigation according to the standard fixed by the laws of this state, into the condition of the company, and report thereon in writing under oath to the court, the superintendent and the receiver. And if by such report it be found that the securities deposited by the company in the Insurance Department and the assets and credits, including all future premiums that will mature on all outstanding policies and other obligations of the company, are sufficient under the laws of this state to pay all such policies, annuities and obligations as they may mature, and the legal costs and expenses incident to the business, and if such report is confirmed by the court, the receiver must notify all the holders of such policies, annuities and obligations, requiring them to pay to him as such receiver all premiums and other payments due or to become due to such company. Or, on the confirmation of the report, the court may, in its discretion, direct the receiver to reinsure all registered policies in some solvent company upon the execution by him of an assignment to such reinsuring company of all securities on deposit in trust for registered policy-holders.

In case the report shows that such securities, assets, credits and premiums are not sufficient to pay the obligations of the company as they may mature and the legal

[1] Laws of 1869, chap. 902, § 7.

costs and expenses of the receivership, upon its confirmation by the court, the court may direct the conversion of the securities held by the superintendent into money for the purpose of distribution. And the proceeds of such securities, upon the order of the court, will be paid to the receiver, and must be applied by him under the direction of the court to the payment of the registered policy-holders in proportion to the net value of their policies, and to the registered annuities of such companies in proportion to the then present value of their respective annuities; and the surplus, if any, with all the other assets of the company, must be applied to the payment of all the just debts of such company incurred in the conducting and carrying on of its lawful business.[1]

If the business of the company is continued as above provided, and the receipts are in excess of the sums required to meet its obligations, and such excess amounts to twenty-five thousand dollars, it must be invested in such securities as are authorized to be deposited in the insurance department and be there deposited.

If at any time the funds in the hands of the receiver are not sufficient to meet the obligations of the company as they mature he must notify the superintendent of the amount required to meet the deficiency, and the superintendent will sell such portion of the securities as may be required to meet such matured obligations, and pay the proceeds to the receiver.[2]

Such a receiver has all the powers incident to the successful management of the affairs of the company, and to that end, authority to purchase policies issued by the company, to make any other compromises in the settlement of its outstanding obligations, and to use the corporate seal of the company whenever necessary in the transaction of the business of his receivership.[3]

[1] Laws of 1869, chap. 902, § 8, as amended by Laws of 1880, chap. 168.

[2] Id. § 9.

[3] Id. § 12.

The receiver of any such company may upon the written consent of the Superintendent of the Insurance Department and the attorney-general reinsure the whole of the policy obligations of such company in any solvent company or companies organized under the laws of this state, whenever the assets of the company of which he is receiver are sufficient to effect such reinsurance; and whenever the assets are not sufficient, he may with like consent reinsure a percentage of each and every policy to the extent that the assets of the company may be sufficient to effect such reinsurance. It is provided, however, that no such contract may be entered into except in pursuance of an order of the court in which such receiver was appointed, directing such reinsurance and establishing the general form of the contract to effect the same.[1]

Receivers of Fire and Inland Navigation Insurance Companies.—The receiver of any fire, or fire and inland-navigation insurance company organized under the laws of this state, on the receipt by him of any policy, and at the request of the policy-holder in writing, may cancel the policy and issue in lieu thereof a certificate of indebtedness as such receiver for the amount of the premium paid less the proportional premium for the expired time of the full term for which the policy had been issued or renewed; and upon the receipt of the certificate of indebtedness by the policy-holder the policy becomes null and void, anything in the policy to the contrary notwithstanding.

It is the duty of the receiver to report among the liabilities of the company in his statements to the Insurance Department the total amount of the outstanding certificates of indebtedness not cancelled at the date of making such statement.[2]

Statements Required.—It is the duty of all receivers of insurance companies during the month of January of each

[1] Laws of 1877, chap. 229, § 3.

[2] Laws of 1880, chap. 110, § 4.

year and at any other time when required by the Superintendent of the Insurance Department to make and file annual and other statements of their assets and liabilities and of their income and expenditures in the same manner and form and under the same penalties as the officers of such companies are required to make statements to the Insurance Department.[1]

Reports by Receivers.—It is the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the Special Term of the Supreme Court held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting after the expiration of such time, and to file a copy of the same, if a receiver of a banking or trust company, with the Superintendent of the Banking Department, and if a receiver of an insurance company, with the Superintendent of the Insurance Department, and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein, during the preceding six months. No such receiver is allowed to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof have been stated to the Special Term in the above manner as expenses incurred, and have been approved by that court, by an order duly entered, and such order is subject to review by the General Term and the Court of Appeals, on an appeal being taken by any party aggrieved thereby.

The attorney-general must be given eight days' notice in writing of the intention to present such an account; and he is required to examine the books and accounts of such receiver at least once a year.[2]

All receivers of insolvent corporations who are required to make and file reports of their proceedings must at the time

[1] Laws of 1867, chap. 709, § 2.

[2] Laws of 1883, chap. 378, § 4.

of making and filing such reports serve a copy thereof upon the attorney-general, and all receivers of corporations under the supervision of the Banking Department must on the first day of January and July in each year file with the Superintendent of the Banking Department a report verified by oath in such form as he may prescribe, showing the condition of their respective trusts.[1]

In case any receiver of an insolvent corporation neglects to make and file a report of his proceedings for thirty days after the time he is required by law to make and file such report, or neglects for the same length of time to serve a copy thereof on the attorney-general, the latter may make a motion in the Supreme Court for an order compelling the making and filing and serving of a copy on him of such report, or for the removal of such receiver from his office.[2]

Compensation of Receivers.—Every receiver may be allowed as compensation for his services as such receiver five per cent. for the first one hundred thousand dollars received and paid out, and two and a half per cent. on all sums received and paid out in excess of one hundred thousand dollars. But no receiver may be allowed, or may receive from such percentages or otherwise, for his services for any one year, any greater sum or compensation than twelve thousand dollars, nor for any period less than one year more than at the rate of twelve thousand dollars per year. And where more than one receiver is appointed such compensation must be divided between the receivers.[3]

The above act applies only to receivers of corporations appointed in proceedings in bankruptcy, and not to one appointed in an action to foreclose a mortgage. The allowance of commissions to such a receiver is governed by the provisions of the Code providing for the allowances of compensation by the court or a judge thereof.[4]

[1] Laws of 1880, chap. 537, § 1.
[2] Id. § 2.
[3] Laws of 1883, chap. 378, § 2, as amended by Laws 1886, chap. 275.
[4] *U. S. Trust Co.* v. *N. Y., West Shore & B. R. Co.*, 101 N. Y. 478.

Where upon the death or removal of a receiver a new receiver is appointed the new receiver is not entitled to a full commission upon the funds collected and turned over to him by his predecessor. The law contemplates but one commission, which is the entire compensation provided for collecting and disbursing the funds.[1]

Wages of Operatives Preferred.—It is provided that where a receiver of a corporation created or organized under the laws of this state, and doing business therein, other than insurance and moneyed corporations, is appointed, the wages of the employees, operatives and laborers thereof shall be preferred to every other debt or claim against such corporation, and shall be paid by the receiver from the moneys of such corporation which shall first come to his hands.[2]

Whether these provisions would apply in the case of a receiver appointed in foreclosure proceedings has not been determined.[3] But following the decisions regarding the compensations of receivers it would seem not to apply.[4]

It will be noticed that the language of the act differs from the language in most of the acts for the formation of corporations making stockholders liable to the laborers in certain events. In these acts the liability is generally to the "laborers, servants and apprentices," while here it is to the "employees, operatives and laborers." In *Gurney* v. *Atlantic and Great Western Railway Company*[5] it was held that the term "employees" occurring in an order directing a receiver to pay the "employees" of a company, was broad enough to include payment to the counsel of the company for services rendered.

But it was held in *People* v. *Remington*[6] that the superintendent and the attorney of a company did not come with-

[1] *Attorney-General* v. *Continental Life Ins. Co.*, 32 Hun, 223.

[2] Laws of 1885, chap. 376.

[3] *Metropolitan Trust Co.* v. *Tonawanda V. & C. R. R. Co.*, 103 N. Y. 245.

[4] *U. S. Trust Co.* v. *N. Y., West Shore & B. R. Co.*, 101 N. Y. 478.

[5] 58 N. Y. 358.

[6] 45 Hun, 329.

in the meaning of this statute. But in a later case[1] it was held that one who was employed to assist the general manager of a corporation in keeping its books, to clean the office, and ship goods, did come within its provisions, and was entitled to the preference at the hands of a receiver. In a still later case[2] it was held that a contractor who hired and paid laborers who were generally governed by the rules in force in the factory of the company, was not within its provisions.

In the first of the above cases[3] it was held [Merwin, J., dissenting] that claims of laborers assigned before the appointment of a receiver were not entitled to a preference under the act, but that after his appointment the preference springs into existence and becomes a legal right, which is assignable. It was also held that where the laborers had received notes and had transferred them to third parties who then held them, such holders were not entitled to a preference.

[1] *Brown* v. *A. B. C. Fence Co.*, 52 Hun, 151.

[2] *People* v. *Remington*, 6 N. Y. Supp. 796; 53 Hun, 638.

[3] *People* v. *Remington*, 45 Hun, 329.

APPENDIX A.

LAWS OF 1848, CHAP. 40—AN ACT TO AUTHORIZE THE FORMATION OF CORPORATIONS FOR MANUFACTURING, MINING, MECHANICAL, CHEMICAL, AGRICULTURAL, HORTICULTURAL, MEDICAL OR CURATIVE, MERCANTILE OR COMMERCIAL PURPOSES.

Corporations, how formed.—SECTION 1. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing, publishing, or selling books, pamphlets or newspapers, or advertising the same or other articles, or for the purpose of purchasing, taking, holding and possessing real estate and buildings, and selling, leasing and improving the same, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business, or the business of slaughtering animals, or for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the State of New York, by animal or steam power, or for the purpose of buying, storing, selling or shipping coal, merchandise and farm produce, their operations not to be confined to the county in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, or the business of buying, breeding, grazing, pasturing, dealing in and selling cattle, sheep, hogs, horses and other live-stock in the United States of America, British North America and elsewhere, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office

of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of said company are to be carried on.

No company organized under this act for the purpose of taking, purchasing, holding or possessing real estate and buildings, and selling, leasing and improving the same, shall be permitted to purchase and hold real estate to the value of more than one million dollars; but this act shall not be deemed to repeal or affect in any way any act heretofore passed amendatory of or supplementary to the said act of February seventeen, eighteen hundred and forty-eight, except as herein provided. [*Thus amended by Laws of* 1888, *chap.* 313.]

When to become Bodies Corporate.—§ 2. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate; and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this state, and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever which may be necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same or give any lien thereon.

Trustees to be Elected.—§ 3. The stock, property and concerns of such company shall be managed by not less than

three nor more than thirteen trustees, who shall respectively be stockholders in such company, and a majority of whom shall be citizens and residents of this state, who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such election shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by by-laws of the said company. [*Thus amended by Laws of* 1883, *chap.* 232.]

Election may be Held on any Day.—§ 4. In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

Officers.—§ 5. There shall be a president of the company, who shall be designated from the number of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

Trustees to make Calls on Stockholders.—§ 6. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at

such times and in such payments or instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

To make By-laws.—§ 7. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this state, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

Stock Transferable.—§ 8. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in any other corporation.

Copy of Certificate to be Evidence.—§ 9. The copy of any certificate of incorporation filed in pursuance of this act, certified by the county clerk or his deputy to be a true copy, and of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the facts therein stated.

Liability of Stockholders.—§ 10. All the stockholders of every company incorporated under this act shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them respectively for all debts and contracts made by such company, until the whole amount of capital

stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded as prescribed in the following section; and the capital stock, so fixed and limited, shall all be paid in, one-half thereof within one year and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved.

Certificate of the Payment of Stock to be filed.—§ 11. The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of the said company is carried on.

Report.—§ 12. Every such company shall within twenty days from the first day of January, if a year from the time of filing of the certificate of incorporation shall then have expired, and, if so long a time shall not have expired, then within twenty days from the first day of January in each year after the expiration of a year from the time of filing such certificate, make a report which shall be published in some newspaper published in the town, city or village, or if there be no newspaper published in said town, city or village, then in some newspaper published nearest the place where the business of the company is carried on, which shall state the amount of capital, and of the proportion actually paid in, and the amount of its existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and if any of said companies shall fail so to do, all the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made; but whenever under this section

a judgment shall be recovered against a trustee severally, all of the trustees of the company shall contribute a ratable share of the amount paid by such trustee on such judgment, and such trustee shall have a right of action against his co-trustees, jointly or severally, to recover from them their proportion of the amount so paid on such judgment; provided that nothing in this act contained shall effect[1] any action now pending. [*Thus amended by Laws of* 1875, *chap.* 510.]

Provision relative to Dividends.—§ 13. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the clerk of the company and with the clerk of the county, they shall be exempt from the said liability.

