NATURE, ORGANIZATION AND MANAGEMENT OF CORPORATIONS

Under
"An Act Concerning Corporations (Revision of 1896)"

OF THE

STATE OF NEW JERSEY

TOGETHER WITH THE

Text of the Statutes relating thereto to the end of the Legislative Session of 1912,

WITH

FORMS AND PRECEDENTS

BY

J. B. R. SMITH
of the New Jersey Bar,
ASSISTANT SECRETARY OF STATE OF NEW JERSEY

Published under the Authority of the Department of State.

NEWARK, N. J.
SONEY & SAGE.
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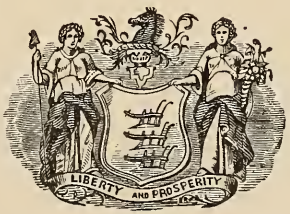

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1912.

STATE OF NEW JERSEY
DEPARTMENT OF STATE
THE SECRETARY OF STATE

TRENTON, April 15th, 1912.

I, DAVID S. CRATER, Secretary of State, do hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and that the said laws are printed and published by the direction and under the authority of the State of New Jersey.

David S. Crater

Secretary of State.

PREFACE.

In preparing this work my object has been, not to present with annotations the Statute Law of New Jersey on Corporations for the use merely of members of the Bar, but to give in convenient form to those interested, both lawyer and layman, a hand-book of New Jersey Corporation Law. Had the former been my object, there would hardly have been an excuse for my effort, as the splendid works already published apparently cover this field. But experience with the practical work of organizing and managing corporations, as well as my association with the Department of State, have indicated that something more is wanted.

The business man, and even the lawyer whose practice has not made necessary special study of this branch of law, find the larger books both too comprehensive and too technical, and they have asked that the story be told in fewer words and in simpler language. This I have undertaken to do. I have arranged in narrative form the story of the legal procedure affecting corporations from their conception to their dissolution. Instead of following each section of the text of the Act with annotations, I have divided the story into chapters arranged in conformity with an analysis, which I trust will be found sufficiently clear and complete to enable those who are associated with New Jersey corporations, readily to ascertain not only their rights but their duties in connection therewith.

The adoption of this style has made necessary the omission of many cases which might properly have been cited, but it is hoped that this omission has been more than replaced by the narrative arrangement. In addition, in discussing the nature and theory of corporations, the various legal and popular conceptions and classifications of corporations, and the view taken of corporations by the Legislature of New Jersey, have been briefly reviewed.

The narrative is followed by the text of the General Act and the various amendments and supplements, and also the several sections of the Annual State Franchise Tax Law applicable to business corporations. The Statutes have in all instances been cross-referenced with the narrative. In addition, a set of forms and precedents has been added which it is believed is sufficiently complete to meet the wants of the incorporating public.

In the preparation of this work I am indebted to Edward O. Clark, of the New Jersey Bar, and Frank Transue, Chief Clerk of Corporations in the Department of State, for much valuable assistance and many excellent suggestions.

Newark, April 1st, 1912.

J. B. R. SMITH.

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Constitutional Provisions Respecting Corporations.

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19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

20. No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever.

ARTICLE IV.

Section VII.

3. The legislature shall not pass any * * * law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

11. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: * * * Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever. Granting to any corporation, association or individual, the right to lay down railroad tracks. * * * The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

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CHAPTER I.

NATURE AND THEORY OF INCORPORATION.

In discussing the nature and theory of incorporation, it may not be out of place to consider briefly, in their order, what corporations really are, the different kinds or classes of corporations, and particularly the view of corporations taken by the citizens of New Jersey as expressed in the acts of their legislature.

I. What is a Corporation?

1. Common law idea.

It seems to be almost impossible to find a comprehensive and scientific definition. The English Common Law, in conformity with the methods of thought prevailing at the time of its earlier development, invested the corporation with personality. It was looked upon as a being possessed of many personal and material attributes. It was also variously regarded as "immortal," "soulless," "invisible," "mysterious" and "intangible." A corporation was thought of as a creature begotten of a supreme power. The state was generally regarded as the parent, and in strict conformity with the semi-barbaric reasoning of those times, independence from parental control was not even at maturity accorded the off-spring. The state claimed the right to perpetually domineer over, even to exterminate, its creature. This school of thought is by no means extinct.

2. Roman idea.

The early Romans, probably borrowing their ideas from the philosophic minds of the Greeks, who seemed capable beyond other people of their own or any other age to reason in the abstract, apparently took an entirely different view; and even after the later Romans had accepted the baser materialistic philosophy of their less intellectual neighbors, the personal idea of corporations did not take shape among them. As late as the days of Gaius and even of Justinian, no such thought seems to have entered their minds. Their idea of a corporation is admirably expressed by Henry Osborne Taylor in his treatise on "The Law of Private Corporations" as, "a collection of individuals among whom, as well as between whom and outsiders, exists certain special legal relations."

3. Mr. Taylor's definition.

Mr. Taylor gives as his own definition of a corporation a refinement of this idea, and says that a corporation "is the manifestation of a

body of rules of law in legal relations between persons who have fulfilled the pre-requisite conditions of fact." This view of a corporation does not, however, necessarily regard the rules embodied in the acts of legislative bodies as being the rules of law, but merely the written expression of them. The rules themselves are of natural growth. Acts of legislatures, in so far as they are sound and capable of enduring, only set out in writing the rules already formulated: the law already developed, as the natural and necessary outcome of the fulfillment of the conditions of fact.

4. Legislative sanction for legal relations.

Legislative enactments defining legal relations between individuals, at least until recently, were the exception rather than the rule; but few will undertake to deny that legal relations were as binding upon individuals, and the law was as potential before it was written into the statute book as it became afterward. The writing made it more convenient, but not more effective. If the entire statute law affecting corporations should be suddenly repealed, corporations would continue to exist just the same as legal relations between individuals would continue to exist—as they now exist, in many instances, without regard to legislative acts expressly passed to affect them.

What then, of the acts of incorporation; what of the corporate charter; what of the acts of regulation? They all belong to the same class; they all are acts expressing the rules of law previously developed because of the fulfillment "of pre-requisite conditions of fact" and are effective only in so far as they express the "true rules." There seems to be much to support the theory that corporations are without personality or other material attributes; that they are not created by legislative sanction, but develop as other rules of law develop, and that they not only can, but do, exist without an act of the legislature.

5. Conception of a mechanical device.

If a material setting is necessary to contemplate corporate existence, the conception of a mechanical device, of a machine, would seem better adapted than that of an artificial person, to represent the best modern thought. In this view, the corporation is seen as an instrument in the hands of its members for accomplishing a purpose, difficult, if not impossible, to accomplish without it. It becomes only a means to an end. As is the case with the Roman idea, it contemplates neither good nor bad corporations. With this view, the corporation is of itself no more capable of working either good or evil than any other inanimate thing. It is efficient in either direction only as used by the persons in charge.

What then, according to this view, are the alleged legislative acts for corporate creation? They are only rules regulating the use of corporations. They merely prescribe limitations to the powers of corporations and provide privileges for, and assign special duties to be performed by, those who find use for some particular form of the corporate device. According to this view, the corporation is brought into existence by those who compose its membership—by those who made

it—the state simply saying by its franchise of incorporation what it says in granting any other corporate franchise; that those who own and control the corporate machine may, under certain conditions, use it in a certain way; they may have certain special privileges.

6. American idea.

It is probably natural that our American conception of the corporation is the conception of artificial personality. It is apparent, however, that our judicial decisions, as well as our scientific and miscellaneous investigation of the subject, all tend toward the conclusion that the charter is not the act of creation, but the act by which the corporation is allowed to exercise its powers.

7. The co-operative idea.

Another conception of a corporation, and one which seems to appeal to the lay mind, is that which associates corporation with co-operation. This simple view is perhaps the result of combining the idea of legal relations with that of an instrument or piece of mechanism. Indeed, the words are so nearly alike in both sound and appearance, that one might hastily conclude that they are different forms of the same word. Furthermore, an examination of the etymology of the words assists in demonstrating their association. "Co-operation" is defined as "operating together," as "concurrent effort." "Corporation," coming from the Latin "corpus" or body, conveys "the idea of union, of several parts in one bodily whole," each unit retaining its individuality and performing its individual functions, resulting in a better development, a refinement, a more perfect concepton of co-operation. A corporation then is simply scientific co-operation; the scientific method of utilizing the efficiency and strength resulting from united and orderly individual action.

If individual units co-operate for worthy purposes, good results; if for unworthy purposes, evil results. The responsibility rests in each instance with the individuals, not with the method of operation. Accordingly, co-operation can be neither vicious nor virtuous. Vice and virtue are both necessarily personal.

With this view of corporations, stripped alike of the idea of personality, and of the simpler conception of a mechanical device, and free from the technical theories involving rules of law, it doubtless will be possible to get a clearer understanding of their true structure and nature, so necessary if one would deal successfully with the perplexing questions growing out of the rapidly increasing, already almost innumerable, forms of co-operation.

II. Kinds and Classes of Corporations.

1. Difficulty in classification.

It will be found almost as difficult to classify corporations as it has been to define them. The rapidly growing complexity of our civilization is continually bringing forward new conditions, making necessary new methods of co-operation, and providing new uses for the corpora-

tion. But scientific classification is nevertheless necessary. To make rules for the development and regulation of each separate corporation would be as difficult, and would work as great injustice, as it would to make separate rules to govern the conduct of each individual.

2. Development of the corporate idea.

The history of the development of the corporate idea seems to be the story of the progress of civilization. Savages could not, except in a very rudimentary way, co-operate with one another. Their only thought was self-protection, and their method was both competitive and combative. They were warlike, while the fundamental principle of co-operation is peace. They exemplified the antithesis of co-operation. But they eventually found that a certain amount of co-operation was desirable, even as an aid in battle, and the phratry and the tribe became probably the earliest forms of corporations. The development of the present political corporation from this humble beginning might be easily and pleasantly traced; and it would refute the claim that the corporate idea was original with the Romans.

Next to self-protection, in the savage mind, is a conception of the supernatural, and a desire so to live on earth that the most happy condition after death may be secured, not only for themselves, but for their fellows. Here again co-operation was found more efficient than individual effort, and the religious corporation was the result. The interest in the welfare of one's fellows after death then extended to an interest in their condition while on earth, and the demand for the eleemosynary corporations began to develop. And so, as civilization advanced, the demand for new forms of corporations arose and was met; but the underlying principle of all seemed to be co-operation; a desire to work together.

It was not until after the time of Blackstone that the people, except in a very few instances, found use for other than political, ecclesiastical and eleemosynary corporations, and the attention which the great commentator pays to the subject, in devoting to it, as he does, only nineteen pages, seems strange indeed to our present generation, who find current legal literature regarding corporations occupying so great a part of our libraries.

3. Blackstone's classification.

Blackstone, it will be remembered, first divided corporations, with reference to their compostion, into sole and aggregate. He next classified them with reference to their functions into ecclesiastical and lay corporations, and lay corporations he divided into civil and eleemosynary. He did not deem it necessary to differentiate between different classes of civil corporations, even the division into public and private corporations not being referred to.

4. Corporate development since Blackstone's time.

Very shortly after Blackstone's time, however, the corporate idea began to rapidly develop. The sciences of government and of economics were being earnestly studied, and invention and commerce were de-

manding greater aids and greater facilities. Scientific co-operation with every changing thought and method was made necessary and new forms of corporations were inevitable.

Limited monarchies and republics with orderly and complicated governmental machinery, necessitating numerous divisions and sub-divisions, developed, and were rapidly followed by a demand for more efficient means of transportation, of communication, and of other public service devices, and for an economical as well as efficient means of producing what were rapidly becoming the necessities of life. As Blackstone observed the development of the religious and the eleemosynary corporation, so we may now observe something of the civil and the business corporation.

5. Sole and aggregate corporations.

As new forms of corporations developed, they, in their turn, occupied public thought to the practical exclusion of older forms. As for the old Blackstonian division of corporations into sole and aggregate, practically no attention seems for a century to have been paid to it. This condition is probably due to the fact that the corporation sole is, in structure and operation, so different from the corporation aggregate, that it is difficult for the average mind to comprehend the existence of a corporation composed only of one person. The mind cannot see in it the fundamental idea of co-operation, and prefers to ascribe to its functions some other name. The conception of a representative; of an officer, seems to be more correct. The idea seems to be equally at variance with the common law conception of the corporation as an artificial person. That a single individual is at the same time both a natural and an artificial person is repugnant to the average mind, and it accordingly prefers to join with advocates of the theory of co-operation in thinking of what once was regarded as the corporation sole, as an individual working in a representative or other official capacity.

6. Ecclesiastical and eleemosynary bodies.

The public mind also, has almost forgotten that ecclesiastical and eleemosynary bodies are entitled to be classified as corporations. These forms of corporation are so well understood and their objects and methods so generally satisfactory that the fact that they were indeed corporations ceased to excite interest. The popular mind already thinks almost as lightly of their corporate functions as it does of the corporate features of the phratry, the tribe and the clan of barbarians and savages.

7. The civil corporation.

The development of the civil corporation has progressed in much the same way. At first only the state or the government was considered under this head. Soon two branches were recognized, the public and the private. The general government was looked upon as a public corporation, and by some the minor public governments were thought of as private corporations; while others applied that term only to the corporations composed of individuals banded together to render some public

service, but for which private gain was to be obtained for themselves. What we now think of as a purely private corporation, even a hundred years ago was so little known that classification was not necessary. The term corporation in those days so clearly conveyed the idea of a political, or at least a quasi-political body, that the terms were practically synonymous in the popular mind. The question was whether the minor governments, the town and the city, were properly classified with the state or whether they took on more nearly the form and nature of the private company rendering a public service, such as a public water supply, a banking, or turnpike company.

8. Difference between the state and the minor political corporations.

But there seems to be a fundamental difference between the true functions of the state, or the major political divisions on the one hand, and the minor political divisions on the other hand. The function of the state seems to be to render equal service to all its members; that is, to all its citizens. The function of a municipality seems to be to render service to all its citizens, but in proportion to their needs rather than to distribute it equally, and the principles necessary to make a sovereign government successful cannot in every instance be successfully applied to minor municipalities.

Likewise a difference of even greater importance was seen between the minor municipality and the private public service company, and so as a third division, the quasi-public corporations came to be recognized.

9. New forms of corporations.

Rapid industrial development soon brought many new forms of corporation into existence, and like the younger members of a family, these continued to attract attention, to the exclusion of the older ones; and the place occupied by the private corporation, which such a short time ago seemed to hardly have a proper existence, was soon over-crowded. The public service and private business corporations especially jostled each other and the others, until a re-classificaton became necessary. Many came to regard the public service corporations properly in the quasi-public, and the minor municipalities in the public class. If the incompatibility between the state and the municipality was so great that they could not properly be regarded as in the same class, the state might take its place along with the ecclesiastical and eleemosynary institutions, the tribe and the clan as organizations without corporate functions.

10. A broader classification.

But a broader generalization will enable us to properly classify, without omission, all forms.

Corporations, as we now understand them, seem to divide with reference, first, to their structure; and secondly, to their functions; the latter being a civil or political division, the former, an economic division.

11. **With the structural or economic division,** so long as the rights of others are not transgressed, those outside the corporation can properly have little to do. Those having a work to do should do it in their own way; their methods should be their own; they should build their organization on any plan that appears to them best suited to their interests. It will be presumed that with them in their corporate capacity, as in their individual capacity, they are the best judges of their own interests. A few of the more important divisions of this classification are the arbitrary, the monarchial, the republican, the democratic, as applied to the method of government; the stock, the non-stock, and many others with sub-divisions and verying plans almost innumerable.

12. **With the civil or functional class** the public can and does have much more to do. They are more closely touched, their individual interests more vitally affected, and the regulation of corporate conduct a matter of greater public importance; but again, as with individuals, this conduct cannot be regulated except as their uses, their special functions, are properly classified. As the laws regulating the business of a butcher could not properly regulate the work of an artist, so the laws regulating the state could not properly regulate a municipality; or those affecting a public service corporation could not properly regulate a church, an orphan asylum, or a private business enterprise.

The following classification seems to be one well fitted to establish the relationship of different corporations as we now know them.

Public Corporations.
- The State.
- The County (in England and probably in at least some American States).

Quasi-Public Corporations.
- The Municipality.
  - The City, Borough, Town, Township (and in some instances the County).
- The School District.
- The Volunteer Fire Company.
- The Volunteer Police and Detective Society.
- The officially recognized society, possessing police power, for the prevention of vice, of crime, and of cruelty.
- The Public Service Corporations, publicly owned and operated by officers and managers, elected by popular vote or appointed by the State or Municipality.
- Eleemosynary Corporations supported by the State or Municipality.

Quasi-Private Corporations. (Stock Companies in which the stock is privately owned).
- Public Service Corporations.
  - Railroad and Canal Companies.
  - Street Railway Companies.
  - Gas, Electric Lighting, Heating and Power Companies.
  - Water Supply and Public Water Power Companies.
  - Telegraph and Telephone Companies.
  - Turnpike Companies.

Fiduciary Companies.
- Banks.
- Trust Companies.
- Safe Deposit Companies.
- Financial Savings Institutions, Loan and Investment Companies of trust funds.
- Building and Loan Associations.
- Insurance Companies.
- Financial Fraternal Benefit Associations.

PRIVATE CORPORATIONS.
- Private Business Stock Companies.
- Religious Corporations.
- Private Educational Corporations.
- Eleemosynary Corporations supported by private funds.
- Labor Unions.
- Social organizations not for financial benefit.
- Societies for the promotion of physicial, social and ethical culture.

It must not be understood that this is a complete analysis or classification of every conceivable form of corporation. It is believed however, that a sufficient number have been given to enable any specific form of corporate organization to be promptly and properly classified.

13. Objections to this classification.

This arrangement will probably be found generally acceptable, until the private business company is reached, where there will be a demand made for further classification. A division into large and small corporations will be asked for; likewise, there will be a demand that those who offer their stock for sale to the general public shall be classified differently from those who do not; and that those who do an interstate business shall be differently treated from those who are not so engaged. Neither of these can hardly be proper classifications until the public is ready to place a limit on the fruits of individual effort, until thrift shall be punished, and a penalty instead of a prize be the compensation for success. Until co-operation shall be outlawed or the privileges of law shall be given one citizen and denied another, no just division can be made on the first ground.

Regarding the second, the sale of stock is like the sale of any other commodity, to be regulated by the same laws. Whether the commodity is sold at public or private sale cannot possibly affect it. Under our law, the doctrine of caveat emptor must apply, or that doctrine must be abandoned altogether. Latent defects may be and should be guarded against, but the same law which will protect the public buyer should also safe-guard all purchasers.

Of the third, it may be said that the federal government has no more right to make a rule affecting two or more men co-operating together in interstate commerce, in a private business, and a different rule affecting an individual so engaged, than it has to make one law for a man of small means and another for one of large means. The latter thought is repugnant to our sense of political liberty.

14. Cause of corporate evil.

The alleged evils growing out of corporate existence are not evils resulting from the application, on a large scale, of rules of law or of economics, but the logical and natural results of the inherent evil of human nature existent before civil laws began to take shape; and these civil laws that have been the direct result of the gradual elimination of these inherent evils, cannot now be made to turn round and support evil rather than good because they are being applied on a large rather than a small scale.

15. The remedy.

The remedy is the only remedy ever found for evil. Remove the evil by placing good in its place; by evolving a higher standard of ethics in the individual. Corporations must be made good by exactly the same methods and the same laws that are employed to make individuals good. Vice is purely personal and can only be changed by changing the nature and the purposes of individual evil doers.

When this is undertaken, it will not only be found that these civil laws, now so strongly opposed, have been strengthened and developed; but that the very process of removing the evil has been promoted and encouraged by these very laws which it is sought to break down.

III. View of Corporations Taken by Citizens of New Jersey.

1. If the idea of personalty originated with the English Common Law, it would seem that in New Jersey, where the theories and forms of that system are adhered to perhaps more closely than in any other state, the personal idea of corporations would have taken deepest root. It must be remembered, however, that the common law is not a fixed thing, but is itself a development. While the early Englishmen, in common with the thought of the age, ascribed personality to almost everything, at a time when the ghost seemed a very real person, it is not strange that the corporation was thought of as an artificial person. But the English mind is progressive, and of necessity the English law must be a continual development. For the want of a better terminology, lawyers still discuss corporations as artificial persons, but their minds are getting further and further from the underlying idea of personality. While they are not altogether scientific in their method of reasoning, they are arriving at correct conclusions and scientific reasoning will follow.

2. Doctrine of Laissez Faire.

Perhaps the greatest boon to English progress and to the common law is the doctrine of Laissez Faire. It was the application of this doctrine to corporations in New Jersey that distinguished our corporation laws from those of our neighbors, and still distinguishes them, although our corporate policy is being rapidly imitated, and frequently by the same persons by whom it has been and is being criticised. As such criticism is criticism of progress, it cannot be harmful.

3. **A true statement of New Jersey's legal corporate policy,** as set out in the acts of its legislature and in the opinions of its courts, I think, may be made by saying that corporations have always been treated as the individuals composing them would have been treated had they undertaken to perform similar functions as individuals. No greater nor less legal burden is to be borne by persons seeking to accomplish good purposes through a corporation than through individual effort. The idea of a legal device, or more accurately the idea of individual co-operation, though not expressed in that language, has underlain the New Jersey idea of corporations from the beginning. A corporation is regarded by the New Jersey law as a collection of individuals endeavoring to promote their individual interests, whether political, religious, eleemosynary or industrial, and the state, recognizing the efficiency of the law of strength in united action, encourages their formation. But this encouragement is given only as the state gives encouragement to any other beneficient object. The state, recognizing the benefits of agriculture, gives special privileges to those who develop agriculture, and obtains in return the benefits of better and cheaper products. Likewise it gives encouragement to religion by enabling the church corporations to perform their corporate functions, and receives in return a higher standard of morality. In the same manner the state gives encouragement to industry, by enabling business men to operate business corporations possessed of the privilege of continual succession and limited liability, receiving in exchange, besides material development, such fees and taxes as the state may from time to time make a part of the franchise agreement. This was the principle underlying the legislative act officially recognizing the Society for the Establishment of Useful Manufactures, passed in 1791, a creation of the brain of Alexander Hamilton, and the instrument which laid the foundation, not only for the future greatness of the city of Paterson, but which has served as a model for corporate legislation since that time. The same principles were incorporated in the next great step in New Jersey's industrial and corporate development; the act creating "The Associates of the Jersey Company," 1804, and later in the Manufacturer's Act of 1846 and its amendments of 1848; in the innumerable private charters granted by the legislature; in the General Revision of 1875; in the second Revision in 1896, and in the great mass of amendatory and supplemental acts, but perhaps the greatest of all, in the very complete and excellent line of legal decisions touching this subject.

4. **New Jersey corporation laws not lax or evil.**

New Jersey corporation laws have frequently been regarded as lax, imperfect, productive of evil rather than good. No greater error can hardly be made. The policy underlying their enactment has been a liberal one. That liberal policy has, as has already been seen, existed from the beginning; there has been no general change in our corporate policy since we became a state. But that liberal policy having been applied, has been adhered to by the most rigid and complete set of laws for its enforcement adopted in any state. In no state has there been anywhere nearly so perfect a compliance with the general policy

of the state; or so complete and effective a body of rules making such compliance necessary as in New Jersey, except, of course, in the states that have followed the New Jersey law on the subject. To refute the charge that New Jersey's laws have been productive of evil rather than good, just two thoughts will suffice. First will be noted the material prosperity of both the state and its corporations. Unless prosperity is a vice and adversity a virtue, unless success is an evil and only failure is good, unless our great constructive teachers of ethics and of economics are wrong, and those who teach disintegration and calamity are right, general material prosperity cannot be harmful. The second thought has already been noted. It is the almost universal imitation by other states of our law. Almost without exception, whenever another state has seen fit either to revise the policy of its corporation law or the legal machinery affecting corporations, they have come to New Jersey for a model. If, "imitation is the sincerest flattery," we should be proud indeed of our corporation laws. Space of course will not permit our pointing out in detail the extent to which some part or the whole of our law has been lifted bodily into that of another state. A comparison of the laws of the respective states as they were fifteen years ago and as they are now, makes a most interesting study, one state at least having not only copied our general act bodily, but for several years, her lawyers depended upon New Jersey for a supply of the printed statutes for use in their own state.

New Jersey is the leading state in corporate development and corporate legislation—a distinction of which she may justly be proud.

CHAPTER II.

PURPOSES AND OBJECTS.

I. Purposes Under General Act.

1. Incorporation under special act prohibited.

Previous to the amendment of the state constitution in 1875, the state legislature passed a great number of special acts chartering corporations to do business and defining their powers. The amended constitution provided, however, that the legislature should no longer pass special acts conferring corporate powers, but that thereafter, the organization of corporations should be effected under general laws to be passed by the legislature. (Constitution of New Jersey, 1875, Art. IV, Sec. 7, Par. 11). Carrying out the command of the constitution, the legislature then passed the several general acts under which corporations are now chartered, the certificates required by these acts becoming the charters of the companies so organized, such certificates being the equivalent of the former special acts of the legislature.

2. Various general acts applying to corporations of a class or kind not prohibited.

The prohibition of the constitution, as amended, as to special acts of incorporation, does not, however, contemplate one general act under which any and every corporation of whatever kind and purpose may be organized. A general act applying to all corporations of a class or kind is not prohibited, and the state legislatures have, from time to time, passed various acts which have made provision for the incorporation of corporations formed for specific purposes. Thus, aside from the General Corporation Act applying in the main to "business companies," there are other general acts applying to the incorporation of railroads, banks, water companies, gas companies, telegraph and telephone companies, etc.

3. Rule as to selection of act under which to incorporate.

In the formation of a corporation, in deciding under which of these acts the company may be incorporated, the following rule may be the guide: Where provision is not made by any other general act for the incorporation of a company for a particular purpose, such incorporation may be effected under the General Corporation Act.

4. Formation of certain corporations under "General Act" expressly prohibited.

The General Corporation Act provides that corporations may be formed under its provisions "for any lawful purpose or purposes what-

ever, other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of taking and condemning lands in this state, or other than a corporation provided for by 'An Act Concerning Banks and Banking (Revision of 1899),' or by 'An Act Concerning Trust Companies (Revision of 1899),' or by 'An Act Concerning Safe Deposit Companies (Revision of 1899),'' (Sec. 6). Banking purposes are expressly prohibited under section 3 of the act.

5. Certain corporations operating without the state.

Corporations, however, may be formed under this act "for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside the state." (Sec. 6).

6. Cremation companies.

Companies organized for cremation purposes may effect their organization pursuant to the provisions of the general act, but such a corporation must, before beginning business, "file a certified copy of its certificate of incorporation with the State Board of Health and obtain from said board a license to carry on said business under such rules and regulations as said board may prescribe." (Sec. 6).

7. Specific general acts prohibit formation under "General Act."

"Where the legislature passes separate acts providing for the organization of certain classes of corporations (especially those owing duties and responsibilities to the public) under conditions inconsistent with, or different from those prescribed by the General Corporation Act, the effect is to impliedly prohibit the organization of those classes under the latter act, although there be no express limitation in terms." (*State v. Atl. City & Shore R. R. Co.*, 77 L. 465; *Domestic Tel. Co. v. Newark*, 49 L. 344.) The passage of general laws authorizing the incorporation of gas companies, shows a clear legislative intent to separate gas companies from those companies which may lawfully be organized under the General Corporation Act. (*Richards v. Dover*, 61 L. 400). A corporation organized under the General Corporation Act of 1896 cannot lay sewers in public streets. (*Fogg v. Ocean City*, 74 L. 362) (See also *Knickerbocker Imp. Co. v. Assessors*, Id. 583; *Atty. Gen. v. Hudson County Water Co.*, 70 E. 695; *Atty. Gen. v. Imperial Trustee Co.*, 72 L. 42). In *Montclair Military Academy v. Assessors*, 65 L. 516, the court expressed doubt as to whether it was lawful to organize a purely educational association under the General Corporation Act, there being other general statutes providing for incorporation of such organizations.

II. List of Acts Under Which Corporations May Be Formed for Specific Purposes.

Agricultural fairs	C. S. 2275
Associations not for pecuniary profit	C. S. 125
Associations to encourage purchase of homes	C. S. 352

("C. S." refers to Compiled Statutes of New Jersey, edition of 1911).

III. Objects Stated in Certificate of Incorporation.

1. Objects not limited.

Corporations organized under the General Corporation Act are not limited to one object or purpose, but may have as many objects or

purposes as may be desired. The object or objects for which a corporation is formed must be set out in the certificate of incorporation. (Sec. 8, par. 3). The General Corporation Act is not exceptional in requiring a statement of the company's objects in its certificate. The Railroad Act, the Banking Law, the Trust Company Law, the Safe Deposit Company Law, the General Insurance Act and numerous other acts providing for the incorporation of different kinds of companies, contain similar provisions.

2. **The certificate of incorporation is a matter of public record,** and it is only by reference to it that ascertainment can be had as to what powers have been granted and what have not been granted. It furnishes the only practical source of information for the attorney general and other officials interested in behalf of the state, and by reference to it, investors can ascertain the character of the contract into which they are entering and the property rights they are acquiring by the purchase of stock of the company. Chancellor Pitney in *State v. Atl. City & Shore R. R. Co.*, 77 L. 465-477, said "The legislative purpose is to preserve, for the benefit of the people and of private parties concerned, solemn evidence of the corporate powers that have been granted, of the contract made between the state and the corporations, and of the contract made by the corporators inter sese."

3. **The certificate of incorporation is evidence as to third parties,** see *See v. Heppenheimer,* 69 E. 36, where it was held that in the absence of proof to the contrary, creditors of a corporation are presumed to act on the information contained in the records relating thereto in the office of the secretary of state.

4. **Certificate of incorporation a contract; equivalent to a grant.** It is essential that the objects of the corporation should be clearly set forth and broadly defined in the certificate of incorporation, for these objects cannot be enlarged by a by-law. In this connection, see *Colgate v. U. S. Leather Co.*, 75 E. 229. Here it was sought to consolidated or merge two corporations and an injunction was asked to restrain the proposed action. Held, that as between the corporators, the corporate objects expressed in the certificate of incorporation could not be changed without unanimous consent, unless such change was brought about by virtue of some act of the legislature which might be read into the contract, and that action on the part of the corporation to change the nature of its business, was to be exercised only by direct proceedings pursuant to the statute. *Brown v. Morton,* 71 L. 26, holds that the provisions in the certificate of incorporation take the place and possess the qualities of a charter granted by the legislature, and form a contract between the company and its stockholders.

IV. Fraudulent Objects Prohibited.

Section 6, as amended by Chap. 12, Laws of 1907 (P. L. 1907, p. 35), expressly provides that the objects or purposes of the corporation must be lawful.

1. Promoting or conducting for fraudulent or unlawful purposes, a crime.

In a supplement to "An Act for the Punishment of Crimes" (Revision of 1898) approved June 2nd, 1905 (P. L. 1905, Chap. 257) fraudulent objects are expressly prohibited. This act reads as follows: "Any person or persons who shall organize or incorporate, or procure to be organized or incorporated, any corporation or body corporate under the laws of this state, with intent thereby to further promote or conduct any fraudulent or unlawful object, shall be guilty of a misdemeanor."

2. Persons so promoting or conducting guilty of misdemeanor.

"Any person or persons who, being officers, directors, managers or employes of any corporation or body politic incorporated under the laws of this state, shall wilfully use, operate or control said corporation or body corporate for the furtherance or promotion of any fraudulent or unlawful object, shall be guilty of a misdemeanor." (P. L. 1905, Chap. 257).

3. Charter grants in defiance of any law of state or congress, are invalid.

(*U. S. v. Northern Securities Co.*, 120 Fed. 721; Aff'd. 193 U. S. 197. See also *Dittman v. Distilling Co. of Am.*, 64 E. 537; *Trenton Potteries Co. v. Oliphant*, 58 E. 507).

CHAPTER III.

PROCEDURE IN ORGANIZING AND CONDUCTING CORPORATIONS.

I. Determining Under What Act Corporations Should be Organized.

To determine under what act corporations shall be organized. (See Purposes and Objects).

II. Number of Incorporators and Qualifications Necessary to Organize a Corporation Under the "General Corporation Act."

1. Three or more natural persons may become a corporation.

(Sec. 6). Corporations cannot act as incorporators. By way of analogy, see (*Coddington v. Ex'rs.*, 8 E. 592), where the court said: "The word 'person' does not naturally apply to corporations, and, as a general rule, does not include corporations." Section 51, however, gives corporations the right to purchase and hold the stock and bonds of other corporations after organization.

2. Incorporators must be of full age; the incorporation being in the nature of a contract. While in England, it has been held (*Nassau Phosphate Co.*, 2 Ch. Div. 610), that a corporation is not rendered invalid because one of the subscribers was an infant, it would seem that in New Jersey the necessary qualifications of incorporators are the same qualifications necessary for natural persons to make contracts.

3. Residence of incorporators.

Incorporators, under the General Corporation Act, need not be either residents of this state, or of the United States.

4. At least one share of stock must be subscribed for by each incorporator.

III. Official Recognition of Corporations.

1. Filing certificate.

Official recognition is given upon recording and filing the certificate of incorporation, in accordance with section 9. The certificate must be recorded both in the county clerk's office of the county in which the principal office is located, and filed and recorded in the department of state. For convenience, an orginal and two copies should be made; the original to be endorsed by the county clerk for filing with the secretary of

state; one copy to be left with the county clerk to be used by him in recording the same and the other to be used by the secretary of state in making a certified copy, which may be used as evidence in all courts and places. (Sec. 9).

IV. ACTS OF INCORPORATORS AND PROMOTERS.

(See INCORPORATORS, STOCKHOLDERS, DIRECTORS, OFFICERS, AGENTS AND THEIR DUTIES).

V. EXECUTION OF CERTIFICATE OF INCORPORATION.

1. **Orderly procedure** in the preparation and execution of the certificate of incorporation is provided for in section 8. It must be signed in person by all of the subscribers to the capital stock named therein, and must set forth: (1) The name of the corporation. (See NAME). (2) The location. (See LOCATION). (3) The objects for which the corporation is formed. (See PURPOSES AND OBJECTS). (4) The amount of authorized and subscribed capital stock. (See CAPITAL STOCK). (5) The names and post office addresses of the incorporators and the number of shares of capital stock subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least $1,000. (6) Period of existence. (See CORPORATE EXISTENCE). (7) The certificate of incorporation may also contain any provisions which the incorporators may choose to insert for the regulation of business and for the conduct of the affairs of the corporation, and any provision creating and defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of directors or stockholders, provided such provisions be not inconsistent with the act.

2. **The certificate of incorporation is a contract** between the company and its stockholders, and any provisions therein contained, form a part of such contract; hence, the charter is the proper instrument in which to set out any special rule, regulation or limitation. If these regulations or restrictions are made a part of the by-laws, they are subject to change or amendment, but if incorporated in the charter, they form a part of the original contract.

3. **Desirable features to include in certificate.**

Giving power to the directors to make and alter the by-laws (Sec. 11); and to determine the amount of profits to be reserved as working capital (Sec. 47); providing for the classification of directors (Sec. 12); providing for quorum at meetings of stockholders and directors, and providing for voting qualifications of stockholders (Sec. 17); providing for quorum at annual election (Sec. 34); providing for cumulative voting (P. L. 1900, p. 418), (Sec. 38½); providing that any action requiring the consent of holders of two-thirds of the stock, at any meeting after notice to them or requiring their consent in writing to be filed, may be taken upon the consent of, and the consent given,

and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy. (Sec. 17).

4. **Registered agent.**

Supplement of April 20th, 1898 (P. L. 1898 p. 410), (Sec. 139), makes it necessary to include in the certificate of incorporation the name of the registered agent.

VI. Authentication and Record of Certificate.

1. **The certificate shall be proved or acknowledged** as required for deeds of real estate. (Sec. 9).

2. **Who may take acknowledgments in New Jersey.**

The acknowledgment must be in the form prescribed by the New Jersey Statute, (See Forms), and within the state of New Jersey may be taken by the chancellor, any justice of the Supreme Court, attorney at law, master in chancery, a judge of any Court of Common Pleas, a commissioner of deeds, a clerk of any Court of Common Pleas, a deputy county clerk, a surrogate or deputy surrogate, or a register of deeds. It cannot be taken by a notary public.