Stock to be Paid in Cash.—§ 14. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

Provision respecting False Certificate or Report.—§ 15. If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to

[1] So in the original.

be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

Provision respecting Stock held by Executors, etc.—§ 16. No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Executors, etc., to Vote at Meetings.—§ 17. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Liability of Stockholders.—§ 18. The stockholders of any company organized under the provisions of this act shall be jointly and severally individually liable for all debts that may be due and owing to all their laborers, servants and apprentices, for services performed for such corporation.

This Act may be Altered or Repealed.—§ 19. The legislature may at any time alter, amend, or repeal this act, or may annul or repeal any incorporation formed or created under this act; but such amendment or repeal shall not, nor shall the dissolution of any such company, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Companies may Increase or Diminish Stock.—§ 20. Any corporation or company heretofore formed, either by special act or under the general law, and now existing for any manu-

facturing, mining, mechanical or chemical purposes, or any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining, mechanical or chemical business, subject to the provisions and liabilities of this act. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company, heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this act, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this act.

Notice thereof to be given.—§ 21. Whenever any company shall desire to call a meeting of the stockholders, for the purpose of availing itself of the privileges and provisions of this act, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting; specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as

aforesaid, or to enable a company to avail itself of the provisions of this act.

Meetings, how to be Organized and Conducted.—§ 22. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if on canvassing the votes it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings, showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished, to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this act, as the case may be.

Indebtedness of Companies.—§ 23. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of such company.

Saving Clause.—§ 24. No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this act, which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against

such company within one year after the debt shall become due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company, for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

Book containing the Names of Stockholders to be kept, with Amount of Stock.—§ 25. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are or shall, within six years, have been stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every day except Sunday and the fourth day of July, be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against such company, or against any one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and

pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom: And every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, by the district attorney of the county in which the business of such corporation shall be located; and when so recovered, the amount shall be paid into the treasury of such county for the use thereof.

General Powers.—§ 26. Every corporation created under this act shall possess the general powers and privileges and be subject to the liabilities and restrictions contained in title third, chapter eighteen, of the first part of the Revised Statutes, and the provisions of section six, article first, title two, chapter thirteen of the first part of the Revised Statutes, shall apply to every such corporation. [*Thus amended by Laws of* 1861, *chap.* 170.]

When Treasurer to render Statement of Assets, etc.; Forfeiture.—§ 27. Whenever any person or persons owning five per cent of the capital stock of any company, not exceeding one hundred thousand dollars, or any person or persons owning three per cent of the capital stock of any company exceeding one hundred thousand dollars, formed under the provisions of this act, shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the person who presented the said written request to said treasurer, within twenty days after such presentation, and shall also at the same time and place keep on file in his office, for six months thereafter, a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid, oftener than once in any six months. If such treasurer shall neglect or refuse to

comply with any of the provisions of this act, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof. [*Added by Laws of* 1854, *chap.* 201, *and thus amended by Laws of* 1862, *chap.* 472, § 1.]

APPENDIX B.

LAWS OF 1875, CHAP. 611—AN ACT TO PROVIDE FOR THE ORGANIZATION AND REGULATION OF CERTAIN BUSINESS CORPORATIONS.

For what Purposes.—§ 1. Corporations may be organized under the provisions of this act for the carrying on of any lawful business except banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings-banks, trust companies or corporations intended to derive profit from the loan or use of money, or safe-deposit companies, including the renting of safes in burglar and fire proof vaults.

General Powers.—§ 2. When so organized, every such corporation shall possess the following general powers:

1. To have succession by its corporate name for the period limited in its certificate of incorporation.

2. To sue and be sued; to complain and defend in any court.

3. To make and use a common seal and alter the same at pleasure.

4. To appoint such subordinate officers and agents as the business of the corporation shall require, and its by-laws shall provide for.

5. To make by-laws for the management of its property, the regulation of its affairs, for the transfer of its stock, and defining the duties of its officers, and from time to time to amend the same.

6. To purchase, hold and possess so much real and personal estate as shall be necessary for the transaction of its business, and sell and convey the same when not required for the uses of the corporation; provided, however, that all real estate acquired in satisfaction of any liability or indebtedness, unless the same be necessary and suitable for

the uses and business of the corporation, shall be sold within three years after becoming the property of such corporation, but such time may be extended to a period not exceeding five years in all, by an order of the Supreme Court made in the district in which the principal business office of such corporation is located, on the verified petition of such corporation, stating the reasons for such extension.

Certificate of Incorporation.—§ 3. Whenever three or more persons, a majority of whom shall be citizens and residents of this state, shall propose to form a corporation under the provisions of this act, they shall make a certificate to that effect, which certificate shall be signed by each of such persons and duly acknowledged by them before some officer authorized to take acknowledgments under the laws of this state. Such certificate shall set forth:

1. The name of the proposed corporation.

2. The object for which it is to be formed, including the nature and locality of its business.

3. The amount and description of the capital stock.

4. The number of shares of which such capital stock shall consist.

5. The location of the principal business office.

6. The duration of the corporation, which, however, shall not exceed fifty years. [*Thus amended by Laws of* 1890, *chap.* 23, § 1.]

Secretary of State to Issue License.—§ 4. Such certificate shall be filed in the office of the secretary of state; and the secretary of state shall thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books for subscriptions to the capital stock of such corporation at such times and places as they may determine; but no license shall be issued in the case of a proposed corporation having the same name as an existing corporation in this state, or a name so nearly resembling that of an existing corporation as to be calculated to deceive.

Subscriptions to Capital Stock; Meeting of Subscribers.—§ 5. Said commissioners shall proceed to open books for subscriptions to the capital stock of such corporation, and no such subscription shall be received, unless at the time of making it

the person so subscribing shall pay to said commissioners ten per cent of the par value of the stock subscribed for in cash. When one-half of the capital stock has been subscribed, said commissioners shall call a meeting of the subscribers for the purpose of adopting by-laws for such corporation and electing directors thereof. Notice of such meeting shall be given to every subscriber, by depositing in the post-office, properly addressed to his last known place of residence, and postage prepaid, at least five days before the time fixed, a written or printed notice, stating the time, place and object of such meeting.

By-laws.—§ 6. The by-laws of every corporation created under the provisions of this act shall be deemed and taken to be its law, and shall provide:

1. The number of directors of the corporation.

2. The term of office of such directors, which shall not exceed one year.

3. The manner of filling vacancies among directors and officers.

4. The time and place of the annual meeting.

5. The manner of calling and holding special meetings of the stockholders.

6. The number of stockholders who shall attend, either in person or by proxy, at every meeting, in order to constitute a quorum.

7. The officers of the corporation, the manner of their election by and among the directors, and their powers and duties. But such officers shall always include a president, a secretary, and a treasurer.

8. The manner of electing or appointing inspectors of election.

9. The manner of amending the by-laws.

Record of Subscribers' Meeting to be Filed; Certificate of Incorporation; Fees of Secretary of State; of County Clerk; Amendment of By-laws.—§ 7. Within ten days after the said subscribers' meeting, said commissioners shall file, in the office of the secretary of state, a verified record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen. There-

upon the secretary of state shall issue to said directors a certificate, setting forth that said corporation is fully organized in accordance with this act. Such certificate shall include a copy of the original certificate provided for in section three of this act, the date and place of the subscribers' meeting, the names of the directors elected, and a statement that all the provisions of this act have been duly observed in the organization of such corporation. A copy of such certificate shall, within ten days after the issuing thereof by the secretary of state, be filed in the office of the clerk of the county in which the principal business office of such corporation is situated. Such certificate shall be recorded at length in a book to be kept in the office of the secretary of state, to be known as the record of incorporations, and also in a similar book in the office of the county clerk aforesaid. Such certificate, or a copy thereof duly certified by the secretary of state or his deputy, shall be presumptive evidence of the incorporation of the corporation named therein, in all courts and proceedings in this state. The secretary of state shall receive for the filing and issuing of all the necessary documents in and about the organization of a corporation under this act, the sum of ten dollars; and for each certified copy of certificate of incorporation, the sum of three dollars, which sum shall be paid into the treasury of the state; and county clerks shall receive the fees now allowed by law. Upon every amendment of the by-laws of any such corporation, a copy of the amended by-law shall be filed in the office of the secretary of state and of such county clerk, and shall not take effect, until so filed; and a copy thereof, certified by the secretary of state or his deputy, shall be received as presumptive evidence of such amended by-law in all courts and proceedings.

Failure to Organize.—§ 8. Unless such corporation shall be fully organized as provided in the last preceding section, within one year after the issuing of the license to commissioners to open books, such license shall be deemed to be revoked, and all proceeding thereunder shall be void.

Secretary of State to publish Statement.—§ 9. The secretary of state shall publish, as an appendix to the session laws of

each year, a statement of all the corporations organized under this act during the preceding year, containing in each case the name of the corporation, its principal business, the location of its principal business office, the amount of capital stock, the date of the filing of the preliminary certificate and of the granting of the final certificate of incorporation by the secretary of state; and any change of location or capital of any such corporation made during the preceding year.

Business to be Managed by Board of Directors; Number of Directors; Quorum; Duty of Secretary and Treasurer.—§ 10. The business of every corporation created hereunder shall be managed by a board of directors (the members of which at their election and throughout their term of office shall be stockholders in such corporation to at least the extent of five shares, and shall hold their offices until their successors are chosen), and by such officers, to be elected by and from among said directors, as the by-laws shall prescribe. The number of directors shall not be less than three nor more than thirteen, and the existing number thereof may be changed to not less than three nor more than thirteen, by a vote of a majority in interest of the owners of the stock issued by said corporation, present in person, or by attorney duly authorized, at a meeting of the stockholders of such corporation called pursuant to such a notice, specifying the purpose of such meeting and given to each stockholder, as is prescribed in section five of this act; and a statement of the change of the number of directors so made, signed and verified by the president or a vice-president of the corporation and by the secretary of the meeting at which the change was made, shall be filed in the office of the secretary of state, and a copy thereof in the office of the clerk of the county in which the principal business office of the company is situated, within ten days after such meeting. A majority of the whole number of directors shall be necessary to constitute a quorum. The secretary shall record all the votes of the corporation and the minutes of its transactions in a book to be kept for that purpose. The treasurer shall give bonds in such sums and with such sureties as are re-

quired by the by-laws for the faithful discharge of his duties. [*Thus amended by Laws of* 1890, *chap.* 23, § 2.]

Capital Stock; Subscriptions when Payable; Penalties for Failure to pay Instalments.—§ 11. The capital stock of every corporation formed under this act shall be divided into shares of not less than ten dollars, nor more than one hundred dollars each; and shall in no case exceed five million dollars. All subscriptions therefor shall be made payable to the corporation in such instalments and at such time or times as shall be fixed by the by-laws or by the directors acting under the by-laws; and if default be made in any payment, an action may be maintained in the name of the corporation to recover any instalment which shall remain due and unpaid for the period of thirty days after the time so fixed for the payment thereof; and no stockholder shall be entitled to vote at any election or at any meeting of the stockholders on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The corporation may, by by-laws, prescribe other penalties for a failure to pay the instalments that from time to time become due, not exceeding forfeiture of the stock, and the amount paid thereon, but no such forfeiture shall be declared against any stockholder before demand shall have been made for the amount due thereon, either in person or by a written or printed notice duly mailed to such stockholder at his last known place of residence at least thirty days prior to the time when such forfeiture is to take effect; and provided, further, that upon such forfeiture the shares of stock held by such delinquent stockholder or subscriber shall be sold at public auction, at the office of said corporation, after ten days' notice thereof shall be conspicuously posted up in said office, and the proceeds of such sale, over and above the amount due on said shares, and after deducting the expenses of such sale, if any, shall be paid to the delinquent stockholder or subscriber. [*Thus amended by Laws of* 1883, *chap.* 102.]

Certificate of Stock.—§ 12. The directors of such corporation shall prepare certificates of stock, and shall deliver

them, signed by the president and treasurer and sealed with the seal of the corporation, to each person entitled to receive the same, according to the number of shares held, which certificates of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, subject, however, to all payments due or to become due thereon; and the assignee to whom the same has been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original holder would have been; but no certificate shall be transferred so long as the holder thereof is indebted to such corporation unless the board of directors shall consent thereto.

May borrow Money.—§ 13. It shall be lawful for all such corporations to borrow money for the legitimate purposes of such corporation, and for such purpose to issue bonds with or without coupons attached thereto, or to mortgage any real estate which it may have or possess, and bearing interest not exceeding six per centum per annum; but the amount of such bonds and such mortgages outstanding at any one time shall not exceed one-half of the value of the corporate property of such corporation. Any issue of such bonds and such mortgages beyond the amount herein specified shall render every director voting the same personally liable to any holder of such bonds or such mortgages, for any damage caused by such over-issue to such holder. No such mortgage or mortgages shall be issued however, without first having obtained the written assent of its stockholders owning more than two-thirds of the stock of said corporation. [*Thns amended by Laws of* 1838, *chap.* 394.]