3. **Who may take acknowledgments out of New Jersey.**

If the certificate be executed out of the state, the acknowledgment may be taken by a master in chancery or foreign commissioner of deeds for New Jersey, or by some officer authorized to take acknowledgment of deeds in such state. If not taken by a master in chancery or foreign commissioner, a certificate of a clerk of a court of record, under the seal of such court must be attached, certifying to the authority of the officer and the genuineness of his signature.

4. **Proof may also be made by subscribing witness.**

VII. Corporate Existence Begins.

(See Period of Existence).

VIII. First Meeting of Incorporators.

1. **There are three methods of calling** the first meeting of incorporators. (Sec. 16). (1) It may be called by a notice signed by a majority of the incorporators designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established. (2) It may be called without such publication, if two days' notice be personally served on all the incorporators. (3) If all the incorporators shall in writing waive notice and fix the time and place of meeting, no notice or publication shall be required. The almost universal practice is to call the first meeting under the latter method at the con-

venience of the incorporators. It may thus be held at any time after the filing of the articles of incorporation; on the same day if need be.

2. Where held.

Section 44 provides that this first meeting, and all meetings of the stockholders, must be held at the registered office in New Jersey. This should not be confused with directors' meetings, which, under the same section, may be held outside of the state if the by-laws or certificate of incorporation so provide.

3. Matters to be considered.

The first meeting of incorporators is usually held to adopt by-laws; to adopt the design for the corporate seal; to decide upon the form of stock certificate; to appoint an agent to take charge of the books of the company and upon whom process against the company may be served; to elect directors of the company; to make the necessary assessments on the subscribed capital stock for taking over any business or property, or for the purpose of carrying out any other object for which the corporation is formed; and the transaction of any other business which may come before the meeting.

IX. MANNER OF CONDUCTING MEETING.

1. Stockholders' attendance; proxy.

It is not necessary for any fixed number of incorporators to be actually present in person at this meeting. Attendance at this, as well as all other meetings of the stockholders, may be by proxy. (See PROXY). (See also Sec. 17).

2. Orderly procedure.

If the meeting is held upon waiver of notice by all of the incorporators, this waiver of notice should be presented and attendance of incorporators, whether in person or by proxy, should be duly noted. If attendance be by proxy, such proxy or proxies should be presented. A chairman of the meeting should be elected and a secretary appointed. The chairman should report the filing and recording of the articles of incorporation and present a certified copy thereof. The secretary should present a form of by-laws which should be adopted section by section. Inspectors of election should be appointed and directors elected. (See ELECTIONS). Transfers of subscription necessary to qualify directors should be presented and accepted. Under proper resolution, the location of the registered office should be established and a formal direction made that a sign with the company's name thereon be conspicuously displayed at the entrance of said office as required by section 45. Under resolution, provision also should be made that the stock and transfer books be kept at the registered office as provided for in section 33. It is proper also to confirm the appointment of the agent in charge of such office as set out in the certificate of incorporation, or to appoint a new agent; to formally give authority to register and transfer the

stock; to procure waiver of notice of assessment signed by all the incorporators; and to authorize the board of directors to assess the stock subscribed when occasion demands such assessment. Authority, by proper resolution, should be given the board of directors to issue capital stock to the full amount authorized by the certificate of incorporation, in such amounts from time to time as shall be determined by the board, and as may be permitted by law, and to accept in full or part payment thereof, such property as the board may determine shall be necessary for the business of the company. It is proper at this meeting to authorize, by resolution, the purchase of any specific property by the directors in their discretion.

3. Minutes of meeting.

It is the duty of the secretary at this meeting to make full and complete entry of all the proceedings in the minute book of the corporation.

X. By-Laws.

1. Should be adopted at first meeting.

By-laws covering and controlling the conduct of the corporation should be adopted at the first meeting of the incorporators.

2. Who may make.

Under section 11, the power to make and alter by-laws lies in the stockholders. This power may be conferred on the directors by proper provision in the certificate of incorporation, but by-laws made by the directors, under power so conferred, may be altered or repealed by the stockholders. (See Powers).

XI. Corporate Records.

1. The duty of keeping the minute book of the company devolves upon the secretary. It is not necessary that the minutes of the corporation shall be in his handwriting; it is sufficient that he direct and approve their entries. (*Wells v. Rahway Rubber Co.*, 19 E. 402).

2. Stock and transfer books as evidence.

The stock and transfer books are usually placed in the custody of the secretary or other officer designated. Under section 33, these books are the only evidence as to who are the stockholders entitled to examine such books and to vote at elections. In reality, this section limits the right to inspect these books to stockholders, thus defining the class upon whom the right is conferred and indicating the capacity in which the right is to be enjoyed, viz.: that it must be with respect to the applicant's interest as a stockholder, or be germane to his status as such. (*O'Hara v. Biscuit Co.*, 69 L. 198; *Stratford v. Mallory*, 70 L. 294).

The general rule is that the books of the corporation are the only evidence of the persons who are entitled to the rights and privileges of stockholders in the management of the affairs of the corporation. "The

books of the corporation are the only evidence of who are stockholders, and as such, entitled to vote at elections." (*In re St. Lawrence Steamboat Co.*, 44 L. 529). In substance, section 40 provides that in an election, where the right to vote upon any share of stock is questioned, the corporate record which shall determine, is the stock book, and if there be any discrepancy between the books, the transfer book shall control. (See ELECTIONS).

3. **The corporate books are the primary evidence of membership** as between the corporation and the members, and in the payment of dividends, without notice of an adverse claim, a corporation is protected by payment to the holder of record on its books. (*Campbell v. Perth Amboy Mut. Loan, Etc., Ass'n.*, 76 E. 347).

XII. PROXY.

1. **Absent stockholders may vote at all meetings by proxy in writing.** (Sec. 17).

2. **There is no prescribed form or formal execution** of the power of attorney. If it appears on its face to confer the requisite authority, and is apparently free from all reasonable ground of suspicion as to its genuineness and authenticity, this is sufficient. (*In re St. Lawrence Steamboat Co.*, 44 L. 529).

3. **It is not necessary for a proxy to be under seal.** (*Hankins v. Newell*, 75 L. 26), (See also *State v. Crowell*, 9 L. 390).

4. **Attendance voids proxy.**

The right to vote by proxy is expressly limited by statute to absent stockholders. It therefore follows that when a shareholder who has given a proxy attends the meeting personally, his proxy becomes void, as he is not an absent stockholder. (*In re Schwartz & Gray*, 77 L. 415), (See also *Chapman v. Bates*, 61 E. 658).

5. **Revocation in part.**

If a proxy be executed by a majority of the board of directors and after such execution a major part of them revoke such execution, so that the remaining part be reduced to a minority, the proxy becomes invalid. (*In re Delaware River & Atl. R. R. Co.*, 68 Atl. 1104).

6. **No proxy may be voted on after three years from its date.** (Sec. 36).

7. **The pledgee of stock may vote same by proxy,** where in the transfer to the pledgee on the books of the corporation, the pledgor shall have expressly empowered the pledgee to vote thereon. (Sec. 37).

XIII. INCORPORATORS SYNONYMOUS WITH STOCKHOLDERS.

As soon as organization has been effected, incorporators become stockholders, i. e., their holdings or interest is evidenced by the amount of their subscriptions, which become payable as the board of directors may direct.

XIV. CERTIFICATE OF PAYMENT OF CAPITAL.

1. Upon the payment of each installment of capital, and of every increase thereof, the president and secretary or treasurer, must sign and swear to a certificate, stating the amount of capital so paid, and file the same with the secretary of state. This certificate must also set out the total amount of capital stock, if any, previously paid and reported, and in reporting the increase or payment of installment, it must state whether the same is paid in cash or by the purchase of property. (Sec. 25).

2. The certificate must be filed within ten days after such payment. (Sec. 25).

XV. LIABILITY OF OFFICERS FOR FAILURE TO FILE CERTIFICATE.

Section 26 makes any of the officers mentioned in section 25, who neglect or refuse to perform the duties required under section 25, for thirty days after a written request by a creditor or stockholder of the corporation, jointly and severally liable for all debts contracted before the filing of such certificate. It is the usual practice not to file the certificate until the entire amount of authorized capital has been paid in.

1. When action may be brought.

In *Nassau Bank v. Brown,* 30 E. 478, it was held that no action could be maintained under section 26 until thirty days after written request had been made by a creditor or stockholder to make a certificate, and the neglect or refusal of the officers to do it within that time. (See also *Waters v. Quimby,* 27 L. 296; Aff'd. 28 Id. 533).

XVI. AMENDMENTS AND CHANGES.

1. Incorporators may amend certificate of incorporation before payment of capital.

It may happen that after the certificate has been filed, but before any part of the capital has been paid in, or organization has been effected, it becomes necessary to change or amend the certificate of incorporation. While the revision of 1896 provided for amendments and changes after organization, no provision was made for amendments before payment of capital. A supplement of April 19th, 1898 (P. L. 1898, p. 407), (Sec. 26½), enables the original incorporators to amend before the payment of capital, and is in substance as follows: Before the payment

of any part of the capital, the incorporators may amend the certificate in whole or in part; such amended certificate must be duly signed by the incorporators named in the original certificate and be executed, acknowledged, recorded and filed in the same manner as the original certificate. This amended certificate shall take the place of the original certificate and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate.

2. **Fee of secretary of state; how computed.**

The fee of the secretary of state for filing such amended certificate is twenty dollars for each amendment, e. g., if both the name and the nature of the business is changed, the fee would be forty dollars; and where the total authorized capital stock is increased, an additional fee of twenty cents for each one thousand dollars of such increase. If the only amendment is to increase capital stock, the fee would be twenty dollars. The secretary of state has made this ruling, based upon a recent opinion of the attorney general.

3. **Amendments and changes after organization.**

Under section 27, (as amended by Chap. 84, Laws of 1908), a corporation organized under this act may change the nature of its business, change its name, increase or decrease its capital stock, change the par value of its shares, change the location of its principal office in this state, extend its corporate existence, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired.

4. **Orderly procedure.**

Such amendment must be made in manner following: (1) The board of directors must pass a resolution declaring that the change or alteration is advisable, and call a meeting of the stockholders to take action upon such resolution. (2) This stockholders' meeting must be held upon such notice as the by-laws provide, and in the absence of such provision in the by-laws, upon ten days' notice given personally or by mail. (3) If two-thirds in interest of each class of stockholders having voting powers, shall vote in favor of such amendment, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged and proved as the original certificate, and such certificate together with the written assent in person or by proxy of two-thirds in interest of each class of such stockholders, must be filed in the office of the secretary of state. The certificate of incorporation is deemed to be amended upon the filing of such amended certificate. There can be no provision inserted in the amended certificate which could not lawfully be made a part of the original certificate. (Sec. 27).

5. **The fee of the secretary of state** for filing such amended certificate is the same as for filing amended certificate before payment of capital, and is computed in the same manner.

6. Amendment cannot abrogate stockholders' rights.

It would seem that this section as amended merely gives the consent of the state as to what the stockholders may do by way of amendment. It does not give the corporation the right to so alter or amend its charter as to abrogate any of the rights of its stockholders which are evidenced by provisions in its original charter. The case of *Zabriske v. Hackensack & New York R. R. Co.*, 18 E. 178, holds that a legislative charter is a contract between the state and the corporation which the state cannot impair; that corporations having a special purpose specified in their charter cannot change that purpose without the consent of all the corporators. The original certificate forms a contract between the several stockholders which, except by unanimous consent, cannot be affected by any change in it made by virtue of any subsequent act of the legislature. It can only be effectually changed by virtue of some act of the legislature then in force, which can and should be, so to speak, read into the contract. (*Meredith v. Zinc & Iron Co.*, 55 E. 211; Aff'd. 56 Id. 454).

In *Einstein v. Raritan Woolen Mills*, 74 E. 624, section 27 (as amended by P. L. 1908, p. 127), was construed. Here a corporation incorporated under a special act of the legislature in 1869 had a provision in its charter limiting the capital stock to one hundred thousand dollars, with the privilege of increasing the capital stock from time to time up to two hundred and fifty thousand dollars. It was sought by the company to increase the total capital stock to five hundred and twenty-five thousand dollars, part of such increase to be preferred stock; and it was further sought to convert the outstanding common stock into preferred stock. It was held that the capital stock could not be increased without the universal consent of the stockholders, nor could preferred stock be substituted for common stock unless all of the shareholders so agreed; and it was further held that where a special charter provides that the capital stock may be increased from time to time to any sum, not exceeding a sum named, this limitation on the power of the company is a part of the contract existing between the stockholders themselves and between stockholders and the corporation, and its abrogation against the objection of a stockholder violates the federal constitution, which prohibits the impairment of the obligation of contracts; and likewise, that the creation of preferred stock, by a corporation not authorized by the special act incorporating it, nor under general laws existing at that time, and against the objection of a shareholder, violates the obligation of the contract between the corporation and shareholder.

7. The authorization of the creation of new stock by corporations, as provided for in section 27, merely gives the consent of the state that the stockholders may create new stock if they all agree, but if all do not agree, such act cannot be held to be a portion of the charter of a corporation organized under a special act or as an amendment thereto. (*Einstein v. Raritan Woolen Mills, supra*).

8. Change of business.

As to the clause in section 27 giving to the corporation power to change the nature of its business, it was held in *Colgate v. United States Leather Co.*, 75 E. 229, that action on the part of the corporation to change the nature of its business, is to be exercised, if at all, by direct proceedings taken pursuant to the statute authorizing it. In the absence of express legislation, unanimous consent is necessary.

9. Increase of capital.

Where it is sought to increase the capital stock under the provision of section 27, see *Wall v. Utah Copper Co.*, 70 E. 17, where it was held that no stockholder could be deprived of his right to share in any additional or new stock proposed to be issued, and that an issue of bonds containing the privilege to the holder of converting the same into stock, amounted to an issue of stock, and could only be issued subject to the right of each stockholder to share ratably therein. This case at p. 29 cites *Way v. American Grease Co.*, 60 E. 263, the head-note of which is as follows: "Directors of a corporation which is fully organized and in the active conduct of its business, are bound to afford to existing stockholders an opportunity to subscribe for any new issue of shares of its capital stock, in proportion to their holdings, before disposing of such new shares in any other way."

10. Change of location of office by directors.

Supplement of April 8th, 1897 (P. L. 1897, p. 175), (Sec. 147), allows directors to change the location of the principal office within this state to any other place within the state, by resolution adopted at either a regular or special meeting of the board, if such change be acquiesced in by a two-thirds vote of the members of the board. Section 27 does not nullify this supplement. The act of 1897 simply provides another method of changing the location of the principal office, and is the method more often employed. Under this supplement, a copy of the resolution changing the location of the principal office must be filed with the secretary of state, unless the change is from one point to another in the same town, township or city in this state; if however, in the latter case a copy of the resolution be sent the state department it will be filed, as a matter of course, the idea of the department being to have the records as complete as possible.

XVII. AMENDMENTS BY CORPORATIONS FORMED UNDER OTHER ACTS.

Section 28 as amended by Chap. 84, Par. 2, Laws of 1908 (P. L. 1908, p. 127), allows any corporation in this state, whether organized under a special act of incorporation, or under general laws, except railroad and canal corporations and other corporations possessing the right of taking and condemning lands, to increase or decrease its capital stock, change its name, change the par value of its shares or the location of its principal office, change its common stock into one or more

classes of preferred stock, create one or more classes of preferred stock, fix a method of altering its by-laws, relinquish one or more branches of its business or extend its business to such branches as might have been inserted in its original certificate, in the manner prescribed in section 27.

1. Corporations included in this section.

The constitution as amended in 1875 (Art. IV, Sec. 7, Par. 11), provides that the legislature shall pass no special act conferring corporate powers; that they shall pass general laws under which corporations may be organized. Section 28, as amended, is therefore purely intended to cover corporations organized under other acts than the Act of 1875, or the Revision of 1896.

2. Stockholders' rights not abrogated by this section.

The fundamental contract between the stockholders and the corporation cannot be disturbed by this section. (*Einstein v. Raritan Woolen Mills*, 74 E. 624). No amendment permitted by statute which strips stockholders of rights acquired with the original grant or charter can prevail against the will of stockholders objecting, unless the power has been conferred in such a manner by legislation, that it may be read into the contract of incorporation. (*Colgate v. U. S. Leather Co.*, 75 E. 229).

XVIII. CHANGE OF LOCATION OF OFFICE.

1. The general act provides two different methods by which this may be accomplished. Both methods have been discussed supra.

XIX. DECREASE OF CAPITAL.

1. How effected.

Section 29 enumerates several different methods of effecting a decrease of capital stock: (1) By retiring or reducing any class of stock. (2) By drawing the necessary number of shares by lot for retirement. (3) By the surrender by every shareholder of his shares and the issue to him in lieu thereof, of a decreased number of shares. (4) By purchase, at not above par, of certain shares for retirement. (5) By retiring shares owned by the corporation. (6) By reducing the par value of each share.

2. Publication of certificate.

To effect a decrease of capital stock, the procedure of section 27 must be followed, (see Amendments and Changes after Organization), and in addition the certificate decreasing capital stock must be published for three weeks successively, at least once a week, in a newspaper published in the county where the corporation has its principal office. The first publication of this certificate must be made within fifteen days after the certificate has been filed.

3. **The directors are jointly and severally liable** for all debts of the corporation contracted before the filing of the certificate, and the stockholders are liable for any sums they have received out of the amount reduced. (Sec. 29).

4. **Liability of stockholders.**

No decrease of the capital stock releases the stockholders, whose shares have not been fully paid, from liability for the corporation's debts contracted before such decrease. (Sec. 29).

5. **No reduction in taxes, that may be required to be paid by charters of corporations incorporated under spcial acts, is effected by such decrease of capital stock.**

(Sec. 29).

6. **Reduction of franchise tax.**

Strict compliance with the method prescribed by the Corporation Act for the reduction of capital stock is necessary in order that the amount so reduced, may be deducted from the total amount of stock issued and outstanding under the Franchise Tax Act. Stock once issued, remains outstanding and subject to the Franchise Tax Act until retired and cancelled in the method prescribed by our Corporation Act for the reduction of capital stock. (*Knickerbocker Imp. Co. v. Assessors,* 74 L. 583).

7. **A corporation may purchase its own stock** without the sanction of the provision of section 29, either in the open market or of shareholders, wherever such purchase is required for a legitimate corporate purpose. Section 20 makes the shares of a corporation personal property, and section 1, sub-division 4, gives power to purchase such personal property as the purposes of the corporation require, except what is excepted in section 3, which exception does not include shares of its own stock. In connection therefore with sections 29 and 38, the right of a corporation to purchase its own shares is necessarily implied. But, if the purpose of such purchase is to retire the stock, the provisions of sections 27 and 29 must be complied with; one of which provisions is that the purchase must be for a price not above par. (*Berger v. U. S. Steel Corp.,* 63 E. 809).

8. **Distinction as to methods of decreasing.**

The first two methods of decreasing capital stock, viz., by retiring any class of stock or by drawing by lot, are compulsory. The fourth method, viz., the purchase at not above par of certain shares for retirement is not compulsory, else it would not be a purchase. It cannot however, be held that in order to give effect to this fourth method, the shares must in effect be purchased ratably from each stockholder and that one dissentient, although all others accept, may deprive the company of the benefit of this method and render the legislative act to that extent abortive. The right to purchase carries with it the right to

make such terms as to payment as can be agreed upon with the vendor. (*Berger v. U. S. Steel Corp.*, 63 E. 809).

9. **As to the distribution of assets consequent upon reduction** of the capital stock of a corporation, see *Continental Security Co. v. Northern Security Co.*, 66 E. 274.

10. **Redemption of preferred stock.**

Supplement of March 28th, 1902 (P. L. 1902, p. 217), provides for the redeeming and retiring of preferred stock out of bonds or out of proceeds of bonds of the corporation. These bonds may bear interest at a rate not exceeding five per cent. per annum, and the principal of such bonds may be made payable at a date not less than ten years from the date of same. (See Sec. 149).

11. **As conditions precedent to the retirement or redemption of preferred stock,** as provided for by section 149, corporations organized under this act must have; (1) issued preferred stock entitling the holder to receive dividends at a rate exceeding five per cent. per annum; (2) the corporation must have continuously declared and paid dividends at such rate on preferred stock for a period of at least one year next preceding the meeting, which meeting must be calld in the manner provided for in section 27 to decide this question; (3) the floating or unfunded debt at the time of the stockholders' meeting must not exceed ten per cent. of the par amount of the preferred stock then outstanding; (4) the assets at such time, after deducting the amount of indebtedness, must, in the judgment of the officers, be at least equal to the amount of preferred stock issued and outstanding. These matters must be certified to in a certificate filed with the secretary of state.

12. **Consent of two-thirds in interest of each class of stockholders,** present in person or by proxy at the meeting, called as provided for in section 27, must be had in order to convert preferred stock into bonds, or retire it. (Sec. 149).

13. **The holder of such preferred stock must also consent** to such redemption or retirement. (Sec. 149).

14. **The constitutionality of this act was sustained** in *Berger v. U. S. Steel Corp.*, 63 E. 809 (Court of Errors and Appeals), and *Venner v. U. S. Steel Corp.*, 116 Fed. 1012, holds that the act does not alter the status of the stockholder so as to impair the obligation of his contract with the corporation within the meaning of the Federal Constitution.

15. **A holder of common stock cannot question the plan** of the company for the conversion of its preferred stock into bonds. (*Raymond v. U. S. Steel Corp.*, 63 E. 830).

XX. UNLAWFUL REDUCTIONS OF CAPITAL AND UNLAWFUL DIVIDENDS.

1. The surplus or net profits arising from the business are the only funds from which dividends may be made by the directors.

The division, withdrawal or payment in any way, to any of the stockholders, of any part of the capital stock, or the reduction of the capital stock except as authorized by law is expressly prohibited. (Sec. 30).

2. Liability of directors; exceptions.

If this provision of the act be wilfully or negligently violated, the directors under whose administration the violation occurs, except those who cause their dissent to be entered upon the minutes of such directors at the time, or those who, not being present, cause their dissent to be so entered, upon learning of such action, are jointly and severally liable, at any time within six years after paying such dividends to the stockholders, for the full amount of any loss sustained by the stockholders, or in case of insolvency, to the corporation or its receiver. (Sec. 30), (*Appleton v. Amer. Malting Co.,* 65 E. 375; *Williams v. Boice,* 38 E. 364; *Mills v. Hendershot,* 70 E. 258).

3. Dividends paid out of capital are in effect reduction of stock.

Seigman v. Electric Vehicle Co., 72 E. 403, holds that the prohibition of section 30 should be read in connection with sections 27 and 29 respecting a decrease of capital stock, and that it deals with the payment of a dividend out of the capital as amounting in effect to a reduction of capital stock. (See also *Mills v. Hendershot,* supra).

4. Right to waive recovery.

Neither the directors nor a majority of the stockholders can waive the right of the company to recover from the directors the amount of dividends paid out of capital.

XXI. VOLUNTARY DISSOLUTION.

1. **It is one of the powers** of a corporation to wind up and dissolve itself. (Sec. 1, Par. 7). This method of dissolution is but one of the means by which corporate existence may be terminated.

2. **The orderly procedure** is set out in section 31. It is worthy of notice, however, that no meeting of stockholders or notice to them, is necessary where all of the stockholders consent in writing to such dissolution. It may also be noted that the question of deciding whether dissolution is advisable for the best interests of the stockholders and the corporation, is left to the judgment of the board of directors. (See *Windmuller v. Standard Dist. Co.,* 114 Fed. 491 and *Windmuller v. Standard Dist. Co.,* 115 Fed. 748). (See also *Benedict v. Columbus Construction Co.,* 49 E. 23).

3. Duty of directors to call meeting.

It was held in *Streit v. Citizen's Fire Ins. Co.*, 29 E. 21, that where a corporation had ceased to do business and apparently nothing remained to be done but to pay its debts and divide the surplus among the stockholders, it is the duty of the directors to call a stockholders' meeting.

4. Dissolution under section 31 does not actually occur until each and every step of the statutes have been carried out; and until the affidavit, that the certificate of the secretary of state has been published as required by law, has been filed with the secretary of state, which is the final step required by the statute, dissolution has not been effected. (*Hegeman v. Atl. Rubber Shoe Co.*, 73 E. 295).

5. The provisions of sections 53, 54 and 55 apply as to winding up the corporation's affairs, after dissolution under section 31.

XXII. STOCKHOLDERS' MEETINGS.

1. Manner of conducting may be determined by certificate or by-laws.

Section 17, as amended by Chap. 119, Laws of 1901 (P. L. 1901, p. 260), provides that every corporation may determine by its certificate of incorporation, or by-laws, the manner of calling and conducting all meetings and what number of shares shall entitle the stockholders to one or more votes.

2. Quorum.

The number of stockholders who shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum, may also be fixed by the certificate or by-laws. If a quorum be not so determined, a majority in interest of the stockholders represented either in person or by proxy, shall constitute a quorum, and there is a further provision that in no case shall more than a majority of shares or amount of interest be required at any meeting in order to constitute a quorum. (Sec. 17).

3. These meetings should not be confused with the first meeting of incorporators, which is discussed under the head of "First Meeting of Incorporators."

4. All meetings of stockholders of every corporation of this state must be held at the principal office of the corporation in this state unless otherwise provided by law.

(Sec. 44). *Hilles v. Parrish*, 14 E. 380-383 says: "Independent of statutory provisions, it is a rule of law that a private corporation whose charter has been granted by one state, cannot hold meetings and pass votes in another state. It exists by force of the law that created it; and where that law ceases to exist, and is not obligatory, the corporation can have no existence."

5. The directors' meetings may be held outside of the state if the certificate of incorporation or by-laws so provide.

(See *Coe v. Midland Ry. Co.*, 31 E. 105-117 and also *Parsons v. Lent*, citing *Coe v. Midland Ry. Co.*, 34 E. 67). In *Schultze v. Van Doren*, 64 E. 465; Aff'd. 65 Id. 764, there was no provision made in the by-laws for holding directors' meetings out of the state, and it appeared by the minutes of the corporation that the resolution of the board of directors which authorized a mortgage was passed at a meeting held in the city of New York: Held, "Where a mortgage by a corporation was duly executed and recorded before a judgment was obtained by a creditor under which the mortgaged property was sold, and the corporation had the full benefit of the bonds which the mortgage was given to secure, the fact that the directors of the corporation, who were substantially the sole owners of its property, held the meeting at which the mortgage was authorized in another state, which fact did not appear from the mortgage, did not render it void as to such judgment creditor."

6. Notice of annual meetings.

The by-laws should provide what notice to stockholders is to be given of annual meetings. (Sec. 17).

7. Notice of special meetings.

The act provides for notice to be given of meetings called for special purposes. Notice of a meeting to act upon a resolution of the board of directors declaring it advisable to dissolve, must be published once a week for four successive weeks in a newspaper published in the county where the corporation has its principal office. (Sec. 31). In this connection it should be noted that where a notice is required to be published for four successive weeks next preceding the date appointed for the meeting, there must be four entire weeks, i. e., twenty-eight days, between the first insertion of the advertisement in the newspaper and the date fixed. (See *Parsons v. Lanning*, 27 E. 70 and *State v. Elizabeth*, 41 L. 517). A meeting to act upon a resolution of the board of directors declaring an amendment advisable, must be held upon such notice as the by-laws provide, or if no provision is made in the by-laws, upon ten days' notice either personally or by mail. (Sec. 27). A twenty-days' notice must be given of a meeting to act upon an agreement for consolidation or merger. (Sec. 105).

8. Extraordinary matters must be mentioned in notice.

It would seem to be the general rule that at any meeting of the stockholders where any matters, extraordinary in their nature, not provided for in the original certificate of incorporation, are to be considered, such matters should be mentioned in the notice upon which the meeting is held.

9. Matters considered extraordinary.

The following would be considered as extraordinary matters: amendments, change in the nature of business, change of name, increase or decrease of capital, change of par value of shares, extension of existence, creation of preferred stock, conversion of preferred stock into bonds, consolidation with other corporations, dissolution, leasing of property and franchise to another corporation. (See *Schwarzwalder v. Tegen,* 58 E. 319-326, citing *People's Ins. Co. v. Westcott,* 14 Gray 440; *Morawetz Corp.,* Sec. 483 and *Ang. and Ames Corp.* 10th edition, Sec. 489). In the Schwarzwalder case it was sought to change an insurance company from a mutual to a joint stock company, and the court held that this was an extraordinary matter and one which could not be fairly embraced in the transaction of business provided for by the charter itself. Action could not be taken upon it at a meeting unless special notice was given.

10. Rule as to notice of election of directors.

In *Dunster v. Bernards Land & Sand Co.,* 74 L. 132, a special meeting was called by the president upon notice "to transact such business as may be properly brought before said meeting;" no notice was given that this meeting would go into an election of directors, nor did such a purpose exist at the time the notice was given. The meeting having been adjourned from time to time, proceeded to elect directors to fill vacancies. It was held (assuming that the by-laws conferred the power to call a special meeting of stockholders for the election of directors at a time other than the date in the annual meeting), that the election as held was void because it was not held at the annual meeting of stockholders, nor at a special meeting called for that purpose on notice to the stockholders, nor by unanimous consent.

11. Stockholder's duty to give company his address; effect of stockholder's laches:

It is the duty of one acquiring stock either to have the stock transferred on the books of the company, or to give distinct notice that subsequent notices of meetings sent to him as a stockholder should be sent to a certain address, in order to charge the company with neglect. If the complainant be guilty of laches in this respect, he is not entitled to relief where notices are sent to the address of the previous holder. (*Dana v. American Tobacco Co.,* 72 E. 44; Aff'd. 73 Id. 736). (See also *Beling v. American Tobacco Co.,* 72 E. 32).

12. Notice of a meeting may be waived by stockholders.

Provision is made for such waiver under section 16 as amended by Chap. 58, Laws of 1902: "Whenever under any of the provisions of this act, or any amendment thereto, a corporation is authorized to take any action after notice to its members or stockholders, or after the lapse of a prescribed period of time, such action may be taken without

notice and without the lapse of any period of time, if such action be authorized or approved and such requirements be waived, in writing, by every member or stockholder of such corporation or by his attorney thereunto authorized." See *Quick v. Corlies,* 39 L. 11, holding that statutory provisions designed for the benefit of individuals may be waived, and where the waiver be in legal form and is acted upon, such waiver becomes an estoppel to plead the statute.

13. As to informality in the manner of calling or giving notice of meetings, see *In re Griffing Iron Co.,* 63 L. 168. Here a special meeting of stockholders was called on less than ten days' notice to amend the by-laws of the company by increasing the number of directors and to elect those that should be added. At the meeting, every share of stock was represented and voted upon and no stock had been transferred within twenty days next preceding the meeting. It was held on summary inquiry under section 42, that notwithstanding its informality, such election would not be disturbed.

14. Voting at meetings not held as elections.

At meetings of stockholders, other than those held for election purposes, stockholders may vote on all shares held at the time of the meeting unless the by-laws provide otherwise.

15. Calling of meeting by three stockholders.

There is still another provision in the act for the calling of a stockholders' meeting, viz., section 46. This section allows three or more stockholders, having voting power, to call a meeting whenever, for any reason, a legal meeting of the stockholders cannot otherwise be called.

16. Notice of such meeting.

Such a meeting must be held upon ten days' notice of the time, place and purpose, published in a newspaper in the county where the corporation's principal office is located, and such notice must also be mailed to all the stockholders. If there be no officers present, the stockholders may elect officers for the meeting. (Sec. 46).

XXIII. ELECTION OF DIRECTORS.

1. Number; qualifications; tenure:

Under section 12 there must be at least three directors, who must be stockholders in the corporation. They must be chosen annually at a meeting of the stockholders held at the registered office in New Jersey, and they are to hold office for one year and until others are chosen and qualify in their stead.

2. Directors may be classified with respect to the time for which they shall hold office, each of the several classes to be elected for different terms. No class may be elected for a shorter term than one year, nor for a longer period than five years, and the term of at least

one class must expire each year. If there be more than one kind of stock, provision may be made in the certificate conferring the right to choose the directors of any class upon the stockholders of any class to the exclusion of the others. (Sec. 12).

3. At least one director must be an actual resident of New Jersey.
(Sec. 12).

4. Directors cannot change time of election.
In *Elkins v. Camden & Atlantic R. R. Co.*, 36 E. 467, it was held that where the charter of a corporation provides that annual meetings for the election of directors must be held by the stockholders, the directors cannot by a by-law so change the time of holding the annual election that they will continue themselves in office more than a year against the wishes of the holders of a majority of the stock. The court declared that the right here given to the stockholders of holding annual meetings for the election of directors, is a highly important right which the directors can neither defeat or impair, and that the right to change the day for the annual meeting is one, from its very nature, that can only be exercised by the stockholders.

5. Directors cannot deprive stockholder of rights.
If officers of a corporation manage through the instrumentality of their power and position to deprive an equitable owner of stock of any of his rights, their act in its consequence is a fraud against which equity will give relief. (*Archer v. American Water Works Co.*, 50 E. 33). (See also *Hilles v. Parrish*, 14 E. 380; *O'Connor v. International Silver Co.*, 68 E. 67).

6. The stock and transfer books must be kept at the registered office in New Jersey.
(Sec. 33).

7. Alphabetical list of stockholders.
At least ten days before every election, after the first, the directors must cause the officer having charge of the stock and transfer books, to make a complete alphabetical list of all stockholders entitled to vote at the coming election. The residence of each stockholder and the number of shares held by each, must appear on this list, and it must be kept at the principal office and be at all times, during business hours, open to the examination of the stockholders. (Sec. 33).

8. Penalty for not making list.
There is a penalty of $200, recoverable against the officer having the books in charge, for refusal or neglect to exhibit such books or list, and if the board of directors neglect or refuse to produce them at the election, they are thereby rendered ineligible to any office at such election. (Sec. 33).

9. Failure to produce list does not invalidate election.

The case of *Downing v. Potts,* 23 L. 66, though decided in 1851, is in point, as at that time an act similar to the one now a part of the present Corporation Act, was in force. This case decides that the requirement which directs that a list of the stockholders entitled to vote, with the number of shares held by each, shall be made out ten days prior to the election, is directory only, and non-compliance with it does not of itself make void the election. At page 73 in the opinion, the court said: "The provision clearly contemplates the validity of the election. * * * * If a refusal or neglect by the directors to produce the list of stockholders be construed to defeat the election, such construction would enable the directors at pleasure entirely to defeat the election, in direct contravention of the general design and policy of the act."

10. The right of a stockholder to vote, does not depend upon his name being contained in the list; on the contrary, the statute expressly declares that the books of the corporation shall be the only evidence as to who are the stockholders entitled to vote. (*Downing v. Potts,* supra). (See also *In re St. Lawrence Steamboat Co.,* 44 L. 529; *In re Schwartz & Gray,* 77 L. 415; *In re Cape May, &c., Navigation Co.,* 51 L. 78).

11. Method of voting.

Unless it is otherwise expressly stated in the certificate of incorporation, all elections of directors must be by ballot; the poll must be open between 9 A. M. and 5 P. M. during the day and must close before nine o'clock in the evening. (Sec. 34).

12. The poll must remain open at least one hour, unless all stockholders are present in person or by proxy and have sooner voted, or unless all stockholders waive this provision in writing. (Sec. 34).

13. The persons receiving the greatest number of votes shall be directors.

(Sec. 34).

14. Quorum at elections.

Unless otherwise provided in the original or amended certificate of incorporation, or in the by-laws approved at a stockholders' meeting, in all corporations formed under the provisions of this act, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum. (Sec. 34).

15. When election must be held.

An election of directors must be held at the annual meeting of stockholders or at a special meeting called for that purpose on notice to the stockholders, otherwise it is void. (*Dunster v. Bernards Land & Sand Co.,* 74 L. 132).

16. **As to votes cast for a candidate who is ineligible for the office of director,** see *In re Lawrence Steamboat Co.*, 44 L. 529, where it was held that these votes should not be thrown away so as to elect a candidate having a minority of votes, unless the electors casting such votes had knowledge of the fact on which the disqualification of the candidate for whom they voted rested, and also knew that the latter was for that reason disabled by law from holding the office.

XXIV. CUMULATIVE VOTING.

1. **Permitted only when authorized.**

By P. L. 1900, p. 418, cumulative voting is permitted at all elections, but only when expressly authorized by either the original or amended certificate of incorporation. (See Sec. 38½). In *Lowenthal v. Rubber Reclaiming Co.*, 52 E. 440, a by-law was held valid which provided for cumulative voting. Note, however, that this case was decided in 1894 before the passage of the above act.

2. **Cumulative voting means** that each stockholder shall be entitled to as many votes, as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and a stockholder may cast all of such votes for a single director, or may distribute them among the number to be voted for, or any two or more of them as he may see fit.

3. **Its effect** is to give minority stockholders representation upon the board of directors.

XXV. REGULATIONS AS TO VOTING.

1. **Number of votes to which a stockholder is entitled.**

At every election, each stockholder, whether a resident or non-resident, is entitled to one vote in person or by proxy for each share of stock held by him unless otherwise provided in the certificate of incorporation or by-laws. (Sec. 36).

2. **No proxy may be voted on three years from its date.**

(Sec. 36).

3. **No share of stock may be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.**

(Sec. 36).

In *Johnston v. Jones*, 23 E. 216, it was held that to entitle a stockholder to vote, he must be registered on the books on the day the election is held, and in *Chapman v. Bates*, 61 E. 658-666, section 36 was held to apply only to voting at elections. In connection with section 36 and cases cited, it should, however, be borne in mind that section 17, as amended by P. L. 1901, p. 260, gives every corporation the right to determine by its certificate of incorporation or by-laws,

the manner of calling and conducting meetings, qualifications as to voting, etc.

4. **As to voting by proxy.**
(See PROXY).

5. **As to voting qualifications of stockholders,** *Savage v. Ball,* 17 E. 142, holds that a stockholder's right to vote is not impaired because of indebtedness to the company on his subscription; *Downing v. Potts,* 23 L. 66, establishes the doctrine that a subscriber to the stock of an incorporated company, whose subscription is received by the directors and regular certificates therefor issued to him, is a bona fide stockholder entitled to transfer his stock and to vote at elections, even though he has paid nothing for his stock, and in *Am. Pig Iron Storage Co. v. Assessors,* 56 L. 389, it was decided that neither certificates of stock nor payment of the par value of the shares in full, are necessary, to confer on the subscribers the rights and privileges of stockholders in the organization and management of the company. In all the legislation on this subject, subscribers to stock are regarded as stockholders. In a popular sense, a corporation is said to issue stock when it obtains subscriptions for it.

6. **No provision for voting pools or trusts** is contained in the General Corporation Act.

7. **When they may be created.**
It would seem that such pools or trusts may be created where the object is to carry out a particular policy, with a view of promoting the best interests of all the stockholders. The propriety of the object validates the means and must affirmatively appear. The merits of each case must be the ground for determining the validity or invalidity of such voting agreement. (See *Warren v. Pim,* 66 E. 353; *White v. Thomas Inflatable Tire Co.,* 52 E. 178; *Cone v. Russell,* 48 E. 208; *Robotham v. Prudential Ins. Co.,* 64 E. 673; *Clowes v. Miller,* 60 E. 179; *Kreissl v. Distilling Co.,* 61 E. 5; *Chapman v. Bates,* 61 E. 658).

XXVI. VOTING POWERS OF EXECUTORS AND TRUSTEES.

Section 37 gives to executors, administrators, guardians or trustees, the right to vote on stock held by them in their representative or fiduciary capacity.

1. **Formal transfer not necessary.**
An executor or administrator is entitled to vote, at any election of directors on the stock standing in the name of the testator or intestate on the corporation's books, without formal transfer or entry on such books.

2. **Foreign executors are within the meaning of section 37.**
(*In re Cape May, &c., Navigation Co.,* 51 L. 78).

3. Hypothecated stock.

Section 37 also gives a stockholder who pledges his stock as collateral security, the right to vote on such stock unless in the transfer to the pledgee on the books of the corporation, he expressly empowers the pledgee to vote thereon.

4. Disqualification to vote stock cannot be removed by hypothecating it as collateral.

The right which the law gives to empower the pledgee of stock to vote thereon is limited to such pledgors as are themselves possessed of the right to vote on the stock which they own. (*Thomas v. International Silver Co.,* 72 E. 224).

5. Determination of whether transfer is complete or in pledge.

As between the corporation, the pledgor and the pledgee, the burden of determining whether there is a complete transfer or whether the transfer is in pledge, is not upon the corporation. The company must recognize the owner on its books, as the true owner, and if the pledgee is under obligation to give the pledgor a proxy, the pledgor's only remedy is to obtain a decree in equity compelling the pledgee to fulfill his obligation. (See *Canadian Imp. Co. v. Lea,* 69 Atl. 455).

XXVII. STOCK OF A CORPORATION HELD BY ITSELF NOT TO BE VOTED UPON.

Under section 38, shares of stock of a corporation belonging to said corporation, may not be voted by the corporation either directly or indirectly.

1. Power to purchase stock implied.

That there is an implied grant of power to corporations under the General Act to purchase shares of their own capital stock if such purchase is required for a legitimate corporate purpose, but not otherwise, see *Knickerbocker Imp. Co. v. Assessors,* 74 L. 583. (See also *Chapman v. Iron Clad Rheostat Co.,* 62 L. 497; *Berger v. U. S. Steel Co.,* 63 E. 809 and *Oliver v. Rahway Ice Co.,* 64 E. 596). Such stock owned by the corporation cannot be voted on directly or indirectly. (*McNeely v. Woodruff,* 13 L. 352-360; *In re St. Lawrence Steamboat Co.,* 44 L. 529-539). In *O'Connor v. International Silver Co.,* 68 E. 67, it was held that where the officers and directors of a corporation which has acquired some of its own stock by the purchase of all the capital stock of another corporation owning it, attempt to vote on the shares so acquired at a meeting for the purpose of electing directors, a person who owns stock in the corporation, but which stands in the name of his grantor on the books of the corporation, is entitled to sue to prevent the illegal voting on the shares in question.

2. Hypothecation does not empower pledgee to vote.

A corporation by pledging its own stock as collateral to another corporation, cannot empower the pledgee corporation to exercise a power or incident of ownership which the real owner does not possess. (*Thomas v. International Silver Co.*, 72 E. 224).

3. Lien on its own stock cannot be acquired.

A corporation cannot even by specified provision for the purpose in its articles of incorporation or in its by-laws, acquire a lien on its own stock held by its debtor. (*D. L. & W. R. R. Co. v. Oxford Iron Co.*, 38 E. 340).

XXVIII. DIRECTORS SHALL BE STOCKHOLDERS.

To enable a person to become a director, he must at the time of his election be a bona fide holder of some of the stock of the corporation. (Sec. 39).

1. A director ceasing to be a bona fide stockholder, shall also cease to be a director.

(Sec. 39).

2. The certificate of incorporation or by-laws, may determine how many shares a person shall hold to qualify him to be a director.

(Sec. 39).

These provisions do not apply to the first directors of a consolidated company. (*Camden, &c., Co. v. Carpet Co.*, 33 Atl. 479).

3. Director must accept office.

A person, though formally elected a director, is not a director until there is satisfactory evidence in a formal manner or by conduct in harmony therewith, that such directorship is accepted by him. (*Whittaker v. Amwell Nat'l Bank*, 52 E. 400-415).

4. The company's books are not conclusive with respect to the qualifications of a director.

A person may be qualified to be a director whose vote cannot be received at the election. He may be a bona fide holder of stock at that time, and yet be disqualified from voting on it by reason of the transfer to him not being entered on the books. The question of competency for directorship is one exclusively of judicial cognizance. A stockholder may have purchased stock with a view of becoming a director, or have obtained it by gift, or he may hold it upon a trust, and be qualified as a director. (*In re St. Lawrence Steamboat Co.*, 44 L. 529-540). (See also *In re Leslie*, 58 L. 609).

5. Director de facto.

Where one of the directors has made an assignment for the benefit

of creditors, he therefore ceases to be a stockholder and hence can no longer be a director, but as to third parties dealing in good faith with the company, without notice of any infirmity of the title of such director, he must be regarded as a director de facto. (*Kuser v. Wright*, 52 E. 825).

6. Ineligibility.

Where the directors neglect or refuse to produce an alphabetical list of all stockholders entitled to vote, with their residences and number of shares held by each, although the stock and transfer books be present at such meeting, said neglect or refusal, pursuant to section 33, renders such director ineligible to any office at such election, and if such directors are voted for and declared elected at said meeting, their election will be set aside. (*In re Schwartz & Gray*, 77 L. 415). *In re Brooklyn Baseball Club*, 75 L. 64, it was held that it requires a wilful refusal to file the report of the election of directors within thirty days after any annual election as required by section 43 (as amended by Chap. 124, Laws of 1900), to make the directors so failing to file the same, ineligible to re-election at the next succeeding annual meeting.

XXIX. STOCK BOOKS TO DETERMINE WHO MAY VOTE.

Section 40 directs the inspectors of election to refer to the stock book of the corporation to ascertain who are the stockholders in case the right to vote upon any share of stock be questioned.

1. In case of any discrepancy between the books, the transfer book shall control and determine who are entitled to vote. (Sec. 40).

In re U. S. Cast Iron & Foundry Co., 74 L. 315, it was held that when a corporation keeps no transfer book for the transfer of its capital stock other than its certificate of stock book, and said certificate of stock book is in fact used as its transfer book, in recording the evidence of the transfer of shares of its capital stock from one stockholder to another, that if said certificate book thus used as a transfer book, be present at the place and time of electing directors, together with all other books and stockholders' lists, as required by section 33, the directors then in office are not ineligible to re-election as directors at such election. (See *In re Cedar Grove Cemetery Co.*, 61 L. 422; *Archer v. Am. Water Works Co.*, 50 E. 33; *Johnston v. Jones*, 23 E. 216).

2. As to inspectors of election.

While there is no express provision in the General Act requiring them, the practice generally followed is to make provision for inspectors in the by-laws.

3. A candidate for the office of director cannot act as inspector, but this prohibition does not apply to the first election of directors. (Sec. 35).

4. **Inspectors cannot pass upon the eligibility of candidates**; this question is one which the courts must decide.

5. **The inspectors' duties** are to receive and count the votes cast, and by means of the books of the company (the transfer book controlling) determine in the event of dispute, whether the person offering the vote is a registered stockholder.

6. **Inspectors should take oath** that they will honestly and impartially perform their duties and after receiving and counting the ballots, certify the result. (See *In re St. Lawrence Steamboat Co.,* 44 L. 529; *Downing v. Potts,* 23 L. 66).

7. **Provision for election where such election was not held on day designated.**

Section 41 provides a means of holding an election for directors where such election was not held on the day designated by the certificate of incorporation or the by-laws. It directs that the directors cause an election to be held as soon thereafter as convenient.

8. **Failure to elect directors at the designated time shall work no forfeiture or dissolution of the corporation.**

Any justice of the Supreme Court may summarily order an election to be held upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order. (See *Hoboken Building Ass'n v. Martin,* 13 E. 427; *In re Consolidated Tel. & Telegraph Co.,* 43 Atl. 433; *McNeely v. Woodruff,* 13 L. 352; *Camden & Atl. R. R. Co. v. Elkins,* 37 E. 273).

9. **Notice of a special meeting for the election of directors** must state specifically the business to be transacted at such meeting. (*Dunster v. Bernards Land & Sand Co.,* 74 L. 132).

XXX. SUPREME COURT MAY SUMMARILY INVESTIGATE COMPLAINTS TOUCHING ELECTIONS.

1. **Application for relief may be made by any person who may be aggrieved,** upon reasonable notice having been given of the intended application to those whose interests are to be affected. The Supreme Court may, in a summary way, hear affidavits, proofs and allegations of the party, or in any manner inquire into the cause of complaint; and may give such relief as right and justice may require. It may establish the election or order a new one, or it may order an issue to be made up to try the rights of the respective parties or direct the attorney general to exhibit an information in the nature of a quo warranto in relation to the matters in dispute. (Sec. 42). That the court may set aside the election and order the admission of those persons who would have been elected if votes wrongfully rejected had been received, see *In re Cape May, &c., Nav. Co.,* 51 L. 78.

2. Stockholders have a standing in court under section 42.

They are parties aggrieved within the meaning of the statute. (*In re St. Lawrence Steamboat Co.,* 44 L. 529).

3. Ballots cast at separate polls.

If the stockholders assemble in two bodies at the time and place appointed for the election and cast their ballots at separate polls, the court, in ascertaining the result, may consider the ballots cast at both polls. (*In re Cedar Grove Cemetery Co.,* 61 L. 422).

4. Technical violation without fraud.

In *Stratford v. Mallory,* 70 L. 294, the violation was purely technical, and the circumstances of the violation were such as negatived any fraudulent or improper motive. Held, that it would be unfair to install as directors the candidates who received a minority of the votes and that a new election must be held. (See *In re Jersey City Paper Co.,* 69 L. 594; *St. Patrick's Alliance of America v. Byrne,* 59 E. 26; *In re Delaware River & Atl. R. R. Co.,* 68 Atl. 1104; *Hankins v. Newell,* 75 L. 26; *In re Griffing Iron Co.,* 63 L. 168; *Rankin v. Newark Library,* 64 L. 265).

5. Unconstitutionality of act giving chancellor power of summary investigation.

Under a supplement of March 29th, 1899 (P. L. 1899, p. 563), the chancellor was given power to summarily investigate complaints touching elections and authority to restrain those claiming to have been elected to the office of directors from exercising any of the duties of the office pending the hearing and determination of the application, but in *Goldstein v. Ewing,* 62 E. 69, decided in 1901, this act was held to be unconstitutional, the court declaring that the power to inquire into and adjudicate upon the validity of an election of officers by both municipal and private corporations, is by the constitution vested solely in the Supreme Court of this state, and the legislature has no power to vest any part of that judicial jurisdiction in any other tribunal.

XXXI. ANNUAL REPORT TO THE SECRETARY OF STATE.

An annual report must be filed with the secretary of state by every domestic and foreign corporation doing business within this state. (Sec. 43).

1. When to be filed.

This report must be filed within thirty days after the first election of directors and officers, and annually thereafter within thirty days after the time appointed for holding the annual election of directors. (Sec. 43).

2. **Authentication.**

It must be authenticated by the signatures of the president and one other officer or by any two directors of the company. (Sec. 43).

3. **This report must show:**

(1) The name of the corporation. (2) The location of its registered office in this state and the name of the agent upon whom process against the corporation may be served (set out the town or city, street and number of street). (3) The character of business. (4) The amount of authorized capital stock, if any, and the amount actually issued and outstanding. (5) The names and addresses of all directors and officers and when the term of each expires. (6) The date appointed for the next annual meeting of stockholders for the election of directors. (7) Whether the name of the corporation has been at all times conspicuously displayed at the entrance of its registered office in this state and whether such corporation has kept at such office the transfer book in which transfers of stock are made and the stock book, containing the names and addresses of all the stockholders and the number of shares held by them respectively open at all times for the examination of the stockholders as required by law. (Sec. 43).

4. **Certain corporations excepted.**

The seventh requirement does not apply to foreign corporations or canal or railroad corporations, nor do any of the foregoing requirements apply to corporations under the supervision of banking and insurance. (Sec. 43).

5. **Penalty for failure to file.**

There is a penalty of two hundred dollars for failure to make and file such annual report. (Sec. 43).

6. **Ineligibility of directors; exception.**

A further provision of section 43 renders all of the directors of any domestic corporation, who are in office at the time of default, who wilfully refuse to comply with the provisions of this section, ineligible for election or appointment to any office whatsoever at the time appointed for the next election and for a period of one year thereafter. The only way a director can escape such disqualification is to file with the secretary of state, before the time appointed for holding the next election of directors after such default, a certificate stating that he has endeavored to have such report made and filed, but that the officers have neglected so to do; and such director must then report, so far as he is able, the items required to be set out in such annual report. This certificate must be verified by him to be true to the best of his information and belief.

7. **Service of process when report is not filed or agent vacates office.**

Paragraph 2 of section 43 makes provision for service of process

against a corporation upon the secretary of state, in case the annual report is not filed as provided above, or in the event of the death, resignation or removal from the state of the agent upon whom process may be served.

8. Registered office may be given as stockholder's address.

Supplement of April 20th, 1898 (P. L. 1898, p. 410), (Sec. 139), permits the registered office of the company to be given as the post office address of any of the stockholders, officers or directors.

9. All reports, &c., to contain location of office and name of agent.

Every certificate, report or statement required to be given to any officer or the department of state shall set forth the location of the corporation's registered office and the name of the agent in charge thereof. (Sec. 139).

10. All certificates, &c., to be in English language.

Under an "Act Relative to Corporations" (P. L. 1903, p. 231), (Sec. 140), it is required that every certificate, either original or amended, and all reports of corporations, whether domestic or foreign, shall be in the English language.

CHAPTER IV.

NAME.

I. Right to Name.

One of the powers granted a corporation under section 1 is the power to have succession by its corporate name.

II. Mode of Acquiring Name.

1. A corporate name may be acquired by usage.
(*Alexander v. Berney,* 28 E. 90).

2. Other modes of acquiring.
Corporations may assume the name used by the incorporators as a firm name, or the name of a dissolved or defunct corporation. The name of a foreign corporation or that of an individual may be used.

3. As to the right to use one's surname, as all or a part of a corporate name, see *Edison Storage Battery Co. v. Edison Automobile Co.,* 67 E. 44-55, where the court said: "Anyone has a right to use his own name in business, but he may be restrained from its use if he uses it in such a way as to appropriate the good will of a business already established by others of that name. (This is the important thing). Nor can he by the use of his own name appropriate the reputation of another by fraud, either constructive or actual." And again, in the case at p. 56: "These and many other cases hold that there is no sanctity in the name being used by a corporation either directly created by special charter or organized under general laws." The name is adopted at the peril of the corporation adopting it. (See also *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.,* 208 U. S. 554; *International Silver Co. v. Wm. H. Rogers,* 72 E. 933).

4. Inquiry at the office of the secretary of state may be had as to the availability of a name desired to be used, but a reliance upon the answer of the state department that such proposed name is proper does not relieve the corporation using such name from any risk attending its use. (*Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co.,* 69 E. 159).

III. MISNOMER IN GENERAL.

1. Does not defeat grant.

The misnomer of a corporation in a grant or obligation does not destroy or defeat the grant or obligation if the identity of the corporation be shown by proper averment and proof. (*Upper Alloways Creek v. String,* 10 L. 323; *Den v. Hay,* 21 L. 174).

2. A contract is not void, because the corporation with which it is made is misnamed therein. (*Hoboken Bldg. Ass'n v. Martin,* 13 E. 427; *Woolwich v. Forrest,* 2 L. 107; *Middletown v. McCormick,* 3 L. 92). The same applies to bequests. (*Van Wagenen v. Baldwin,* 7 E. 211; *McBride v. Elmer,* 6 E. 107; *Goodell v. Union Ass'n* 29 E. 32; *Lanning v. Sisters of St. Francis,* 35 E. 392).

IV. UNAUTHORIZED ASSUMPTION OF A CORPORATE NAME.

1. Remedy by injunction.

The unauthorized use of the name of an individual in a corporate title adopted by others may be restrained by injunction even though the corporation and individual are not engaged in a competitive business. (*Edison v. Edison Polyform Mfg. Co.,* 67 Atl. 392).

2. Infringement of personal right.

It was held in *Edison v. Mills Edisonia,* 74 E. 521, that the use of the word "Edisonia" in the name of the defendant corporation, organized to conduct exhibitions by the lawful use of Edison phonographs and kinetoscopes, was not calculated to mislead the public to believe that Edison was in any manner interested in defendant corporation, and did not constitute an infringement of any personal right possessed by the complainant Edison in his name. A name descriptive of a patented article used in connection with the business conducted by a corporation may be used as a part of its corporate name.

V. NAME NOT TO BE SIMILAR TO ONE ALREADY IN USE.

Care should be taken that the name assumed is not already in use by another existing corporation of this state, or so nearly similar thereto, as to lead to uncertainty and confusion. (Sec. 8, Par. 1).

1. Corporation may be restrained.

That a domestic corporation may be restrained from using a name so similar to that of another domestic corporation as to lead to uncertainty or confusion, see *Glucose Sugar Refining Co. v. Am. Glucose Sugar Refining Co.,* 22 N. J. L. J. 147, where the use of the name American Glucose Sugar Refining Company was enjoined. See also *L. Martin Co. v. L. Martin-Wilckes Co.,* 71 Atl. 409. This case was reversed on the question of accounting only, 72 Id. 294.

2. **It is not necessary to show that damage has already been done,** in order to restrain the use of an incorporator's name. (*Edison Storage Battery Co. v. Edison Automoblie Co.,* 67 E. 44).

3. **Application for restraint must be prompt.**
(*Edison Storage Battery Co. v. Edison Automobile Co.,* supra).

4. **Foreign corporations may complain.**
If the name be adopted in imitation of that already in use by a corporation of another state, thereby deceiving the public and appropriating the complainants' good will and reputation, immunity from injunction against carrying on business under such name is not afforded by the fact that the complainant is a corporation foreign to the state in which the defendant is incorporated. (*Peck Bros. & Co. v. Peck Bros. Co.,* 113 Fed. 291; Aff'd 187 U. S. 643).

5. **Corporation's own acts considered.**
In *Bear Lithia Springs Co. v. Great Bear Spring Co.,* 72 E. 871, equitable relief was denied because the complainant had by its own acts, created in great part, the very confusion of which it complained.

6. **The essential inquiry in all cases is,** is the new name, as used, calculated to deceive or mislead. (See *O'Grady v. McDonald,* 72 E. 805; *International Silver Co. v. Rogers Corporation,* 67 E. 646; *Sterling Silk Mfg. Co. v. Sterling Silk Co.,* 59 E. 394; *L. Martin Co. v. L. Martin Wilckes Co.,* 71 Atl. 409; *St. Patrick's Alliance of America v. Byrne,* 59 E. 26; *Edison Storage Battery Co. v. Edison Automobile Co.,* 67 E. 44).

VI. CORPORATIONS MAY CHANGE NAME.

Corporations may change their name after organization under section 27, or before payment of capital under supplement of April 19, 1898, section 1 (P. L. 1898, p. 407), (Sec. 26½). (See AMENDMENTS, under PROCEDURE IN ORGANIZATION, &c.).

VII. NAME TO BE STATED IN ANNUAL REPORT.

1. **Applies also to foreign corporations.**
The name of every domestic corporation and every foreign corporation doing business within this state must be shown in its annual report to the secretary of state. (Sec. 43).

VIII. NAME TO BE DISPLAYED.

1. **At principal office.**
The name of every corporation must at all times be conspicuously displayed at the entrance of its principal office in this state. (Sec. 45).

2. Penalty.

The directors are jointly and severally liable to a penalty of two hundred dollars for default, to be recovered by an action to be prosecuted by the attorney general, and the directors are also jointly and severally liable to a like penalty for every thirty days additional default, from and after the service of process in the first action, to be recovered in like manner. (Sec. 45).

IX. CERTAIN WORDS NOT TO BE A PART OF NAME.

By a supplement of April 23rd, 1897 (P. L. 1897, p. 274), a corporation organized under this act is forbidden to use the words "insurance," "safe deposit," "trust company" or "bank," as a part of its name; and corporations heretofore organized are forbidden, by change or amendment to adopt the said words as a part of their corporate names. (Sec. 150).

CHAPTER V.

LOCATION.

I. Location of Principal Office.

1. New Jersey laws are specific with respect to the legal domicile of its corporations.

Migratory corporations cannot exist in this state, as section 8, subdivision 2, provides that the location of the principal office in this state must appear in the certificate of incorporation; the city or town with the street and street number being set out.

2. Registered agent in charge.

Reference to section 44 will disclose the legislature's direction to all corporations of this state to maintain a principal office in New Jersey and have an agent in charge thereof.

3. Corporate records and stockholders' meetings.

The stock and transfer books may at no time be taken from the principal office and the stockholders' meetings may be held only at such office. (Sec. 44).

4. **A foreign corporation** is required to file a copy of its charter and a statement before commencing business in New Jersey. This statement must designate the principal office of the company in this state and the name of the agent in charge thereof. (Sec. 97). (See Foreign Corporations).

II. Change of Location.

1. **The Act provides for two methods of changing location**; one by amendment (Sec. 27), and the other by resolution of the board of directors. (Sec. 147). (See Amendments and Changes).

III. Change of Location by Directors.

1. **This method is the one generally employed** when it is desired to change the location of the principal office in New Jersey.

2. **The procedure** is provided in a supplement to the general act (P. L. 1897, p. 175). (See Sec. 147). A resolution, adopted by at least a two-thirds vote of the members of the board of directors at a regular

or special meeting of the board, is required. After adoption of such resolution, a copy thereof must be filed with the secretary of state, unless the office is removed from one point to another in the same town, township or city, when no certificate is required. This certificate must be signed by the president and secretary and bear the corporate seal.

IV. Annual Report.

1. **That evidence of location may at all times be available,** section 43 (as amended by Chap. 124, Laws of 1900), sub-division 2, directs that the annual report to the secretary of state must contain the location of the registered office in New Jersey, with the town or city, street and street number set out, and also the name of the agent in charge of such office. (See also Procedure in Organizing, &c.).

V. Every Certificate Must Give Location of New Jersey Office.

1. **All reports and statement are also included** in the section. (See Sec. 139).

2. **To insure compliance with this provision,** it is provided in the same section that no certificate, statement or report may be received, filed or recorded by any officer or in any office of this state, unless in such certificate, statement or report, the location of the principal office and the agent in charge thereof is set out.

3. **The registered office is deemed to be the office and post office address of the officers, directors and stockholders.**
(Sec. 139).

4. **Notice sent to such office is sufficient notice to officers, directors and stockholders.**
(Sec. 139).

5. **The registered office may be given as the post office address of the directors, officers, incorporators or stockholders** in any certificate, report or statement where the residence or post office address of such person is required to be set out. (Sec. 139).

CHAPTER VI.

POWERS.

A. General Powers.

Certain general powers are given to every legally organized corporation. These are the ordinary powers of all corporations, which exist, in addition to those expressly given in the charter or provided for in the act under which the corporation is formed.

These general powers are enumerated in section 1 and are as follows:

I. To Have Succession By Its Corporate Name.

1. Perpetual unless limited.

Under the Corporation Act of 1875, the period of corporate existence was limited to fifty years, but under the present act, existence may be perpetual. Corporate existence may be extended or made perpetual by compliance with the provisions of section 27.

II. To Sue and Be Sued in any Court of Law or Equity.

This is an essential power of all corporations. A corporation may sue as an incident to the execution of its powers. (*Leggett v. N. J. Mfg., &c., Co.,* 1 E. 541). (See also *Rumsey v. N. Y. & N. J. Tel. Co.,* 49 L. 322).

Corporations may sue and be sued like a natural person. However, because the statute says they may sue and be sued, it by no means follows they may be sued for everything; but it means they may be sued like an individual for all matters and things for which they are civilly liable. General principles must be looked to for the purpose of ascertaining the extent of that civil and legal liability. (*Freeholders v. Strader,* 18 L. 108).

1. By implication, a corporation also has power to compromise suits.

(*Ellerman v. Chicago Junction Rys. Co.,* 49 E. 217).

2. A corporation may be sued on an implied contract.

(*Worrell v. First Pres. Church,* 23 E. 96; *Mendham v. Losey,* 2 L. 327; *Antipoeda Baptist Church v. Mulford,* 8 L. 182). (See also *Bennett v. Milville Imp. Co.,* 67 L. 320).

3. It may be sued for malicious prosecution.
(*Vance v. Erie Ry. Co.,* 32 L. 334).

4. An action of trespass for assault and battery will lie against it.
(*Brokaw v. N. J. Ry. & Trans. Co.,* 32 L. 328).

5. It may be sued for libel.
(*McDermott v. Evening Journal,* 43 L. 488; Aff'd 44 Id. 430).

6. It is indictable for keeping a disorderly house.
(*State v. Passaic County Agricultural Society,* 54 L. 260).

7. Malice and evil intent may be imputed to a corporation and it may be sued for slander.
(*Empire Cream, &c., Co. v. De Laval Dairy Supply Co.,* 75 L. 207).

8. It may maintain suit for libel.
(*Trenton Mut. Life & Fire Ins. Co. v. Perrine,* 23 L. 402).

9. A corporation is liable for torts, committed by its agents or servants, precisely as a natural person. (*State v. Morris & Essex R. R. Co.,* 23 L. 360; *Brokaw v. N. J. Ry. & Trans. Co.,* 32 L. 328).

10. An action of ejectment lies against a corporation in possession of realty. (*Auten v Fen,* 10 L. 237).

11. Ultra vires no defense to action in tort.
A corporation cannot defend itself in an action for a tort done by it on the ground that the business, in the prosecution of which the tort was done, was ultra vires. (*N. Y. L. E. & W. Ry. Co. v. Haring,* 47 L. 137).

12. A corporation may hold as tenant from year to year.
(*Crawford v. Longstreet,* 43 L. 325).

13. Stockholders' suits on behalf of the corporation.
Individual stockholders cannot sue or defend on behalf of corporate interests without the consent of a legal majority of the stockholders. (*Silk Mfg. Co. v. Campbell,* 27 L. 539). But stockholders may sue in equity in their own name to enforce a right of the corporation without first requesting the directors to sue, if it appears that such request would have been refused, or if granted, the litigation following would be under the control of those opposed to its success. (*Knoop v. Bohmrich,* 49 E. 82; Aff'd 50 Id. 485; *Ackerman v. Halsey,* 37 E. 356; Aff'd 38 Id. 501). (See also *Groel v. United Electric Co. of N. J.,* 70 E. 616; *Stephany v. Marsden,* 71 Atl. 598; *Lillard v. Oil, &c., Co.,* 70 E. 197; *Columbia Nat'l Sand, &c., Co. v. Washed Bar, &c., Co.,* 136 Fed. 710).
Where a corporation refuses to sue promoters to recover a secret

profit of the promoters, *Arnold v. Searing,* 73 E. 262, holds that transferees of stock are entitled to sue, in their capacity as stockholders, on behalf of the corporation on grounds of public policy. This case also holds that the principle that a corporation cannot complain of a transaction to which all of the stockholders assent, is inapplicable unless the assent was that of the real parties in interest. (See also *Siegman v. Maloney,* 65 E. 372).

14. Regarding contracts of estoppel.

(See *Met. Tel. Co. v. Domestic Tel. Co.,* 44 E. 568; *Blake v. Domestic Mfg. Co.,* 64 E. 480). The doctrine of equitable estoppel applies to the internal concern of stock companies. (*Breslin v. Fries Breslin Co.,* 70 L. 274).

15. As to necessary parties and pleadings in stockholders' suits.

(See *Wilson v. Am. Palace Car Co.,* 64 E. 534; *Wilson v. Am. Palace Car Co.,* 65 E. 730; *Wilson v. Am. Palace Car Co.,* 67 E. 262; *German Reformed Church v. Von Puechelstein,* 27 E. 30).

III. TO MAKE AND USE A COMMON SEAL AND ALTER THE SAME AT PLEASURE.

1. Common law idea abrogated; present rule.

The idea at common law was that a corporation could act only under its corporate seal. This idea has been abrogated by the courts of this state. In *Baptist Church v. Mulford,* 8 L. 182, this question was considered at length in the Supreme Court, and the authorities bearing upon it collected and considered; and *Crawford v. Longstreet,* 43 L. 325, citing *Baptist Church v. Mulford, supra,* holds that a corporation stands upon the same footing as natural persons with respect to the use of its seal. Where it would be necessary for an individual to use a seal, it would likewise be necessary for the corporation; and to bind a corporation under a lease for years, execution under its corporate seal is not requisite. (See also *Mendham v. Losey,* 2 L. 327; *Fleckner v. The Bank of the U. S.,* 8 Wheat. 357).

2. A corporate deed must be under seal.

Chapter 89, P. L. 1904, provides that "no deed or other instrument mentioned in the twenty-first section of the act to which this is a supplement (An act respecting conveyances, Revision of 1898), heretofore or hereafter made, excepting deeds or instruments made by a corporation or corporations shall be void for lack of a seal, provided the attestation clause and the acknowledgment of proof shall recite that the same was signed and sealed by the makers thereof." (See P. L. 1910, p. 35).

3. It is not necessary that the impression of the seal be upon wax.

(See Sec. 20, P. L. 1898, p. 677, of An Act Respecting Conveyances, Revision of 1898). (See also *Corrigan v. Trenton Del. Falls Co.,* 5 E. 52, decided in 1845).

4. **The seal of a private corporation must be proved by testimony;** it is not evidence of its own authenticity. *Den v. Vreelandt,* 7 L. 352, cited in *Vaughn v. Hankinson's Admr.,* 35 L. 79, in which latter case it was held that a diploma under the seal of a medical society cannot be received in evidence until the genuineness of such seal has been proved. The court may look beyond the seal, and inquire in what manner and by what authority it was affixed; and it may be shown that it was affixed without proper authority. The burden of proof is on the party objecting. (*Leggett v. N. J. Mfg., &c., Co.,* 1 E. 541).

5. **Presumption of authority.**

A deed of a corporation, under its corporate seal and signed by the proper officer, is presumed to have been executed by authority of the corporation. An allegation in the bill to the contrary, supported only by an affidavit of belief that the facts are true, is not sufficient to overcome the presumption. (*Manhattan Mfg. Co. v. N. J. Stock Yard Co.,* 23 E. 161). No presumption of authority arises from the use of a common paper seal if it does not appear on its face to be the corporate seal even though there be the statement "witness the corporate seal." (*Raub v. Blairstown Creamery Ass'n,* 56 L. 262).

6. **Proving of corporate deed.**

A corporate deed can be proved only by proving that the seal affixed is the seal of the corporation, or that it was affixed as the corporate seal by an officer of the corporation, or other person thereunto duly authorized. (*Osborne v. Tunis,* 25 L. 633). Where deeds of a private corporation are shown to be sealed with the corporate seal, the testimony of a single corporate officer, whose duty might or might not make him cognizant of their execution, that he had no knowledge of corporate authority having been given to execute the instrument, should be deemed legally insufficient to overcome the presumption of due execution to which the affixing of the corporate seal gives rise. (*Parker v. Washoe Mfg. Co.,* 49 L. 465). (See also *Whitehead v. Hamilton Rubber Co.,* 52 E. 78).

IV. To Hold, Purchase and Convey Real and Personal Property.

1. **Text of statute.**

The full text of section 1, sub-division 4, with reference to this power is as follows: "To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been bona fide conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest."

2. Limitation as to amount removed.

This section is practically the same as that contained in all general corporation acts since 1846. Whatever limitations existed by virtue of the statutes prior to the Revision of 1896, as to the amount or value of real estate which a corporation might hold, were removed by that revision, so that now a corporation may become possessed of any amount of real estate without reference to amount or value. The only limitation upon the right of a corporation to hold real property is that the purchase must be a natural incident in the carrying out of the purposes of the corporation.

3. Direct proceedings necessary to contest right.

The right of a corporation to take and hold title to an interest in real estate can not be denied by the grantor, but can only be contested by the public authorities. (*Northeastern Tel. & Tel. Co. v. Hepburn,* 72 E. 7). Third persons cannot object to the capacity of a corporation to take a gift on the ground that its property already equals the amount limited by the law under which it was formed. The state alone can interfere. (*De Camp v. Dobbins.* 29 E. 36; Aff'd 31 Id. 671). It is settled that a forfeiture by a corporation cannot be taken advantage of, or enforced against it collaterally or incidentally, or otherwise than by direct proceedings for the purpose. (*Ang. & Ames Corp.,* Sec. 777).

4. May hold title in fee simple.

The limitation of the existence of a corporation does not prevent it from holding lands in fee simple. (*State v. Brown,* 27 L. 13; *State v. Haight,* 35 L. 178; Aff'd 36 Id. 471). A corporation owning the fee of land can grant to another corporation the right to use the land for a purpose which is not within the powers of the grantor, but is within those of the grantee. (*Benton v. City of Elizabeth,* 61 L. 411; Aff'd Id. 693).

5. Implication of power.

In *Freeman v. Sea View Hotel Co.*, 57 E. 68, it was held that where a hotel company's charter authorized it to purchase land and maintain a hotel, that if its business was unprofitable in one location, it could dispose of its holdings and purchase land in another location.

6. Legislative grants to private corporations are to be strictly construed.

This rule is well settled. (*P. R. R. Co. v. Nat'l Ry. Co.*, 23 E. 441; *Greenwich v. Easton & Amboy R. R. Co.,* 24 E. 217; Aff'd 25 Id. 565; *Central R. R. Co. v. Hudson Terminal Ry. Co.,* 46 L. 289).

7. Corporations are presumed to contract within their powers.

(*Railway Co. v. McCarthy,* 96 U. S. 258). Prima facia all their contracts are valid, and the courts will, as a general rule, presume that

contracts made by a corporation which appear to be designed to promote its legitimate and profitable operation, are within the limits of its powers, and if their validity be assailed, will require the assailant to assume the burden of demonstrating that fact. (*Ellerman v. Chicago Junction Ry., &c., Co.* 49 E. 217).