Issue of Stock.—§ 14. No corporation organized under this act shall issue either stock or bonds except for money, labor done, or property actually received for the use and legitimate purposes of such corporation at its fair value, and all fictitious increase of stock or indebtedness in any form shall be void.

Increase or Decrease of Capital Stock.—§ 15. The capital stock of any corporation organized under this act may be

increased to an amount not to exceed in the aggregate two million dollars, or reduced by a vote of a majority of the stockholders in number, and representing a majority of the stock of such corporation, at any meeting thereof convened for that purpose, pursuant to notice thereof specifying the object of such meeting, and served pursuant to the provisions of section five. A statement of such increase or reduction shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated, within ten days after such action. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be first satisfied and reduced so as not to exceed such diminished amount of capital.

Books of Account.—§ 16. It shall be the duty of the directors of every such corporation to cause to be kept at its principal office or place of business, correct books of account of all its business and transactions, and every stockholder in such corporation shall have the right at all reasonable times by himself or his attorney to examine the records and books of account of such corporation.

Book of Stockholders.—§ 17. It shall be the duty of the directors of every such corporation to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such corporation, and showing their places of residence, the number of shares of stock held by them, respectively, and the time when they, respectively, became the owners of such shares, and the amount actually paid thereon; which book shall, during the usual business hours of the day, on every day, except Sundays and legal holidays, be open for the inspection of stockholders and creditors of the corporation, and their personal representatives, at the principal business office of such corporation; and any and every such stockholder, creditor or representative shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose

whatever, except to render the person to whom it shall be transferred liable for the debts of the corporation according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing from and to whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff in any suit or proceeding against such corporation, or against any one or more stockholders. Every officer or agent of any such corporation, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor; and the corporation shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal and all the damages resulting therefrom. And every corporation that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people of the state by the district attorney of the county in which the principal business office of such corporation is located, and the amount so recovered shall be paid to the proper authorities for the support of the poor of such county.

Annual Reports.—§ 18. Every such corporation shall annually, within twenty days after the first day of January, or in case of such corporation doing business without the United States, then within twenty days after the first day of April, make a report as of the said first day of January, which shall state the amount of capital, and the proportion actually paid in, the amount and, in general terms, the nature of its existing assets and debts, and the names of its then stockholders, and the dividends, if any, declared since the last report, which report shall be signed by the president and a majority of the directors, and shall be verified by oath of the president or secretary of such corporation, and filed in the office of the secretary of state; and if any such corporation shall fail so to do, all the directors thereof shall be jointly and severally liable for all the debts of the corpora-

tion then existing, and for all that shall be contracted before such report shall be made. Provided, however, that any such corporation doing business without the United States shall still be required to make such report, within twenty days after the first day of January, in each year as aforesaid, unless such corporation shall make and file in the office of the secretary of state, within twenty days after the first day of January in each year, a certificate verified by the oath of the president, secretary or treasurer of such corporation, stating that said corporation is at the date of such certificate doing business without the United States, and such certificate shall be conclusive evidence for the purposes of this section, that such corporation is actually doing business without the United States, and provided that if any director shall file with the secretary of state, at any time within thirty days after such first day of January, or first day of April, as the case may be, a certificate, verified by the oath of such director, stating that he has endeavored to have such report made and signed as aforesaid, but that the officers or a majority of the directors have refused or neglected to make and file such report; and shall append to such certificate a report containing the items aforesaid, so far as they are within his knowledge or are obtainable from sources of information open to him, which report shall be verified by him as being true to the best of his knowledge, information and belief, in that case such director shall not be liable on account of such failure to make and file such report upon making proof of such facts in any action which may be commenced against him upon the trial thereof. Whenever, under this section, a judgment shall be recovered against a director severally, all the directors of the corporation shall contribute a ratable share of the amount paid by such director on such judgment, and such director shall have a right of action against his co-directors, jointly or severally, to recover from them the proportion of the amount so paid on such judgment. [*Thus amended by Laws of* 1884, *chap.* 208.]

Dividends.—§ 19. If the directors of any such corporation shall declare and pay any dividend when the corpora-

tion is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, the directors voting in favor of declaring such dividend shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted while they shall respectively continue in office.

Loans to Stockholder.—§ 20. No loan of money shall be made by any such corporation to any stockholder therein, and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the corporation contracted before the repayment of the sum so loaned.

False Certificates.—§ 21. If any certificate or report made, or public notice given, by the officers of any such corporation shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the corporation contracted while they are officers thereof.

Liability of Directors.—§ 22. If the indebtedness of any such corporation shall at any time exceed the amount of its capital stock, the directors of such corporation creating such indebtedness shall be personally and individually liable for such excess to the creditors of such corporation.

Trustees of Stock.—§ 23. No person holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Vote of Executors, etc.—§ 24. Every such executor, admin-

istrator, guardian or trustee shall represent the share or shares of stock in his hands at all meetings of the corporation, and may vote accordingly as a stockholder, and every person who shall pledge his stock as aforesaid may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Limitation on Stockholder's Liability.—§ 25. No stockholder shall be personally liable for the payment of any debt contracted by any corporation formed under this act, which is not to be paid within two years from the time the debt is contracted, nor unless an action for the collection of such debt shall be brought against such corporation within two years after the debt shall become due; and no action shall be brought against any stockholder who shall cease to be a stockholder in any such corporation for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such corporation.

Annual Election of Directors.—§ 26. The annual elections of directors shall be held at such time and place as shall be designated by the by-laws of the corporation, and public notice of such time and place shall be published, not less than ten days previous thereto, in a newspaper published in a city or town in which the principal business office of the corporation is situated, if a newspaper be published therein, and otherwise in the newspaper published nearest to said office; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. No person shall be permitted to vote upon the proxy of a stockholder in any such corporation after the lapse of eleven months from the date thereof, unless the stockholder shall have specified therein that it is to continue in force for some longer and limited time. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected, and he may distribute his votes among those to be voted for as he sees fit; and the persons receiving the greatest number of votes shall be directors, and when any vacancy shall occur among

the directors by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said corporation.

Failure of Election.—§ 27. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said corporation, when it ought to have been made, the corporation, for that reason, shall not be dissolved, but it shall be lawful, on any other day within three months thereafter, to hold an election for directors, upon service of notice upon the stockholders thereof respectively in the manner provided in section five of this act; and all acts of directors shall be valid and binding as against such corporation until their successors shall be elected.

Inspectors of Election.—§ 28. Every person acting as an inspector of election in any such corporation shall, before entering upon the duties of his office, take and subscribe an oath or affirmation before some officer authorized to administer the same, that he will discharge the duties of his office with fidelity, and that he will not receive any vote but such as he believes to be legal, nor reject any which he believes to be legal; and if any such inspector shall violate this oath or affirmation, he shall be subject to all the penalties imposed by law upon inspectors of general state elections in this state violating their duty, and shall be proceeded against in like manner and with like effect.

Duration of Corporate Existence.—§ 29. Whenever any corporation organized under this act has fixed the duration of its corporate existence for a less period than fifty years, it may, at any time, extend the term of its existence beyond the time mentioned in the original certificate of incorporation by the consent of the stockholders owning two-thirds in amount of the capital stock of such corporation, in and by a certificate to be signed by such stockholders, in person or by attorney duly authorized and acknowledged or proved, so as to enable it to be recorded, which certificate shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated, and the said secretary of state, and

the county clerk, respectively, upon such filing shall record the same in the record of corporations kept in his office, and make a memorandum of such record in the margin of the original certificate in such record book; and thereupon the time of existence of such corporation shall be extended, as designated in such certificate, for a term which, with the term originally fixed, will not exceed fifty years.

Taxes.—§ 30. Every corporation organized under this act shall be taxed on all of its property, except its real estate, in the town, city or village, where its principal business office is situated, and on its real estate in the town, city, or village where such real estate is situated shall be taxed therein.

Change of Place of Business.—§ 31. Such corporation may change its principal place of business by the consent of the stockholders owning two-thirds in amount of the capital stock of such corporation, in and by a certificate to be signed by such stockholders in person or by attorney duly authorized and acknowledged or proved, which certificate shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated; and the secretary of state and county clerk respectively, shall upon such filing, record the same in the record of corporations kept in his office, and make a memorandum of such record in the margin of the record of the original certificate recorded in such office, and thereupon the principal business office of such corporation shall be deemed to be changed as stated in such certificate.

Under what Provisions Existing Corporations may Organize.—§ 32. Any corporation heretofore or hereafter organized under the general laws of this state, except such corporations as are particularly excepted by the first section of this act from organizing thereunder, may come under and avail itself of the privileges and provisions of this act by complying with the following provisions: The directors of such corporation shall publish a notice, signed by at least a majority of them, in a newspaper published in the county in which the principal business office thereof is situated, for at least three successive weeks, and to deposit a written or printed copy

thereof in the post-office, postage prepaid, addressed to each stockholder, at his last known place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, and the time and place when and where such meeting shall be held. At the time and place specified in the notice, the stockholders shall organize by choosing one of the directors chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if votes represent a majority of all the stock of the company shall be given in favor of availing itself of the provisions of this act, the said officers shall make a certificate of the proceedings, showing a compliance therewith, duly acknowledged, and stating:

1. The name of the corporation.

2. The object for which it is formed, including the nature and locality of its business.

3. The amount and description of the capital stock.

4. The number of shares of which such capital stock consists.

5. The location of the principal business office.

6. The duration of the corporation, which, however, shall not exceed fifty years.

7. The names of the directors for the ensuing year; which certificate, with a copy of the by-laws of such corporation, shall be filed in the office of the secretary of state, whereupn the secretary of state shall issue to said directors a certificate setting forth that said corporation is fully reorganized in accordance with this act. Such certificate of the secretary of state shall include a copy of the certificate of the proceedings (not including the by-laws), held as hereinbefore set forth, the date and place of the stockholders' meeting, the names of the directors elected, and a statement that all the provisions of this act have been duly observed in the reorganization of such corporation. A copy of such certificate shall, within ten days from the issuing thereof by the secretary of state, be filed in the office of the clerk of the county in which the principal business office of such corporation is situated. Such certificate shall be recorded at length in a book

to be kept in the office of the secretary of state. For the issuing of this certificate of reorganization the secretary of state shall receive the same fee as is provided in section seven of chapter six hundred and eleven of the laws of eighteen hundred and seventy-five. From the time of such filing such corporation shall be deemed to be a corporation organized under this act, and, if originally organized or incorporated under any general law of this state, shall have and exercise all such rights and franchises as it has theretofore had and exercised, under the laws pursuant to which it was originally incorporated. But such change or proceedings shall not in any way affect, change or diminish the existing liabilities of the corporation so availing itself of the provisions of this act. [*Thus amended by Laws of* 1885, *chap.* 540, § 1.]

Classifications of Corporations.—§ 33. The corporations formed under this act shall be of two classes, to be known respectively, as:

1. Full liability companies.
2. Limited liability companies.

Full Liability Companies.—§ 34. In "full liability companies," all the stockholders shall be severally individually liable to the creditors of the company in which they are stockholders, for all debts and liabilities of such company, and may be joined as defendants in any action against the company. No execution shall issue against any stockholder individually, until execution has been issued against the company and been returned unsatisfied; and whenever a judgment shall be recovered against a stockholder individually, all the stockholders shall contribute a proportionate share of the amount paid by such stockholder on such judgment, proportionate to the number of shares of stock owned by each of such stockholders, and such stockholder shall have a right of action against the other stockholders in such corporation jointly or severally, to recover from them and each of them, the proper portion due by them and each of them of the amount so paid on such judgment.

Limited Liability Companies.—§ 35. In "limited liability companies," the name of the company shall in every case have as its last word, the word "limited" and every such

corporation shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position in letters easily legible, and shall have its full name stated in legible characters in all notices, advertisements, and other official publications of such company, and in all its bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings, used in the transaction of the business of the corporation.

Omission of Word "Limited."—§ 36. Every omission of the word "limited" in the use of the name of such company shall render each and every officer or director in such company personally liable for any indebtedness, damage or liability incurred during such omission. If any limited liability company under this act does not paint or affix, and keep painted or affixed its name, in the manner above set forth, it shall be liable to a penalty of not exceeding twenty-five dollars for such omission, for every day during which such name is not so kept painted or affixed; and every director or officer of such company who shall authorize or permit such omission shall be liable to a like penalty; and if any director or officer of such company, or any person on its behalf, shall use or authorize the use of any seal purporting to be a seal of the company, on which its name is not so engraved, as aforesaid, or shall use or authorize the issue of any notice, advertisement, or other official publication of such company, or shall sign or authorize to be signed, on behalf of such company, any bill of exchange, promissory note, indorsement, check, order for money or goods, invoice, bill, receipt, letter of credit or other writing of the company wherein its name is not mentioned, as aforesaid, he shall be liable to a penalty of one hundred dollars. The penalties in this section provided shall be sued for in the name of the people of the State of New York by the district attorney of the county in which the principal office of such corporation is located, and the amounts recovered shall be paid over to the proper authorities for the support of the poor of such county.