8. Right of foreign corporations; exception.

Section 95 of the Corporation Act allows foreign corporations to acquire, hold and convey real estate in this state, but Chap. 22, Laws of 1903 (P. L. 1903, p. 41), (see Sec. 95½) prohibits municipal corporations of another state from acquiring, holding and conveying lands in this state, and section 7, as amended by chap. 263, Laws of 1905 (P. L. 1905, p. 515) gives a corporation organized under New Jersey laws, power to acquire, hold and convey real estate in other states or foreign countries. A corporation may acquire and convey real estate in another state as fully as in the state of its incorporation, unless there is express prohibitive legislation therefor in either state. (*Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893).

9. Corporations may lease property and franchises; exceptions

An act approved March 24th, 1899 (P. L. 1899, p. 334), provides as follows: "Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and that any such lease or assignment, or both, heretofore made, are hereby validated; provided, however, that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state." (See *Dickinson v. Consolidated Traction Co.*, 119 Fed. 871; *Coler v. Tacoma Ry., &c., Co.*, 65 E. 347). (See Sec. 156).

10. A corporation may purchase shares of its own capital stock, but the purchase must be for legitimate corporate purposes. (*Oliver v. Rahway Ice Co.*, 64 E. 596; *Berger v. U. S. Steel Corp.*, 63 E. 809; *Chapman v. Ironclad Co.*, 62 L. 497).

11. Right to mortgage.

The fourth sub-division of section 1 gives the power to a corporation to mortgage its real or personal estate with its franchises. The power to convey real property includes the right to mortgage. A mortgage is a conveyance; an alienation of an estate and when lawfully executed, may be given either in payment of debt, or as security direct or collateral. (*Leggett v. N. J. Mfg., &c., Co.*, 1 E. 541).

12. Usual procedure in mortgaging corporate property.

There is no statutory requirement making necessary the assent of stockholders to the making of corporate mortgages, nor do the statutes prescribe the procedure to be followed where corporate mortgages are created. It would seem that in the absence of restrictions in the certificate of incorporation, the power to mortgage corporate property is given to the directors under section 12. Where the authority is not expressly given the directors under provision in the certificate of incorporation, a meeting of the stockholders is usually called and their consent obtained before any action is taken by the directors. (See *Hackensack Water Co. v. De Kay*, 36 E. 548).

13. Chattel mortgages.

A chattel mortgage by a corporation, authorized by de facto stockholders only, is good as to third persons. (*Kane v. Loder*, 56 E. 268). A corporation, however, has no right to execute a chattel mortgage to a creditor of the company when it is in a condition of insolvency. (See Sec. 64; and also *Miller v. Gourley*, 65 E. 237). (See *Morton Trust Co. v. Home Tel. Co.*, 66 E. 106; *Guaranty Trust Co. v. Atlantic Coast Electric R. Co.*, 132 Fed. 68; *Ilkelheimer v. Consolidated Tob. Co.*, 59 Atl. 363; *Tilford v. Atlantic Match Co.*, 134 Fed. 924).

14. What lien of chattel mortgage may cover.

A chattel mortgage may be made a lien on the outstanding book accounts due a mortgagor, and also upon such book accounts as shall thereafter become due to the mortgagor in the regular course of his business. (*Buvinger v. Evening Union Printing Co.*, 72 E. 321). See *Nugent v. McNeil Shoe Co.*, 62 E. 583, where it was held that, where a partner continuing a business gave a chattel mortgage to his late partner on the book accounts due the dissolved firm, it imposed a lien on them, but not on the money collected on such accounts by a company which purchased the business from the mortgagor, the money being mixed with other money and used in the regular course of the company's business.

15. Where mortgagor remains in possession.

Where a mortgagee permits the mortgagor to remain in possession of the property and sell it in the usual course of trade, the mortgagor will be considered acting as the agent of the mortgagee, and as receiving the money for him; but it would be otherwise if the whole stock should be sold together or in any other manner than in the usual course of business. (*Miller ads. Pancoast*, 29 L. 250). (See also *Lister v. Simpson*, 38 E. 438; Aff'd 39 E. 595).

16. Where there is a mortgage of goods to be thereafter acquired by the mortgagor.

(See *Looker v. Peckwell*, 38 L. 253; Aff'd 39 Id. 134; *Williamson v. N. J. Southern R. R. Co.*, 29 E. 311; *Smithurst v. Edmunds*, 14 E. 408; *Gevers v. Wright*, 18 E. 330; *Collerd v. Tully*, 77 Atl. 1079).

17. **The assignee of a mortgage** securing a bond takes it subject to all defences to the bond, whether with or without notice. (*Voorhees v. Nixon,* 72 E. 791; Aff'd. in *Voorhees v. Malott,* 73 Id. 673).

18. **Effect of express provision in charter.**

An express provision in a corporate charter giving power to issue bonds secured by mortgage, does not prevent the corporation from borrowing money and issuing a mortgage therefor in common form to secure its debt. (*Brown v. Citizens' Ice, &c., Co.,* 72 E. 437).

19. **Effect of defective mortgage upon rights of parties in interest.**

The fact that no notice was given to one of the directors, of the meeting of directors, at which a mortgage was executed, does not affect its validity. The mortgagee was not bound to examine as to that. (*Kuser v. Wright,* 52 E. 825). A chattel mortgage, void as to creditors, for want of the statutory affidavit and proper record, is a lien upon the property mortgaged so far as the rights of the parties to the instrument are affected. Such a mortgage is valid against the claims of the receiver of an insolvent corporation, unless it is made to appear that he is contesting it for the benefit of creditors, whose debts have been fastened on the personal property of the corporation by virtue of the insolvency proceedings. (*Fidelity Trust Co. v. Staten Is. Clay Co.,* 70 E. 550). (See also *Hebberd v. Southwestern, &c., Cattle Co.,* 55 E. 18).

20. **As to foreclosure of mortgages;** (see *Holmes v. Seashore Electric Railway Co.,* 57 L. 16; *Smith v. Crater,* 43 E. 636; *Morris v. Carter,* 46 L. 260-268; *Reinhardt v. Inter-State Tel. Co.,* 71 E. 70). The holder of any one of a series of bonds secured by a mortgage made to trustees, may, on refusal of the trustees so to do, maintain a suit for the foreclosure of the mortgage, for default in the payment of interest. Such suit ordinarily should be brought by the bondholder in behalf of himself and all other bondholders, but an averment to this effect is unnecessary when default has been made only on the bonds held by complainant. (*McFadden v. Mays Landing & Egg Harbor, &c., Co.,* 49 E. 176). (See also *Schultze v. Van Doren,* 64 E. 465; *Johnes v. Outwater,* 55 E. 398). As to necessary parties to a bill for foreclosure (see *Williamson & Upton v. N. J. So. R. R. Co.,* 25 E. 12; *Willink v. Morris Canal, &c., Co.,* 4 E. 377; *N. J. Franklinite Co. v. Ames,* 12 E. 507; *Johnes v. Outwater,* 55 E. 398; *Hackensack Water Co. v. De Kay,* 36 E. 548). (See also *Ring v. New Auditorium Pier Co.,* 77 Atl. 1054).

21. **Power to hold, purchase, mortgage and convey property outside of state.**

Section 7, as amended by Chap. 263, Laws of 1905, allows any corporation organized under the laws of New Jersey to hold, purchase, mortgage and convey real and personal property outside of New Jersey provided such powers are included within the objects set forth in the certificate of incorporation. (See *Baltimore & Ohio R. R. Co. v.*

Koontz, 104 U. S. 5; *Bank of Augusta v. Earle,* 13 Pet. 519-588; *Hilles v. Parrish,* 14 E. 380).

22. **The mortgaging of the property and franchises of a corporation, upon reorganization** and resumption of the management and control of its property and business, is provided for in section 70.

23. **There is no statutory limitation as to the amount of indebtedness** that may be contracted by a corporation by way of mortgage, neither do the statutes restrict the power of the corporation to issue bonds, either secured by mortgage or otherwise. This statement applies to corporations formed under the General Corporation Act. In some states the articles of incorporation must specify the highest amount of indebtedness to which the corporation may at any time be subject, and such amount is limited to a certain percentage of the capital stock. In New Jersey, railroad companies are limited in the amount of such indebtedness.

24. **Classification of bonds.**

In *Benwell v. Newark,* 55 E. 260, Pitney, V. C., classified and defined the several kinds of bonds in use in this country.

25. **As to negotiability of bonds.**

Coupon bonds, if they contain words of negotiability, are negotiable, the same as promissory notes. If payable to bearer, they are negotiable by delivery. (*Boyd v. Kennedy,* 38 L. 146; *Morris Canal v. Fisher,* 9 E. 667; *Morris Canal, &c., Co. v. Lewis,* 12 E. 323). (See also *Knapp v. Hoboken,* 39 L. 394; *Copper v. Jersey City,* 44 L. 634; *Hackensack Water Co. v. De Kay,* 36 E. 548). A company giving a written certificate that a person named is entitled to a bond about to be issued by such company, is estopped from denying the truth of such statement in favor of a person who, in good faith, has changed his position in reliance on such certificate. So far as such parties are concerned, it does not matter whether the certificate so given be negotiable or not. (*Midland R. R. Co. v. Hitchcock,* 37 E. 549). (See also *Hoskins v. Seaside Ice Mfg. Co.,* 68 E. 476).

26. **Bonds being negotiable securities, may be made the subject of pledge.**

(*Morris Canal, &c., Co. v. Fisher,* 9 E. 667). (See also *Morris Canal, &c., Co. v. Lewis,* 12 E. 323).

27. **Title of mortgage bonds payable to bearer.**

The title of bona fide holders of coupon mortgage bonds, issued by a corporation and payable to bearer, which are taken before maturity, is like the title to commercial paper so taken, good against all secret equities claimed by the corporation or third party. (*Lembeck v. Jarvis Terminal, &c., Co.,* 70 E. 757).

28. The holders of mortgage bonds have a lien relating to the time when the mortgage was recorded.

The mortgage is an encumbrance upon the mortgaged premises prior to the claims for mechanics' liens, even though bonds were not issued until after the erection of a building had been commenced. (*Central Trust Co. v. Continental Iron Works,* 51 E. 605).

29. As to guaranteeing securities of another corporation.

A corporation having power to take and dispose of the securities of another corporation, may guarantee their payment if it disposes of them to another party in payment of its own debt; if it buys property subject to a mortgage securing bonds, it may guarantee the payment thereof if said guarantee is taken as payment pro tanto of its debt. (*Ellerman v. Chicago Junction Rys. Co.,* 49 E. 217).

30. Insolvency of a corporation, at the time of issuing bonds secured by mortgage, does not invalidate the mortgage or the rights of the bondholders thereunder.

Stockholders owing money to the corporation upon the subscriptions to stock, are at liberty to buy and pay for these bonds and either hold them or pass them upon the market. (*Bergen v. Porpoise Fishing Co.,* 42 E. 397).

V. To Appoint Officers and Agents.

1. Text of statute.

The full text of this sub-division is "To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation." (Sec. 1, sub-div. 5). Section 14 also provides for the agents of a corporation as follows: "The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws."

2. Necessity of corporation acting through officers and agents.

"Inasmuch as a corporation cannot act personally, responsibility for negligence cannot exist unless it is held for the act of some agent or employe. Without a voice of its own, it must speak through another. Inanimate, and without capacity to act by itself, its functions must be performed, and its obligations to its agents discharged through some representative, whose act is its act, whose control is its control, and whose negligence is its negligence. The board of directors, the president—every one in employment, from the highest to the lowest—is an agent and servant of the company." (*Smith v. Oxford Iron Co.,* 42 L. 467-473). (See also *O'Brien v. American Dredging Co.,* 53 L. 291).

3. General practice as to appointment of officers and agents.

The general practice in the organization of corporations, is to provide in the by-laws for the appointment of servants and agents. Ordinarily, this power of appointment would be in the directors, unless otherwise provided in the by-laws.

4. A servant or agent need not be appointed under corporate seal.

(*Mendham v. Losey,* 2 L. 327). (See also *State v. Morris & Essex R. R. Co.,* 23 L. 360).

5. How authority may be conferred.

In the absence of statutory prohibition, or limitation upon the authority of agents of a corporation, authority may be conferred by parol, and may be inferred from circumstances, or implied from the acquiescence of the corporation or its managers in a general course of business. (*Crossley v. St. Philip Neri,* 74 L. 653).

6. Authority of corporation to appoint co-extensive with that of individual to appoint.

A trading or manufacturing corporation, until its charter is annulled by proper statutory proceeding, has the same authority as an individual trader or manufacturer, to sell or consign its goods, to select its selling agents and to impose conditions as to whom they shall sell and the terms upon which they shall sell. (*Atty. Gen. v. Am. Tob Co.,* 55 E. 352).

7. **Acts of de facto officers** will be valid until such officers are lawfully ousted; and their acts are binding on the corporation more especially as they respect third persons. (*Doremus v. Dutch Reformed Church,* 3 E. 332).

8. **It is incompetent for one who has had the benefit of the contract to controvert the act of the agent,** where the corporation is willing to recognize the validity of the act. (*Brahn v. J. C. Forge Co.,* 38 L. 74).

9. **Failure to elect officers at the time designated, will not work dissolution of a corporation.**

(*Hoboken Bldg. Ass'n. v. Martin,* 13 E. 427).

For further discussion of this subject, see "CORPORATIONS' AGENTS AND THEIR DUTIES" under "INCORPORATORS, STOCKHOLDERS, DIRECTORS. OFFICERS, AGENTS AND THEIR DUTIES."

VI. TO MAKE BY-LAWS.

1. Text of statute.

This sub-division reads as follows: "To make by-laws, fixing and altering the number of its directors, and providing for the management

of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars." (Sec. 1, sub-div. 6).

2. **Power to make.**

"The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred, may be altered or repealed by the stockholders." (Sec. 11).

3. **Matters to be regulated by by-laws.**

Section 17 sets out several regulations which may be properly made the subject of by-laws. The stockholders may, by by-law, fix the date for, and regulate the payment of, dividends, designate the date for election of directors, determine the number of shares to be held by directors, prescribe the manner of filling vacancies, provide for keeping books, except stock and transfer books, outside the state, provide for meetings of directors outside the state, provide for regulation of voting at elections, regulate transfers of stock and fix amount of profits to be reserved as working capital. It is to be understood, however, that any of the above matters may be provided for in the certificate of incorporation, and if so provided for, they cannot be altered by by-law.

4. **When by-law may be set aside.**

A by-law, to be set aside, ought to be demonstrably shown to be unreasonable, and contrary to some great public principle. (*Paxson v. Sweet*, 13 L. 196). (See also *Taylor v. Griswold*, 14 L. 222; *State v. Mayor, &c.*, 37 L. 348; *State v. Overton*, 24 L. 435).

5. **The validity of a by-law is purely a question of law,** and whether the by-law be in conflict with the law, or with the charter of the company, or be in a legal sense unreasonable, and therefore unlawful, is a question for the court and not for the jury.

6. **By-laws of a private corporation bind the members only, and do not effect third persons.**

(*State v. Overton*, 24 L. 435).

7. **As to the distinction between a by-law and a regulation,** see *Morris & Essex Ry. Co. ads. Ayers*, 29 L. 393, where it was held: "the question whether the regulation of a corporation which affects third persons is reasonable, is a question of fact for the jury; but the validity of a by-law of a corporation, which only affects its members, and not third persons, is a question of law for the court." (See also *Compton v. Van Volkenburgh & N. J. R. R. & Tr. Co.*, 34 L. 134).

8. Is by-law a contract?

The certificate of incorporation forms a contract between the stockholders. "Whether any particular by-law also forms a part of such contract depends upon the time when, and the circumstances under which, it was adopted. If it was adopted as a part of the original organization of the company, so that the subscriptions of stock were made and money paid thereon upon the strength of it, then it becomes a part of the fundamental contract between the stockholders." (*Loewenthal v. Rubber Reclaiming Co.*, 52 E. 440).

9. A by-law cannot enlarge the powers of a corporation.

In the matter of *Griffing Iron Co.*, 63 L. 168, it was held that the delegation by the stockholders to the directors of power to amend the by-laws, does not control the power of the stockholders to amend them.

VII. TO WIND UP AND DISSOLVE ITSELF.

Or be wound up and dissolved as the statutes provide. (See DISSOLUTION).

POWERS ADDITIONAL.

In addition to the powers enumerated in section 1, and the powers specified in the certificate or in the act under which it was incorporated, every corporation, its officers, directors and stockholders shall possess and exercise all powers and privileges contained in the General Corporation Act, so far as such powers are necessary or convenient to the attainment of the objects set forth in the charter or certificate of incorporation. The corporation shall be governed by the provisions and be subject to the restrictions and liabilities contained in the General Corporation Act so far as the same are appropriate to, and not inconsistent with the charter, or the act under which the corporation was formed. No corporation shall possess or exercise any other corporate powers except such incidental powers as shall be necessary to the exercise of the powers so given. (Sec. 2).

1. Powers limited to those conferred.

"Corporations being creatures of legislation, are precisely what their organic act makes them, and beyond that, nothing. They must act strictly within their limited sphere, and for every function they claim to exercise, they must find authority in legislative grant." (*Watson v. Acquackanonk Water Co.*, 36 L. 195). (See also *Nat'l Trust Co. v. Miller*, 33 E. 155).

VIII. POWER TO CONTRACT AND CREATE INDEBTEDNESS.

1. Unanimous consent does not invalidate invalid contract.

A contract not within the scope of the powers conferred on a corporation, cannot be made valid by the assent of every one of the shareholders. (*Nat'l Trust Co. v. Miller, supra*).

2. Ability to contract as natural persons.

Corporations have within the range of their chartered powers the same ability to contract that pertains to natural persons, and when acting within the scope of those powers, stand upon the same footing as do natural persons. Contracts made on its behalf by authorized agents, though by parol, are express contracts, and, as in the case of individuals, the law will on ordinary grounds imply promises against it. (*Crawford v. Longstreet,* 43 L. 325). (See also *Atty. Gen. v. Am. Tob. Co.,* 55 E. 352; Aff'd 56 Id. 847).

3. Corporations are presumed to contract within the existing powers of their charters; and where general words are used in a contract admitting of a double construction, they must be construed consistently with the scope and powers of the charter. (*Morris & Essex R. R. Co. v. Sussex R. R. Co.,* 20 E. 542). (See also *Morris & Essex R. R. Co. v. Bonnell,* 34 L. 474).

4. Directors' power to contract.

The directors of a corporation have power to make any contract necessary to enable the corporation to accomplish the purposes of its creation, and so long as they act in good faith, with honest motives, and for honest ends, their acts are valid. (*Park v. Grant Locomotive Works,* 40 E. 114; *Ellerman v. Chicago Junction Ry. Co.,* 49 E. 217).

5. Exceptional contracts.

Contracts for the compromise of suits and for non-competition, are within the exercise of powers incident to corporate management and business. Contracts which impose an unreasonable restraint upon the exercise of a business are void, but contracts in reasonable restraint thereof are valid. (*Ellerman v. Chicago Junction Ry. Co., supra*).

6. Construction of grants.

In *Rabe v. Dunlap,* 51 E. 40, it was held that "a corporation created by statute, either special or general, can exercise no power and has no rights except such as are granted by express words or fair implication. And in the construction of such grants, it must be held that what is fairly implied is as much granted as what is clearly expressed."

7. Public grants are to be strictly construed.

(*J. C. Gaslight Co. v. Consumers Gas Co.,* 40 E. 427; *State v. City of Elizabeth,* 28 L. 103; *Atty. Gen. v. Central R. R. Co.,* 50 E. 52).

8. Indebtedness not limited by statute.

As to a corporation's power to create indebtedness, there is no statutory limitation upon this power in New Jersey. Corporations created for business purposes, unless restrained by charter or statute, have, as a necessary incident, the power of incurring debts in the course of their legitimate business, and of making negotiable paper in payment of such debts. (*Fifth Ward Savings Bank v. First Nat'l Bank,* 48 L.

513; *Lucas v. Pitney*, 27 L. 221; *Nat'l Bank of Republic v. Young*, 41 E. 531; *Stratton v. Allen*, 16 E. 229).

9. A manufacturing corporation has no authority to give accommodation paper, but it is bound by an endorsement of paper given for accommodation only when in the hands of a bona fide holder. (*Blake v. Domestic Mfg. Co.*, 64 E. 480). See *Perkins v. Trinity Realty Co.*, 69 E. 723; Aff'd. 71 Id. 304, where it was held that accommodation notes given by a business corporation are not valid as against creditors or dissenting stockholders.

10. Guaranteeing securities of other corporations.

A corporation, having power to take and dispose of the securities of another corporation, may guarantee their payment if it disposes of them to another party to pay its own debt; if it buys property subject to a mortgage securing bonds, it may guarantee the payment thereof if said guarantee is taken as payment pro tanto of its debt. (*Ellerman v. Chicago Junction Rys. Co.*, 49 E. 217). (See also *Whitehead v. Amer. Lamp & Brass Co.*, 70 E. 581; *Earle v. Amer. Sugar Refining Co.*, 74 E. 751).

11. Rule as to ultra vires.

As to contracts of a corporation which are ultra vires, the rule followed in New Jersey is stated in *Camden & Atl. R. R. Co. v. Mays Landing, &c., R. R. Co.*, 48 L. 530. When the transaction is complete, and the party seeking relief has performed on his part, the plea of ultra vires by the corporation which has acquiesced in it, is inadmissible in an action brought against it for not performing its side of the contract, in all those instances where the party who has performed cannot, upon rescission, be restored to his former status. A contract ultra vires fully executed on both sides is permitted to stand while an executory contract ultra vires cannot be enforced. (See also *Chapman v. Ironclad Rheostat Co.*, 62 L. 497). The doctrine of ultra vires ought to be reasonably understood and applied, and whatever may be fairly regarded as incidental to and consequential upon, those things which are authorized by the charter of the company, ought not (unless expressly prohibited), to be held by judicial construction to be ultra vires. (*Ellerman v. Chicago Junction, &c., Co.*, 49 E. 217). (See also *Dittman v. Distilling Co. of Am.*, 64 E. 537).

12. Estoppel to plead ultra vires.

Where stockholders have all assented to corporate action, and no rights of the state or creditors intervene, the doctrine of estoppel is fully applicable, and the plea of ultra vires is unavailing. (*Breslin v. Fries-Breslin Co.*, 70 L. 274; *Perkins v. Trinity Realty Co.*, 69 E. 723; Aff'd 71 Id. 304). (See also *Camden Safe Deposit, &c., Co. v. Citizens Ice, &c., Co.*, 69 E. 718; Aff'd 71 Id. 221; *Blake v. Domestic Mfg. Co.*; 64 E. 480).

13. Ultra vires acts may be restrained in equity at the suit of the attorney-general.

(See *Atty. Gen. v. Del. & Bound Brook R. R. Co.*, 27 E. 631; *Atty. Gen. v. Cen. R. R. Co.*, 50 E. 52; *Atty. Gen. v. Pitman, &c., Gas Co.*, 74 E. 255; *Atty. Gen. v. Firemens' Ins. Co.*, Id. 372; *Atty. Gen. v. Vineland L. & P. Co.*, 73 E. 703).

IX. POWERS PROHIBITED.

1. Express prohibition.

The following powers are expressly prohibited to corporations created under the General Corporation Act: "Carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money." (Sec. 3, as amended by Chap. 176, Laws of 1899, P. L. 1899, p. 473).

X. TORTS.

(See also TO SUE AND BE SUED under POWERS).

1. General statement as to liability.

Generally, it may be stated that a corporation is liable the same as a natural person, for the tortious acts of its servants in the course of their employment, committed by the authority of the corporation, express or implied, whether such acts fall within the designation of forcible, fraudulent, negligent or malicious torts, and without regard to the form of action by which the appropriate remedy is sought. (*Brokaw v. N. J. Ry. & Trans. Co.*, 32 L. 328; *State v. Morris & Essex R. R. Co.*, 23 L. 360; *McDermott v. Evening Journal*, 43 L. 488; Aff'd. 44 Id. 430; *Dierkes v. Hauxhurst Land Co.*, 79 Atl. 361).

2. The pertinent inquiry when liability of corporations for torts of agents is charged, is whether the act in question is one within the scope of the corporate powers, and whether it was done by a person who was the agent of the corporation in doing it. (*N. J. & Seashore R. R. Co. v. Welsh*, 62 L. 655). (See also *Hoboken Printing Co. v. Kahn*, 59 L. 218; *Dock v. Elizabethtown Steam Mfg. Co.*, 34 L. 312; *Vance v. Erie R. R. Co.*, 32 L. 334; *Empire Cream Co. v. De Laval Dairy Co.*, 75 L. 207).

3. As to the question of corporate liability for punitive damages. (See *Carey v. Wolff & Co.*, 72 L. 510; *Peterson v. Middlesex & Somerset Traction Co.*, 71 L. 296).

4. For cases on the subject of torts of corporations affecting public interest, see *Freeholder v. Strader*, 18 L. 108, distinguishing between a specific duty owing to an individual and a general duty owing to the

public, and *Trusman v. Belvidere-Del. R. R. Co.*, 26 L. 148, as to the application of the principle of non-liability of persons executing a public trust, for injuries to individuals resulting therefrom, as applied to private corporations authorized to construct public works, by private capital and for private emolument.

5. Ultra vires no defense.

A corporation cannot defend itself in an action for tort done by it on the ground that the business, in the prosecution of which the tort was done, was ultra vires. (*N. Y. L. E. & W. R. R. Co. v. Haring*, 47 L. 137).

XI. CRIMES AND CRIMINAL PROSECUTION.

1. Destruction of corporate records.

Under the provision of "An Act for the Punishment of Crimes," (Revision of 1898), P. L. 1898, p. 794, chap. 235, the malicious destruction or damaging of deeds, letters patent, charter or any other papers of a corporation is made a misdemeanor. Fraudulent appropriation of corporate property, the keeping of fraudulent corporation accounts, the willful destruction of corporate books, or papers, the making of false entries in corporate accounts, the publishing of false statements, the issuing of false stock, are misdemeanors under the above act. Embezzlement from a corporation by the same act is made a high misdeameanor.

2. Fraudulent purposes.

By a supplement to the above act, approved June 2d, 1905 (P. L. 1905, c, 257, p. 501), the organization or procuring the organization of a corporation for fraudulent purposes, or the using of a corporation for any fraudulent or unlawful object, is made a misdemeanor.

3. Fraudulent representations.

A further supplement approved May 17th, 1906 (P. L. 1906, c. 266, p. 549), makes it a misdemeanor for any corporation to obtain money or property through false representations.

4. Criminal procedure.

Sections 61, 62 and 63 of "An Act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases" (Revision of 1898), P. L. 1898, chap. 237, p. 866, makes provision for service of process, etc., against corporations after indictment.

5. Subject to indictment.

Indictment will lie against a corporation for a misfeasance. (*State v. Morris & Essex R. R. Co.*, 23 L. 360; Aff'd. 25 Id. 437); also for keeping a disorderly house. (*State v. Passaic County Agricultural Society*, 54 L. 260); also for an offense against the public. (*State v. Morris Canal, &c., Co.*, 22 L. 537).

XII. POWER TO DO BUSINESS WITHOUT THE STATE.

This power is given under section 7 (as amended by chap. 263, laws of 1905; P. L. 1905, p. 515).

1. Statutory sanction necessary.

In *Hilles v. Parish,* 14 E. 380-383, it was held that, independent of statutory provision, a private corporation cannot transact business in another state. The corporation exists by force of the law that creates it, and where that law ceases to exist, and is not obligatory, the corporation can have no existence. (See also *Bank of Augusta v. Earl,* 13 Peters, 519-588; *Runyan v. The Lessee of Coster,* 14 Peters, 129).

XIII. POWERS LIMITED BY REPEAL.

1. Repeal of charter.

"The charter of every corporation, or any supplement thereto or amendment thereof, shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may, at pleasure, dissolve any corporation." (Sec. 4).

2. Amendment or repeal of act.

Section 5 provides that the General Corporation Act may be amended or repealed at the pleasure of the legislature, and every corporation created under the General Corporation Act shall be bound by such amendment. It also provides that the General Corporation Act and all amendments, shall be a part of the charter of every corporation heretofore or hereafter formed under it, unless inapplicable or inappropriate to the objects of such corporation. Section 4 in the General Corporation Act of 1896, is a re-enactment of section 6 of the Act of 1846, but section 5 first enacted in the Act of 1896, was designed to amplify and enlarge the power of the legislature over corporations organized under it.

3. Impairment of stockholders' rights.

The rights reserved in section 4 extend only to the modification or destruction of rights as between the state and the corporation. The rights of the stockholders inter sese can in no respect be impaired except in so far as an impairment may result from an alteration required by public interest. (*Berger v. U. S. Steel Corp.,* 63 E. 809-824).

4. Power of legislature limited.

A legislative charter is a contract between the state and the corporation which the state cannot impair. The power of the legislature has its limit. It can repeal or suspend, alter or modify, or take away the charter, but it cannot impose a new one and oblige the stockholders to accept it. Power to alter or modify anything can never

be held to imply a power to substitute a thing entirely different. (*Zabriskie v. Hackensack & N. Y. R. R. Co.,* 18 E. 178; *Mills v. Central R. R. Co.,* 41 E. 1). (See also *Cooper Hospital v. Camden,* 68 L. 691; *Einstein v. Raritan Woolen Mills,* 74 E. 624). (See also DISSOLUTION).

XIV. CERTAIN CORPORATIONS MAY TAKE STOCK AND BONDS IN OTHER CORPORATIONS IN PAYMENT FOR LABOR AND MATERIALS.

(See CAPITAL STOCK AND DIVIDENDS).

XV. CORPORATIONS MAY HOLD STOCK AND BONDS OF OTHER CORPORATIONS.

(See CAPITAL STOCK AND DIVIDENDS).

CHAPTER VII.

CAPITAL STOCK AND DIVIDENDS.

I. Nature of Capital Stock.

1. Distinguished from value of corporate property.

The term "capital stock," as used in the Corporation Act, designates the amount of capital to be contributed by the stockholders for the purposes of the corporation. It denotes the sum fixed by the charter as the amount paid in, or to be paid in, by the stockholders for the prosecution of the business of the corporation, and for the benefit of the corporation's creditors.

2. Its value may be determined with reference to the value of the property of the corporation; surplus profits enhancing, and business losses diminishing its worth, but the term itself does not indicate what is the actual value of the corporate property. (*State v. Morristown Fire Ass'n,* 23 L. 195).

3. Not synonymous with "Property of Corporation."

The term "property of the corporation" includes "capital stock," but the phrases are not synonymous. This is the view taken by the courts of this state as embodied in the cases of *State v. Morristown Fire Ass'n, supra,* and *Amer. Pig Iron Storage Co. v. Assessors,* 56 L. 389, and represents the idea of most of the text writers. (See *Cook Corp.,* Secs. 8 and 199).

II. Amount of Capital Stock Necessary.

Under section 8 (as amended by Chap. 172, Sec. 2, Laws of 1898), Par. 4, the certificate of incorporation must set out the amount of the total authorized capital stock (which in no case may be less than $2,000); the number of shares into which the same is divided and the par value of each share. The certificate must also show the amount of capital stock with which the company will commence business (which may not be less than $1,000), and if there be more than one class of stock created, these classes must be described and the terms of their creation shown.

1. Capital stock not limited.

It will thus be seen that the amount of capital stock is not limited. It is necessary that not less than $2,000 shall be the total amount, at

least $1,000 of which must be subscribed for by the incorporators, but the total authorization may be any sum desired above $2,000.

2. Separation of classes of stock.

If there be both common and preferred stock, the certificate of incorporation must separate the authorized capital and fix the amount of each class.

III. POWER TO ISSUE STOCK.

1. This power cannot be assumed.

A corporation cannot issue stock except by express legislative grant. If there be no authority in the charter of a corporation providing for a capital stock divided into shares, a by-law adopted, providing for same is invalid. (*Mutual Benefit Life Ins. Co. v. Utter,* 34 L. 489).

2. As to when stock is actually issued, it was held in *American Pig Iron Storage Co. v. Assessors,* 56 L. 389, that stock is issued when the company has received and accepted subscriptions for the same, whether paid for or not.

3. Stock once issued, remains outstanding until retired and cancelled as provided for by statute.

(*Knickerbocker Imp. Co. v. Assessors,* 74 L. 583).

IV. NOTHING BUT MONEY SHALL BE CONSIDERED AS PAYMENT OF ANY PART OF THE CAPITAL STOCK EXCEPT STOCK ISSUED FOR PROPERTY PURCHASED.

Under the provisions of section 48, nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under the General Corporation Act, except as that act further provides in the case of the purchase of property. (See Sec. 49).

Section 49, immediately following, provides for the issuing of stock for property purchased, and is as follows: "Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact."

1. Construction of statutes.

The above two sections have been fully construed in *Donald v. Amer. Smelting & Refining Co.,* 62 E. 729. Here the court said: "The meaning of section 48 is not questionable. The money must equal the face value of the stock. The language of section 49 is even more explicit. The corporation may issue stock to the amount of the value of the property. The value of the property in the one case, just as the value of the money in the other, must at least equal the face value of the stock. Such was the view expressed for this court by Mr. Justice Depue in *Wetherbee v. Baker,* 35 E. 501, and supported by abundance of authority."

"The distinction between the contemplated issue of corporate stock for property and its issue for money lies, not in the rule for valuation, but in the fact that different estimates may be formed of the value of the property. When such differences are brought before judicial tribunals, the judgment of those who are by law entrusted with the power of issuing stock to the amount of the value of the property, and on whom, therefore, is placed the first duty of valuing the property must be accorded considerable weight. But it cannot be deemed conclusive when duly subjected to judicial scrutiny. Nor is it necessary that conscious over valuation, or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. Their honest judgment, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of this statutory rule as surely as would corrupt motive."

The court distinguished the following cases: *Elkins v. Camden & Atl. R. R. Co.,* 36 E. 241; *Park v. Grant Locomotive Works,* 40 E. 114; Aff'd 45 Id. 244; *Ellerman v. Chicago Junction Rys. Co.,* 49 E. 217; *Willoughby v. Chicago Junction Rys. Co.,* 50 E. 656; *Sewell v. East Cape May Beach Co.,* 50 E. 717; *Edison v. Edison United Phonograph Co.,* 52 E. 620, and then continuing said: "But the original issue of corporate stock is a special function, in the exercise of which the legislature has fixed the standard to be observed, and it is the duty of the courts, so far as their jurisdiction extends, to see that this standard is not violated, either intentionally or unintentionally."

2. "When corporate stock has once been issued for property purchased, then the legislature has directed the application of a different rule.

In the words of the same section (49), 'the stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, shall be conclusive.' Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to

hold his stock as full paid stock, free from further call. The cases of *Bickley v. Schlag,* 46 E. 533 and *Rural Homestead Co. v. Wildes,* 54 E. 668, indicate that the completed transaction was equally secure, even before the statute received its present decisive form."

In *Edgerton v. Electric Imp., &c., Co.,* 50 E. 354-361, the court held: "To justify a corporation in issuing stock under our act for property purchased, there should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed it represents." In this connection, see *Rural Homestead Co. v. Wildes,* 54 E. 668, where it was held that the purchase of land, by an issue of stock, to suppress competition that might be disasterous, was valid. (See also *Easton Nat'l Bank v. Amer. Brick & Tile Co.,* 70 E. 732; *Goodnow v. Amer. Writing Paper Co.,* 72 E. 645; Aff'd 73 Id. 692; *Carver v. Southern Iron & Steel Co.,* 78 Atl. 240; *Gilson v. Appleby,* 77 Atl. 1084).

3. **As to the valuation and proof of value in the case of mining property,** a different rule must of necessity prevail, as such property is of so uncertain a value, which value may or may not be disclosed by even the most thorough inspection. (See *Geer v. Amalgamated Copper Co.,* 61 E. 364).

4. **As to the rights of stockholders where full paid stock not subject to further call is issued at an admitted over-valuation, but without fraud.**

(See *Goodnow v. Amer. Writing Paper Co.,* 72 E. 645; Aff'd 73 Id. 692). (See also *Volney v. Nixon,* 68 E. 605; *Morton v. Timken,* 48 L. 87; *Ecuadorian Ass'n Ltd. v. Ecuador Co.,* 71 E. 757; *Strickland v. National Salt Co.,* 72 E. 170; *Voorhees v. Malott,* 73 E. 673).

5. **As to stock issued as a bonus.**

(See *Arnold v. Searing,* 73 E. 262).

6. **Proof of value.**

That proof of bona fide value required by the statute, where stock is issued for property purchased, must be something more than bookkeeping or mere recitative language in resolutions of a board of directors. (See *Knickerbocker Imp. Co. v. Assessors,* 74 L. 583).

7. **The good will of a business is property for which stock may be issued.**

(*Washburn v. Nat'l Wall Paper Co.,* 81 Fed. 17).

8. **Letters patent,** purchased by stock, issued therefor for property purchased, are a part of the invested capital of a corporation. (*American Mutoscope Co. v. Assessors,* 70 L. 172).

V. CORPORATIONS MAY TAKE STOCK AND BONDS OF OTHER CORPORATIONS IN PAYMENT FOR LABOR AND MATERIALS.

The Corporation Act also provides (section 50) that "Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact."

1. Construction of statute.

The same rulings as apply to section 49 apply also to this section (*Attorney-General v. Pitman, Glassboro & Clayton Gas Co.*, 74 E. 255); and also to stock issued upon consolidation, (*Strickland v. Nat'l Salt Co.*, 72 E. 170).

2. Where the rights of creditors are involved, the issue of stock, as paid for in work and labor, is upheld, only where the contract for the rendition of the services payable in stock has been made in good faith, and the services accepted in payment have been put in at a full, fair and bona fide valuation. (*Clevenger v. Moore*, 71 L. 148).

3. As to the power of a railroad company to issue ite entire stock to a construction company for the building of the road.

(See *In re Del. River & Atl. Ry. Co.*, 68 Atl. 1104).

VI. CORPORATIONS MAY HOLD STOCK AND BONDS IN OTHER CORPORATIONS.

Corporations may hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state. (Section 51).

1. **Power to exercise all rights and privileges of ownership,** including the power to vote thereon while owning such stock, is also given. (Sec. 51).

2. **The power given under section 51 is subject to the limitations of section 3.**

The power exists as a primary power only, when the purpose to exercise it as such is expressed in the certificate of incorporation; otherwise it exists as an incidental power only, so far as necessary or convenient for the attainment of the objects set forth in the certificate of incorporation. (*State v. Atl. C. & Shore R. R. Co.,* 77 L. 465).

3. **This power may extend to the organizing of and holding stocks of corporations in other states.**

(*Dittman v. Distilling Co.,* 64 E. 537). (See also *Robotham v. Prudential Ins. Co.,* Id. 673).

4. **Shares of one corporation held by another may be voted by duly authorized proxy.**

(*State v. Rohlffs,* 19 Atl. 1099).

5. **Where there is an issue of stock for stock of another corporation,** (See *Strickland v. Nat'l Salt Co.,* 72 E. 170). (See also *Ellerman v. Chicago Junction Rys., &c., Co.,* 49 E. 217; *Edwards v. Nat'l Window Glass Jobbers Ass'n,* 68 Atl. 800).

VII. POWER TO RECEIVE SUBSCRIPTIONS.

1. **Commissioners may be appointed** to receive subscriptions for the stock of a corporation, but the case of *Atty.-Gen. v. Stevens,* 1 E. 369, holds them to be trustees, whose acts may be controlled by the Court of Chancery, on complaint of the stockholders or persons subscribing or seeking to subscribe for stock. (See also *Van Dyke v. Stout,* 8 E. 333).

VIII. RIGHT TO SUBSCRIBE.

The right to subscribe to the capital stock of a corporation is accorded to all persons who conform to the statutory provisions.

1. **There is no qualification as to residence or citizenship.**

2. **An infant may not subscribe for shares** of stock only because of the general inability of an infant to contract.

3. **A corporation may become a subscriber for stock in another corporation** where the subscribing corporation is engaged in any work of intended improvement or public use as set out in section 50. (See *Dittman v. Distilling Co.,* 64 E. 537). A corporation may also purchase shares of its own stock for legitimate corporate purposes. (See Sec. 60).

4. "A corporation cannot in its own name subscribe for stock or be a corporator under the General Railroad law; nor can it do so by a simulated compliance with the provisions of the law through its agents, as pretended corporators and subscribers of stock." (*Cen. R. R. Co. of N. J. v. Penna. R. R. Co.,* 31 E. 475-494).

5. **Objects must be legal.**

In all cases, however, in order that the right may be enforced, the objects of the corporation must be legal and the subscription must not be given for a fraudulent purpose. (See Sec. 6).

6. **As to oral contracts of subscription.**

Where a corporate charter requires a subscription to be made in writing, an oral contract of subscription will not be enforced. (*Vreeland v. N. J. Stone Co.,* 29 E. 188).

7. **Liability of subscriber for subscriptions.**

A subscriber for stock of a corporation is liable to pay therefor on the execution of the certificate of incorporation, though he does not participate in the organization, and though the corporation becomes merely a de facto corporation. (*McCarter v. Ketcham,* 74 L. 825).

8. **Distinction between original subscriber and traansferee.**

At common law, a stockholder is liable to pay his subscription if such payment is necessary to pay the debts of the company. A distinction is drawn between one who holds his stock by transfer and an original subscriber. The former may, in the absence of any fraudulent purpose, discharge himself from liability for unpaid installments by due transfer of his shares, while the latter cannot obtain immunity in that way. The subscription to the stock and the acceptance of a certificate for the shares, constitute a contract between the subscriber and the company, by which the subscriber engages to pay the remaining installments on demand by the corporation. From this agreement the subscriber cannot recede without the consent of the company. (*Hood v. McNaughton,* 54 L. 425).

IX. PREFERRED AND OTHER SPECIAL STOCKS.

1. **Power to create.**

Under the provisions of section 18, as amended by Chap. 110, Laws of 1901 (P. L. 1901, p. 245), every corporation, organized under the General Corporation Act, is given power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof, as shall be stated or expressed in the certificate of incorporation, or in any amendment to the certificate of incorporation.

2. **Power to increase or decrease stock as provided in sections 27 and 29, applies to all or any classes of stock.**

(Sec 18).

3. **The total amount of preferred stocks issued and outstanding shall at no time exceed two-thirds of the capital stock paid for in cash or property.**
(Sec 18).

4. **Such preferred stock may be made subject to redemption at any time after three years from its issue at a price not less than par.**
(Sec 18).

5. **Dividends on preferred stock; restrictions.**
The corporation is bound to pay on such stock, dividends at such rates, and on such conditions as shall be stated either in the original or amended certificate of incorporation, not exceeding eight per cent. per annum, payable quarterly, half yearly or yearly. (Sec. 18).

6. **Such dividends may be made payable before any dividends shall be set apart or paid on the common stock.**
(Sec 18).

7. **Such dividends may be made cumulative, provided** the corporation shall set apart or pay the said dividends to holders of non-cumulative preferred stock before any dividends shall be paid on the common stock. (Sec. 18).

8. **Dividends on preferred stock may be made only from surplus or net profits.**
(Sec. 30).

9. **In no event shall a holder of preferred stock be personally liable for the debts of the corporation.**
(Sec 18).

10. **In case of insolvency,** the debts or other liabilities of the corporation shall be paid in preference to the preferred stock. (Sec. 18).

11. **Shareholder may object to creation of preferred stock.**
In *Einstein v. Raritan Woolen Mills,* 74 E. 624, it was held that the creation of preferred stock by a corporation not authorized by the special act creating it, nor under general law existing at that time, and against the objection of a shareholder, violates the obligation of the contract between the corporation and the shareholder. In this case the corporation was incorporated by a special act of the legislature in 1869.

12. **Preferred stock should be defined.**
The present act enables the corporation to create different kinds of stock, the designations, preferences, restrictions or qualifications of which, however, must be stated in the original or amended certificate,

and the act itself restricts the issue in this; that preferred stock shall at no time exceed two-thirds of the paid up capital stock. "Calling stock preferred stock, does not, per se, define the rights of such stock, but in order to determine in what respect the holder of such stock is to be preferred to the holder of ordinary stock, resort must be had to the statute, or contract, under which it is issued." (*Elkins v. Camden & Atl. R. R. Co.*, 36 E. 233-236). (See also *Bassett v. U. S. Cast Iron Pipe & Foundry Co.*, 74 E. 668).

13. How stock may be preferred.

Stock may be preferred as to dividends, as to capital, as to both dividends and capital, or otherwise, or it may be restricted or qualified as to voting power.

14. The power to vote may be wholly taken from any class of stock.

15. As to statutory preference in distribution of assets; present rule.

In connection with the above section (18), section 86, which provides for distribution of assets, should be considered. The latter section provides that surplus funds, if any, shall be divided among the general stockholders proportionately, after payment of all allowances, expenses and costs, general and special liens, satisfaction of all claims of creditors, and the "preferred stockholders." The Revision of 1896 eliminated the statutory preferences contained in the Act of 1875, and *Lloyd v. Penna. Elec. Vehicle Co.*, 72 Atl. 16, decided in 1909, over-ruling *McGregor v. Home Ins. Co.*, 33 E. 181, holds, that upon the winding up of a corporation, the preferred stockholders are entitled only to the preference set forth in the certificate of incorporation, and are not to be paid on account of the par value of their shares in preference to the common stockholders.

16. As to mortgage given to secure preferred stock.

In *Black v. Hobart Trust Co.*, 64 E. 415, decided in 1903, a mortgage was given to secure preferred stock and the court held upon the insolvency of the company, that such preferred stockholders could not occupy the dual position of stockholders and creditors.

17. In case of insolvency, preferred stockholders are liable to calls or assessments up to the par value of the stock.

(*Kirkpatrick v. Amer. Alkali Co.*, 140 Fed. 186).

18. Personal liability of holder may be fixed.

Provision in the certificate of incorporation and in the shares of partially paid preferred stock, that the holder of such shares of record on the books of the corporation at the time of making an assessment thereon, and he only, shall be liable for such assessment, is binding on such holder and fixes his personal liability. (*Campbell v. Alkali Co.*, 125 Fed. 207).

19. May be created by amendment.

Preferred stock may be created originally or out of common stock by amendment to the certificate of incorporation. (Secs. 27 and 28).

X. CONVERSION OF PREFERRED STOCK INTO BONDS.

A supplement of March 28th, 1902 (P. L. 1902, p. 217), provides for the conversion of preferred stock into bonds. (Sec. 149).

1. Orderly procedure.

An analysis of this supplement shows, however, that before this can be done, the consent of two-thirds in interest of each class of stockholders, present in person or by proxy, at a meeting called in the manner provided for in section 27, must be had.

2. Conditions precedent.

It is also necessary: (1) that the corporation shall have issued preferred stock entitling the holders to receive dividends at a rate exceeding five per cent. per annum; (2) that dividends on such preferred stock shall have been continuously declared and paid at such rate for a period of at least one year next preceding the meeting; (3) that the floating or unfunded debt of the corporation, at the time of the stockholders' meeting, does not exceed ten per cent. of the par amount of the preferred stock then outstanding (and this must be certified to in the certificate to be filed with the secretary of state); (4) the assets of the corporation, at such time, after deducting the amount of indebtedness, must, in the judgment of the officers making the certificate, be at least equal to the amount of preferred stock issued and outstanding.

3. Consent of holders necessary.

If all the above requirements are met, the corporation may, with the consent of the holder of any such preferred stock, redeem and retire the preferred stock of such holder, out of bonds or out of proceeds of bonds of the corporation. (Sec. 149).

4. The rate of interest on such bonds shall not exceed five per cent. per annum.

(Sec. 149).

5. The principal of such bonds shall not be made payable less than ten years from the date thereof.

(Sec. 149).

6. Construction of statute.

In the case of *Berger v. U. S. Steel Corp.*, 63 E. 809, the Court of Errors and Appeals declared this act to be valid and constitutional. It held the act to be a restraining and not an enlarging act, in that it provided the conditions upon which the preferred stock might be pur-

chased and retired by mortgage bonds, and thereby excluded the adoption of any other method. The act of 1896 gave the corporation the right by a two-thirds vote of its shareholders, to retire preferred stock by purchase; the act of 1902 preserves that right; merely regulating the manner in which it should be exercised. (See also *Hodge v. U. S. Steel Corp.*, 64 E. 807). The case of *Venner v. U. S. Steel Corp.*, 116 Fed. 1012, held that this act did not impair the obligation of the stockholders' contract with the corporation, within the meaning of the Federal Constitution.

7. A holder of common stock of a corporation cannot question the plan of the company for the conversion of preferred stock into bonds. (*Raymond v. U. S. Steel Corp.*, 63 E. 830).

8. As to the right to issue bonds convertible into common stock, (provided for by Sec. 149), *Wall v. Utah Copper Co.*, 70 E. 17, holds that an issue of bonds containing the privilege to the holder to convert the same into stock, amounts to an issue of stock, and can only be issued subject to the right of each stockholder to share ratably therein. A stockholder cannot be deprived of his right to share in an issue of new stock on the same terms as other parties. (See *Way v. Amer. Grease Co.*, 60 E. 263).

XI. Stock Certificates.

1. Every stockholder entitled to.

Section 19, as amended March 23d, 1911 (P. L. 1911, Chap. 53), enacts that every stockholder shall have a certificate certifying the number of shares owned by him in the corporation.

2. Who shall sign.

Until the enactment of this amendment, the certificate had to be signed by the president and treasurer; now, however, it may be signed by the president or a vice-president, and either the treasurer or an assistant treasurer, or the secretary or an assistant secretary. It is usual to provide in the by-laws to which officers this duty shall be assigned.

3. Share of stock defined.

"A share of stock represents the right which its owner has in the management and profits of the corporation." (*Amer. Pig Iron Storage Co. v. Assessors*, 56 L. 389).

4. Stock certificate defined.

"A certificate of the number of shares subscribed for, or to which the subscriber is entitled, it not necessary to constitute the subscriber a shareholder, or to impose upon him a liability to pay the amount of his subscription. The certificate is merely an additional and con-

venient evidence of his ownership of stock, which he may require for his own satisfaction, or to enable him to effect a transfer of his interest. A subscriber for stock who has complied with the terms of his subscription, and has paid the assessments on the shares subscribed for, may compel the corporation to give him a certificate by proceedings at law, and without any certificate being issued, he is amenable to an action by the creditors of the corporation, to compel him to contribute his proportional part for the payment of the debts of the corporation." (*Amer. Pig Iron Storage Co. v. Assessors, supra*). A stock certificate is merely evidence and does not in itself constitute the right of a stockholder. (*N. Y. East. Tel. & Tel. Co. v. Great East. Tel. Co.*, 74 E. 221; Aff'd, 75 Id. 297). (See also *Bijur v. Standard Distilling, &c., Co.*, 74 E. 546). *Lakewood Gas Co. v. Smith*, 62 E. 677, holds the certificate to be a mere voucher, a mere receipt establishing, when regularly issued, a prima facie title in the holder to the shares of stock named therein.

5. Irregularity in the execution of the certificate does not relieve the liability of the stockholder.

6. Legal presumption of ownership; burden of proof.

"The holding of the certificate creates a legal presumption of rightful ownership, which can only be overcome by proof that it was illegally issued or legally forfeited. * * * If alleged to be illegally or fraudulently issued, the burden of proof is upon the party making the allegation." (*Downing v. Potts*, 23 L. 66-79).

7. As to certificates lost or destroyed.

Sections 111, 112, 113 provide for the issuance of new certificates of stock for certificates lost or destroyed.

XII. TRANSFER AND SALES OF SHARES.

The following provisions are contained in the General Corporation Act with respect to the transfer of shares:

1. The shares of stock in every corporation shall be personal property.

(Sec. 20).

2. The by-laws shall provide the manner of transfer on the books of the corporation.

(Sec. 20).

3. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

(Sec. 20).

4. **A subscriber to stock of a corporation has a right to transfer his stock though he has paid nothing therefor** where his subscription has been received by the directors and regular certificates of stock issued to him. (*Downing v. Potts,* 23 L. 66).

5. **Presumptive evidence of ownership.**

A certificate of stock accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder. And where the party in whose hands the certificate is found is a holder for value, without notice of any intervening equity, his title cannot be impeached. The holder of the certificate may fill up the letter of attorney, execute the power and thus obtain the legal title to the stock. And such a power is not limited to the person to whom it was first delivered, but enures to each bona fide holder into whose hands the certificate and power may pass. (*Prall v. Tilt,* 28 E. 479). (See also *Rogers v. N. J. Ins. Co.,* 8 E. 167; *Broadway Bank v. McElrath,* 13 E. 24; *Hunterdon County Bank v. Nassau Bank,* 17 E. 496; *Mt. Holly Turnpike Co. v. Ferree,* 17 E. 117; *Del. & Atl. R. R. Co. v. Irick,* 23 L. 321; *Bush v. Warren Foundry Co.,* 32 L. 439; *Gibbs v. Craig,* 58 L. 661-664; *N. J. Trust & Safe Deposit Co. v. Bodine,* 60 Atl. 387).

In *Matthews v. Hoagland,* 48 E. 455-486, after citation of most of the above cases had been made, Green, V. C., said: "The reason of the rule is, that the record owner has done everything in his power to effect the transfer, and by such act has assigned all interest he may have had, and surrendered all indicia of ownership—as to third parties, holders for value, he is estopped from asserting ownership—as to volunteers, the gift is complete and irrevocable if inter vivos."

6. **A voluntary transfer of stock, by its owner, perfected by delivery and acceptance, becomes an executed contract** and is irrevocable by the owner, for it was founded upon the mutual consent of the parties in reference to a right of interest passing between them. (*Walker v. Dixon Crucible Co.,* 47 E. 342).

7. **Transfer must be made as by-laws direct.**

If the charter of a corporation provides that all shares of its capital stock shall be transferable on the books of the company, in such manner as the by-laws shall ordain, no legal transfer can be made until it provides books, and ordains by-laws for the transfer of its stock; and until then, no legal demand on a person to transfer shares can be made. (*M'Courry v. Doremus,* 10 L. 245).

8. **Transferee without notice.**

A by-law, creating a lien for indebtedness of stockholders, of which a transferee of a certificate of stock had no notice, is insufficient to create such a lien in the absence of provision in the charter. *Drexell v. Long Branch Gas Co.,* 3 N. J. L. J. 250). See *Young v. Vough,* 23 E. 325; Aff'd 24 E. 535, where it was held that a by-law of a national

bank, declaring that no transfer of stock shall be made by any stockholder while indebted to the bank, whether the debt is due or not, was a reasonable and legal by-law. In this case, however, the transferee of the stock had notice of this by-law.

9. **Endorsement not always necessary.**

In *Curtis v. Crossley,* 59 E. 358, Emery, V. C., held that endorsement of the certificate is not necessary to pass title, where a deed has been executed assigning the stock and authorizing the transfer on the books of the corporation. At page 362 of this case, the opinion reads: "The authorities cited by me in *Tarbox v. Grant,* 56 E. 199, at page 204, show further that the gift or trust would probably have been complete by the delivery of the deed assigning the stock without the delivery of the certificates themselves." (See *O'Connor v. International Silver Co.,* 68 E. 67; Aff'd Id. 680).

10. **Transfer on books not always essential.**

A sale of stock, accompanied by delivery of the certificate and power of attorney authorizing its transfer on the books of the corporation, is valid against a creditor of the seller, and gives the buyer precedence over subsequent judgments, executions and attachments procured by creditors of the seller, though a by-law of the corporation provides that its stock shall be transferable only on its books. Such a sale deprives the seller of any interest therein subject to attachment, though a transfer on the books of the corporation has not been applied for and made. (*Reilly v. Absecon Land Co.,* 75 E. 71).

11. **Effect of buyer's laches.**

But where the buyer at such sale, failed for a long time to demand transfer on the books of the corporation, and during the interval the stock was levied on and sold in attachment proceedings against the seller, the Court will require the buyer to indemnify the corporation against loss, before granting a decree requiring the corporation to transfer the stock to him on its books. (*Reilly v. Absecon Land Co., supra*).

12. **In the sale of stock, the rule of caveat emptor applies,** and the vendor can only be made liable for misrepresentation or fraud. (*Renton v. Maryott,* 21 E. 123).

13. **A parole agreement to sell and assign shares of stock is a contract for the sale of goods, wares and merchandise within the sixth section of the Statute of Frauds.**

(*Greenwood v. Law,* 55 L. 168).

14. **As to when specific performance of the sale of stock will be decreed by a court of equity.**

(See *Kimball v. Morton,* 5 E. 26; *Safford v. Barber,* 74 E. 353; *Andrews v. Guayaquil & Quito R. R. Co.,* 73 E. 150).

15. As to fraud in the sale of stock.
(See *Cowley v. Smyth,* 46 L. 380).

16. Measure of damages in case of fraud.
Where one by fraudulent representation induces another to purchase stock as an investment, the loss which the purchaser suffers by retaining the stock, under the belief that the representations are true, is chargeable against the wrong-doer; such loss being presumptively within his contemplation at the time of committing the fraud. In such cases, the market price of the stock while the fraud is still operative on the conduct of the purchaser is unimportant, the measure of damages is the difference between the amount paid for the stock and the value of the stock after the fraud ceased to be operative. (*Smith v. Duffy,* 57 L. 679, citing *Crater v. Binninger,* 33 L. 513).

17. Whether a warranty is to be inferred from the representations made is a question for the jury.
(*Phillips v. Crosby,* 70 L. 785).

18. Material misrepresentation.
A false statement, by officers of a corporation that none of its shares had been sold for less than par, is a material misrepresentation authorizing rescission of sale. Equity has jurisdiction to rescind a contract for fraudulent misrepresentations and to compel restitution of the money obtained thereunder. (*Hubbard v. International Merc. Agency,* 68 E. 434).

19. Right of recovery against innocent vendor.
As to the right of a vendee who rescinds a contract of sale, which sale he has been lead into by the fraudulent misrepresentations of one other than the vendor, to recover from the innocent vendor, (see *Brounfield v. Denton,* 72 L. 235). (See also *Kennedy v. McKay,* 43 L. 288; *Titus & Scudder v. C. & F. R. R. Co.,* 46 L. 393; *White v. N. Y., Susq. & W. R. R. Co.,* 68 L. 123).

20. As to the duty of the vendor to disclose facts which are within his knowledge and which are material to the interest of the vendee (see *Keen v. James,* 39 E. 527).

21. As to laches in bringing suit.
One induced by fraudulent representation to purchase stock, must bring suit for rescission of the contract promptly upon discovery of the fraud. In *Tierney v. Parker,* 58 E. 117, a delay of three years in bringing suit, after falsity of representations had been disclosed to him, was held fatal to recovery by plaintiff.

22. Suit to recover money paid for stock by the inducement of false representations, will not be entertained by a court of equity.

(See *Polhemus v. Holland Trust Co.*, 59 E. 93, citing *Krueger v. Armitage*, 58 E. 357).

23. As to contracts for speculations in stock upon margins (see *Flagg v. Baldwin*, 38 E. 219; *Pratt v. Boody*, 56 E. 429; *Sharp v. Stalker*, 63 E. 596; *Thompson v. Williamson*, 67 E. 212; *Van Pelt v. Schauble*, 68 L. 638).

24. A contract for the sale of stock tainted with illegality will not be enforced. (*Morton v. Timken*, 48 L. 87).

25. Mandamus will not lie to compel the transfer of stock nor to compel the corporation to issue stock.

(*Bush v. Warren Foundry Co.*, 32 L. 439; *Curtis v. Steever*, 36 L. 304; *Galbraith v. Bldg. Ass'n*, 43 L. 389; *Morton v. Timken*, 48 L. 87).

26. Stockholders' rights protected by equity.

Where the officers of a corporation manage, through the instrumentality of their power and position, to deprive an equitable owner of stock of any of his rights, their act in its consequence is a fraud, against which equity will give relief. Where, by fraudulently refusing to transfer stock, the fraud-doers are put into a position, through the control which they acquire, to seriously prejudice the interests of those who are justly entitled to the transfer, and so act as to make their purpose to accomplish that prejudice apparent, the meetings they can control will be stayed by injunction until the transfers can be compelled, and a court of equity will in such case, compel the transfer of stock to the equitable owner on the books of the corporation. (*Archer v. Am. Water Works Co.*, 50 E. 33).

XIII. STOCKHOLDERS LIABLE UNTIL SUBSCRIPTIONS ARE FULLY PAID.

Section 21 of the General Corporation Act provides as follows: "Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations."

1. Stockholder's liability may be enforced either by general creditors' bill, or by the receiver in statutory insolvency proceedings.

(See *Wetherbee v. Baker*, 35 E. 501; *Bickley v. Schlag*, 46 E. 533; *Barkalow v. Totten*, 53 E. 573; *Hood v. McNaughton*, 54 L. 425; *Cumberland Lumber Co. v. Clinton Hill, &c., Co.*, 57 E. 627; *See v. Heppenheimer*, 69 E. 36).

2. As to the liability of a stockholder of a foreign corporation for payment of corporate debts.

(See *Johnson v. Tenn. Oil, &c., Co.*, 69 Atl. 788).

3. The original subscriber to stock becomes liable for his subscription upon the execution of the certificate of incorporation.

(*McCarter v. Ketcham*, 74 L. 825).

4. "**The subscription to the stock and the acceptance of a certificate for shares constitute a contract** between the subscriber and the company, by which the subscriber engages to pay the remaining installments on demand by the corporation. From this agreement the subscriber cannot recede without the assent of the company. He may transfer his stock without consent of the company, and thereby vest in the purchaser his right to the shares, and as between himself and such purchaser cast upon the latter the obligation to pay him such installments as are called upon the stock, but the subscriber cannot thereby impair or affect the contract rights of the company. His liability to the company cannot thereby become extinguished." (*Hood v. McNaughton*, 54 L. 425).

5. A distinction is drawn, however, between one who holds his stock by transfer and an original subscriber.

The former may, in the absence of any fraudulent purpose, discharge himself from liability for unpaid installments by due transfer of his shares, while the latter cannot obtain immunity in that way. (*Hood v. McNaughton, supra*).

6. The registered holder of stock at the time of the call, is liable and such holder is not released by a transfer of stock after the call has been made, but before it becomes payable. (*Campbell v. Am. Alkali Co.*, 125 Fed. 207). (See also *Clevenger v. Moore*, 71 L. 148; *Brown v. Morton*, 71 L. 26; *Easton Nat'l Bank v. Am. Brick & Tile Co.*, 69 E. 326; Aff'd 70 Id. 722; *Ecuadorian Ass'n v. Ecuador Co.*, 70 E. 277; Aff'd 71 Id. 757).

7. The statute of limitations, as to unpaid subscriptions, commences to run after a call and assessment has been made.

(*McCarter v. Ketcham*, 72 L. 247).

8. Holders of stock given as bonus are liable on it to creditors.

(*Hebberd v. Southwestern Cattle Co.*, 55 E. 18).

XIV. Directors May Assess Capital Stock.

Under section 22, the directors are given power to make assessments, from time to time, upon the shares of stock subscribed for, to an amount not exceeding in the whole, the par value of the shares.

1. **The sum assessed must be paid to the treasurer** at such times and by such installments as the directors shall direct. (Sec. 22).

2. **The directors must give thirty days' notice of the assessment** and of the time and place of payment, either personally or by mail or by publication in a newspaper in the county where the corporation is established. (Sec. 22).

3. **Suit to recover unpaid portion of stock** will not lie until a call has been duly made. (*Braddock v. Phila., &c., R. R. Co.*, 45 L. 363). The call must be made by adequate authority and it must conform to the terms of the subscription. (*N. J. Midland Ry. Co. v. Strait*, 35 L. 322). (See also *Grosse Isle Hotel Co. v. l'Ansons' Ex'rs*, 42 L. 10). Calls may be made by the receiver of an insolvent company. (*Hood v. McNaughton*, 54 L. 425; *Barkalow v. Totten*, 53 E. 573; *Hebberd v. Southwestern Cattle Co.*, 55 E. 18; *Cumberland Lumber Co. v. Clinton Hill*, 57 E. 627). The receiver may also maintain a bill against the several stockholders to ascertain and enforce their several liabilities. (*See v. Heppenheimer*, 55 E. 240).

XV. Directors May Order Stock Sold.

Section 23 provides that the directors may order the treasurer to sell at public auction, such number of shares of a delinquent owner, who has neglected to pay any sum assessed on his shares for thirty days after the time appointed for payment, as will pay all assessments then due from him with interest, and all necessary incidental charges. The shares so sold shall be transferred to the purchaser and he shall be entitled to a certificate therefor.

XVI. Treasurer Shall Give Notice of Time and Place Appointed for Sale.

Section 24 enacts that the treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week before the sale, in some newspaper published in the county where the corporation is established, and by mailing a notice thereof to the delinquent stockholder, if he knows his post office address.

1. **Stock once rightly issued, even though nothing has been paid on it, can only be forfeited in the manner prescribed by statute.** (*Downing v. Potts*, 23 L. 66). (See also *N. Y. & East. Tel. & Tel. Co. v. Great East. Tel. & Tel. Co.*, 74 E. 221).

XVII. Certificate on Payment of Capital.

(See Procedure in Organizing, &c).

XVIII. LIABILITY OF OFFICERS FOR FAILURE TO FILE CERTIFICATE.

(See PROCEDURE IN ORGANIZING, &C).

XIX. CAPITAL STOCK CHANGES.

(See PROCEDURE IN ORGANIZING, under headings: "Incorporators may amend certificate of incorporation before payment of capital; Amendments and changes after organization; Amendments by corporations formed under other acts").

XX. PROCEDURE IN DECREASING CAPITAL STOCK.

(See PROCEDURE IN ORGANIZING, under heading: "Decrease of capital stock").

XXI. RETIREMENT OF STOCK.

1. How effected.

Stock may be retired under section 29 in the following manner: (1) by retiring or reducing any class of stock; (2) by drawing the necessary number of shares by lot for retirement; (3) by the surrender of every shareholder of his shares and the issue to him in lieu thereof of a decreased number of shares; (4) by the purchase at not above par of certain shares for retirement; (5) by retiring shares owned by the corporation; (6) by reducing the par value of shares. (See *Berger v. U. S. Steel,* 63 E. 809; *Continental Securities Co. v. Northern Securities Co.,* 66 E. 274).

XXII. UNLAWFUL REDUCTIONS OF CAPITAL AND UNLAWFUL DIVIDENDS.

(See PROCEDURE IN ORGANIZING, &C.).

XXIII. DIVIDENDS, HOW DECLARED.

1. Time of declaration.

Section 47, as amended by chap. 110, section 2, Laws of 1901 (P. L. 1901, p. 246), is as follows: "Unless otherwise provided in the original or amended certificate of incorporation, or in a by-law adopted by a vote of at least a majority of the stockholders, the directors of every corporation created under this act shall, in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand."

It will be noticed that the manner of declaring dividends, both as to time and as to the authority for such declaration, may be provided for in the certificate of incorporation, either original or amended, or

in a by-law adopted by a vote of at least a majority of the stockholders. This section does not apply to life insurance companies (*Blanchard v. Prudential Ins. Co.*, 79 Atl. 533).

2. Stockholders have the right to fix the amount to be reserved as a working capital.

It is the universal custom to provide for all matters pertaining to dividends in either the certificate of incorporation or in the by-laws. Where, however, no such provision has been made, section 47 provides the time and the method for declaring dividends.

XXIV. DIVIDENDS TO BE PAID OUT OF SURPLUS.

1. The directors of a corporation cannot make dividends except from surplus or from the net profits arising from the business of such corporation. (Sec. 30). A corporation cannot in any way divide, withdraw or in any way pay to its stockholders any part of the capital stock, or in any way reduce capital stock except as authorized by law. (Sec. 30). This section clearly fixes the funds out of which dividends may be declared (either surplus or net profits), and as clearly forbids any impairment of the capital stock in order that dividends may be made.

2. Power to make dividends out of capital cannot be conferred.

Siegman v. Electric Vehicle Co., 72 E. 403, holds that while it is a function of the board of directors to determine whether net earnings or surplus exist applicable to the payment of dividends, they cannot by an erroneous determination of this point, confer either upon themselves or upon the corporation, the power to make dividends out of capital. The approval of a majority of the stockholders does not validate the declaration of dividends out of capital.

3. Construction of statute.

The case of *Goodnow v. Am. Writing Paper Co.*, 73 E. 692, construes section 30, as amended in 1904 (P. L. 1904, p. 275), with the language as used in the same section in the Act of 1896 (P. L. 1896, p. 286). In the Act of 1896, the language used was "from the surplus or net profits." Under the act of 1904, the language used is "from its surplus or from the net profits." While under the Act of 1896 there was room to contend that the words "net profits" were intended to be synonymous with the word "surplus," under the Act of 1904, this contention is no longer possible. The evident intent of the change is to point out two funds from which dividends may be made. The court also held in this case that the term "capital stock," as used in this section, was ambiguous. On page 695, the opinion says: "When the legislature forbids the dividing, withdrawing or paying to the stockholders any part of the capital stock it means capital actually invested; when it forbids the reduction of capital stock it means the share capital subscribed, or the authorized capital." A dividend may therefore be declared where the company has profits over and above the actual assets with which it

began business, although the total assets may not exceed the debts and the nominal share capital.

XXV. How to Compel Payment of Dividends.

1. Equitable jurisdiction.

"The general rule is well settled that the directors of trading corporations are invested with a wide discretionary power in regard to the distribution of profits in the form of dividends among the stockholders. Subject, of course, to provisions in the charter, and also to the by-laws of the company, it is for the directors to say whether profits shall be distributed to the stockholders or retained for the purpose of the corporate business. It is, however, equally well settled that this discretionary power is not absolute, and when the directors 'improperly refuse to make a division of unused profits,' a court of equity will intervene on behalf of any stockholder who may complain." (*Stevens v. U. S. Steel Corp.*, 68 E. 373-377). (See also *Laurel Springs Land Co. v. Fougeray*, 50 E. 756-759; *Fougeray v. Cord*, 50 E. 185-197; *Griffing v. Griffing Iron Co.*, 61 E. 269-271; *Trimble v. Am. Sugar Refining Co.*, 61 E. 340; *Raynolds v. Diamond Mills Paper Co.*, 69 E. 299).

2. The power given to stockholders to fix the amount to be reserved as working capital under section 47 is absolute, and it is discretionary.

So long as the capital reserved is retained for the benefit of the whole company, and not distributed to the majority stockholders at the expense of the minority, the Court of Chancery will not interfere with or question the action of a majority of the stockholders, because of the supposed motive of reserving their own profits instead of dividing them. (*Lillard v. Oil, Paint & Drug Co.*, 70 E. 197-216). (See also *Bassett v. U. S. Cast Iron Pipe & Foundry Co.*, 74 E. 668).

3. Dividend a debt due.

When a dividend is declared, it becomes a debt due from the corporation to the individual stockholder, and after demand of payment, an action at law may be maintained for its recovery. (*King v. Paterson & Hudson River R. R. Co.*, 29 L. 504).

4. Payment of percentage of profits to employe.

The payment to an employe of a corporation, as compensation for services, of a percentage of the profits of the business, is no more than wages or salary of an employe, and not a division of the "accumulated profits" to which stockholders are entitled under section 47 of the Corporation Act, but an expense of the business which must be deducted from receipts before the "accumulated profits" can be ascertained. (*Bennett v. Millville Imp. Co.*, 67 L. 320).

5. As to the rule to be applied as between life tenants and remaindermen of shares of stock with respect to dividends.

(See *Lang v. Lang's Ex'r*, 57 E. 325, and *Lister v. Weeks*, 60 E. 215; Aff'd 61 Id. 675).

XXVI. CORPORATIONS MAY NOT PLEAD USURY.

By "An Act relating to usury," approved April 3d, 1902 (P. L. 1902, p. 459), it is provided that "No corporation shall hereafter plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation; provided, that this act shall not apply to any such action which is now pending." (Sec. 145). (See *Lembeck v. Jarvis Terminal Cold Storage Co.,* 70 E. 757).

XXVII. PENALTY FOR FALSE CERTIFICATES.

Section 52 provides "If any certificate made, or any public notice given by the officers of any corporation, 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 be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

An action under this section will not lie against an incorporator who signed the certificate of organization. (*Thompson-Houston Elec. Co. v. Murray,* 60 L. 20). (See also *Wetherbee v. Baker,* 35 E. 501; *Waters v. Quimby,* 27 L. 296; Aff'd 28 Id. 533).

CHAPTER VIII.

PROMOTERS, INCORPORATORS, STOCKHOLDERS, OFFICERS, AGENTS AND THEIR DUTIES.

I. Acts of Incorporators and Promoters.

1. Determination of legal relations.

Generally speaking, the legal relations arising through the promotion of a corporation and the rights and liabilities incurred thereunder, are to be determined with reference to the law of contracts, agency and partnership. However, it should be borne in mind that where the ultimate end of the promotional scheme is the formation of a corporation, such a corporation when formed, and the members thereof, may have rights and be subject to liabilities which are the direct result of the promotional contract.