Liability of Stockholder in Limited Company; Definition of "Stockholder;" Execution; Capital Stock.—§ 37. In limited liability companies, all the stockholders shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company has been paid in, and a certificate thereof has been made and recorded as hereinafter prescribed. The term stockholder as used herein shall apply, not only to such persons as appear by the books of the corporation or association to be such, but also to every equitable owner of stock, although the same may appear on such books in the name of another person, and also to every person who shall have advanced the instalments or purchase-money of any stock in the name of any person under twenty-one years of age, and while such person remains a minor, to the extent of such advance; and also to every guardian or other trustee who shall voluntarily invest any trust funds in such stock; and no trust funds in the hands of such guardian or trustee shall be in any way liable uuder the provisions of this act by reason of any such investment, nor shall the person for whose benefit any such investment may be made be responsible in respect to such stock until thirty days after the time when such persons respectively become competent and able to control and dispose of the same; but the guardian or other trustee making such investment as aforesaid shall continue responsible as a stockholder until such responsibility devolves upon the person beneficially interested therein; and in respect to stock held by a guardian or other trustee under a transfer of the same by a third person, or under positive directions by a third person for such investment, the person making such transfer or giving such directions, and his executors and administrators shall, for the purposes of this act, be deemed a stockholder; and the estate of such person, if he be deceased, shall be responsible for the debts and liabilities chargeable on such stock, according to the provisions of this act. No execution shall issue

against any stockholder individually, until execution has been issued against the corporation and returned unsatisfied; and whenever a judgment shall be recovered against a stockholder individually, all the stockholders shall contribute a proportionate share of the amount paid by such stockholder on such judgment proportioned to the number of shares of stock owned by each of such stockholders, and such stockholder shall have a right of action against the other stockholders in such corporation, jointly or severally, to recover from them, and each of them, the proportion due by them and each of them of the amount so paid on such judgment. The capital stock of every such limited liability company shall be paid in, one half thereof within one year, and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved. The directors of every such company within thirty days after the payment of the last instalment of the capital stock, shall make a certificate stating the amount of the capital so paid n, which certificate shall be signed and sworn to by the president and a majority of the directors; and they shall, within the said thirty days, record the same in the office of the secretary of state, and of the county in which the principal business office of such corporation is situated.

Dissolution not to Impair Liability.—§ 38. The dissolution for any cause whatever, of any corporation created as aforesaid, shall not take away or impair any remedy given against such corporation, its stockholders or offices, for any liabilities incurred previous to its dissolution.

Extension of Existence.—§ 39. The directors of any manufacturing corporation organized under this act, who may desire within one year from the date of the original certificate of such manufacturing corporation to extend the business of such corporation beyond that mentioned in said original certificate, providing that the proposed extension of said business shall be of the same general character of that stated in, and which might have been properly included in said original certificate, are hereby authorized to make and file an amended certificate of incorporation to conform to this

act; and upon the making and filing of such amended certificate, the said corporation shall be deemed and taken to be a manufacturing corporation for all purposes stated in said amended certificate from the time of filing said original certificate. [*Added by Laws of* 1888, *chap.* 513.]

APPENDIX C.

LAWS OF 1880, CHAP. 542—AN ACT TO PROVIDE FOR RAISING TAXES FOR THE USE OF THE STATE UPON CERTAIN CORPORATIONS, JOINT-STOCK COMPANIES AND ASSOCIATIONS.

LAWS OF 1881, CHAP. 361—AN ACT TO AMEND CHAPTER FIVE HUNDRED AND FORTY-TWO OF THE LAWS OF EIGHTEEN HUNDRED AND EIGHTY, ENTITLED "AN ACT TO PROVIDE FOR RAISING TAXES FOR THE USE OF THE STATE UPON CERTAIN CORPORATIONS, JOINT-STOCK COMPANIES AND ASSOCIATIONS."

President or Treasurer to make Annual Report to Comptroller on or before the 15th day of November. Where no Dividend has been declared, Treasurer and Secretary to estimate and appraise Capital Stock and forward same to Comptroller. Appeal.—SECTION 1. Hereafter it shall be the duty of the president or treasurer of every association, corporation or joint-stock company liable to be taxed on its corporate franchise or business, as provided in section three of this act, to make report in writing to the comptroller annually on or before the fifteenth day of November, stating specifically the amount of capital paid in, the date, amount and rate per centum of each and every dividend declared by their respective corporations, joint-stock companies or associations during the year ending with the first day of said month. In all cases where any such corporation, joint-stock company or association shall fail to make or declare any dividend upon either its common or preferred stock during the year ending as aforesaid, or in case the dividend or dividends made or declared upon either its common or preferred stock during the year ending as aforesaid shall amount to less than six per centum upon the par value of the said common or preferred stock, the treasurer and secretary thereof, after being duly sworn or affirmed to do and perform the same with fidelity, according to the best

of their knowledge and belief, shall, between the first and fifteenth days of November, in each year in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of said common or preferred stock, estimate and appraise the capital stock of such company upon which no dividend has been made or declared, or upon the par value of which the dividend or dividends made or declared amounted to less than six per centum, at its actual value in cash, not less, however, than the average price which said stock sold for during said year; and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the comptroller a certificate thereof, accompanied by a copy of their said oath or affirmation, by them signed, and attested by the magistrate or other person qualified to administer the same; provided, that if the comptroller is not satisfied with the valuation so made and returned, he is hereby authorized and empowered to make a valuation thereof and to settle an account upon the valuation so made by him for the taxes, penalties and interest due the state thereon; and any association, corporation or joint-stock company dissatisfied with the account so settled, may within ten days appeal therefrom to a board consisting of the secretary of state, attorney-general and state treasurer, which board, on such appeal, shall affirm or correct the account so settled by the comptroller, and the decision of said board shall be final; but such appeal shall not stay proceedings unless the full amount of the taxes, penalties and interest as due on said account, as settled by the comptroller, be deposited with the state treasurer.

Ten per cent. to be added to Tax in Case of Failure to make Report, etc. Failure for Two Successive Years to be reported to Governor. —§ 2. If the said officers of any such corporation, joint-stock company or association shall neglect or refuse to furnish the comptroller, on or before the 15th day of November of each and every year, with the report aforesaid, or the certificate of appraisement, and oath or affirmation, as the case may be, as required by the first section of this act, or to pay the

tax imposed on such corporation, company or association within fifteen days after the first of January as provided in the fourth section of this act, it shall be the duty of the comptroller of the state to add ten per centum to the tax of said corporation, company or association, for each and every year for which such report or certificate of appraisement and oath or affirmation were not so furnished, or for which such tax shall not have been paid, which percentage shall be assessed and collected with the said tax in the usual manner of assessing and collecting such taxes; provided that if said officers of any such corporation, joint-stock company or association shall intentionally fail to comply with the provisions of the first or fourth section of this act for one year, the comptroller shall report the fact to the governor, who, if he shall be made satisfied that such failure was intentional, shall thereupon direct the attorney-general to take proceedings, in the name of the people of this state, to declare the charter or privileges of said corporation, joint-stock company or association forfeited, and at an end; and for such intentional failure duly found, the charter and privileges of every such corporation, company or association shall cease, end, and be determined.

Annual Tax; Amount.—§ 3. Every corporation, joint-stock company or association whatever, now or hereafter incorporated, organized or formed under, by or pursuant to law in this state or in any other state or country, and doing business in this state, except only savings-banks, and institutions for savings, life-insurance companies, banks, foreign insurance companies, manufacturing or mining corporations, or companies wholly engaged in carrying on manufacture, or mining ores within this state, and agricultural and horticultural societies or associations, which exceptions, however, shall not include gas companies, trust companies, electric or steam heating, lighting and power companies, shall be liable to and shall pay a tax, as a tax upon its franchise or business, into the state treasury annually, to be computed as follows: If the dividend or dividends made or declared by such corporation, joint-stock company or association, during any year ending with the first day of November, amount to six or

more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-quarter mill upon the capital stock for each one per centum of dividends so made or declared; or if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of one and one-half mills upon each dollar of the valuation of the said capital stock made in accordance with the provisions of the first section of this act; and in case any such corporation, joint-stock company or association shall have more than one kind of capital stock, as, for instance, common and preferred stock, and upon one of said stocks a dividend or dividends, amounting to six or more than six per centum upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter mill for each one per centum of dividend made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of one and and one-half mills upon each dollar of a valuation made also in accordance with the provisions of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum. [*Thus amended by Laws of* 1889, *chap.* 353.]

When Tax to be Paid.—§ 4. It shall be the duty of the treasurer or other officer having charge of any corporation, joint-stock company or association, upon which a tax is imposed by either of the preceding sections of this act, to transmit the amonnt of said tax to the treasury of the state within fifteen days after the first day of January in each and every year.

Officers of Insurance Companies to make Reports Semi-annually; what to Contain; Amount of Tax.—§ 5. Hereafter it shall be the duty of the president, secretary or other proper officer of

every insurance company and every association organized or incorporated by or under any law of this state, and of every person or partnership doing an insurance business in this state (except life-insurance companies, and purely mutual beneficial associations, whose fund for the benefit of members, their families or heirs, is made up entirely of contributions of their members, and the accumulated interest thereon), to make report in writing to the comptroller annually upon the first day of August in each year, after the first day of August, eighteen hundred and eighty-one, setting forth the entire amount of premiums received on business done in this state by such company, or association, person or partnership during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits, or any other substitute for money, and every such company, association, person or partnership shall pay into the state treasury, at the date aforesaid, a tax, as a tax on its corporate franchise or business, at the rate of eight-tenths of one per centum upon the gross amount of said premiums. And every company or association organized under the laws of any other state or country, and every person or partnership doing an insurance business in this state, except as aforesaid, shall pay into the treasury on the first day of August in each year a tax at the rate of eight-tenths of one per centum on their gross premiums received by them on business transacted in this state during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits or any other substitutes, for money. And every such company, association, person, partnership, or the agents and officers thereof in this state, shall make report in writing to the comptroller annually upon the first day of August in each year, setting forth the entire amount of premiums received during the period aforesaid. Provided, that the reports above required shall be made under oath or affirmation, and that it shall be the duty of the comptroller of the state to add ten per centum to the account of any company, association, person or partnership which shall neglect or refuse for a period of

thirty days to make the said report, or to pay into the state treasury the tax imposed by this section. And it shall also be the duty of the president, secretary, or other proper officer of each and every insurance company, association, partnership, and of every person liable to be taxed under this section, to make a report in writing to the comptroller on the first day of August, eighteen hundred and eighty-one, under oath or affirmation, of the entire amount of premiums received on business done in this state during the six months ending with the preceding thirtieth day of June, and to pay a tax at the rate of eight-tenths of one per centum thereon. And it shall be the duty of the comptroller of the state to add ten per centum to the account of any company, association, person or partnership, which shall neglect or refuse for a period of thirty days to make the said report, or to pay into the state treasury the tax imposed.

Tax on Railroad, Express, Navigation and other Companies.—§ 6. In addition to the taxes above provided for, every corporation formed for railroad, canal, steamboat, ferry, express, navigation or transportation purposes, and every elevated railway company, and every other corporation, joint-stock company or association now or hereafter incorporated or organized by or under any law of this state, or now or hereafter incorporated or organized by or under the laws of any other state or country and doing business in this state, and owning, operating or leasing to or from another corporation, joint-stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe line or transportation route or line, or elevated railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freights or passengers, and every telegraph company or telephone company incorporated under the laws of this or any other state, and doing business in this state, and every express company or association, palace car or sleeping car company or association incorporated or unincorporated, doing business in this state, shall pay to the state treasurer for the use of the state, as a tax upon its corporate franchise or business in this state, a tax, at the rate of five-tenths of one per centum

upon the gross earnings in this state of said corporation or company or association, for tolls, transportation, telegraph, telephone or express business transacted in this state.

Tax to be Paid Semi-annually; Treasurer to render Statement under Oath.—§ 7. The tax imposed under section six of this act shall, after the first day of August, eighteen hundred and eighty-one, be paid annually on the first day of August of each year. It shall be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section six of this act to transmit to the comptroller, on the first day of August in each year, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint-stock companies derived from all sources during the year ending with the preceding thirtieth day of June, together with the amount of tax imposed thereon by section six. And it shall also be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section six of this act, to transmit to the comptroller on the first day of August, eighteen hundred and eighty-one, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint-stock companies derived from all sources during the six months ending with the thirtieth day of June, eighteen hundred and eighty-one, together with the tax imposed thereon by section six of this act. And if any such corporation, joint-stock company or association shall neglect or refuse, for a period of thirty days after any tax imposed by sections six or seven of this act becomes due, to make returns or to pay the same, the amount thereof, with the addition of ten per centum thereto, shall be collected for the use of the state as other taxes are recoverable by law from such corporation, joint-stock company or association.

Lands and Real Estate to be Taxed, but Capital Stock to be Exempt.—§ 8. The corporations, joint-stock companies and associations mentioned in this act as taxable shall hereafter be exempt from assessment and taxation for state purposes, except upon their real estate and as herein provided; but

they shall in all other respects be liable to assessment and taxation as heretofore.