2. Question of fraud.

Thus, a contract of subscription to the capital stock of a corporation will be set aside if procured by fraud. (*Vreeland v. N. J. Stone Co.*, 29 E. 188; *Garrison v. Technic Electrical Works*, 55 E. 708; *Hubbard v. International Mercantile Agency*, 68 E. 434). Default on the part of a promoter, in respect of a promise made as an inducement for the subscription to stock, vitiates the contract. (*Audenried v. East Coast Milling Co.*, 68 E. 450).

3. A promoter is in a fiduciary relation to the company which he promotes.

4. Promoter must disclose his interest.

If a promoter has a property which he desires to sell to the company, it is incumbent upon him, as upon any other person in a fiduciary capacity, to make a full and fair disclosure of his interest and position with respect to that property. (*Placquemines Tropical Fruit Co. v. Buck*, 52 E. 219; *See v. Heppenheimer*, 69 E. 36). Where a profit has been made without such disclosure, the exact measure of the relief in equity is that the promoter account for the profit that he has made. (*Loudenslager v. Woodbury Heights Land Co.*, 58 E. 556).

5. Secret profits of promoters.

A promoter is accountable to the company for all moneys secretly

obtained by him from it, just as if the relationship of principal and agent, or of trustee and cestui que trust, had really existed between such promoter and the company, when the money was so obtained. (*Placquemines Tropical Fruit Co. v. Buck, supra*). A stockholder of a corporation is entitled to sue on its behalf, joining the corporation as a defendant, to recover secret profits made by promoters; the corporation, after demand, having wrongfully refused to sue. (*Groel v. United Electric Co., of N. J.*, 70 E. 616). The liability of promoters for profits secretly made by them arises in cases where future allottees of stock are concerned. (*Knoop v. Bohmrich*, 49 E. 82; *Placquemines Tropical Fruit Co. v. Buck*, 52 E. 219; *Loudenslager v. Woodbury Heights Land Co.*, 58 E. 556). The obligation of a corporation for the contracts of a promoter must rest upon a ratification by the company. (*Seacoast R. R. Co. v. Wood*, 65 E. 530).

6. **Assent to fraudulent transaction.**

Neither a corporation, nor a shareholder on its behalf, can complain of a fraudulent transaction to which all the stockholders assented with true knowledge of the facts; but this principle is inapplicable unless the assent was that of the real parties in interest. (*Arnold v. Searing*, 73 E. 262).

7. **Promoters' liability joint and several.**

The general rule that a party seeking relief in the courts may choose his own forum in any jurisdiction where the defendant may be found, applies to corporations as well as to natural persons. Thus, where a secret profit was acquired jointly by two promoters, the corporation may hold them liable jointly and severally, and recover the entire secret profit from either promoter, the other being without the jurisdiction, and if by the law of New Jersey there could not be a recovery of the entire secret profit from one of several joint promoters, if the action was brought in this state, the corporation may bring action in the home jurisdiction of one of the promoters (if such jurisdiction be without the state of New Jersey) for the entire loss. (*Bigelow v. Old Dominion Copper Co.*, 71 Atl. 153).

8. **Incorporators who procure the organization of a corporation for fraudulent purposes** or unlawful objects, are guilty of a misdemeanor. (See supplement to "An Act for the punishment of Crimes," P. L. 1905, chap. 257).

II. NUMBER OF INCORPORATORS NECESSARY.

(See PROCEDURE IN ORGANIZING, &C.).

III. RIGHTS AND LIABILITIES OF STOCKHOLDERS.

1. **Subscribers for stock are regarded as stockholders** and neither certificates of stock, nor payment of the par value of the shares in

full, are necessary to confer the rights and privileges of stockholders in the organization and management of the company. (*Am. Pig Iron Storage Co. v. Assessors,* 56 L. 389).

2. Rights and liabilities specifically conferred.

Several sections of the General Corporation Act specifically confer rights and impose liabilities upon stockholders.

3. Consent to dissolution.

Under section 31 consent of two-thirds in interest of all the stockholders is required in voluntary dissolution proceedings.

4. Consent to consolidation.

Under section 105 two-thirds in interest of all the stockholders of each of the merging corporations must vote in favor of consolidation or merger in order to make such action possible.

5. Right to stock certificate and transfer of same.

Section 19 entitles every stockholder to a certificate, certifying the number of shares owned by him. Stockholders complying with all the terms of subscription may compel the corporation to give them certificates (*Am. Pig Iron Storage Co. v. Assessors,* 56 L. 389), and the transfer of stock on the books of the corporation may also be compelled. (*Reilly v. Absecon Land Co.,* 71 Atl. 248).

6. Right to inspect books.

Section 33 gives the stockholder the right to inspect the books of the corporation; this right may be enforced by mandamus. (*Bruning v. Hoboken Printing & Pub. Co.,* 67 L. 119; *Fuller v. Hollander Co.,* 61 E. 648; *Rosenfeld v. Einstein,* 46 L. 479). This right of inspection of corporate books, however, in its enforcement by writ of mandamus, is within the discretion of the court. (*O'Hara v. Nat'l Biscuit Co.,* 69 L. 198).

7. Right to vote.

A stockholder's right to vote is provided for in sections 17 and 36, and his right to vote by proxy is given under section 17.

8. Right to make by-laws.

The power to make by-laws is reserved to stockholders by section 11, and the choice of directors by section 12.

9. Consent to conversion of stock.

Conversion of preferred stock into bonds must be sanctioned by two-thirds in interest of each class of stockholders. (P. L. 1902, ch. 58, p. 217). (Sec. 149).

10. Consent to amendments.

Under section 27, amendments and changes after organization cannot be made unless two-thirds in interest of each class of stockholders consent.

11. Right to contest election.

A stockholder may apply to the Supreme Court if aggrieved by an election of the corporation, for an investigation of such election. (Sec. 42).

12. Right to call meeting.

Three or more stockholders may call a meeting of the stockholders, when for any reason a legal meeting of the stockholders cannot otherwise be called. (Sec. 46).

13. Right to reserve a fixed sum as working capital is given the stockholders under section 47.

14. Right to injunction and receiver.

By section 65 it is provided, that any stockholder, upon the insolvency of the corporation, may apply to the Court of Chancery for an injunction and the appointment of a receiver.

15. Right to recover for payment of company's debts.

(Sec. 93).

16. Right to appraisal of stock.

Section 108 and Supplement of April 10th, 1902 (P. L. 1902, p. 700), (Sec. 108½), give a dissenting stockholder, upon merger of two or more corporations, the right to have his stock appraised.

17. Lost certificates.

Sections 111, 112 and 113, provide for the issue of new certificates to stockholders for certificates lost or destroyed.

18. Consent to lease.

In order to lease its property and franchises, a corporation must first obtain the consent of two-thirds in interest of the stockholders. (P. L. 1899, p. 334).

19. These rights or powers of stockholders may be limited by provision in the certificate of incorporation.

(Sec. 8, sub-division 7).

20. As to the modification of the rights of stockholders.

(See "POWERS LIMITED BY REPEAL" under "POWERS").

21. Right to subscribe for new stock.

In *Way v. Am. Grease Co.,* 60 E. 263, it was held, that where stock is increased, the original stockholders are entitled to subscribe for such increase in proportion to their holdings, before such issue is offered to strangers; and *Wall v. Utah Copper Co.,* 70 E. 17, held an issue of bonds convertible into new stock illegal, for the reason that it deprived stockholders of the right to participate in such new issue.

22. As to the right of individual stockholders to sue on behalf of the corporation.

(See *Silk Mfg. Co. v. Campbell,* 27 L. 539; *Knoop v. Bohmrich,* 49 E. 82; Aff'd 50 Id. 485; *Ackerman v. Halsey,* 37 E. 356; Aff'd 38 Id. 501; *Groel v. United Electric Co. of N. J.,* 70 E. 616).

23. As to stockholders' right to equitable relief where the question of internal management of the corporation is involved; (see *Benedict v. Columbus Cons. Co.,* 49 E. 23; *Elkins v. Camden & Atl. R. R. Co.,* 36 E. 241; *Park v. Grant Locomotive Works,* 40 E. 114; Aff'd 45 E. 244).

24. Stockholders are liable until their subscriptions are fully paid.

(Sec. 21). (See CAPITAL STOCK AND DIVIDENDS).

25. Stock for property purchased.

As to the liability of stockholders where stock has been issued for property purchased at an excessive valuation, (see *See v. Heppenheimer,* 69 E. 36; *Easton Nat'l Bank v. Am. Brick & Tile Co.,* 70 E. 732; *Johnson v. Tennessee Oil, &c., Co.,* 74 E. 32; *Honeyman v. Haughey,* 66 Atl. 582).

26. Creditors' remedy.

Stockholders' liability cannot be enforced by creditors, until all remedies against the corporation have been exhausted, and then only in a proceeding in equity; this proceeding must be by general creditors' bill. (*Bickley v. Schlag,* 46 E. 533, citing *Wetherbee v. Baker,* 35 E. 501). In the absence of statutory provision, making shareholders liable in case of failure to comply with the requirements of a charter, or with the requirements of the act under which a company is incorporated, persons who have contracted with a de facto corporation as a corporation, cannot deny its existence in order to charge its stockholders individually as partners. (*Stout v. Zulick,* 48 L. 599).

27. Preferred stockholders are liable for unpaid installments up to the par value of the stock.

(See *Kirkpatrick v. Am. Alkali Co.,* 140 Fed. 186).

28. Holders of bonus stock are liable on it to creditors.

(*Hebberd v. Southwestern Cattle Co.,* 55 E. 18).

29. Stockholders who have not paid up their stock in full, cannot maintain an action to compel other stockholders to pay up unpaid stock.

(*Sivin v. Mutual Match Co.*, 72 E. 577).

30. Stockholders are liable to repay dividends paid unlawfully out of capital.

(*Williams v. Boice*, 38 E. 364; *Mills v. Hendershot*, 70 E. 258).

31. Liability upon decrease of stock.

Under section 29, decrease of stock in the manner provided for by statute does not release the stockholder whose shares have not been fully paid, from liability for debts of the corporation contracted before such decrease.

32. Non-resident stockholders.

In a suit by the receiver of an insolvent corporation, to recover on stockholders' liability for unpaid stock, those stockholders who are solvent and within the jurisdiction of the court, can properly be charged with the entire burden, regardless of the liability of others, and they in turn are entitled to recover contribution from the others, but if, in such a suit, the non-resident stockholders appear and litigate the question of their liability, they thereby submit themselves to the jurisdiction of the court, and are subject to a decree, though recourse to the courts of the state of their residence may be required in order to enforce same. (*See v. Heppenheimer*, 69 E. 36).

33. Liabilities created by statutes of other states not to be enforced in this state.

By supplement of March 30th, 1897 (P. L. 1897, p. 124), personal liability created by statutes of any other state or foreign country cannot be enforced against a stockholder of a domestic corporation in any of the courts of this state, and no action can be maintained in any court of law in New Jersey against a stockholder of any domestic or foreign corporation by, or on behalf of any creditor, to enforce any statutory personal liability created by the laws of any other state or foreign country, and no pending or future action to enforce any such statutory personal liability can be maintained in any court in this state, other than in the nature of an equitable accounting for the benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and stockholders shall be necessary parties. (See *Johnson v. Tennessee Oil, &c., Co.*, 74 E. 32; *Derrickson v. Smith*, 27 L. 166).

34. Contracts for stockholders' benefit.

Where a person purchases real estate from a corporation and agrees and promises to pay, in consideration therefor, all the debts of the corporation and to the stockholders, the par value of their stock; when

the deed is accepted by said purchaser, he becomes liable to each stockholder to pay the value of his stock under P. L. 1903, p. 537, sec. 28, and a stockholder may maintain an action upon such contract under this section. (*Fleming v. Reed,* 77 L. 563).

IV. NUMBER OF DIRECTORS AND THEIR DUTIES.

1. There shall be at least three directors who must be shareholders of the corporation.

They must be chosen annually by the stockholders, unless by provision in the charter they are to be classified with respect to the time they shall hold office. (Sec. 12). (See "ELECTION OF DIRECTORS" under "PROCEDURE IN ORGANIZING," &c.).

2. "The business of every corporation shall be managed by its directors."

(Sec. 12).

3. Limitation of powers.

One of the powers given to corporations under section 1 is to make by-laws, fixing and altering the number of its directors and providing for the management of its property and the regulation of its affairs, and under the provisions of section 8 it may, in the certificate of incorporation create, definite, limit and regulate the powers of the directors. It is possible, under the above sections, for the stockholders to largely control the management of the corporation by limiting the power of the directors. However, there must be some executive head and the board of directors is the legal executive, recognized as such by the statute; resolutions of stockholders can only be considered as advisory and as giving their consent, and have only the effect of empowering the directors to act. (*Placquemines Tropical Fruit Co. v. Buck,* 52 E. 219).

4. "Individual stockholders cannot question, in judicial proceedings, corporate acts of directors, if the same are within the powers of the corporation, and in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith and in the exercise of an honest judgment." (*Berger v. U. S. Steel Corp.,* 63 E. 809-829). The internal affairs of the corporation, the policy of its management, and the lawful appropriation of its corporate funds to advance corporate interests, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. (*Ellerman v. Chicago Junction Railways, &c., Co.,* 49 E. 217, citing *Park v. Grant Locomotive Works,* 40 E. 114; Aff'd 45 Id. 244; and *Elkins v. Camden & Atl. R. R. Co.,* 37 E. 273). (See also *Benedict v. Columbus Cons. Co.,* 49 E. 23; *Edison v. Edison United Phonograph Co.,* 52 E. 620).

5. What are the duties of directors with respect to the corporation and its stockholders and creditors?

As a general rule, the directors are only required, in the management of corporate affairs, to keep within the limit of its powers and to exercise good faith and honesty. They only undertake, by virtue of their assumption of the duties incumbent on them, to perform those duties according to the best of their judgment, and with reasonable diligence, and a mere error of judgment will not subject them to personal liability for its consequences. They are personally only bound, in the management of the affairs of the corporation, to use reasonable diligence and prudence, such as men usually exercise in the management of their own affairs of a similar nature. But they are personally liable if they suffer the corporate funds or property to be wasted by gross negligence and inattention to the duties of their trust. For such a wrong, there is a remedy in equity. For any wilful breach of their trust or misapplication of the corporate funds, or for any gross neglect of, or inattention to, their official duties, directors are liable in a court of equity. The liability is to the corporation in the first instance, where the corporation is capable of acting; but if it refuses to do so, then a person aggrieved may bring the suit. If the corporation be insolvent, and its affairs in the hands of a receiver, he may maintain the litigation. If he refuses or is himself involved, a person aggrieved may sue. (*Ackerman v. Halsey,* 37 E. 356; Aff'd 38 E. 501). (See also *Conway v. Halsey,* 44 L. 462; *Williams v. McKay,* 40 E. 189). It is the duty of the directors to manage the affairs of the corporation. They cannot by contract abdicate their duty of management and turn it over to an alien body. This is in direct violation of the words and meaning of section 12. (*Atty. Gen. v. Firemen's Ins. Co.,* 74 E. 372).

6. Contracts benefitting directors.

It is firmly established law in this state that directors cannot lawfully enter into a contract, in the benefit of which even one of their number participates, without the knowledge and consent of the stockholders. (*Hodge v. U. S. Steel Corp.,* 64 E. 807). (See also *Staats v. Bergen,* 17 E. 554; *Winans v. Crane,* 36 L. 394; *Stroud v. Consumers Water Co.,* 56 L. 422; *Gardner v. Butler,* 30 E. 702; *Guild v. Parker,* 43 L. 430; *Stewart v. Lehigh Valley R. R. Co.,* 38 L. 505; *Traction Co. v. Bd. of Works,* 56 L. 431; *Booth v. Land Filling Co.,* 68 E. 536; *Elkins v. Camden & Atl. R. R. Co.,* 36 E. 467; *Barry v. Moeller,* 68 E. 483).

7. Officers are liable to refund excessive salaries, as being misappropriation of the assets, so far as necessary for the payment of debts. (*Mills v. Hendershot,* 70 E. 258; *Hayes v. Pierson,* 65 E. 353; *Davis v. Thomas & Davis Co.,* 63 E. 572; *Porch v. Agnew,* 70 E. 328; *Lillard v. Oil, &c., Co.,* 70 E. 197).

8. Directors as trustees.

While a director of a corporation is not, strictly speaking, a trustee, still the duties which he is required to perform for his corporation are similar to the duties of a trustee, and his relation to the corporation essentially that of a trustee. (See *Marr v. Marr,* 72 E. 797; *Marr v. Marr,* 73 E. 643; *Raleigh v. Fitzpatrick,* 43 E. 501).

9. Promotion of other corporations.

A contract by directors of a corporation to promote the formation of a corporation in another state, for the furtherance of the interests of their company and to take a majority of its stock was, in *Rubino v. Pressed Steel Car Co.,* 53 Atl. 1050, held not to be ultra vires.

10. A person who is a director in each of two companies who are contracting with each other, is incapacitated from taking part in settling the terms of a contract affecting both companies. (*Met. Tel. Co. v. Dem. Tel. Co.,* 44 E. 568).

11. Delegation of authority.

The above case also decides that the rule that directors may not delegate authority has been measurably relaxed since incorporated companies for business purposes have become so common, and that current and ordinary business may be delegated to a committee or committees. (See also *Burlington v. Dennison,* 42 L. 165; *Millville Fire Ins. Co. v. Mechanics' Building Ass'n,* 43 L. 652).

A director of a corporation has no authority, as director, to act for the corporation except in his place as a member of the board of directors. (*Clement v. Young-McShea Amusement Co.,* 70 E. 677; *Titus v. Cairo & Fulton R. R. Co.,* 37 L. 98; *Demarest v. Spiral Tube Co.,* 71 L. 14).

12. Majority may act.

When power is given to be exercised by several directors, in the absence of a rule requiring the concurrence of a definite number, a majority of a quorum duly convened may act. (*Met. Tel. Co. v Dom. Tel. Co.,* 44 E. 568; *Wells v. Rahway White Rubber Co.,* 19 E. 402; *Cadmus v. Farr,* 47 L. 208; *Barnert v. Paterson,* 48 L. 395).

13. Misrepresentation by directors.

That directors of a corporation, who by wilful misrepresentation induce a person to take stock in the corporation, are personally liable, (see *Vreeland v. N. J. Stone Co.,* 29 E. 188; Aff'd Id. 651).

14. Directors of a corporation cannot speculate with the funds or credit of the company and appropriate to themselves the profits of such speculation. Even if they are only persons interested as stockholders, still they have no right to do so, for such transactions are opposed to the policy of the law, and cannot, in any manner, be countenanced by a court of equity. (*Redmond v. Dickerson,* 9 E. 507). The prop-

erty of a corporation is by equity regarded as a fund held in trust for the payment of the corporation's debts, and if others than bona fide creditors of the corporation or purchasers possess themselves of it, they take it charged with this trust which a court of equity will enforce against them. (*Nat'l Trust Co. v. Miller,* 33 E. 155).

15. Must call meeting upon insolvency.

It is the duty of the directors, upon the corporation becoming insolvent, to call a meeting of the stockholders and exhibit to them a full, fair and true account of the situation of the affairs of the corporation. (See Sec. 63).

16. Must not convey property upon insolvency.

By section 64 it is provided that "Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements; nor shall they, or either of them, make any such sale, conveyance, assignment or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; provided, that a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached."

17. Directors trustees upon insolvency.

When a corporation becomes insolvent its directors become trustees for the creditors, over whose claims they can obtain no personal preference. (*Savage v. Miller,* 56 E. 432).

18. Remedies against officers.

As to the enforcement of statutory liability, where directors are made specifically liable by the provisions of the General Corporation Act for the payment of the debts of the company, see sections 92 and 94. As to the remedy of the director who pays corporate debts for which he is made liable by the provisions of the act, see section 93.

OFFICERS AND AGENTS.

V. Election and Appointment Of.

1. The power to appoint officers and agents is included in the general powers conferred under section 1. This power is ordinarily in the directors, but may be delegated. It is customary to provide for the appointment of officers and agents in the by-laws of the corporation.

2. Every corporation organized under the General Corporation Act shall have a president, secretary and treasurer.
(Sec. 13). These officers may be chosen either by the directors or stockholders as the by-laws may direct.

3. The president must be chosen from among the directors.
(Sec. 13).

4. Other officers, agents and factors may be had by the corporation who shall be chosen in such manner as the by-laws prescribe. (Sec. 14).

5. Directors must be shareholders and must be chosen annually by the stockholders. (Sec. 12). (See also Sec. 39).

6. Elections for directors must be by ballot unless otherwise expressly provided for in the certificate of incorporation. (Sec. 34).

7. Directors must qualify.
A person declining to accept the office of director of a corporation and declining to perform any duties thereof, cannot be regarded as a director simply because he was nominated and elected. (*Whittaker v. Amwell Nat'l Bank,* 52 E. 400).

8. Effect of election held at separate polls.
If, at the time and place appointed for an election of directors, the stockholders of a corporation assemble in two bodies and cast their ballots at separate polls, the court, in ascertaining the result of the election under the Corporation Act, may consider the ballots cast at both polls. (*In re Cedar Grove Cemetery Co.,* 61 L. 422).

9. Determining validity of elections.
(See Sec. 42).

VI. De Facto Officers and Agents.

1. Definition.
A de facto officer is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. If officers selected are ineligible, or are elected irregularly or illegally, but are allowed by the proprietors of the corporation to take control of its property and to exercise its functions and powers, they become officers de facto, and as such, may act for and bind the corporation.

2. Effect of acts.
From very earliest times, it has been held, that the acts of de facto officers are binding upon the corporation, until they are lawfully ousted; especially so far as their acts create rights in favor of third persons. (*Mechanics Nat'l Bank of Newark v. Burnet Mfg. Co.*, 32 E. 236;

Doremus v. Dutch Reformed Church, 3 E. 332; *Hackensack Water Co. v. De Kay,* 36 E. 548; *Savage v. Ball,* 17 E. 142).

3. Ratification of acts.

In *Brahn v. J. C. Forge Co.,* 38 L. 74, the court said: "If the contract was without authority, and the company subsequently adopted it, the tenant cannot, after receiving the benefit of it, repudiate it. So long as the company is willing to recognize the validity of the agent's act, it is incompetent for the tenant to controvert it."

4. Estoppel to deny authority.

In *Kuser v. Wright,* 52 E. 825, it was held that the company is estopped from denying the authority of one who is, de facto, a director, and in that capacity authorized to represent it. (See also *Collier v. Consolidated Lighting Co.,* 70 L. 313).

5. A de facto officers himself can acquire no rights by his acts.

(*Green v. Kleinhans,* 14 L. 473-477). (See also *Johnson v. Jones,* 23 E. 216).

VII. ESTOPPEL TO DENY APPOINTMENT OR AGENCY.

"If an unauthorized act is done on behalf of a corporation, although the corporation may not be bound by the act as done, yet, if the corporation or that corporate authority which would have been competent originally to do the act, knowingly ratifies it or accepts the benefit of it, or if all the persons having a right to object to the act knowingly acquiesce in it, the act will be as binding on the corporation as if it had been originally authorized. This proposition is but an application of the doctrine of the law of agency, that when a person ratifies the unauthorized act of another who has purported to act on his behalf, the legal effect of the act will be the same as if it had been authorized before it was done." (*Taylor Private Corp.,* Sec. 211).

VIII. TENURE OF OFFICE.

1. **The president, secretary and treasurer** shall hold office until others are qualified and chosen in their stead. (Sec. 13).

2. **Other officers, agents and factors** as shall be chosen, shall hold office for such terms as the by-laws may prescribe. (Sec. 14).

3. **Directors** shall be chosen annually, and shall hold office for one year and until others are chosen and qualified in their stead; unless there be provision in the certificate of incorporation classifying directors in respect to the time for which they shall severally hold office. If directors be so classified, the several classes are to be elected for different terms; no class shall be elected for a shorter period than one year or for a

longer period than five years and the term of at least one class shall expire each year. (Sec. 12).

4. Effect on tenure of failure to file annual report.

The failure of a corporation to file, in the office of the secretary of state, in a given year, a statement containing the names and addresses of the directors who were required to be elected that year, raises the presumption that no election was held during that year, and that the directors whose names appear on the statement last filed in the office of the secretary of state have held over, and still remain in office. (*Appleton v. Am. Malting Co.*, 65 E. 375).

IX. DISQUALIFICATION.

1. Refusal to file annual report.

Directors who wilfully refuse to comply with the provisions of section 43 as to the filing of the annual report of the corporation, are ineligible for election or appointment to any office in the company at the time appointed for the net election, and for a period of one year thereafter. (Sec. 43).

2. Directors who cease to be stockholders shall cease to be directors. (Sec. 39).

3. Acting as judge, inspector or clerk of election.

If a person, who is a candidate for director, shall act as judge, inspector or clerk of any election for director, and be elected, his election is void. (Sec. 35). This section does not apply to first election of directors.

4. Neglect or refusal of the directors to produce the stock and transfer books and the alphabetical list required by section 33, at any election, renders such directors ineligible to any office at such election. (Sec. 33).

5. Reincorporation by mistake.

In *Miller v. English*, 21 L. 317, the officers of a corporation supposed the original corporate papers and record thereof had been lost, and under this mistaken belief they participated in a re-incorporation of the corporation for the purpose of perpetuating the original corporation. Held, that they did not thereby forfeit their rights as officers of the original corporation.

6. Bankruptcy of director.

In *Wright v. First Nat'l Bank*, 52 E. 392, it was held that a director who goes into bankruptcy and flees from the state, ceases to be a director. This case was reversed in *Kuser v. Wright*, Id. 825, but on other grounds.

X. REMOVAL.

1. Causes for.

Lord Mansfield, in *Rex v. Richardson,* 1 Burr 539, considered that there were three causes for the amotion of a corporate officer: (1) The commission of such offenses as would render the officer unfit to hold the office; (2) The doing of such acts as would be in violation of his oath and duty; (3) The committing of such an offense as would be in violation of the officer's duty and render him liable to indictment. (See also *Ang. & Ames Corp.,* 246, &c.).

2. The statute recognizes a power of removal.

(Sec. 15) and such power is indeed inherent.

3. **If there be a fixed term of office, removal must be for cause,** but otherwise, unless limited by statute or by-law, the power to remove ministerial officers is absolute in the body that elects, subject only to a right of action if there be a breach of contract of employment. The president of a corporation has no securer tenure than any other ministerial officer. (*In re Griffing Iron Co.,* 63 L. 168; Aff'd Id. 357). An amendment to the by-laws giving express power of removal was judicially upheld in *Weinburgh v. Union, &c., Adv. Co.,* 55 E. 640.

4. The provisions of section 15 are inapplicable to a directorship newly created.

The filling up of a board, whose membership is enlarged, seems to be left to the creating body, i. e., the stockholders. (*In re Griffing Iron Co., supra*). (See also *Welsh v. Passaic Hospital,* 59 L. 142).

5. **Certiorari is not the proper remedy** to review either a resolution of a private corporation removing its president from office, or proceedings to reinstate or re-elect directors who had resigned, in a case where mandamus or quo warranto are available remedies. (*Overman v. Manley Drive Co.,* 71 Atl. 1125). (See also *Thompson Corp.,* Sec. 825; *Cook Corp.,* Sec. 617).

XI. RESIGNATION.

1. Form of.

Unless there be some provision to the contrary in the charter or by-laws, a director or other officer of a corporation can resign, either orally or in writing at any time.

2. **A written resignation takes effect upon delivery to the president;** acceptance by the board is not necessary. (*Fearing v. Glenn,* 73 Fed. 116; *Internat'l Bank v. Faber,* 86 Fed, 443).

3. Filling of vacancy.

Upon the resignation of any director, or the president, secretary or treasurer, the vacancy thereby created shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the board of directors. (Sec. 15).

XII. ELECTION OR APPOINTMENT OF SUCCESSORS.

The provisions of section 15 do not apply to the filling up of a board of directors whose membership is enlarged by a vote of the stockholders. Such offices shall be filled by the stockholders at a special meeting subsequently called for that purpose. (*In re Griffing Iron Works,* 63 L. 168; Aff'd Id. 357).

XIII. AUTHORITY AND FUNCTIONS.

1. How conferred.

The authority of officers to act for the corporation is conferred either by the charter or delegated by the directors or managers, in whom, as the representatives of the corporation, the control of its business and property is vested. The powers of the officers of a corporation over its business and property are strictly the powers of agents. (*Fifth Ward Savings Bank v. First Nat'l Bank,* 48 L. 513).

2. The president is the chief executive officer of a corporation, and by virtue of his office, has authority to perform all acts of an ordinary nature which, by usage or necessity, are incident to his office, and may bind the corporation by contracts in the usual course of business.

3. His authority to act may be enlarged beyond those powers which are inherent in his office, but those are cases where his agency has arisen from the assent of the directors, presumed from their consent and acquiescence in permitting the officer to assume the direction and control of the business of the company.

4. Where the act is extraordinary in its nature, the president must have express authority.

5. Specific examples.

In *Stokes v. N. J. Pottery Co.,* 46 L. 237, the court admitted the right of the president to borrow money and secure the debt in the usual way; but held that the power to contract the debt did not carry with it the power to encumber the company's property by a mortgage or a judgment confessed as a security for its repayment. Likewise in *Titus v. Cairo & Fulton R. R. Co.,* 37 L. 98, it was held that the president of a corporation could not execute a power of attorney authorizing a sale of bonds, without the authority of the board of directors. Held also, in *Leggett v. N. J. Banking Co.,* 1 E. 541, that a mortgage executed

by the president and cashier of a corporation under the corporate seal, without the authority of the board of directors, is not valid. (See also *Bennett v. Kean,* 59 E. 634). Neither has the president power, by virtue of the office, to execute a cognovit. (*Raub v. Blairstown Creamery Ass'n,* 56 L. 262). A resolution of a de facto board of directors cannot be annulled by the president alone. (*Collier v. Consolidated R., &c., Co.,* 70 L. 313). Nor has he implied power to award sub-contracts on construction work for which his company has the main contract. (*Murphy v. Cane Inc.,* 76 Atl. 323). He has no power by virtue of his office to alter the provisions of a formal agreement under seal, entered into by the corporation itself. (*Mausert v. Feigenspan,* 68 E. 671). (See also *Minshull v. N. J. Terminal R. Co.,* 71 Atl. 663). Where a person is both president and treasurer and the owner of nearly all the stock of a corporation, he is nevertheless not authorized to bind the corporation by a contract to pay a commission for the sale of his own stock. (*Demarest v. Spiral Riveted Tube Co.,* 71 L. 14). The general authority of the president of a corporation warrants him in collecting outstanding accounts and in selling the accounts for their face value. (*Cogan v. Conover Mfg. Co.,* 69 E. 816).

6. As to when the president's agency is a question of fact for the jury.

(See *Loh v. Broadway Realty Co.,* 77 L. 112).

7. Functions of president stipulated by statute.

Some of the functions which the president must perform are expressly stipulated in the General Corporation Act. He must sign the certificate upon payment of capital (Sec. 25), and he must also sign the annual report to the secretary of state. (Sec. 43). Either he or a vice-president must sign the stock certificates. (Sec. 19).

8. Vice-president.

In *Am. Soda Fountain Co. v. Stolzenbach,* 75 L. 721, the authority of the vice-president is considered in an opinion by Dill, J. (See also *Earle v. Nat'l Metallurgic Co.,* 76 Atl. 555).

9. Secretary.

Every corporation must have a secretary, who must be sworn to the faithful discharge of his duty, and who must record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him. (Sec. 13). He is not required to be a director of the corporation. As to the secretary's duties with reference to the corporation minutes (see *Wells v. Rahway Rubber Co.,* 19 E. 402). As to his power to bind the company by his act (see *Harris v. Congress Hall Hotel Co.,* 70 Atl. 330; *Curry v. Congress Hall Hotel Co.,* 73 Atl. 124; *Voorhees v. Nixon,* 72 E. 791). (See also *No. Pa. Iron Co. v. Boyce,* 71 L. 434; *Newark & N. Y. R. R. Co. v. Goll,* 32 L. 285).

10. Treasurer.

Section 13 directs that the corporation shall have a treasurer, who, if required by the by-laws, shall give bond for the faithful discharge of his duties.

11. Scope of duties.

Unless specifically authorized, the treasurer's duties and authority are limited to those acts which come within the usual scope of his office; e. g., he is not virtute officii invested with the power of borrowing money and pledging the corporate securities as collateral. (*Fifth Ward Savings Bank v. First Nat'l Bank,* 48 L. 513). Nor is he, in the absence of any authority delegated to him by the directors, authorized to endorse the company's note for discount or sale. (*Blake v. Dom. Mfg. Co.,* 64 E. 480). The treasurer of a corporation is not chargeable with interest on the funds of the company in his hands, unless it be shown that he used them for his own purposes, or that he used them or ought to have used them, in such a way as to earn interest. Where the treasurer, with the corporation's consent, deposits its funds in a bank to his credit as treasurer, he is entitled to allowance, for so much of the deposit as was lost by the failure of the bank, in accounting with the company. (*Laurel Springs Land Co. v. Fougeray,* 57 E. 318). (See also *De Jonge v. Woodport Hotel, &c., Co.,* 77 L. 233).

12. As to directors.

(See NUMBER OF DIRECTORS AND THEIR DUTIES).

XIV. RIGHTS, DUTIES AND LIABILITIES AS TO CORPORATION AND ITS MEMBERS.

1. Stockholders' right to share in dividends is provided for in section 17. (See CAPITAL STOCK AND DIVIDENDS).

2. Compensation of officers.

The power to compensate officers and agents is given under section 1. Compensation, however, must be reasonable. The question of reasonableness of compensation for services, depends upon what the services of a competent person in the position were reasonably worth, and a court of equity has power to review the question of the reasonableness of salaries to corporate officers, though fixed by the stockholders, especially where the salary was fixed by the vote of a majority stockholder for his own benefit. (*Lillard v. Oil, &c., Co.,* 70 E. 197).

3. Services must be commensurate with compensation.

In *Davis v. Thomas & Davis Co.,* 63 E. 572, three directors of a wall paper corporation voted themselves salaries of $5,000 a year each, as president, vice-president and secretary, respectively; held, on review of the evidence, that the services were not sufficient to justify the $5,000 salaries.

4. Compensation of directors who are also employes.

If directors of a corporation are employed in the business of the corporation and agree to pay themselves a stipulated sum, the agreement is void, and no recovery can be based upon such a contract, but for such service as they render, they may recover upon a quantum meruit. (*Porch v. Agnew Co.*, 70 E. 328; Aff'd 71 Id. 305; *Gardner v. Butler*, 30 E. 702). (See also *Mitchell v. United Box Board & Paper Co.*, 72 E. 580).

5. Compensation of incorporators.

An agreement between the incorporators of a company, that in consideration of their respective services to each other and the company, and in consideration of one dollar paid by each to the other of them, so much of the company's stock as was left after paying with it for certain patent rights and property acquired by the company, should be divided between them, does not preclude a recovery for services rendered by any of the parties to the agreement, as employes of the company. (*Wiltbank v. Automatic Amusement Co.*, 69 L. 236).

6. Liability to receiver for excessive compensation.

Where an officer receives an excessive salary, he is liable to the receiver of the corporation for the amount in excess. (*Mills v. Hendershot*, 70 E. 258).

7. As to the rights of members and officers of a corporation who are also creditors.

(See *Grinnell v. Merchants' Ins. Co.*, 16 E. 283; *Coe v. N. J. Midland R. Co.*, 27 E. 110; Id. 31 E. 105).

8. Use of corporate funds in speculation by directors.

The corporate funds, property and securities are the property of the corporation, and the important trust committed to the directors of a corporation, is to manage the capital, as well as for the protection of the public as for the profit of the stockholders; hence they cannot speculate with the funds or credit of the company and appropriate to themselves the profit of such speculation. (*Redmond v. Dickerson*, 9 E. 507). (See also *Trenton Banking Co. v. McKelway*, 8 E. 84; *Hilles v. Parrish*, 14 E. 380; *Williams v. Riley*, 34 E. 398; *Loudenslager v. Woodbury Heights Land Co.*, 56 E. 411; *Guild v. Parker*, 43 L. 430; *Landis v. Sea Isle Hotel Co.*, 31 Atl. 755).

9. Contracts benefiting directors.

The rule that directors cannot lawfully enter into a contract in the benefit of which even one of their number participates without the knowledge and consent of the stockholders, is held to be settled law in New Jersey in *Hodge v. U. S. Steel Corp.*, 64 E. 807. (See also *Barry v. Moeller*, 68 E. 483; *Booth v. Land Filling & Imp. Co.*, 68 E. 536; *Mitchell v. United Box Board & Paper Co.*, 72 E. 580).