How Taxes to be Applied.—§ 9. The taxes imposed by this act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the state, and if any corporation, joint-stock company, person, partnership or association shall neglect or refuse to pay any tax by this act required to be paid, the same may be sued for in the name of the people of the state, and recovered in any court of competent jurisdiction, in an action to be brought by the attorney-general at the instance of the comptroller.

Saving Clause.—§ 10. All obligations, liabilities, and taxes heretofore incurred or imposed under said act, chapter five hundred and forty-two of laws of eighteen hundred and eighty, are saved, and shall be enforced as if the said act had not been hereby amended.

Amount of Capital Employed here to be Basis of Tax; Report to state same; if Dissatisfied, Comptroller may Fix Amount.—§ 11. The amount of capital stock which shall be the basis for tax under the provisions of section three of this act, in the case of every corporation, joint-stock company and association liable to taxation thereunder, shall be the amount of capital stock employed within this state. In making to the comptroller the report in writing or certificate of estimate and appraisal of the capital stock of such corporation, joint-stock company or association provided for by the first section of this act, it shall be the duty of the president or treasurer thereof, as the case may be, to state specifically the amount of capital stock employed within this state, of such corporation, joint-stock company or association. Whenever the comptroller is dissatisfied with such report or certificate of estimate and appraisal, as the case may be, of any corporation, joint-stock company or association whose capital is only partially employed within this state, he is authorized and empowered to ascertain, fix and determine the amount of capital employed within this state, and to settle an account for the taxes and penalties due the state thereon. [*Added*

by Laws of 1882, *chap.* 151, *and thus amended by Laws of* 1885, *chap.* 501.]

On Failure to make Report, etc., Comptroller may Examine Books, etc.—§ 12. Whenever any corporation, joint-stock company or association liable to make reports or certificates of estimate and appraisal to the comptroller, under any of the provisions of this act, shall neglect or refuse to make such report or reports within the time prescribed in this act, or shall make such report or certificate as shall be unsatisfactory to the comptroller, the comptroller is authorized to examine, or cause to be examined, the books and records of any such corporation, joint-stock company or association, and to fix and determine the amount of tax and penalty due in pursuance of the provisions of this act, either from the said books and records, or from any other data in his possession which shall be satisfactory to him, and to settle an account for said tax and penalty, together with the expenses of such examination, against said corporation, joint-stock company or association. [*Added by Laws of* 1882, *chap.* 151, *and thus amended by Laws of* 1885, *chap.* 501.]

Comptroller may Issue Subpœna; Punishment for Failure to Obey.—§ 13. Whenever the comptroller shall deem it necessary or important to examine any person as a witness upon any subject or matter relating to the amount of capital stock of such corporation, or to use, examine or inspect any book, account, voucher or document in possession of any officer of such corporation, or other person, or under his control, relating to such capital stock and tax, he shall have the power to issue a subpœna in proper form, commanding such person or officer to appear before him or some person designated as commissioner by him by an appointment in writing, filed in the office of such comptroller, at a time and at the place where the principal office of such corporation is situated within this state in such subpœna specified, to be examined as a witness, and such subpœna may contain a clause requiring such person or officer to produce on such examination all books, papers and documents in his possession or under his control, relating to the capital stock of such corporation and the amount thereof employed within this state. Such

subpœna shall be served upon the person named by showing him the original subpœna and delivering to and leaving with him at the same time a copy thereof. The comptroller or the commissioner so designated by him as aforesaid may administer oaths to such persons as he may desire to examine, so brought before him by subpœna or otherwise, and examine them on oath in relation to any matter which may in any wise be material in determining the amount of the tax to be paid by any such corporation, joint-stock company or association as aforesaid. Whenever any person duly subpœnaed to appear and give evidence as aforesaid, or to produce any books and papers as hereinbefore provided, shall neglect or refuse to appear or to produce such books and papers according to the exigency of such subpœna, or shall refuse to testify before said comptroller or the commissioner so designated by him, or to answer any proper and pertinent question, he shall be deemed in contempt, and thereupon any justice of the supreme court of the judicial district within which the principal office of such corporation within this state is situated shall, upon the motion of the comptroller, based upon affidavit showing the commission of the offense, either, first, make an order requiring the accused to show cause before him, at a time and place specified therein, why the accused should not be punished for the alleged offense; or, second, issue a warrant of attachment directed to the sheriff of a particular county, or generally directed to the sheriff of any county where the man may be found, commanding him to bring him before said justice either forthwith or at a time and place therein specified, to answer for the alleged offense. On the return of said attachment and the production of the body of the defendant therein the said justice shall have jurisdiction in the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed and the same punishments inflicted as in the case of a witness subpœnaed to appear and give evidence as is prescribed in title three, chapter seventeen of the Code of Civil Procedure, in proceedings to punish a contempt of court other than a criminal contempt. [*Added by*

Laws of 1882, *chap.* 151, *and thus amended by Laws of* 1885 *chap.* 501.]

Comptroller may Adjust Accounts for Taxes and Penalties since May 12, 1882; Proviso as to Payment.—§ 14. The comptroller is hereby authorized and directed, upon application to him made by any corporation, joint-stock company or association, to make, settle and adjust all accounts against such corporation, joint-stock company or association, for all taxes and penalties arising under the third section of this act since the twelfth day of May, A.D. eighteen hundred and eighty-two, by taking as a basis for taxation the capital employed within the state by such corporation, joint-stock company or association. Provided, however, that such corporation, joint-stock company or association shall not be entitled to the benefit of a settlement upon such basis unless it shall have secured such adjustment and paid into the treasury the full amount of the taxes so settled before the first day of August, eighteen hundred and eighty-five, nor shall this section apply to the case of any tax for which suit shall have been heretofore brought by the attorney-general, in which suit the trial has been commenced, or in which judgment shall have been entered heretofore for the people for the amount of said tax. Any corporation, joint-stock company or association whose capital has heretofore been, only partially employed within this state, and which is now liable for taxes arising under the third section of this act since the twelfth day of May A. D. eighteen hundred and eighty two, and which are still due and unpaid, may, at any time prior to the first day of August, eighteen hundred and eighty-five, pay to the state treasurer, for the use of the state, in full discharge of the same, such sum of money as shall be fixed by the comptroller as the tax due for the said period by the said corporation, joint-stock company or association, upon the basis of the capital employed within the state. Provided, that this section shall not apply to the case of any tax for which suit may have heretofore been brought by the attorney-general, and for which judgment shall have been entered therein, or if in such suit trial has been commenced. [*Added by Laws of* 1885, *chap.* 501.]

Interest.—§ 15. All accounts hereafter settled by the comptroller agreeably to the provisions of this act shall bear interest from a date thirty days after the sending of notice of settlement, hereinafter provided for, until full payment thereof shall be made. [*Added by Laws of* 1885, *chap.* 501.]

Notice to be given before making Settlement of Taxes.—§ 16. It shall be the duty of the comptroller after making with any partnership, corporation, joint-stock company or association, liable to taxation under any of the provisions of this act, the settlement of such taxes, to forthwith send notice hereof in writing, to such person, partnership, corporation, joint-stock company or association, which notice may be sent by mail to the post-office address of such corporation, joint-stock company or association. [*Added by Laws of* 1885, *chap.* 501.]

Regulations as to Writ to Review Determination of Comptroller.—§ 17. No writ of certiorari to review the determination and settlement of the comptroller as to the amount of capital used within the state by any corporation, joint-stock company or association, and as to the tax and penalty to be paid thereon, shall be granted, except application therefor be made within thirty days after service upon such corporation, joint-stock company or association by the comptroller of notice of such settlement. Nor shall any such writ be granted except the papers upon which motion therefor is to be made, including notice of motion, shall have been served upon the comptroller at least eight days before such motion, nor unless the corporation, joint-stock company or association applying for such writ shall, before making such motion, have deposited with the state treasurer the full amount of taxes, penalties and charges so settled and adjusted by the comptroller, and filed with him an undertaking in such amount, and with sufficient sureties as shall be approved by one of the justices of the supreme court of this state, to the effect that if said writ be vacated and the determination of the comptroller sustained, the applicant for the writ will make payment of all costs and charges which may accrue against such applicant in the prosecution of such writ,

including costs on all appeals. [*Added by Laws of* 1885, *chap.* 501.]

After Thirty Days Comptroller may Issue Warrant for Collection; How Warrant Enforced.—§ 18. After the expiration of thirty days from the service by the comptroller of notice of the settlement aforesaid, if no proceedings shall have been taken to review the same, as provided by this act, or if the deposit with the state treasurer of the amount of the said settlement, together with the undertaking, as provided for by this act, shall not then have been made, it shall be lawful for the comptroller to issue his warrant or warrants under his hand and seal of office directed to the sheriff of any county in this state, commanding him to levy upon and sell the goods and chattels, lands and tenements of the said corporation, joint-stock company or association found within the said county, for the payment of the amount of said settlement, together with interest thereon and costs of executing such warrant, and to return the said warrant to the comptroller, and pay to the state treasurer the money which shall be collected by virtue thereof, by a certain time therein to be specified, not less than sixty days from the date of such warrant. Such warrant shall be a lien upon and shall bind the personal estate of the person, partnership, corporation, joint-stock company or association against whom it shall be issued, from the time an actual levy shall be made by virtue thereof, and the sheriff to whom such warrant shall be directed shall proceed upon the same in all respects with the like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments rendered by a court of record, and shall be entitled to the same fees and costs for his services in executing the same, to be collected in the same manner. [*Added by Laws of* 1885, *chap.* 501.]

Comptroller may Revise Accounts in certain cases.—§ 19. The comptroller may at any time revise and readjust any account theretofore settled against any person, association, corporation, or joint-stock company by himself or any preceding comptroller for taxes arising under this act or the act to which it is an amendment whenever it shall be made to ap-

pear by evidence submitted to him that the same has been illegally paid, or so made as to include taxes which could not have been lawfully demanded, and shall resettle the same according to law and the facts and charge or credit as the case may require the difference, if any, resulting from such revision and resettlement upon the current accounts of such person, association, corporation or joint-stock company. [*Added by Laws of* 1889, *chap.* 463.]

Comptroller's Action may be Reviewed.—§ 20. The action of the comptroller upon any application made to him by any person or corporation for a revision and resettlement of accounts as provided in this act, may be reviewed, both upon the law and the facts upon certiorari by the Supreme Court at the instance either of the party making such application or of the attorney-general in the name and in behalf of the people of this state, and for that purpose the comptroller shall return to such certiorari the accounts and all the evidence submitted to him on such application, and, if the original or resettled accounts shall be found erroneous or illegal by that court either in point of law or of fact the said accounts shall be there corrected and restated by the said Supreme Court and from any such determination of the Supreme Court an appeal may be taken by either party to the Court of Appeals as in other cases. [*Added by Laws of* 1889, *chap.* 463.]

APPENDIX D.

FORMS.

The following embrace the most important forms necessary to be used in the organization and conduct of the business of corporations, and may be varied to apply to the different classes of corporations. For convenience in transcribing or dictating, numbers, corresponding to the blank spaces, are inserted in each form.

I.

Certificate of Incorporation under the Manufacturing Act.

STATE OF NEW YORK }
(CITY AND) COUNTY } *ss.:*
OF (1) , }

We (2) [*insert names of corporators in full*] do by these presents associate ourselves together to form a company pursuant to and in conformity with chapter forty of Laws of eighteen hundred and forty eight, entitled "An Act to Authorize the Formation of Corporations for Manufacturing, Mining, Mechanical or Chemical Purposes," and the several acts supplementary thereto and amendatory thereof, and for that purpose, we do hereby declare:

I. The corporate name of the said company shall be (3) .

II. The objects for which the company shall be formed are (4) .

III. The capital stock of said company shall be (5) dollars.

IV. The said company shall commence its existence upon the filing this certificate [*or, on the day of* 18] and shall continue for (6) [*not exceeding fifty*] years [*or shall terminate on the day of* .]

V. The number of shares of stock of said company shall be (7) and the par value of each share shall be (8) dollars.

VI. The number of trustees shall be (9) [*not less than three nor more than thirteen*] and the names of those who shall manage the affairs of the company for the first year are (10) [*insert names and residences of trustees*].

VII. The names of the town and county in which the operations of the company shall be carried on are (11) [*state place, and add if necessary*] [and such other places within and without this state as the trustees may from time to time designate] (*or*) [a part of the business of said company is to be carried on at (12) without this state]. Witness our hands and seals this (13) day of .

[*Names of Corporators*].

STATE OF NEW YORK, }
(CITY AND) COUNTY OF } *ss.:*

On the (14) before me personally appeared (15) [*insert names of corporators*] known to me to be the individuals described in and who executed the foregoing certificate and severally acknowledged that they executed the same.

In witness whereof I have hereunto set my hand and official seal this day of .

Notary Public,
(*or Com'r of Deeds.*)

II.

Preliminary Certificate under the Business Act.

STATE OF NEW YORK, }
(CITY AND) COUNTY OF (1) } *ss.:*

We, the undersigned (2) , of the city of (3) , and of the city of (4) , a majority of whom are citizens and residents of this State, being desirous of forming a company in the class of (5) [*limited or full*] liability, in accordance with the provisions of an act of the Legislature of the State of New York, entitled "An Act to provide for the Organization and Regulation of certain Business Corporations," passed June 21st, 1875, and the acts amendatory thereof do hereby certify,

THAT the name of the proposed corporation shall be (6)

[*give name in full, with the addition of the word "Limited," if it be in that class*].

THAT the object for which it is to be formed is (7) [*state the nature of the business to be carried on*], and place of business thereof, is to be at (8) in the County of (9) and State of (10) .

THAT the amount of the capital stock of said corporation shall be (11) dollars. [*If not all cash, state here what proportion is to be represented by money and what by property, describing it.*]

THAT the number of shares of which said capital shall consist is (12) , of the par value of (13) dollars each. [*Not less than* $10 *nor more than* $100 *each*].

THAT the location of the principal business office of said Corporation is to be at (14) , State of New York.

THAT the duration of said Corporation is to be for the term of (15) [*not exceeding fifty*] years.

STATE OF NEW YORK,
(CITY AND) COUNTY OF (1) , } *ss.:*

On this (16) before me personally appeared (17), known to me to be the persons described in and who executed the foregoing instrument, and who severally acknowledged to me that they executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal, this ——— day of ———.

———,
Notary Public,
(or Com'r of Deeds.)

III.

License under the Business Act.

STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE, } *ss.:*

WHEREAS, an application for the formation of a corporation in the class of ——————— liability, under the cor-

porate name ——————————— pursuant to the provisions of Chapter 611, Laws of 1875, entitled "An act to provide for the organization and regulation of certain business corporations," was filed in this office on the ——— day of ———, A.D. 189—,

I therefore License and Appoint ——————————— Commissioners to open books for subscriptions to the capital stock of such corporation, agreeably to the requirements of the said act.

WITNESS my hand and the Seal of office of the Secretary of State, at the city of Albany, this ——— day of ———, 189—.

———————————

Secretary of State.

IV.

Commissioners' Report and Record of Proceedings.

STATE OF NEW YORK, }
(CITY AND) COUNTY OF (1) , } *ss.:*

We, the undersigned, duly appointed and empowered by License the Secretary of State of the State of New York, by bearing date of the (2) Commissioners to open books for subscriptions to the capital stock of (3) [*full, or limited*] liability company, to be known under the corporate name of (4) [*state name in full, with the addition of the word "Limited," if it be in that class*], hereby report, in conformity therewith:

THAT on the (5) at (6) in the city of (7) , we opened books for subscriptions to the capital stock of such company.

THAT, annexed hereto is a true copy of the list of subscriptions to the said capital stock, which list is marked "EXHIBIT A," and is hereby made a part of this record.

THAT, at the time of making such subscription, each subscriber paid to us in cash ten per cent of the par value of each and every share subscribed for by him.

THAT, on the (8) , it appearing that at least one-half of the capital stock of the said (9) [*name in full*], had been

duly subscribed in accordance with the requirements of § 5 of the aforesaid act, we called a meeting of the subscribers for the purpose of adopting By-laws for said corporation, and of electing Directors therefor.

THAT such meeting was called by depositing a notice in the post-office, addressed to each and every subscriber at his last-known place of residence, and with the proper postage thereon prepaid, at least five days previous to the time appointed for said meeting, as appears by the copy of said notice, and the accompanying affidavit hereunto annexed, marked "EXHIBIT B," and which is hereby made a part of this record.

THAT at the time and place named in said notice, to wit: on the (10) at (11) in the city of (12) , at (13) o'clock in the (14) . noon, subscribers to the number of (15) and representing, in person or by proxy, (16) of the capital stock, appeared and organized by choosing Mr. (17) Chairman and Mr. (18) Secretary.

THAT on motion, of Mr. (19) it was *Resolved*, "That the following are hereby adopted as the By-laws of this Corporation:"

of "The [*state name in full*]. [*Insert by-laws in the record.*]

THAT the meeting then proceeded to the election of (20) [*state number, as required by By-laws*] Directors to manage the affairs of the company for the first year.

THAT the Chair appointed Mr. (21) and Mr. (22) Inspectors of such election.

THAT upon a canvas by such Inspectors, it was found that (23) votes, representing (24) shares of the capital stock, had been cast, of which (25)

——— of ———, received ——— votes;
——— " ———, " ——— "
——— " ———, " ——— "

being a majority of all the votes cast; whereupon they were declared duly elected, as appears by the Certificate of the Inspectors hereunto annexed, marked "EXHIBIT C," and which is hereby made part of this record.

THAT, there being no further business, the meeting then adjourned. ———, *Secretary.*

And we, the Commissioners aforesaid, being severally duly sworn, depose and say, and each for himself deposes and says, that the foregoing is a true and correct record of the proceedings had under the aforesaid License, and of all of them, from the time of the receipt thereof.

Severally subscribed and sworn to before me, this ——— day of ———, A. D. 189—.

[L. S.]

———.
———.
———.
———.

———, *Notary Public.*

"EXHIBIT A," referred to in the foregoing report:

LIST OF SUBSCRIBERS

to the capital stock of "The [*name in full.*]

NAMES.	RESIDENCE.	NO. OF SHARES.
———	———	———

"EXHIBIT B," referred to in the foregoing report:

NOTICE.

A meeting of the subscribers to the capital stock of "The (26) [*name in full*] will be held at (27) in the city of (28) on (29) at (30) o'clock in the (31) noon, for the adoption of By-laws for said corporation, and the election of Directors to manage the concerns of the company for the first year.

Dated ———.

———,
———,
———,
———,
———,
Commissioners.

STATE OF NEW YORK, (CITY AND) COUNTY OF (32) , } *ss:*

(33) being duly sworn, deposes and says that on the (34) he deposited in the post-office in the city

of (35) printed [*or written*] copies of the above notice, each notice having been first securely enclosed in an envelope, and said envelopes having been respectively addressed to each subscriber at his last known place of residence, and the proper postage on each of said envelopes having been prepaid.

Sworn to before me this ——— day of ———, A. D. 189—.

———, *Notary Public.*

"EXHIBIT C," referred to in the foregoing report:

STATE OF NEW YORK, (CITY AND) COUNTY OF (36) } *ss.:*

We (37) , the Inspectors for the first annual election of (38) [*name in full*], being severally duly sworn, do depose and say, and each for himself deposes and says: That, at such election held at (39) in the City of (40) on the (41) , the following-named stockholders were elected Directors to manage the affairs of the said company for the first year of its existence, each Director having received the number of votes set opposite to his name, to wit:

(42) received (43) votes;

&c.

Sworn to before me, this ——— day of ———, A. D. 189—.

———, *Notary Public.*

———,
———,
———,
Inspectors.

V.

By-Laws.

By Laws of (1)
Adopted (2)

ARTICLE I.

DIRECTORS.

SECTION 1. The stock, property and concerns of the (3) shall, except when otherwise provided, be managed and controlled by a Board of Directors (4) in number, who shall respectively be stockholders in said company to the extent of (5) shares, and who shall hold their

offices for one year, or until others are elected in their stead. Vacancies in the Board shall be filled only by a vote of a majority of the Directors then existing.

SEC. 2. The annual election for Directors shall be held on the (6) [*first Tuesday of May in each year*], at the principal office of the company.

SEC. 3. Regular meetings of the Board of Directors shall be held at the office of the company in the City of (7) on the (8) [*first Tuesday of each month*]. A majority of the whole number of Directors shall constitute a quorum for the transaction of business.

SEC. 4. Special meetings of the Board of Directors may be called by the President in his discretion, or at the request in writing of two members of the Board. Notices of such meetings shall be given by a written or printed notice delivered or mailed to each Director (9) days before said meeting.

SEC. 5. The order of business at the regular meetings of the Board of Directors shall be:

1. Calling the roll.
2. Reading the minutes of the last regular and all intervening special meetings.
3. Reading the minutes and report of the Executive Committee.
4. Communications and reports of the President.
5. Report of the Treasurer.
6. Reports of standing committees.
7. Reports of special committees.
8. Unfinished business.
9. New business.

ARTICLE II.

STOCKHOLDERS.

SECTION 1. Regular meetings of the stockholders shall be held at the principal office of the company on the (10) [*first Tuesday of May in each year*], for the purpose of electing Directors. At such meetings two inspectors of election shall first be chosen by ballot to count and certify the votes for directors at such meeting.

SEC. 2. Special meetings of the stockholders may be called by the President in his discretion, and shall be called by him whenever requested so to do by stockholders owning (11) [*one-third*] of the capital stock.

SEC. 3. Stockholders representing (12) [*one-third*] of the whole capital stock of the company, present either in person or by proxy, shall be necessary to constitute a quorum.

ARTICLE III.

OFFICERS.

SECTION 1. The officers of the company shall consist of a President, Secretary and Treasurer, and shall be annually elected by [and from] the Board of Directors. [One person may hold any two of the above offices.] All elections shall be by ballot, and a majority shall be necessary for a choice. Vacancies among the officers may be filled at any meeting of the Board, but no officer elected by the Board shall be removed except by a vote of (12) [*two-thirds*] of the Directors.

SEC. 2. The President shall have the chief management, control and supervision of the affairs of the company; he shall preside at all meetings of the stockholders and of the Directors, and shall [with the advice of the Executive Committee] appoint all such subordinate officers as may be necessary for the transaction of business, and remove the same at will, and fix their compensation. He shall sign all certificates of stock of the company, and all checks, drafts, notes, contracts or other obligations of the company.

SEC. 3. It shall be the duty of the Secretary to keep the minutes of all meetings of the stockholders and of the Directors [and such minutes of the meetings of the Executive Committee as such Committee may direct]; to keep the books and records of the company, except the stock-book, and to give notice to all Directors of the time and place of all special meetings, and to notify all stockholders appearing as such on the books of the company of all regular and special meetings of the stockholders.

SEC. 4. It shall be the duty of the treasurer to receive all moneys belonging to the company, and to deposit the

same with such bank as may be designated by the (13) [*Executive Committee*, or *Board of Directors*] to the credit of the company in its corporate name; to keep true and accurate vouchers of all money disbursed; to keep regular books of account, showing all receipts and disbursements of every nature for the company, and to render an account thereof when required by the Board of Directors [or the Executive Committee]. Before entering upon the performance of his duties he shall furnish such bonds for the faithful performance of the same as the [Executive Committee or] Board of Directors may require. He shall have the custody of the seal of the company, and he shall keep or cause to be kept a book containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; and the amount of stock actually paid in.

ARTICLE IV.

EXECUTIVE COMMITTEE.

[*This article may be inserted if desired.*]

SECTION 1. There shall be an Executive Committee, which shall consist of the President and two Directors, to be chosen by ballot by the Board of Directors. The Committee may fix such times for the meetings as they may see fit, and may be called together by the President at any time for special business.

SEC. 2. All the powers and duties of the Board of Directors, except as otherwise expressly provided by such Board, may be exercised and discharged by the Executive Committee.

SEC. 3. The Executive Committee may fix and designate such bonds to be given by the Treasurer, or any other officer or employee of the company, conditioned for the faithful performance of their duties and with sureties to be approved by such committee as they may see fit.

ARTICLE V.

DIVIDENDS.

SECTION 1. Dividends shall be made from the profits of the company at such times as the Board of Directors may determine.

ARTICLE VI.

CERTIFICATES OF STOCK.

SECTION 1. Each owner of stock in the company shall be entitled to a certificate or certificates representing the shares owned by him, which certificate shall be signed by the President and Treasurer and sealed with the corporate seal.

SEC. 2. Such stock shall be transferable on the books of the company in person, or by attorney duly authorized, upon the surrender of the old certificate.

ARTICLE VII.

CONTRACTS OF THE COMPANY.

SECTION 1. All notes, deeds, contracts and other evidences of debt or obligations to bind the company shall be signed by the President and countersigned by the Secretary.

SEC. 2. Checks and drafts of the company shall be signed by the Treasurer and countersigned by the President.

ARTICLE VIII.

CORPORATE SEAL.

SECTION 1. The seal of this company shall be circular in form, with the name of the company and the year of incorporation thereon, and shall be in the custody of the Treasurer.

ARTICLE IX.

BY-LAWS: HOW AMENDED.

SECTION 1. These by-laws may be altered or amended by a vote of two-thirds of the whole number of Directors at any regular meeting of the Board, or at a special meeting called for that purpose, provided notice of the intention to

make such alteration or amendment shall be given at a previous regular meeting.

VI.

Certificate of Payment of Capital Stock.

We, (1) , President, and (2) , being a majority of the Trustees of (3) , do hereby certify,

1. That the capital stock of said company is (4) dollars.

2. That the entire amount of said capital has been paid in. [*If any portion of the capital was paid in in property add*] and that (5) dollars was paid in in cash, and (6) dollars was paid in in property for the use of said company at its fair and reasonable value.