XV. Liability for Corporate Debts and Acts.

The stockholders of a corporation are liable to pay on each share the sum necessary to complete the amount of such share, or such proportion of that sum as shall be required, where the whole capital shall not have been paid in, and that part of the capital which has been paid in is insufficient to pay the debts of the corporation. (Sec. 21). For knowingly making any false certificate or public notice required by the provisions of the General Corporation Act, all the officers signing same are jointly and severally liable for all the debts of the corporation contracted while they were officers or stockholders thereof. (Sec. 52).

Officers making a loan to any stockholder or other officer, or assenting thereto, are jointly and severally liable to the extent of such loan and interest, for all debts of the corporation until re-payment of the sum so loaned. (Sec. 48). Responsibility for debts of the corporation is placed upon officers who do not file certificates of decrease of capital stock as required by section 29, and upon officers neglecting or refusing to file certificate upon payment of capital. (See Sec. 26). Also upon those officers who shall declare dividends out of any funds except as provided for in section 30.

(Section 58 makes provision as to payment of debts by corporations dissolving, and section 86 regulates the distribution of the assets of insolvent companies).

(The liability for corporate acts has been discussed supra in this chapter).

XVI. Representation of Corporation by Officers and Agents.

(See Officers and Agents).

XVII. Corporations' Agents and Their Duties.

(See Officers and Agents).

XVIII. Compensation of Directors, Officers and Agents.

(See Rights, Duties and Liabilities as to Corporations and Its Members).

XIX. Vacancies Among Directors or Officers.

(See Removal and Resignation).

XX. Election of Directors.

(See Procedure in Organizing, &c.).

XXI. Duty of Directors In Case of Insolvency.

(See Insolvency).

CHAPTER IX.

PERIOD OF EXISTENCE.

I. To Have Succession.

1. Right to succession.

The right of a corporation to have succession under its corporate name is expressly given under section 1.

2. Perpetual unless limited.

If there be no period of limitation in the charter, corporate existence is perpetual under the present General Corporation Act. By the Corporation Act of 1875, corporate existence was limited to fifty years, but corporations formed under that act may extend or make perpetual their existence by complying with the provisions of section 27 of the present act.

II. Corporate Existence Begins.

1. Date of filing determines.

Corporate existence begins upon making the certificate of incorporation and causing the same to be recorded and filed as provided for in section 9. The persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as elsewhere provided for in the General Corporation Act. (Sec. 10).

2. Distinction between grants made in contemplation of existence and grants of existence upon condition.

In *Stevens v. Merchantville*, 62 L. 167, it was held that an ordinance, by which a municipality makes a grant to a private corporation, is void if such corporation was non-existent at the time the ordinance was introduced and passed upon its second reading. In *Lake v. Ocean City*, Id. 160, it was held that a municipality that may lawfully consent to the formation of a private corporation for certain public purposes, may lawfully condition its consent upon terms protective of such public interest and germane to the subject. It was contended in this case that, under the decision in *Stevens v. Merchantville, supra*, in dealing with the unformed company, everything in the ordinance, except the mere consent to the formation of the company, was ultra vires; but the court said: "The distinction is between contracting with a person not in existence, and consenting that some person may come

into existence upon certain conditions or not otherwise." (See also *Bd. of Assessors v. Plainfield Water Co.*, 67 L. 357).

3. As to special act of creation.

In *Union Water Co. v. Kean*, 52 E. 111, it was held that an Act, March 17th, 1870, entitled "An Act to incorporate the Union Water Company" and declaring that certain persons named, and their successors, "shall be, and are hereby constituted and declared to be, a body politic and corporate," created, of itself, a corporation in praesenti, composed of the corporators and commissioners named therein. This case was reversed Id. 813, but on another point.

4. De facto corporations.

Where it is shown that there is a charter or a law under which a corporation, with the powers assumed, might lawfully be incorporated, and there is a colorable compliance with the requirements of the charter or law and a user of the rights claimed thereunder, the existence of a corporation de facto is established. (*Stout v. Zulick*, 48 L. 599).

5. Estoppel to deny existence.

A person who enters into a written contract which purports to be made with a corporation, is not thereby estopped, in a case where there is no colorable organization of a de facto corporation, from showing that the corporate name was a name under which the individuals with whom he dealt, were trading. (*Cottentin v. Meyer*, 76 Atl. 341).

6. Existence admitted in suits unless disputed.

By supplement of April 8th, 1903 (P. L. 1903, p. 490), it is provided that "In every suit or judicial proceeding in this state, to which a corporation is a party, the existence of such corporation shall be taken to be admitted, unless it is put in issue by the pleadings; and in courts in which the practice is that the defendant need not file a plea, the existence of such corporation shall be taken to be admitted unless the party to the suit denying the existence of such corporation shall file with the court an affidavit stating that to the best of his or its knowledge and belief, such corporation does not exist."

7. Certificate evidence of existence.

Section 9 provides that the certificate of incorporation, or a copy thereof duly certified by the secretary of state, shall be evidence in all courts and places.

III. Extension of Corporate Existence.

1. Corporations organized under this act may extend corporate existence by complying with the provisions of section 27. (See Amendments and Changes).

2. **"Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence** in the manner prescribed in the twenty-seventh section of this act; provided, that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such extension shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages." (Supplement February 2, 1897, P. L. 1897, p. 11).

3. **Extension after expiration of existence; exceptions.**

By chap. 205, Laws of 1903 (P. L. 1903, p. 391), the corporate existence of any corporation other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a street railroad company, a telegraph company, a telephone company, a gas company, an electric light company, a turnpike company, a plank road company, or any company which possesses the right of condemning lands in this state, may be extended, even where its charter may have expired by limitation of time, within four years next preceding the date when such corporation shall file the certificate of extension. There is an orderly procedure to be followed under the provisions of this act and also explicit instructions as to its construction.

4. **For cases on the question of the extension of corporate existence.**

(See *J. C. v. No. Jersey St. Ry. Co.,* 74 L. 774; *Cooper Hospital v. Camden,* 68 L. 691; *First Pres. Church v. State Bank,* 57 L. 27; Aff'd 58 Id. 406; *Smith v. Eastwood Wire Mfg. Co.,* 58 E. 331; *Nat'l Lead Co. v. Dickinson,* 70 L. 596; Aff'd 72 Id. 313; *Bd. of Assessors v. Morris, &c., Ry. Co.,* 49 L. 193).

IV. DURATION.

1. **The certificate of incorporation must set out the period, if any, limited for the duration of the company.**

(Sec. 8).

2. **Unless limited by its certificate of incorporation or charter, a corporation's existence is perpetual.**

(Sec. 1).

3. **The termination of corporate existence** may be brought about either; by failure to perform statutory conditions; by expiration of time limited in the charter; by forfeiture; by surrender or voluntary dissolution. (See *Elizabthtown Gas Light Co. v. Green,* 46 E. 118).

4. Existence continues after termination.

"All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established." (Sec. 53). (See *Atty. Gen. v. Plank Road Co.*, 65 L. 603; *Camp v. Taylor,* 19 Atl. 968; *Am. Surety Co. v. Great White Spirit Co.,* 58 E. 526).

CHAPTER X.

DISSOLUTION.

I. Power to Wind Up and Dissolve.

1. A power which every corporation has.

Section 1, sub-div. 7, provides that every corporation shall have power to wind up and dissolve itself, or be wound up and dissolved in the manner provided in the act.

The methods by which a corporation may be wound up and dissolved are provided for by statute, as will be shown below, where the several methods are discussed under sub-headings.

2. Failure to elect directors at the designated time shall work no forfeiture or dissolution of the corporation.

(Sec. 41). (See *Hoboken Bldg. Ass'n v. Martin,* 13 E. 427).

3. Dissolution must be actual.

In *Zinc Co. v. Franklinite Co.,* 13 E. 322, it was held that a mere agreement to transfer the property and stock of a corporation cannot affect its legal existence, nor will the actual transfer of all the real and personal estate of the corporation including the stock itself, extinguish its charter; and in *Sewell v. East Cape May Beach Co.,* 50 E. 717, it was held that while such disposal of the property as a whole practically results in winding up the present investment of the corporation, it is not a winding up, in law, of the corporation, which still continues to exist, with power to use the funds and securities derived from the sale in any future transactions by it. "A corporation may exist without exercising its corporate rights; and the mere omission of a corporation to exercise some of its rights and powers is no cause of forfeiture of its charter, much less will such an omission work a dissolution of the corporation." (*Society for Establishing Useful Manufactures v. Morris Canal, &c., Co.,* 30 E. 145; Foot-note p. 152).

II. Methods of Dissolution.

1. The several methods of dissolution are as follows:

(1) By the legislature.
(2) Voluntary dissolution by directors or by unanimous consent of stockholders.
(3) By surrendering the corporate franchise.
(4) By limitation of the corporate existence.

(5) By decree of court.
  (*a*) By insolvency.
  (*b*) By forfeiture for non-user, mis-user, exercise of franchise or power not granted by law, or violation of charter or statute.
  (*c*) Violation of Corrupt Practice Act.
(6) For failure to pay State Franchise Tax for two consecutive years.

III. First—Dissolution by the Legislature.

1. Charter may be repealed.

Section 4 provides that "the charter of every corporation, or any supplement thereto or amendment thereof, shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation."

2. The Act itself may be repealed.

Section 5 provides that "this act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred."

2. The Act, and all amendments thereof, are part of the charter of every corporation heretofore or hereafter formed under its provisions, except so far as the same are inapplicable and inappropriate to the objects of such corporation. (Sec. 5).

4. Irrepealable charter cannot be granted.

"By the federal constitution (Art. 1, Sec. 10), it is declared that no state shall pass any law impairing the obligation of contracts. That an irrepealable contract, within the meaning of this clause, may be embodied in the charter of a private corporation enacted by a legislature having power to grant the same, is the necessary result of the doctrine laid down in the *Dartmouth College Case,* 4 Wheat. 518. That such a charter may even contain a contract exempting the property of the corporation from taxation, and if so granted for a valid consideration moving to the state, and accepted and acted on by the recipient, may become binding on the state according to its terms, is established by a line of decisions in the United States Supreme Court, and is, of course, recognized by this court. Our legislature is now prevented from granting an irrepealable charter, by force of the constitutional amendment of 1875." (*Cooper Hospital v. Camden,* 68 L. 691-694, and cases cited).

5. Assent of stockholders.

In re Newark Library Ass'n, 64 L. 265, an election of directors was contested on the following grounds. The corporation was incorporated

by special act of the legislature in 1847, and the charter of the association contained a provision limiting the voting power of shares. It was contended that this voting right was so far the property of the shareholder, or an incident of his property, that it could not be destroyed under a general statute of April 9th, 1897, which provided that every stockholder in any library association, whether incorporated by a general law or special act of the legislature, should at each meeting of the stockholders, have at least one vote for every share of stock held by such stockholder. The court held that the statute which on its enactment, became perhaps only conditionally the law of the association (the condition being the assent of all the stockholders), became, on fulfillment of that condition, the absolute law of the corporation, and that the assent once given was irrevocable.

6. Legislative right reserved by Act itself.

In *Shiloh Turnpike Co. v. Bates,* 76 Atl. 448, it was held that the section of the corporation act providing that "the charter of every corporation which shall be thereafter granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature," operated as effectively in reserving the rights of alteration, suspension and repeal, as if it had been inserted in each charter thereafter granted.

7. Legislative reservation does not impair rights of stockholders inter sese.

The rights reserved in section 4 extend only to the modification or destruction of rights as between the state and the corporation. The rights of the stockholders inter sese can in no respect be impaired except in so far as an impairment may result from an alteration required by public interest. (*Berger v. U. S. Steel Corp.*, 63 E. 809).

8. Power may be reserved by general law.

"Charters of private corporations are regarded as executed contracts between the state and the corporator, and the rule is settled, that, if the charter does not contain a reservation of power in the legislature to modify or change the contract, the legislature cannot repeal, impair or alter such a charter against the consent or without the default, of the corporation. Subsequent legislation modifying such a charter, where there is no such reservation, is unauthorized. But where such a provision is incorporated in the charter, it is clear that it modifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the constitution. And this power, the charter being silent upon the subject, may be reserved by general law existing at the time the charter is granted, which provides that all charters thereafter granted shall be subject to it. The effect of such a law is the same as if each special charter thereafter contained its provisions, though the charter contains no such reservation of power nor any allusion to the general law." (*Montclair v. N. Y. & Greenwood Lake Ry. Co.*, 45 E. 436-443 and cases cited). (See

also *Zabriskie v. Hackensack & N. Y. Ry. Co.*, 18 E. 178; *Mills v. Cen. R. R. Co. of N. J.*, 41 E. 1).

9. Stockholders' rights cannot be abrogated.

A limitation upon the power of the corporation which is part of the contract existing between the stockholders among themselves, and between the stockholders and the corporation itself, cannot be abrogated or avoided by the corporation or its directors, or by any majority however large of its stockholders against the objection of a single share. This is on the ground that such action would violate that provision of the federal constitution which prohibits the states from passing any laws which impair the obligations of contracts. (*Einstein v. Raritan Woolen Mills*, 74 E. 624). (See also *Johnson v. Mutual Guarantee B. & L. Ass'n*, 66 L. 683; *Schwarzwalder v. German Mutual Fire Ins. Co.*, 59 E. 589).

10. Notice of intention to repeal.

Art. IV, section VII, par. 9 of the Constitution of New Jersey, provides that "no private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given." By a supplement to "An Act to prescribe the notice to be given of applications to the legislature for laws, when notice is required by the constitution" (P. L. 1905, p. 17), it is provided "of the intention to apply for the passage of a bill to repeal the charter of any corporation, or bill to repeal the charter and dispose of the property of any corporation, the public notice required by the first section of the act to which this is a supplement, shall be given by publishing the same, in a daily newspaper published in Trenton, for at least six consecutive days prior to the introduction of such bill, and by serving a copy of the notice upon the president or secretary or a director or registered agent of the corporation, if such officer or agent can be found within this state, and if none of them can be found, then by personal service of such copy upon them or one of them out of this state, or by mailing a copy to them or one of them, directed to the residence or post-office address of such officer or agent, if known." (See Sec. 146).

IV. SECOND—VOLUNTARY DISSOLUTION.

1. Judgment of directors.

If at any time, in the judgment of the directors, it is deemed advisable and most for the benefit of the corporation that it should be dissolved, dissolution may be effected in accordance with the provisions of section 31, which analyzed is as follows:

2. Orderly procedure.

A majority of the board of directors shall adopt a resolution to the effect that dissolution is advisable; this resolution to be adopted at a meeting of the board held for that purpose upon at least three

days' notice to each director. Within ten days thereafter, notice of the adoption of such resolution shall be mailed to each stockholder in the United States, and also beginning within the said ten days, a like notice is to be published in a newspaper published in the county wherein the corporation has its principal office, at least four weeks successively, once a week next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board. This meeting must be held between ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and may be adjourned from time to time for not less than eight days at a time by consent of a majority in interest of the stockholders present. Notice of such adjourned meeting must be given by advertisement in the newspaper in which original notice of meeting was published. If at the meeting, two-thirds in interest of all stockholders consent to such dissolution, and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and secretary, or the treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed. The board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in the county where the corporation has its principal office, and then must file in the office of the secretary of state an affidavit that the certificate has been so published, whereupon the corporation shall be dissolved.

3. Unanimous consent of all stockholders.

However, if all the stockholders consent in writing to a dissolution, no meeting or notice thereof is necessary, but on filing said consent in the office of the state department, the secretary of state shall forthwith issue a certificate of dissolution, which must be published as above.

4. Provisions as to winding up.

The sections providing for the winding up of corporations, viz. 53 et seq. apply to settling up and adjusting of the affairs of a corporation dissolved under the provisions of section 31.

5. Equity can compel directors to wind up corporation.

"Shareholders in a corporation cannot extinguish its charter or dissolve it, and a court of equity cannot dissolve it at their instance. In the absence of a statutory provision, the franchises can be declared forfeited and extinguished only at the suit of the state in an appropriate proceeding at law, * * * but where it plainly appears that the object for which the company was formed is impossible of attainment, it becomes the duty of the company's agents to put an end to its operations and wind up its affairs, and should they, even though supported by a majority of the shareholders, pursue operations which

must eventually be ruinous, any shareholder feeling aggrieved would, upon plain equitable principle, be entitled to the assistance of a court of equity, and a decree should be made compelling the directors to wind up the company's business and distribute the assets among those who are entitled to them, unless they can lawfully be used for other business purposes allowed by the charter." (*Benedict v. Columbus Cons. Co.*, 49 E. 23).

6. Directors' duty to call meeting.

Where the corporation has been compelled to cease doing business and apparently nothing remains but to pay its debts, and divide the residue of its assets among the stockholders, it is the duty of the directors to call the stockholders together, under section 31. (*Streit v. Citizens' Fire Ins. Co.*, 29 E. 21).

7. Directors' judgment not subject to review.

There is no power in a court of equity to review the judgment of the directors who deem dissolution advisable. (*Windmuller v. Standard D. & D. Co.*, 114 Fed. 491; *Windmuller v. Standard D. & D. Co.*, 115 Fed. 748).

8. The proceeding prescribed for voluntary dissolution of corporations is wholly statutory and must be strictly followed.

The various steps are plain and simple. The corporation is not dissolved until the final step, viz,: the filing of the affidavit that the certificate of the secretary of state has been published as required by law, has been taken. (*Hegeman v. At. Rubber Shoe Co.*, 73 E. 295). An arrangement to transfer all the property and franchises, except the franchise of being a corporation, to another corporation, was restrained in *Coler v. Tacoma Ry. &c., Co.*, 65 E. 347; the court holding that it was tantamount to a dissolution within the meaning of the statute, and, therefore, could be legally carried out only by such proceedings as the statute prescribed for dissolution.

9. Effect of dissolution on stockholders' rights.

Stockholders at a meeting to determine whether the corporation shall be dissolved, act not as trustees for each other, but individually and may vote as their own views or their individual interests may dictate; but a dissolution may not be used by the majority to commit a fraud on the minority. Where the motive for dissolution is to terminate rights given to stockholders by a by-law, such a motive does not make the proceedings for dissolution a fraud on minority stockholders. That the proposed dissolution is but a step toward reorganization, does not of itself make the proceedings fraudulent. (*Riker & Son Co. v. United Drug Co.*, 79 Atl. 1044). (See also *Bijur v. Standard D. & D. Co.*, 74 E. 546).

V. THIRD—SURRENDER OF CORPORATE FRANCHISE.

Provisions for this method of dissolution are contained in section 32.

1. Time of surrender.

This can only be effected in cases where no part of the capital has been paid in, and the business for which the corporation was organized has not been begun.

2. Procedure.

In such cases, the incorporators may surrender all their corporate rights and franchises by filing in the office of the secretary of state, a certificate verified by oath that no part of the capital has been paid and such business has not been begun.

VI. FOURTH—BY LIMITATION OF CORPORATE EXISTENCE.

1. Existence perpetual unless limited.

Our present Corporation Act makes corporate existence perpetual unless its succession is limited by provision in its charter. (Sec. 1, par. 1). The Corporation Act of 1875 limited corporate existence to fifty years, but any company formed under the latter act may extend or make perpetual its existence by complying with the provisions of section 27. (See also P. L. 1903, p. 391).

VII. FIFTH—BY DECREE OF COURT.

(a) By insolvency.

(See INSOLVENCY).

1. Insolvency of itself does not work a dissolution of the corporation.

(See *State v. R. R. Comm'rs,* 41 L. 235; *Second Nat'l Bank v. N. Y. Silk Mfg. Co.,* 5 N. J. L. J. 197; *Kirkpatrick v Bd. of Assessors,* 57 L. 53).

(b) By forefiture for non-user, mis-user, exercise of franchise or power not granted by law, or violation of charter or statute.

1. Objects impossible of attainment.

Where it plainly appears that the object for which a company was formed is impossible of attainment, it becomes the duty of the company's agents to put an end to its operations and wind up its affairs, and should they, even though supported by a majority of the shareholders, pursue operations which must eventually be ruinous, any shareholder feeling aggrieved will, upon plain equitable principle, be entitled to the assistance of a court of equity by decree compelling the directors to wind up the company's business. (*Benedict v. Columbus Cons. Co.,* 49 E. 23).

2. Question of intention.

Where the question of non-user is in controversy, the case of *Raritan Water Power Co. v. Veghte,* 21 E. 463, holds that the question is one of intention, and that to constitute an abandonment the facts or circumstances must clearly indicate such an intention. Non-user is a fact in determining it, but is not, even though continued for twenty years, conclusive evidence in itself of an abandonment.

3. Mere failure to elect officers at the time designated does not work a forfeiture or dissolution.

(Sec. 41). (See *Hoboken Bldg. Ass'n v. Martin,* 13 E. 427). (See also *McNeely v. Woodruff,* 13 L. 352).

4. Misfeasance and malfeasance.

The legislature has the power to confer upon a court authority to declare a charter forfeited for a specified misfeasance or malfeasance. (*Huylar v. Cragin Cattle Co.,* 40 E. 392-396).

5. Forfeiture for failure to bring books within state.

Section 44 provides that the Court of Chancery or the Supreme Court, or any justice thereof, may, "upon proper cause shown," summarily order any or all of the books of a corporation to be forthwith brought within this state and kept therein at such place and for such time as may be designated in such order. Forfeiture of the corporate charter is the penalty for failure to comply with this order.

The expression "upon proper cause shown" in section 44 means a cause, the propriety of which is made to appear to the judicial officer nominated in the section. It is of the essence of the statute that the determination of the "cause shown" be committed to the determination of such judicial officer; and for such determination the conclusion reached by the applicant for the order, from undisclosed facts, is not a valid substitute. (*National Packing Co. v. Garven,* 78 Atl. 703).

6. Disposing of all property equivalent to dissolution but charter is not extinguished thereby.

It was held in *Coler v. Tacoma Ry., &c., Co.,* 65 E. 347, that the entering into a contract, by a corporation, to dispose of all its property and franchises except the franchise of being a corporation, was tantamount to a dissolution and therefore could be legally carried out only by such proceedings as the statute prescribed for dissolution. (See also *In re Public Highway,* 22 L. 293; *State v. De Mott,* 14 L. 254; *State v. Snedeker,* 30 L. 80). A mere agreement to transfer the property and stock of a corporation cannot affect its legal existence, nor will the actual transfer of all the real and personal estate of the corporation, including the stock itself, extinguish its charter. (*Zinc Co. v. Franklinite Co.,* 13 E. 322). (See also *Sewell v. East Cape May Beach Co.,* 50 E. 717).

7. If a corporation is violating its charter or the laws of the state, it is liable to a proceeding to forfeit its charter.

(*Phillipsburg Elec. Co. v. Phillipsburg,* 66 L. 505). (See also *Elizabethtown Gas Light Co. v. Green,* 46 E. 118; *Atty. Gen. v. Am. Tob. Co.,* 55 E. 352).

8. Failure to carry out a directory provision which forms a part of the charter, while it might forfeit the charter, does not make the acts of the company void. (*Morris Canal, &c., Co. v. Van Vorst,* 21 L. 100).

9. Legality of a corporation cannot be attacked collaterally.

The legality of a corporation which exists under the form of law can only be impugned by an application for a writ of quo warranto, or by an information in the nature thereof, instituted by the attorney general. (*West Jersey R. R. Co. v. Cape May, &c., Co.,* 34 E. 164). (See also *Nat'l Docks Ry. Co. v. Cen. R. R. of N. J.,* 32 E. 755; *Elizabethtown Gas Light Co. v. Green,* 46 E. 118). Individuals cannot institute legal proceedings to establish the invalidity or non-existence of an alleged corporation; this is a prerogative of the state. (*Bell v. Penn., &c., R. Co.,* 10 N. J. L. J. 336). Forfeiture cannot be taken advantage of or enforced collaterally or incidentally, or in any other mode than by a direct proceeding on behalf of the state. (*N. J. Southern R. R. Co. v. Comm'rs,* 39 L. 28; *Terhune v. Potts,* 47 L. 218; *J. C. Gas Light Co. v. Consumers' Gas Co.,* 40 E. 427). Whether a corporation is acting illegally is not a question to be determined in a court of equity at the suit of a stockholder. (*Dittman v. Distilling Co.,* 64 E. 537; *Benedict v. Columbus Cons. Co.,* 49 E. 23). An information in the nature of a quo warranto for the purpose of dissolving a corporation, or seizing its franchises, cannot be prosecuted in the name of the state, at the relation of private persons, though leave be asked of the court. (*State v. Paterson, &c., Co.,* 21 L. 9).

10. Authority of state.

The state may interpose its authority at any time and compel an abandonment of the act in excess of power, and if need be revoke the charter of the company for its usurpation. Where the state challenges the legality of the transaction, the paramount and only question is, whether it has bestowed upon the company the requisite authority to engage in it. (*Camden & Atl. R. R. Co. v. Mays Landing, &c., R. R. Co.,* 48 L. 530).

(c) Violation of Corrupt Practice Act.

By section 36, chap. 188, Laws of 1911, approved April 20th, 1911 (P. L. 1911, p. 344), it is provided that "it shall be unlawful for any person, directly or indirectly, by himself or any other person in his behalf, to make use of, or threaten to make use of, any force, violence or restraint, or to inflict or threaten the infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to

induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person or persons at any election, or on account of such person having voted or refrained from voting at any election. And it shall be unlawful for any person, by abduction, duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interefere with the free exercise of the elective franchise by any voter; or to compel, induce or prevail upon any voter either to give or refrain from giving his vote at any election, or to give or refrain from giving his vote for any particular person or persons at any election. It shall not be lawful for any employer, in paying his employes the salary or wages due them, to inclose their pay in 'pay envelopes' upon which there is written or printed the name of any candidate or any political mottoes, devices or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employes. Nor shall it be lawful for any employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop or other establishment or place where his workmen or employes may be working, any handbill or placard containing any threat, notice or information that in case any particular ticket of a political party, or organization, or candidate shall be elected, work in his place or establishment will cease, in whole or in part, or his place or establishment be closed up, or the salaries or wages of his workmen or employes be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employes. This section shall apply to corporations as well as individuals, and any person or corporation violating the provisions of this section is guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter."

VIII. PURPOSES FOR WHICH CORPORATE EXISTENCE CONTINUES AFTER DISSOLUTION.

Section 53 provides that all corporations, whether they expire by their own limitation, or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

1. Form of judgment in quo warranto proceedings in accordance with section 53.

In *Grey v. Newark Plank Road Co.*, 65 L. 603, it was held that in consequence of the above statute, upon a determination in quo warranto proceedings, that the charter has expired, a judgment ousting the corporation from enjoying the franchise of corporate existence, should not be rendered, but that a judgment should be entered that the corporate

existence of the company has terminated except so far as it is continued by the above section, and that the company be ousted from the exercise and enjoyment of all franchises except such as are thereby conferred.

2. Suit brought after dissolution.

Under section 53, a corporation of this state, after dissolution, may be sued for a cause of action in tort, arising before such dissolution, and process in such suit may be served on the registered agent of such corporation. (*Hould v. Squire,* 79 Atl. 282).

3. Directors to be trustees upon dissolution.

Section 54 makes the directors trustees upon the dissolution in any manner of the corporation. They are to have full power to settle its affairs, collect outstanding debts, sell and convey the property, and divide the moneys and other property among the stockholders, after paying the corporation's debts, so far as such moneys and property shall enable them. They may meet and act under the by-laws of the corporation and, under regulations to be made by a majority of the trustees, they may prescribe the terms and conditions of the sale of the property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property.

4. In case a vacancy exists in the board of directors at the time of dissolution or subsequently, the surviving members of the board are constituted trustees with full power to act. (Sec. 54).

5. The powers and liabilities of the directors, constituted trustees as provided in section 54, are set out in section 55. They shall have authority to sue for and recover the debts and property by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

In *Keen v. Maple Shade Land & Imp. Co.,* 63 E. 321, a corporation was dissolved by voluntary action as provided for in section 31. It was indebted to the complainant and its assets, more than sufficient to discharge complainant's claim, were divided by the directors among the stockholders without paying the said complainant. It was held that under sections 54 and 55, the directors were personally chargeable with the debt due complainant, and his bill in chancery could be maintained against them as trustees for discovery and relief.

6. Court of Chancery may appoint receiver of dissolved corporation.

Under the provisions of section 56, upon the dissolution in any manner of any corporation, the Court of Chancery, on the application of any creditor or stockholder, at any time, may either continue the directors' trustees as provided for in section 54, or appoint one or more persons to be receivers of such corporation.

7. Power of such receivers.

Such receivers, if appointed, are to take charge of the estate and effects of the corporation, and collect the debts and property due and belonging to the corporation. They are given power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or proper, and may appoint an agent or agents under them and do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of its unfinished business. The powers of such trustees or receivers may be continued as long as the court shall think necessary for the purpose of final settlement. (Sec. 56).

8. Power of chancellor discretionary.

The authority of the chancellor to interpose and take from the directors the power to close up the business of the corporation and put its affairs into the hands of a receiver (as provided in section 56), is a discretionary power, to be exercised only on good cause shown, upon circumstances disclosed by the proof which show the need of the interference of the court, for the protection of creditors or stockholders from breaches of trust by the directors in the performance of their duties. (*Newfoundland R. R. Con. Co. v. Schack,* 40 E. 222). (See also *Am. Surety Co. v. Great White Spirit Co.,* 58 E. 526; *Fitzgerald v. State Mut. B. & L. Ass'n,* 69 Atl. 564).

The general jurisdiction of equity over corporations does not, in the absence of express statutory authority, extend to the power of dissolving the corporation or of winding up its affairs, and sequestrating the corporate effects and property; and courts of equity will not, ordinarily, by virtue of their general equitable jurisdiction or of their visitorial powers over corporate bodies, sequestrate the effects of the corporation, or take the management of its affairs from its own officers and entrust it to the control of a receiver of the court, upon the application either of creditors or shareholders. (*Einstein v. Rosenfeld,* 38 E. 309.) A receiver of a corporation will not be appointed under sections 56 and 57, where it appears that the corporation was being dissolved by the stockholders, in accordance with the provisions of section 31, and that the bill was filed eleven days after the stockholders' meeting held for that purpose, but before the stockholders' consent and statutory certificate had been filed in the office of the secretary of state, there being no allegation of the insolvency of the corporation or maladministration on the part of its directors. (*Hegeman v. At. Rubber Shoe Co.,* 73 E. 295).

9. Jurisdiction of Court of Chancery.

Section 57 gives the Court of Chancery jurisdiction over the application for the appointment of a receiver, and over all questions arising in the proceedings thereon, and power is given said court to make such orders and decrees in such proceedings as justice and equity shall require.

10. Disposition of proceeds.

Section 58 directs that the said trustees shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court. If any balance remains after payment of such debts and necessary expenses, such balance is to be distributed among the stockholders.

11. Payment to a shareholder of record without notice of a previous assignment, on the final distribution of assets, is a valid payment as against a holder of the certificate by assignment who has not applied for a transfer on the books. (*Campbell v. Perth Amboy Mut. Loan, &c., Ass'n,* 76 E. 347).

12. Actions not to abate on dissolution.

Section 59 provides that actions are not to abate upon dissolution, and is as follows: "Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation."

13. The final step to be taken is provided in section 60, which directs that "A copy of every decree or judgment dissolving a corporation or forfeiting its charter, shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws."

IX. FOR FAILURE FOR TWO CONSECUTIVE YEARS TO PAY STATE FRANCHISE TAX.

By section 1, supplement of April 21st, 1896; P. L. 1896, p. 319, as amended by P. L. 1905, p. 508, section 1, it is provided that "If any corporation created under any act of this state shall for two consecutive years neglect or refuse to pay the state any tax which has been or shall be assessed against it under any law of this state and made payable into the state treasury, the charter of such corporation shall be declared void as in section 2 of this act provided, unless the governor shall, for good cause shown to him, give further time for the payment of such tax, in which case a certificate thereof shall be filed by the governor in the office of the comptroller, stating the reasons therefor."

1. Winding up of corporation so dissolved.

The provisions of sections 53 to 60, as to winding up, apply to a corporation whose charter has been declared void for non-payment of taxes. (*Amer. Surety Co. v. Great White Spirit Co.,* 58 E. 526).

X. COMPTROLLER TO REPORT LIST OF DELINQUENTS; GOVERNOR ISSUES PROCLAMATION.

1. Time of report.

On or before the first Monday in January in each year, the comptroller must report to the governor a list of all corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this state as required by the provisions of the first section of the above supplement. (P. L. 1905, p. 509, sec. 2).

2. The governor must forthwith issue his proclamation, declaring, under this act of the legislature, that the charters of these corporations are repealed, and all powers conferred by law upon such corporations shall thereafter be deemed inoperative and void. (Sec. 2, supplement of April 21st, 1896; P. L. 1896, p. 319; as amended by P. L. 1905, p. 509, section 2).

XI. PROCLAMATIONS TO BE FILED AND PUBLISHED.

P. L. 1905, p. 509, section 3; amending section 3, supplement of April 21st, 1896; P. L. 1896, p. 319; directs that the proclamation of the governor shall be filed in the office of the secretary of state, and published in such newspapers, and for such length of time as the governor shall designate.

XII. PENALTY FOR EXERCISING POWERS UNDER CHARTER AFTER PROCLAMATION.

By section 4, supplement of April 21st, 1896; P. L. 1896, p. 319; as amended by P. L. 1905, p. 509, section 4, it is enacted that "Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court."

XIII. WINDING UP AFFAIRS OF DISSOLVED CORPORATIONS.

1. General provisions.

Sections 53 to 60, inclusive, provide for the continuance of corporate existence for the purpose of settling up the corporate business, the relationship of the directors who become trustees on dissolution, the powers and liabilities of such trustees, the power of the Court of Chancery to appoint receivers, the general jurisdiction of the Court of Chancery in applications for receiverships, and the disposition of the proceeds by the trustees or receivers. Section 59 declares that actions against corporations are not to abate by reason of dissolution, and section 60 directs the filing of the copies of decrees

or judgments dissolving a corporation or forfeiting its charter, with the secretary of state. These sections are discussed supra.

XIV. CAUSES FOR DISSOLUTION IN GENERAL.

(See METHODS OF DISSOLUTION).

XV. PROCEEDINGS TO ENFORCE DISSOLUTION OR FORFEITURE.

(See METHODS OF DISSOLUTION).

XVI. REINCORPORATION AND REORGANIZATION.

(See INSOLVENCY).

XVII. CORPORATIONS MAY EXTEND, RENEW AND CONTINUE CORPORATE EXISTENCE.

(See PERIOD OF EXISTENCE).

XVIII. CONSOLIDATION AND MERGER.

1. Nature of business must be similar.

Section 104 of the Corporation Act permits the merger or consolidation of any two or more corporations organized or to be organized under any law of this state for the purpose of carrying on any kind of business of the same or similar nature.

2. Such merger into a single corporation, may be either one of the merging corporations, or a new corporation to be formed by means of such merger.

(Sec. 104).

3. Corporations excepted.

The provisions of section 104, by express stipulation in the section itself, do not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands), banking companies, savings bank or other corporations intended to derive profit from the loan and use of money, turnpike companies or canal companies.

4. Change of object cannot be accomplished by merger.

This act neither permits nor contemplates that a change of the objects of incorporation is to be accomplished by means of a consolidation agreement. Action to change the nature of business, pursuant to the authority conferred for that purpose, is to be exercised, if at all, by direct proceedings taken pursuant to the statute. Under the above act, it is plain that the power to merge two corporations is conferred only where they are organized for the purpose of carrying on business of the same or a similar nature. The General Corporation

Act does not limit a corporation to one object or purpose, but allows a variety of objects to be set forth in the certificate of incorporation. Whether the businesses of the corporations seeking to merge are of the "same or similar nature" must be determined with regard to the primary purposes of such corporations, and not with reference to the incidental objects, where a variety of purposes, possessing similarity in some degree, are provided for in the certificates of the corporations proposing to consolidate. (See *Colgate v. U. S. Leather Co.*, 75 E. 229).

5. Compliance with statutory provisions.

The merger or consolidation must be made in strict compliance with the statutory provisions contained in section 105. Analysis of this section shows the following successive steps:

6. Orderly procedure.

(1) The directors of the several corporations proposing to merge, may enter into a joint agreement under the corporate seals of the respective corporations for the merger of said corporations. This agreement shall prescribe the terms and conditions thereof, the mode of carrying same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors be chosen, either according to law or the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, the amount or par value of each share of such new or consolidated corporation; the manner of converting the capital stock of each of said merging corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers shall be chosen or appointed; and any other details deemed necessary to perfect the consolidation.