Dated (7) , 18 .

STATE OF NEW YORK, }
(CITY AND) COUNTY OF (8) , } *ss.:*

(9) , President, and (10) , being duly sworn, severally depose and say, that the said (11) is the President and (12) are Trustees of the (13) and a majority thereof, and that the statements made in the foregoing certificate are true.

Sworn to before me this ——— }
of ———, 189—. }

VII.

Annual Report under the Manufacturing Act.

We, (1) , President, and (2) , being a majority of the Trustees of (3) , do hereby certify,

1. That the capital stock of the said company is (4) dollars.

2. That the amount actually paid in is (5) dollars [*if any portion of the capital was paid in in property add*], of which (6) dollars was paid in in cash and (7) dollars was paid in in property for the use of said company at its fair and reasonable value.

3. That the amount of the existing debts of said company do not exceed (8) dollars.

Dated (9) , 18 .

STATE OF NEW YORK,
(CITY AND) COUNTY OF (10) } *ss.:*

(11) [*President or Secretary*] being duly sworn, says that (12) is the President and (13) are the Trustees of the (14) company and a majority thereof, and that this deponent is (15) [*President or Secretary*], and the foregoing report is true to the best of his knowledge, information and belief.

Sworn to before me, this ——— day of ———, 189—.

VIII.

Annual Report under the Business Act.

We, (1) , President, and (2) , being a majority of the Trustees of the (3) company, do hereby certify, that on the first day of January last,

1. The capital stock of the said company was (4) dollars.

2. That the actual proportion paid in was (5) dollars [*if any portion of the capital was paid in in property add*], of which (6) dollars was paid in in cash and (7) dollars was paid in in property for the use of said company at its fair and reasonable value.

3. That the nature of the then existing assets of the corporation was (8). [*Specify nature of assets.*]

4. That the names of the stockholders at the said date were (9) .

5. That since the last annual report the following dividends have been paid and declared (10). [*Specify dividends.*]

Dated (11) , 18 .

[*Add affidavit as in form number VII.*]

IX.

Assent to Mortgage.

We, the undersigned, being (1) [*state the necessary number of stockholders and amount of stock to be held*], holding the number of shares of stock of said company set opposite our respective names, do hereby consent that said company shall execute a bond or bonds [*or note or notes*], conditioned for the payment of the sum of (2) dollars and a

mortgage to secure the payment thereof upon all or any part of the real or personal estate of said company, and also upon all or any parts of the goods, chattels, liberties and franchises of saidcompany.

Dated (3) , 18 .

Names of Stockholders. Number of Shares.

X.

Acknowledgment by Corporation.

STATE OF NEW YORK, }
(CITY AND) COUNTY OF (1) , } *ss.:*

On the (2) day of ———, 18 , before me personally appeared (3) known to me to be the (4) [*state what officer*] of the (5) described in and who executed the foregoing (6) who being by me duly sworn, did depose and say, that he resides in the (7) ; that he is the (8) [*state office held*]; that he knows the corporate seal of the said (9) ; that the seal affixed to the foregoing instrument is the corporate seal of the said (10) and was affixed thereto by order of the Board of Directors of said (11) ; and that he signed his name thereto by the like order as (12) [*state office held*] of the said (13) . And deponent further says that he is acquainted with (14) and knows him to be the (15) [*state name of other officer signing*] and that the signature of said (16) above subscribed is the genuine handwriting of said (17) and was thereto subscribed by the like order of the Board of Directors in the presence of deponent.

Subscribed and sworn to, before me this }
day of ———, 18 . }

XI.

Verification of Pleading or Petition.

STATE OF NEW YORK, }
(CITY AND) COUNTY OF (1) , } *ss.:*

(2) being duly sworn says that he is (3) [*state what officer*] of the (4) ; that he has read the forego-

ing (5) and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason that the foregoing (6) is verified by deponent and not by (7) [*state party, as plaintiff or defendant or petitioner*] is that (7) [*same*] is a corporation and deponent is (8) thereof. [*If there are allegations on information and belief, add*] and that the sources of deponent's information and the grounds of his belief are (9) [*state same*].

Sworn to, before me this ——— day of ———, 18 .

XII.

Report to State Comptroller where dividend of six per cent or more has been declared.

Report of the (1) for the year ending the 1st day of November, A.D. 18 .

Office of the (1) [*give post-office address of company*].

18 .

To the Comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz.:

Total authorized capital of company.....$
Whole number of shares of stock authorized.....
Number of shares of stock issued.....
Par value of each share.....$
Amount paid into the treasury of the company on each share.....$
Amount of capital paid in.....$
Amount of capital upon which dividends were declared.....$
Date of each dividend declared.....
Amount of each dividend declared.....$
Rate per cent per annum of dividends.....
Amount of profit added to sinking fund.....$

———, *Treasurer.*

STATE OF NEW YORK,
(CITY AND) COUNTY OF (2) } ss.:

On this (3) personally appeared before me, (4) , treasurer of (5) , who being duly sworn did depose and say, that the foregoing report is just and true, according to the accounts in the books of the company, and that it includes all dividends, whether in cash, stock, scrip, or of any other character or description, declared by said company during the year ending on the 1st day of November, A.D. 18 , and that the amount of profit added to the sinking fund of this company, during the said year, without a division thereof among its stockholders, was $ as above stated.

———, *Treasurer.*

Sworn to and subscribed before me, the day and year aforesaid.

———, *Notary Public.*

Where no dividend or a dividend of less than six per cent has been declared, substitute the following for the last affidavit and acknowledgment.

STATE OF NEW YORK,
(CITY AND) COUNTY OF (2) } ss.:

On this (3) , before me, personally appeared (4) , treasurer, and (5) , secretary, of the above-named company, who being by me severally duly sworn, did say that the amount of capital paid in of said company is (6) , and that said company declared no dividend in cash, stock, scrip, or of any other character or description during the year ending the 1st day of November, 18 , save the dividends herein reported, and that they will with fidelity, according to the best of their knowledge and belief, estimate and appraise the capital stock of said company at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price or value as indicated or measured by the amount of the dividends made or declared during the year; and that the amount of profit added to the sinking fund of this company during the said

year without a division thereof among its stockholders, was (7) dollars.

———, *Treasurer.*
———, *Secretary.*

Sworn to and subscribed before me, the day and year aforesaid.

Notary Public.

Office of the (8) [*state name and post-office address of company*].

18 .

We, the undersigned, being the treasurer and secretary of the above-named company, do certify, that in pursuance of our aforesaid oaths, we have estimated and appraised the capital stock of said company, at its actual value in cash as follows, viz.: (9) shares at (10) dollars per share, amounting in the whole to (11) dollars.

In witness whereof, we have hereunto set our hands the day and year aforesaid.

———, *Treasurer.*
———, *Secretary.*

XIII.

Statement for Local Taxation.

Statement made by the (1), [*state full name of company or corporation*] to the assessors of the (2),[*state town or ward of city where the principal office or place of transacting the financial concerns of said company or corporation is located*] for the purposes of taxing the property of said company for the year 18 .

Capital stock paid in or secured to be paid in,
Rate of last annual dividend,
Surplus earnings on hand exceeding ten per cent of the capital stock,
[*If stock is worth less than par state actual value.*]
Nominal taxable capital and surplus,
Value of other personal property.

Deductions :

Amount of capital actually paid for real estate [*state location of real estate*].

Amount of indebtedness [*except mortgages on real estate and current expenses*].

Mortgages on real estate,

Amount invested in the stocks of other corporations which are taxed upon their capital,

Amount invested in United States securities,

Amount of capital stock held by New York State,

Amount of capital stock held by any incorporated literary or charitable institution,

Total amount of taxable personal property and capital,

The principal place of transacting the financial business of this company is at ———

[*If assessed by the state under Laws of* 1881, *chap.* 361, *so state*].

Treasurer.

STATE OF NEW YORK,
(CITY AND) COUNTY OF — }

I, the treasurer of said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

APPENDIX E.

THE following laws of 1890 were received too late to be incorporated in the text, the last chapters having been passed after the book had gone to press.

Chapter 193 is of considerable importance, as involving the rights of purchasers of the franchises and property of manufacturing corporations.

Chapter 506, which goes into effect July 1st, is the act for the regulation and supervision of mortgage companies, which has already attracted much attention.

CHAPTER 119.

AN ACT to amend chapter one hundred and forty-three of the laws of eighteen hundred and seventy-four, entitled "An act to authorize the formation of corporations for the erection and keeping of hotels," as amended by chapter one hundred and twenty-seven of the laws of eighteen hundred and eighty-five, and chapter five hundred and ninety-two of the laws of eighteen hundred and eighty-six.

SECTION 1. Section sixteen of chapter one hundred and forty-three of the laws of eighteen hundred and seventy-four, entitled "An act to authorize the formation of corporations for the erection and keeping of hotels," is hereby amended so as to read as follows:

§ 16. After the passage of this act it shall not be lawful to organize any corporation under chapter seven hundred and ninety-one of the laws of eighteen hundred and sixty-six, or the acts passed supplementary thereto and amendatory thereof.

§ 2. Said act, as amended by chapter one hundred and twenty-seven of the laws of eighteen hundred and eighty-

five, and chapter five hundred and ninety-two of the laws of eighteen hundred and eighty-six, is hereby further amended by adding thereto and making a part thereof as section nineteen, as follows:

§ 19. Any company formed under this act may secure the payment of any debt heretofore contracted, or which may be contracted by it, in the business for which it was incorporated, by mortgaging all or any part of the real or personal estate of such company; and every mortgage so made shall be so valid to all intents and purposes as if executed by an individual owning such real or personal estate; provided that the written assent of the stockholders owning at least two-thirds of the capital stock of such company shall first be filed in the office of the clerk of the county where the mortgaged property is situated.

§ 3. This act shall take effect immediately.

CHAPTER 193.

AN ACT supplemental to chapter forty of the laws of eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and the amendments made thereto.

SECTION 1. When the property and franchises of any corporation, organized under the provisions of chapter forty of the laws of eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and the amendments made thereto, shall be sold by virtue of any mortgage or deed of trust duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of an execution issued thereon, or under any sale made by a receiver appointed in proceedings for the dissolution of such corporation, the creditors of such corporation, or such of them as desire, or any person, persons, or committee designated by them, may purchase at such sale such franchises and such property, or any part thereof, and upon such purchase shall acquire title to the

same in the manner prescribed by law. He or they may associate with them any number of persons, not less than the numbers required by law, for the incorporation of such corporation, a majority of whom shall be citizens and residents of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of sale possessed by the corporation whose property shall have been so sold upon making, acknowledging and filing, in the office where certificates of such corporations are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court, by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and if the sale was made by a receiver, the date of the order appointing the receiver, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate.

2. The maximum amount of its capital stock, and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of trustees, not less than three nor more than thirteen, with their names and post-office address, who shall manage the affairs of the new corporation for the first year.

4. Any plan or agreement which may have been entered into, at or previous to the time of sale, by the purchasers or by them and their associates, in anticipation of the formation of the new corporation, and pursuant to which such purchase was made.

Such corporation shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises which at the time of such sale belonged to or were vested in the corporation last owning the property sold or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporations.

§ 2. At or previously to the sale the purchasers thereof or the persons for whom the purchase is to be made may enter into a plan or agreement for or in anticipation of the readjustment of the respective interests therein of the creditors uniting in such plan of the corporation owning such property and franchises at the time of sale, and the respective rights of the associates of such creditors uniting in such plan, if any, and for the representation of such creditors and associates, if any, in the stock of the new corporation to be formed, and also in the bonds of the new corporation, if any bonds are to be issued. And may therein regulate the voting by the holders of the preferred and common stock at any and all stockholders' meetings, and by the holders of any or all of the bonds of the corporation foreclosed, or of the bonds issued or to be issued by the new corporation, and such right of voting by bondholders shall be exercised in such manner, for such period and upon such conditions as shall be therein described. Such plan or agreement must contain suitable provision for the bondholders voting by proxy, if they are allowed to vote, and must not be inconsistent with the laws of the state, and shall be binding upon the corporation until changed as therein provided or as otherwise provided by law. If bonds of the new corporation are issued as provided for by the said plan or agreement, they may be secured by a mortgage or trust deed upon the property of the new corporation, its franchises, rights and privileges. The new corporation, when duly organized, pursuant to such plan or agreement and the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization pay, compromise or discharge any debt, claim or liability of the former corporation to the creditors of the former corporation who unite in the plan or agreement to form said new corporation as provided in and by said plan. And may establish preferences in respect to the payment of dividends in favor of any portion of its capital stock, and may divide its stock into classes, but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the

certificate of incorporation, nor shall the bonds issued by it exceed in the aggregate two-thirds of the value of the corporate property.

§ 3. The supreme court may direct a sale of the whole of the property, or such part of it as it may think proper, together with the rights, privileges and franchises of the corporation when the sale is made by a receiver, and if the whole of the property is not so sold, together with the rights, privileges and franchises of the corporation, the balance of the property shall be sold separately. If the sale is made under the power contained in a mortgage or mortgages or deed of trust, the judgment or order may in like manner direct the sale to be made either in case of the non-payment of interest only, or of both the principal and the interest due and to be paid and secured by any such mortgage or mortgages or deeds of trust.

§ 4. This act shall take effect immediately.

CHAPTER 292.

AN ACT to amend section eight of chapter two hundred and forty-eight of the laws of eighteen hundred and seventy-two, entitled "An act to authorize the formation, establishing and maintaining of driving-park, park and agricultural associations."

SECTION 1. Section eight of chapter two hundred and forty-eight of the laws of eighteen hundred and seventy-two, entitled "An act to authorize the formation and establishing and maintaining of driving park, park and agricultural associations" is hereby amended to read as follows:

§ 8. The officers of any association organized under the provisions of this act shall be jointly and severally liable, for all debts due from said association, contracted while they are officers thereof, and prior to the filing of a certificate showing that the whole amount of capital stock has been paid in as required by section three of this act, provided a suit for the collection of the same be brought within one year after the debt shall become due and payable.

§ 2. Nothing in this act contained shall affect any claim or liability which now exists.

§ 3. This act shall take effect immediately.

CHAPTER 400.

AN ACT in relation to life and casualty insurance companies, associations and societies organized under the laws of this state.

SECTION 1. No order, judgment or decree, providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any life or casualty insurance company, association or society of this state or appointing a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the attorney-general on his own motion or after his approval of a request in writing of the Superintendent of the Insurance Department except in an action by a judgment creditor or in proceedings supplementary to execution.

§ 2. This act shall take effect immediately.

CHAPTER 439.

AN ACT to amend chapter five hundred and forty-six of the laws of eighteen hundred and eighty-seven, entitled "An act to provide for the organization of trust companies, for their supervision, and for the administration of their affairs."

SECTION 1. Section twenty-seven of chapter five hundred and forty-six of the laws of eighteen hundred and eighty-seven, entitled "An act to provide for the organization of trust companies, for their supervision, and for the administration of their affairs," is hereby amended so as to read as follows:

§ 27. The trustees shall have a discretionary power of investing the moneys received by them in trust, in public stocks of the United States, or of any individual state, or in the bonds or stocks of any incorporated city or county of this state, duly authorized to be issued, or in such real and

personal securities as they may deem proper; but no trust company shall invest in the stock of any private incorporated company to an amount in excess of ten per cent of the capital of the trust company.

§ 2. Section thirty-one of said chapter five hundred and forty-six of the laws of eighteen hundred and eighty-seven is hereby made applicable to any trust company chartered and existing before June eighth, eight hundred and eighty-seven, by special acts of the legislature.

§ 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 4. This act shall take effect immediately.

CHAPTER 506.

AN ACT relating to the supervision of mortgage companies organized under the laws of another state.

SECTION 1. The Superintendent of the Banking Department is hereby empowered and directed to issue a license under his hand and seal, in accordance with the conditions hereinafter mentioned, authorizing mortgage companies organized under the laws of another state to transact business within the limits of this state. The supervisory power granted under this act shall apply to associations, copartnerships, individuals, joint-stock companies, firms, or corporations organized under the laws of any other state, and known as mortgage, loan, investment or trust companies, who sell, offer for sale, or negotiate bonds or notes secured by deed or trust or mortgage of real estate, or choses in action, owned, issued, negotiated or guaranteed by it or them.

§ 2. The companies, associations and others described in section one of this act, shall make and furnish to the Superintendent of the Banking Department a true and verified statement of their financial condition in detail on blanks furnished by the superintendent for that purpose, which statement shall show, first, the amount of capital actually paid in, in cash; second, the amount of capital subscribed; third, the undivided profits or earnings on hand; fourth, the total liabilities itemized in such form as may be indicated in the

blanks; fifth, the total amount of moneys loaned, invested or guaranteed; sixth, the number and amount of all mortgages in arrears of interest for a period exceeding six months prior to the date of said report; seventh, the number and amount of mortgages foreclosed during the past year; and eighth, the present cash value of all the real estate held or owned by foreclosure or otherwise, and such other and further information concerning their business affairs and methods as the superintendent shall require. The said statement shall be signed by such officers and others, and in such form as the superintendent may prescribe. The first statement under this act shall be made on the first day of July, eighteen hundred and ninety, and succeeding statements shall be made semi-annually on the first day of January and July respectively. The superintendent may, if he be of opinion that it is desirable, require that a like report from any company either wholly or in part, as to the particulars aforesaid, be made to him at any time, and submitted within such period as he may designate. Before the issuance of a license to transact business, it shall be the further duty of the superintendent, either personally or by some competent person or persons appointed by him, to visit and examine thoroughly into the condition, business methods and affairs generally of any company, association, corporation, copartnership, or individual proposed to be licensed by him; and the said superintendent is hereby empowered to make such examination as often thereafter as he deems necessary, but such examination shall be made at least once in every year. The superintendent and every such examiner shall have power to administer an oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination by summons, subpœna, or attachment in the manner now authorized in respect to the attendance of persons a switnesses in the courts of record of this state, and all books and papers which it may be deemed necessary to examine by the superintendent or the examiner or examiners so appointed shall be produced and their production may be compelled in like manner. The expense of

every such examination shall be paid by the corporation, company, firm or association examined to such an amount as the superintendent shall determine. Whenever such examination shall be made by the superintendent personally, or by one or more of the regular clerks in his department, no charge shall be made in such examination but for the necessary travelling and other actual expenses. On every such examination inquiry shall be made as to the condition and resources of the company generally, the mode of conducting and managing its affairs, the advice of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and within the requirements of its charter and of law have been complied with in the administration of its affairs.

§ 3. Whenever it shall appear to the Superintendent of the Banking Department from an examination made and the statement or report submitted by any such company, corporation, copartnership, firm or association, pursuant to the requirements of section two of this act, that it is conducting its affairs in a safe and authorized manner, he shall issue to said company, corporation, copartnership, firm or association a certificate, under his hand and seal, permitting it to transact business in this state for the term of one year from the date thereof.

§ 4. No person, association, corporation, company or partnership shall, after the first day of October, eighteen hundred and ninety, act in this state as the agent or representative of any company, corporation or others described in section one of this act unless the same be duly licensed by the Superintendent of the Banking Department, as hereinbefore provided. Every such company, corporation or others described in section one of this act, shall, within thirty days after being authorized to transact business in this state, file in the office of the Superintendent of the Banking Department a certificate stating the name and business address of every person, association, corporation, company, firm or others who act or propose to act in this state as the agent or representative of such company, and in case of any change

in such representation, an amended certificate shall forthwith be filed as herein provided. Whoever shall offend against the provisions of this section shall be guilty of a misdemeanor, and shall also forfeit the sum of one thousand dollars. The penalties prescribed herein shall be recovered by suit in the name of the people of this state, to be prosecuted by the attorney-general.

§ 5. Licensees under the provisions of this act shall pay their proportionate share of the expenses of the Banking Department as is now required of banks and other corporations supervised by the Superintendent of the Banking Department by section six of chapter four hundred and nine of the laws of eighteen hundred and eighty-two, and for such purposes said licensees shall be subject to the provisions of said section.

§ 6. Licensees under the provisions of this act shall be granted a limit of twenty days after January first and July first respectively, in which to file the semi-annual statements in the office of the Superintendent of the Banking Department, and upon failure to so report within the specified time or to otherwise comply with the requirements of this act the superintendent shall revoke the said license as provided in section seven of this act.

§ 7. Whenever it shall appear to the said superintendent from an examination made or report submitted by such licensee under this act, or from sufficient information otherwise obtained that such licensee is conducting its business and affairs in an unsafe or unauthorized manner, he shall by an order under his hand and seal of office addressed to such licensee direct said licensee to discontinue such unsafe or illegal practices, and to conform to the requirements of its charter and of law, and to provide for the safety and security of its transactions. If such licensee shall neglect or refuse to make any report as hereinbefore specified, or to comply with such order as aforesaid; or whenever it shall appear to the superintendent that it is unsafe or inexpedient for any such licensee to continue the transaction of business, he shall forthwith revoke the license of such company and serve a copy of the order of revocation on said company at its

head office; a copy of said order shall also be served upon each agent or representative of said company named as prescribed by section four of this act, by depositing the same in the post-office directed to each of said agents at his place of business. The superintendent may also in his discretion publish such order with such other facts as he may deem proper for six successive days in the state paper published in the city of Albany.

§ 8. It shall be the duty of the Superintendent of the Banking Department, on or before the first day of March in each year, to communicate to the legislature a statement of the condition of every company and others, described in section one, authorized to transact business in this state, or from which a report has been received for the preceding year, giving, in detail, the actual financial condition of every such company, together with such other facts as may, in his judgment, be right and proper to communicate for the public benefit. It shall be the duty of the superintendent to print the said report, as a separate document, the cost of same to be defrayed in like manner as other expenses incurred in and about the conducting of the business of the said department.

§ 9. Every corporation, company, firm or association, described in section one of this act, shall, before being authorized to transact business within this state, by an instrument in writing, duly executed, appoint the Superintendent of the Banking Department of this state the true and lawful attorney of such corporation, company, or association, upon whom all lawful process in any action or proceeding by any resident of this state against such corporation, company or association may be served, with the same effect as if such corporation, company or association existed in this state, and had been lawfully served with process therein. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the Superintendent of the Banking Department, and copies certified by him or his deputy shall be deemed sufficient evidence in regard thereto. Service in favor of a resident of this state upon such attorney shall thereafter be deemed a personal service upon such

corporation, company or association. Whenever lawful process against such corporation, company or association shall be served upon the superintendent of the Banking Department, under the provisions of this act, he shall forthwith forward a copy of the process served on him, by mail, prepaid, and directed to the president or secretary of the corporation, company or association at the last-named post-office address of such corporation, company or association. For each copy of process the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, the same to be recovered by him as part of his taxable disbursements, if he succeeds in his suit or proceeding. The term "process" in this act includes any writ, summons, petition, or order, whereby any suit, action, or proceeding shall be commenced by a resident of this state.

§ 10. The supervisory powers granted under this act shall also apply to associations, copartnerships, joint-stock companies or corporations organized under the laws of this state, who sell, or offer for sale, or negotiate bonds or notes secured by deed of trust or mortgage of real estate, situate outside of this state, owned, issued, negotiated or guaranteed by it or them.

§ 11. The provisions of this act shall not apply to trust, loan, mortgage, security, guarantee or indemnity companies or associations, organized under the laws of another state, which now do or hereafter may make the deposit of securities with the Superintendent of the Banking Department required by section two hundred and twenty-four of chapter four hundred and nine of the laws of eighteen hundred and eighty-two.

§ 12. The sum of three thousand dollars, or so much thereof as may be necessary is hereby appropriated out of any moneys in the treasury not otherwise appropriated to defray the expenses of carrying out the provisions of this act, to be paid from the treasury on the order of the Superintendent of the Banking Department, said sum to be refunded to the treasury by the licensees under this act on

assessment made by the said superintendent as provided by section five of this act.

§ 13. This act shall take effect July first, eighteen hundred and ninety.

CHAPTER 508.

AN ACT to amend chapter forty of the Laws of eighteen hundred and forty-eight, entitled, as amended by chapter eight hundred and thirty-eight of the Laws of eighteen hundred and sixty-six, "An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes."

SECTION 1. Section one of chapter forty of the Laws of eighteen hundred and forty-eight, entitled, as amended by chapter eight hundred and thirty-eight of the Laws of eighteen hundred and sixty-six, "An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes," is hereby amended so as to read as follows:

SEC. 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any manufacturing, mining, mechanical, or chemical business, or the business of printing, publishing or selling books, pamphlets or newspapers, or advertising the same or other articles, or for the purpose of purchasing, taking, holding and possessing real estate and buildings, and selling, leasing and improving the same, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business or the business of slaughtering animals, or for the purpose of towing or propelling canal-boats, vessels, rafts or floats on the canals and navigable rivers of the State of New York, by animal or steam power, or for the purpose of buying, storing, selling or shipping coal, merchandise and farm produce, their operations not to be confined to the country *

* So in the original.

in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, or the business of buying, breeding, grazing, pasturing, dealing in and selling cattle, sheep, hogs, horses and other live-stock in the United States of America, British North America and elsewhere, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate, in writing, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of said company are to be carried on. No company organized under this act for the purpose of taking, purchasing, holding or possessing real estate and buildings, and selling, leasing and improving the same, shall be permitted to purchase and hold real estate to the value of more than one million dollars, *provided, however, that any company so organized for the purpose of erecting, owning and maintaining a building in any city to be used or rented as an office or store building may hold real estate in excess of the value of one million dollars;* but this act shall not be deemed to repeal or affect in any way any act heretofore passed and amendatory of or supplementary to the said act of February seventeenth, eighteen hundred and forty-eight, except as herein provided.

SEC. 2. This act shall take effect immediately.

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