(2) This agreement must be submitted to the stockholders of each of said merging corporations, separately, at a meeting thereof. This meeting must be called, for the purpose of considering this agreement, upon twenty days' notice of its time, place and object, which notice shall be mailed to the last known post-office address of each of such stockholders. At this meeting, the agreement must be considered and a vote of the stockholders of each corporation by ballot shall be taken separately, for its adoption or rejection, each share of stock entitling the holder thereof to one vote. Said ballots must be cast in person or by proxy. If the votes of the holders of two-thirds of all the capital stock of each of the said merging corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger of the said corporations. A copy of said agreement and act of merger or consolidation, duly certified by the

secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

7. Effect of consolidation.

Section 106 provides that corporations so merged or consolidated shall be one corporation by the name provided in the agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged, except as altered by the provisions of the act.

8. Rights of creditors preserved.

Section 107, provides that upon the consumation of the act of merger, all rights, etc., all property, and all debts due shall be vested in the consolidated corporation with the special proviso however, that all rights of creditors and all liens upon the property of either of said former corporations, shall be preserved unimpaired and capable of enforcement against the consolidated company, to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

9. Rights of dissenting stockholders.

Section 108 and supplement of April 10, 1902 (P. L. 1902, p. 700), are to the effect that dissenting stockholders, upon the merger or consolidation of two or more corporations, may have their stock appraised. Section 108 provides for dissenting stockholders of public utility corporations, while the supplement above mentioned makes provision for dissenting stockholders of corporations which do not have the right to exercise any franchise for public use.

10. Right to issue bonds and mortgage property.

Under the provisions of section 109, the consolidated corporation is given power to issue bonds or other obligations, negotiable or otherwise, with or without coupons or interest certificates attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume in order to effect such merger; and to secure the payment of such bonds or obligations, it may mortgage its corporate franchises, rights, privileges, and property, real, personal and mixed.

11. Such bonds, however, shall not bear a greater rate of interest than six per cent. per annum.

(Sec. 109).

12. The consolidated company may purchase and dispose of the stocks of other corporations of this state or elsewhere, and exercise in respect thereto all the powers of stockholders thereof. (Sec. 109).

13. It may issue capital stock, either common or preferred, or both, to such amount as may be necessary, to the stockholders of such

merging corporations, in exchange or payment for their original shares, as provided in the agreement of consolidation, which agreement may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging corporations conveyed to the consolidated corporation, as well as upon money capital paid in. (Sec. 109).

14. Consolidation does not enlarge the franchises, powers or privileges of the original companies, and the new company takes the rights and franchises it acquires by the consolidation subject to the original conditions and limitations. (*Traction Co. v. Elizabeth,* 58 L. 619; *Wilbur v. Trenton Passenger Ry. Co.,* 57 L. 212).

15. Stockholders' objection must be prompt.

In *Beling v. Am. Tob. Co.,* 72 E. 32, the following facts appear. After the filing of a consolidation contract, the business previously transferred by the constituent companies was carried on by the merged corporation as an entirety, and a large amount of the property received by the merged corporation had been sold, exchanged, or converted into other forms, and the receipts therefor had been so commingled that it became impossible to identify the same or to separate the business of the constituent corporations. The complainant, a stockholder in one of such corporations, made no objection to the merger until nearly six months after the agreement, during which time the consolidated corporations' securities had been put on the market and largely dealt in. It also appeared that complainant's assignor, who was the administrator of the record holder of the stock, had received notice of the meeting at which the merger agreement was entered into, and complainant when he acquired the stock had actual notice thereof, and bought the stock for the purpose of suing to set aside the consolidation. It was held that complainant was not entitled to a decree vacating such merger agreement and requiring the officers of his corporation to resume possession of its assets and continue to transact its business. (See also *Dana v. Am. Tob. Co.,* 72 E. 44; Aff'd 73 Id. 736).

16. Laches will bar intervention by a court of equity on behalf of non-assenting stockholders. (*Rabe v. Dunlap,* 51 E. 40).

17. Rights of dissenting stockholders.

Where an agreement for the merger of corporations provides for the issue of mortgage bonds to be exchanged for similar bonds of the constituent companies, the holders of the latter bonds who do not assent to the merger agreement, cannot complain if the parties thereto vary the terms upon which the bonds are exchanged. (*Burlington City L. & T. Co. v. Princeton Lighting Co.,* 72 E. 891).

18. As to the vesting of rights, etc., in the new corporation upon the merger or consolidation. (See *Day v. N. Y. S. & W. R. R. Co.,* 58 L. 677).

19. The issuance of stock must at all times be subject to the provisions of sections 48 and 49, hence the stock issued under any of the sections providing for the merger or consolidation of two or more corporations, must be issued subject to the provisions in those two sections.

20. Bonds of consolidated company as equivalent of bonds of one of the merging companies.

In *New Jersey Midland Ry. Co. v. Strait,* 35 L. 322, a railroad company agreed to give its bonds in consideration of certain money, and afterward becoming amalgamated with two other companies, tendered the bonds of the consolidated corporation and brought suit for the money. Held that such suit would not lie, the consideration offered not being that agreed for.

CHAPTER XI.

FOREIGN CORPORATIONS.

I. Reservation by State of Right to Regulate; Deductions.

In discussing this subject, it becomes apparent that if it is to be dealt with in a manner which may be clearly understood, the idea of a corporation being an artificial legal person must be discarded; for the attribute of personality contemplates citizenship, and if citizenship be imputed to a corporation, the privileges of citizenship must, as a logical sequence, be accorded to it. Investing the corporation with the privileges of citizenship would place it under the provision of section 2, article IV of the Constitution of the United States which directs that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." As the state of New Jersey, as well as all the other states of the union, reserve the right to limit the powers of foreign corporations within their several state jurisdictions, and also regulate their business operations within the boundaries of the state, it is apparent that citizenship is not one of the attributes of the corporation.

II. Determination of Status.

The status of a corporation, in a state or country foreign to the jurisdiction in which such corporation was organized, must be determined by the statutes of such foreign government. Thus in *Runyan v. The Lessee of Coster,* 14 Pet. 122-129, it was held that "every power which a corporation exercises in another state depends for its validity upon the laws of the sovereignty in which it is exercised, and no corporation can make a valid contract without the sanction, express or implied, of such sovereignty; unless a case should be presented in which the right claimed by the corporation should appear to be secured by the Constitution of the United States."

In our state the powers and duties of foreign corporations are clearly set out by statute, and those statutes have, in most instances, been construed and interpreted by our courts.

III. Power of Foreign Corporations To Hold and Convey Lands.

Section 95 grants to any corporation created by any foreign state, kingdom or government, the right to acquire by devise or otherwise, and hold, mortgage, lease and convey real estate in this state for the purpose of prosecuting its business or objects; or such real estate as

it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; provided, such foreign state, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase, at war with the United States.

1. Municipal corporations excepted.

The authority of a municipal corporation of another state to acquire, hold and use real estate within the state of New Jersey, is taken away by chapter 22, Laws of 1903 (P. L. 1903, p. 41), which is as follows: "It shall be lawful for any foreign corporation whatsoever, other than municipal corporations, to purchase and convey, to lease, hold, occupy and use for the purposes of such corporation, such real estate in this state as may be devised or conveyed to it." (Sec. 95½).

2. Nature of legislative grant.

A legislative grant to a foreign corporation, of the power to exercise its franchises or independent powers in the nature of corporate franchises within the state, does not make it a domestic corporation. In such cases, the foreign corporation will take, under legislative sanction, those rights only which are within the expressed terms of the grant. (*Bd. of Assessors v. M. & E. R. R. Co.*, 49 L. 193).

IV. FOREIGN CORPORATIONS SUBJECT TO THE PROVISIONS OF THIS ACT.

By section 96, it is provided that foreign corporations doing business in this state shall be subject to the provisions of this act so far as the same can be applied to foreign corporations.

1. Importance of this provision.

This section is of greater import than is apparent at first reading. There are statutory restrictions placed upon all of our domestic corporations, and various sections of the act are in effect rules for the regulation of their conduct and management. Certain powers are denied them, other powers are expressly granted and still others implied. The apparent scheme of the entire act is to not only encourage corporate formation, but to stimulate corporate growth. Section 96 places the foreign corporation doing business here upon the same level as the domestic corporation. It can exercise no greater powers than those exercised by corporations organized under our own statutes, and its conduct must square with our laws so far as these laws are applicable to it. The domestic corporation is therefore protected within its domicile, and its growth fostered by these limitations placed upon its rivals from sister states.

V. BEFORE COMMENCING BUSINESS IN THIS STATE, FOREIGN CORPORATION SHALL FILE COPY OF ITS CHARTER, &C.

Section 97 directs, in detail, the method by means of which foreign corporations may obtain statutory authority to transact business in this state.

1. Banking, insurance, ferry and railroad corporations are not included in this section.

2. Form of copy of charter and statement.

Every corporation, other than those mentioned, before transacting any business in this state, must file in the office of the secretary of state, a copy of its charter attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and actually issued, the character of business to be transacted in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process may be served. The agency so constituted, shall continue until the substitution by writing of another agent. (Sec. 97).

3. Certificate of secretary of state.

Upon the filing of such copy and statement, the secretary of state issues to such corporation, a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state. The secretary of state must keep a record of all such certificates issued. (Sec. 97).

VI. CANNOT MAINTAIN ACTION UNTIL CERTIFICATE OF SECRETARY OF STATE IS OBTAINED AND UNLAWFUL TO TRANSACT BUSINESS UNTIL AUTHORITY IS OBTAINED.

1. Disability.

Failure to obtain a certificate of the secretary of state by a foreign corporation, before the transaction of business in this state, places such corporation under disability to maintain any action in this state upon any contract made by it in this state. (Sec. 98).

2. Penalty.

By section 100 "Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the state the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state."

3. The power of the state over foreign corporations is not less than the power of the state over domestic corporations (*N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389), and a state has the power to impose terms under which foreign corporations may do business within it. (*Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28; *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727; *Ashley v. Ryan*, 153 U. S. 436). (See also *Orient Ins. Co. v. Daggs*, 172 U. S. 557; *Blake v. McClung*, Id. 239; *Parke Davis Co. v. Roberts*, 171 U. S. 658; *Hooper v. California*, 155 U. S. 648).

4. What constitutes the transaction of business in the state within the meaning of the statutes?

The general conclusion of the courts is, that isolated transactions, commercial or otherwise, taking place between a foreign corporation domiciled in one state and citizens of another state, are not a doing or carrying on of business by a foreign corporation within the latter state. Statutes prohibiting foreign corporations from doing or carrying on business within the state unless they have complied with certain conditions, are levelled against the acts of foreign corporations entering the domestic state by their agents and engaging in the general prosecution of their ordinary business. Thus, a foreign corporation which makes a single sale of its product and accepts a guarantee of payment in this state, does not transact business within the meaning of the statute. (*D. & H. Canal Co. v. Mahlenbrock,* 63 L. 281). (See also *Henry v. Simanton,* 64 E. 572-575; *Ladd Metal Co. v. Am. Mining Co.,* 152 Fed. 1008; *Cooper Mfg. Co. v. Ferguson,* 113 U. S. 727).

5. A foreign corporation may bring suit in this state upon a contract made in a foreign state without complying with the provisions of the act requiring a certificate to be filed in this state. (*MacMillan Co. v. Stewart,* 69 L. 212; Aff'd Id. 676; *Faxon Co. v. Lovett Co.,* 60 L. 128; *Bell Tel. Co. v. Galen Hall Co.,* 72 Atl. 47; *Slaytor-Jennings Co. v. Paper Box Co.,* 69 L. 214).

6. The material inquiry.

In *Groel v. United Electric Co. of N. J.,* 69 E. 397-423, the court said: "The material inquiry always is, was the foreign corporation in fact here transacting business? The immaterial consideration is whether they used one instrumentality or another in transacting such business. That which the defendant did was to come into the state of New Jersey, organize and control a corporation, cause such corporation to issue its bonds and stocks, took such bonds and stock, and with them or some of them, purchased the stocks held in various New Jersey corporations engaged in the business of electric and gas lighting, and also took from such persons certain sums of money as further consideration, and further gave a guaranty that for five years another corporation would pay the interest on its bonds. Taking this all together, it was certainly a 'doing of business' in this state."

7. As to foreclosure of mortgages.

It was held in *Am. Net & Twine Co. v. Ginthens,* 21 N. J. L. J. 190, that proceedings to foreclose a mortgage is not such an action on contract as is contemplated by the statute which prohibits foreign corporations from maintaining any action in this state upon any contracts made by it in this state until they have complied with certain conditions. (See also *Manhattan, &c., Ass'n v. Massareli,* 42 Atl. 284).

8. As to action for waste.

In the case of *Del. & A. Tel & Tel Co. v. Pensauken Twp.,* 116 Fed. 910, it was held that a foreign corporation may maintain an action for wanton destruction of its property, though it has not complied with the statutory requirements before transacting business within this state.

9. As to contracts.

Where the only penalty prescribed, by another state, for the doing of business by a foreign corporation without complying with certain statutory provisions, is a denial of the right to maintain an action in that state, such a penalty does not attach to a contract made by such foreign corporation in such state, so as to deprive it of a suable quality in this state. When the statute does not declare the contract to be void, it is to be strictly construed and the validity of the contract maintained; the only effect of such statute being to impose the prescribed penalties and disabilities in the state where it is enacted. Disqualifications of a penal character have no extra-territorial operation, and comity does not require a recognition of them in other states. But a contract void by the law of the state where made, will not be enforced in this state. (*Alleghany Co. v. Allen,* 69 L. 270). (See also *Boehme v. Rall,* 51 E. 541).

10. The courts of one state will not take judicial notice of the statutes of another state.

If a foreign statute be pleaded, it must be set forth in substance. The averment "pursuant to the statute" without setting forth the substance of the statute, is insufficient. (*Salt Lake City Nat'l Bank v. Hendrickson,* 40 L. 52).

11. Presumption as to compliance with statute.

It is presumed that foreign corporations have complied with the law as to doing business, unless the contrary is shown or the status of the corporation is questioned. (*Benton v. Elizabeth,* 61 L. 411; Aff'd Id. 693).

VII. On the Death or Disqualification of Agent, Another To Be Appointed.

1. Evident legislative intent.

The frequent references which the various sections of the act make to the principal office of the corporation in this state, and the agent in charge thereof upon whom process against the corporation may be served, indicate clearly the intent of the legislature that the corporation shall, at all times, have a domicile of record, and an agent of record, in order, not only that the corporate situs may be publicly known, but also that some representative of the corporation shall be publicly designated by name, so that, in the event of an action being instituted against the corporation, service of process may be made with

certainty and despatch. Section 97 makes it necessary for a foreign corporation to designate such an agent in its statement to be filed with the secretary of state before commencing business in this state, and section 99 declares that if such agent die, remove from the state, or become disqualified, the foreign corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, such appointment to be attested in the manner provided in section 97.

2. The penalty provided for the omission to so appoint such agent within thirty days after such death, removal, or disability, is the revocation, by the secretary of state, of the certificate of authority to transact business in this state.

3. Secretary of state may be served with process.

Process against such corporations in actions upon any liability incurred within this state, before the designation of another agent, may, after such revocation, be served upon the secretary of state; this section (99) further provides that at the time of such service (upon the secretary of state) the plaintiff shall pay to the secretary of state, for the use of the state, two dollars to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof if known to him.

4. Annual report of foreign corporations.

In connection with this subject, reference to section 43 will disclose the statutory requirements as to the annual report which is to be filed by a foreign corporation, the penalty for failure to file such report, &c.

VIII. ATTACHMENT AGAINST FOREIGN CORPORATIONS.

By section 4 of "An Act for the relief of creditors against absent and absconding debtors (Revision of 1901)," it is provided that "Attachments may issue against * * * corporations not created or recognized as corporations of this state by the laws of this state and joint stock associations" (P. L. 1901, p. 158, section 4). (See Sec. 144).

1. History of statute.

The earliest statute in this state on the subject of attachment was an act passed March 8th, 1798, Pat. L. p. 296, Rev. 1820, p. 355. This statute did not authorize a writ of attachment against a corporation. On February 22d, 1839, a supplement to the act was passed, the second section of which provided "That writs of attachment may be issued against * * * any corporation or body politic not created or recognized by the laws of this state in all cases in which such writ may lawfully issue against an absconding or absent male" * * * (P. L. 1839, p. 63). This statute was inserted in the attachment act of 1845 as section 43 and in the Revision of 1874, it was enacted as section 7. (Gen. Stat., p. 99, Sec. 7).

2. Construction of statute.

Under this section, it was held in *Goldmark v. Magnolia Metal Co.*, 65 L. 341, decided in 1900, that where a foreign corporation owns property in this state and transacts business here, but has not complied with the requirements under which such corporations are allowed to transact business in this state, an attachment will lie against it. On the other hand, if the foreign corporation has complied with this statute (Sec. 97) and designated an agent upon whom process against it may be served in the manner pointed out, such foreign corporation would be exempt from liability to attachment.

3. Statutory test.

In *Brand v. Auto. Ser. Co.*, 75 L. 230, decided in 1907, it was held that the statutory test provided by the Attachment Act of 1901 (Sec. 4), for an attachment against a corporation, is not whether it be a resident or non-resident, but whether it be a corporation created or recognized as a corporation of this state by the laws of this state.

IX. SERVICE OF PREROGATIVE WRIT AGAINST FOREIGN CORPORATIONS.

1. Upon whom such writ may be served.

Section 102 provides that "In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation."

2. Such writ may be enforced by attachment.

Section 103 provides for the enforcement of such writ upon failure or neglect to make return as follows: "In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the Supreme Court, Court of Chancery, or any of the Circuit Courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this state."

3. Distinction as to service of prerogative writ and process.

It should be borne in mind that the above sections apply to the service of prerogative writs only. For service of process against foreign corporations, see section 88.

X. GROUNDS OF RECOGNITION OF FOREIGN CORPORATIONS.

1. Depends upon statute.

Recognition of a domestic corporation is had upon the filing in the office of the secretary of state of the certificate of incorporation, and section 9 provides that the said certificate or a duly certified copy thereof shall be evidence in all courts and places. The existence and general powers of a foreign corporation may, by comity, be so far recognized as to permit such corporations to make contracts and enforce them by legal remedies, but such contracts and remedies depend for their validity upon the laws of the state where made or used, and are not valid or to be enforced there without its express or implied sanction. The extent of recognition given foreign corporations therefore depends upon the statutory regulations and prohibitions of the state into which such foreign corporation seeks to enter. Statutes which provide the terms upon which foreign corporations may be recognized by states other than the state creating, determine the corporate status of such corporation in such states. (*Groel v. United Electric Co. of N. J.*, 69 E. 397; *Connecticut Mutual Ins. Co. v. Spratley*, 172 U. S. 602).

In *Public Service Corp. v. Am. Lighting Co.*, 67 E. 122, it was held that a foreign corporation having no franchise within the state, being neither a citizen nor a householder thereof, the sole business of which is the furnishing of a patent gas burner, has no standing, in its own right, to demand and receive a supply of gas from a domestic corporation for any purpose whatever.

XI. INCORPORATION UNDER FOREIGN LAWS FOR BUSINESS IN STATE OF RESIDENCE.

1. Advantages of.

By reason of the greater liberality of the corporation statutes of some of the states, persons desirous of forming a corporation, often incorporate in a state where it is not intended to carry on any of the business of the company.

2. Attitude of New Jersey.

By the comity of states, the present rule seems to be, that a corporation organized under the laws of a state may transact business beyond the borders of that state. New York state has taken a liberal view of the comity of states. (See *Merrick v. Van Santvoord*, 34 N. Y. 208). In New Jersey, the earlier cases held that a corporation could not become incorporated under the laws of another state for the purpose of carrying on all its corporate transactions in the state of New Jersey. (*Hill v. Beach*, 12 E. 31). It is quite improbable that this doctrine would be followed in New Jersey to-day, in fact New Jersey has created and is creating many corporations which do not transact business of any nature in this state, other than the holding here of stockholders' meetings as the statute requires. These

corporations are given recognition by the states in which they actually carry on their business, and a corporation organized in some other state for the purpose of conducting business in this state would doubtless be accorded the same recognition. (*Att'y-Gen. v. Am. Tob. Co.*, 55 E. 352).

XII. ACTIONS AGAINST FOREIGN CORPORATIONS.

1. Process must be lawful.

A foreign corporation is liable to be sued in this state, on a contract made in this state, when summoned in accordance with our laws. (*Nat'l Condensed Milk Co. v. Brandenburgh,* 40 L. 111). The process against such foreign corporation must, therefore, be served in the manner provided in our statutes in order that the suit may be maintained.

2. Comity of states as effecting service of process.

In *Moulin v. Ins. Co.*, 24 L. 222, Elmer, J., said: "By the comity universally acknowledged in the states of this Union, and acted upon by the Supreme Court in the case of *Bank of Augusta v. Earl* (13 Pet. 519), corporations may send their officers and agents into other states, transact their business, and make contracts there; and in some instances the laws of the states prescribe the mode and the terms upon which they may do so. I am not prepared to say that if they choose to avail themselves of this privilege, natural justice will be violated by subjecting their officers and agents to the services of process on behalf of the corporation they represent; on the contrary, I think natural justice requires that they shall be subject to the action of the courts of the states whose comity they thus invoke. For the purpose of being sued, they ought in such cases to be regarded as voluntarily placing themselves in the situation of citizens of that state. Any natural person who goes into another state carries along with him all his personal liabilities; and there is quite as much reason that a corporation which chooses to open an office and transact its business, or to authorize contracts to be made in another state, should be regarded as thereby voluntarily submitting itself to the action of the laws of that state, as well in reference to the mode of commencing suits against it, as to the interpretation of the contracts so made. But I am quite prepared to say that where a corporation confines its business operations to the state which has chartered it, a law of another state, which sanctions the service of process upon one of its officers or members accidentally within its jurisdiction is unreasonable, and so contrary to natural justice and to the principles of international law that the courts of other states ought not to sanction it. In such a case, a president or other officer ought not to be considered as carrying his official character along with him." (See also *Moulin v. Ins. Co.*, 25 L. 57).

3. Statute not to be construed as giving new right of suit.

A foreign corporation which has no place of business in this state, and which, at the time of the commencement of suit, is not doing business in this state, the contract sued on being made in a foreign jurisdiction, is not suable in the courts of this state. The statute providing for service of process against foreign corporations does not give any new right of suit. It simply appoints a method of bringing corporations invested with a foreign character into the courts of this state, when such courts have jurisdiction over them. It is not a proper construction of such statute to assume it was designed to place within the jurisdiction of our courts all the corporations of the world, merely from the fact that a director, clerk or other subordinate officer happened to come upon the territory of the state. (*Camden Rolling Mill Co. v. The Swede Iron Co.,* 32 L. 15).

4. Who are exempt from service.

In *Mulhearn v. Press Pub. Co.,* 53 L. 150, the court said: "The line between those who represent and those who do not represent a foreign corporation for the purposes of this act (referring to Sec. 88) cannot be decided by a formula. But it was never intended that every servant who happened to do some act in this state for a foreign corporation, represented the company." An officer of a foreign corporation is privileged from service of process when coming here to testify (*Mulhearn v. Press Pub. Co.,* 53 L. 153). (See also *Buffalo Sandstone Co. v. Am. Brick Machinery Co.,* 141 Fed. 211; *Puster v. Parker Mercantile Co.,* 64 E. 599, s. c. 70, Id. 771), and an officer of a foreign corporation, happening within the state on personal business, where the corporation has never transacted any business within the state, is not a proper person to serve with process against the company. (*Freeholders v. Penna. R. R. Co.,* 42 L. 490).

It was held in *Carroll v. N. Y., &c., Ry. Co.,* 65 L. 124, that a person employed by defendant as engineer on its steamboat used in transporting cars between Jersey City and the Harlem river, did not represent the defendant in such sense as to legalize service of summons upon him; and in *Haas v. Security Ins. Co.,* 57 L. 388, service on a person whose only connection with defendant was a contingent one, that had ceased before the action had commenced, was held not good.

5. Act does not apply to all process issued out of all courts.

The 88th section of the Corporation Act providing for service of process upon a foreign corporation applies only to process issued out of the upper courts and not to justices' courts. A summons issued out of the court for the trial of small causes, must be served as directed by the act constituting the court for the trial of small causes, to give the justice jurisdiction. (*Penna. R. R. Co. v. Kreitzman,* 57 L. 60).

6. Sections 88 and 97 co-existent.

The statute requiring a foreign corporation to designate an agent in this state upon whom process may be served before transacting

business in this state (Sec. 97), does not make nugatory the provisions of the statute providing for service of process against foreign corporations, (Sec. 88). The two statutes co-exist and one is not exclusive of the other. (*Groel v. United Electric Co.*, 69 E. 397-415, and cases cited).

7. Engagement in business at time of service not necessary.

Where the cause of action arises in this state, while the defendant corporation was transacting business here, under a license obtained under the statute, process served upon the designated agent is good, whether such corporation is actually engaged in business here at the time of service or not.

8. Acting beyond specified powers does not bar action.

Although the business out of which the cause of action arose within this state, was not within the objects specified in the statement filed by such foreign corporation, it is nevertheless amenable to the jurisdiction of our court if process is served in accordance with the statute. (*Groel v. United Electric Co.*, 69 E. 397).

9. Service upon the designated agent is good even though such agency has been revoked where there has been no substitution of another designated agent as required by the statute.

(*Groel v. United Electric Co.*, 69 E. 397). (See also *St. Clair v. Cox*, 106 U. S. 350).

XIII. INSOLVENCY.

1. A foreign corporation doing business here is subject to the provisions of our statute, so far as its property in this state is concerned. That section of the General Corporation Act providing that "foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations" makes the remedies thereby provided in case of insolvency applicable to foreign corporations, so far as practicable. (*Minchin v. Second Nat'l Bank*, 36 E. 436).

2. Proof of insolvency required before receiver will be appointed.

When it is not shown that a foreign corporation has been declared insolvent by the courts in the state of its creation, the Court of Chancery in this state will not appoint a receiver on a mere suspicion that such corporation intends removing its property to another state or intends to commit a fraud. (*Smyth v. Empire Rubber Co.*, 2 N. J. L. J. 154).

3. The Court of Chancery may appoint a receiver of a foreign corporation having property in this state, as auxiliary to the proceedceeding instituted against it in the state which created it, and confer upon him the same powers that it is authorized to grant to the receiver

of a domestic corporation, so far as they may be necessary to the recovery and collection of the assets of the corporation; and independent of statutory provision, and simply as a matter of courtesy, said court may extend its aid to the receiver of a foreign corporation for the purpose of enabling him to get possession of property which should, in equity, be applied in payment of its debts. (*Nat'l Trust Co. v. Miller,* 33 E. 155). (See also *Bidlack v. Mason,* 26 E. 230).

4. **Not necessary that the corporation be engaged in business here.** To authorize the appointment of a receiver of an insolvent foreign corporation, it is not necessary that such corporation should be engaged in carrying on its business in this state at the time of the filing of the bill or petition; the court may take jurisdiction in any case where it is made to appear that the corporation has done business here, and still has property here, although at the time when the bill or petition was filed, its business here is entirely suspended. (*Albert v. Clarendon Land, &c., Co.,* 53 E. 623).

5. **Discretion of the court.** In view of the rule established in *Hurd v. Elizabeth,* 41 L. 1; *Nat'l Trust Co. v. Miller,* 33 E. 155, and *Sobernheimer v. Wheeler,* 45 E. 614, that the right to collect personal assets everywhere passes to the receiver, upon his appointment, but that the exercise of that right beyond the limits of the state of his appointment, is by virtue of the comity which may be extended to him by the court of the state in which the right is asserted, and that such comity will not be extended where the rights of the citizens of the state are likely to be prejudiced, or where it would be in contravention of the policy of the state; Reed, V. C., in *Irwin v. Granite State Provident Ass'n,* 56 E. 244, said: "Whenever application is here made for an appointment of a receiver for a foreign corporation, which is already in the hands of a receiver at the place of its domicile, the court in which the application is made can do one of three things—(1) It can refuse to appoint a receiver here and let the domiciliary receiver bring suit in this state to collect all the debts of the insolvent corporation within its limits; (2) It can appoint the domiciliary receiver as an ancillary receiver; (3) It can appoint someone other than the domiciliary receiver."

CHAPTER XII.

FEES AND TAXES.

I. Real and Personal Property.

1. Taxed as property of individual; exceptions.

Section 110 directs that all real and personal property of every corporation shall be taxed the same as the real and personal property of an individual. There is, however, a provision that this section is not to apply to railway, turnpike, insurance, canal or banking corporations or savings banks, neither shall it apply to cemeteries, church property, or purely charitable or educational associations. Taxation of trust companies is provided for in "An Act concerning trust companies (Revision of 1899)." (P. L. 1899, p. 467, Sec. 29).

2. Tax assessments when made; when payable.

Under the provisions of section 5 of "An Act for the assessment and collection of taxes" (P. L. 1903, p. 394), all taxable property is assessed to the owners thereof with reference to the amount owned as of the twentieth day of May in each year, and under section 42 of the same act, these taxes must be paid on or before the twentieth day of December next following.

3. Real property; where assessed.

The real property of a corporation is assessed in the taxing district wherein such real property is situated. (P. L. 1903, p. 394, Sec. 6).

4. Local tax distinguished from franchise tax.

The tax provided for by section 110 of the "General Corporation Act" is distinct from the annual state franchise tax which is imposed upon corporations under chapter 159 of the Laws of 1884. The latter is a state tax, or license fee assessed against the amount of capital stock issued and outstanding, and is designed to provide revenue for the state. The tax which section 110 contemplates is a local tax and is a tax upon the property of the corporation. (See *Pipe Line Co. v. Berry*, 52 L. 308; Aff'd 53 Id. 212).

A supplement to the General Tax Law, approved April 11th, 1866 (Rev. 1156, Sec. 74), provides that all private corporations (with certain exceptions) be assessed at the full amount of their capital stock paid in and accumulated surplus; and that the persons holding the capital stock should not be assessed therefor. Section 105 of the act concerning corporations, passed in 1875, provided that all the real

and personal estate of every corporation (with certain exceptions) shall be taxed the same as the real and personal estate of an individual. In *J. C. Gaslight Co. v. J. C.*, 46 L. 194, it was held that the provision above referred to in the act of 1866, was not repealed by the act of 1875; the design of the latter act being to establish a more fair and direct method of taxation by making the property of the corporation rather than the stock and surplus the subject of taxation. (See also *Trenton Iron Co. v. Yard*, 42 L. 357; *N. J. Hedge Co. v. Craig*, 51 L. 437). The franchises of a corporation are not taxable under the tax act of 1866 (Rev., p. 1150), nor under section 105 of the Corporation Act of 1875, which is in effect the same as section 110 of the present act. (*Passaic Water Co. v. Paterson*, 56 L. 471).

II. PLACE OF TAXATION OF PERSONAL PROPERTY.

1. Taxed as property of individual.

Personal property of a corporation is taxed the same as personal property of an individual. (See Sec. 110).

2. Tangible personalty assessed where found.

"An Act for the assessment and collection of taxes" (P. L. 1903, p. 394, Sec. 11), provides that "the tax on all tangible personal property in the state and on all taxable personal property of non-residents of this state, shall be assessed in and for the taxing district where such property is found; the tax on other personal property * * * shall be assessed on each inhabitant in the taxing district where he resides on the twentieth day of May in each year."

3. Personal property may acquire a situs in this state and be made the subject of local tax when deposited here for an indefinite period even though such deposit is but an interruption in its transit. (*Lehigh & Wilkesbarre Coal Co. v. Borough of Junction*, 75 L. 922).

4. Shares of stock not taxed.

Shares of stock of any corporation of this state which by contract with the state is expressely exempted from taxation, and the shares of stock of any corporation of this state, the capital or property whereof is made taxable to and against said corporation, are exempt from taxation under P. L. 1903, chap. 208, sec. 3, subdiv. 5.

5. Personal property without the state.

The same act, section 3, subdivision 1, also exempts from taxation personal property owned by citizens or corporations of this state situate and being out of the state upon which taxes shall have been actually assessed and paid within twelve months next before May twentieth.

6. Stocks of corporations without the state.

In *Trenton v. Standard Fire Ins. Co.*, 73 Atl. 606, the Court of Errors and Appeals, in construing the above section, held that the words

"personal property" as used therein, were equivalent to the words "stocks and other personal estate" as used in the Tax Act of 1866 (P. L. 1866, p. 1079, sec. 5), and that therefore the act of 1903 exempts from taxation stocks of corporations of other states held by citizens of this state, when taxes have been actually assessed and paid on the corporation's property in its own state within twelve months.

7. Foreign corporations doing business here; how taxed.

Corporations regularly doing business in this state, and not being corporations of this state, are assessed and taxed for the amount of capital usually employed in this state in the doing of such business, and not otherwise taxed as real property or tangible personal property, and such assessment is made in the taxing district where such business is usually carried on and transacted. (Sec. 16, P. L. 1903, chap. 208). The real estate of a foreign corporation is taxed in the taxing district in which it is located, and the tangible personal property is taxed in the taxing district where found.

III. INHERITANCE TAX LAW.

New Jersey has an Inhertance Tax Law which was originally enacted in 1894.

1. Direct inheritances not taxed.

This law does not, however, levy a direct tax upon inheritances, the statute specifically exempting from taxation property transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift to or for the use of father, mother, husband, wife, children, brother or sister, or lineal descendants born in lawful wedlock, or the wife or widow of a son, or the husband of a daughter.

2. Collateral inheritances subject to tax; exception.

Collateral inheritances, i. e., inheritances passing to the more distant relatives or to strangers, are by the terms of the statute, subject to a tax of five dollars on every hundred dollars of the clear market value of the property transferred, with an exemption of $500, which applies to individual shares, not to the estate as a whole. (P. L. 1894, p. 318, Sec. 1).

3. The property affected by the provisions of section 1 of the Act of 1894, was by the terms of the act only such as passed by will or by the intestate laws of this state from any person who might die seized or possessed of the same while being a resident of the state, and all property which shall be within the state.

4. The construction put upon the Act of 1894 by the Court of Errors and Appeals in *Neilson v. Russell,* 71 Atl. 286, was that it did not apply to stock of a New Jersey corporation, belonging to a testator who was domiciled without the state, at the time of his death.

5. Conflict of opinion under amendment of 1906.

An act approved May 15th, 1906 (P. L. 1906, chap. 228), amended the first section of the act of 1894. This amendment, by the second subdivision to the first section, provided that such tax may be imposed, "when the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death." Under this amendment, it was held in *Dixon v. Russell* (Supreme Court, 1909), 73 Atl. 51, that shares of stock in a New Jersey corporation belonging to a non-resident, and passing under a bequest in the will of such non-resident, are subject to the inheritance tax. This decision was reversed by the Court of Errors and Appeals in 1910, 76 Atl. 982, on the ground that the title of the amendatory act left the title as expressed in the original act unchanged and that the words in the title of the original act "An Act to tax legacies" did not express that the object of the enactment, so far as it related to legacies, was the imposition of a tax upon the transfer of property which was the subject of a bequest.

6. Change in title of act by amendment of 1909.

By chapter 209, of the Laws of 1909 (P. L. 1909, p. 304), the title of the act of 1894 was amended to read as follows: "An Act to tax the transfer of property of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases."

7. Revision of 1909.

The above title is used in the revision of the Collateral Inheritance Act of 1909 (P. L. 1909, p. 325). The wording of the second subdivision of the first section of this revision is identical with the wording of the amendment of 1906 quoted supra.

8. Tax on transfer of stocks by foreign executor.

By section 12, of the above act of 1909, it is provided, "If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of this state on the transfer thereof."

9. Corporations to give notice of intended transfer.

"No corporation of this state shall transfer any such stock, unless notice of the time of such intended transfer be served upon the comptroller of the treasury of this state at least ten days prior to such transfer, nor until said comptroller shall consent thereto in writing." (P. L. 1909, p. 331, sec. 12).

10. Penalty for illegal transfer.

"Any corporation making such a transfer without first obtaining the

consent of the comptroller of the treasury as aforesaid, shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock, together with the interest thereon, and in addition thereto, a penalty of one thousand dollars, which liability for such tax and interest and said penalty herein prescribed may be enforced in an action of debt in the name of the state of New Jersey." (P. L. 1909, p. 331, sec. 12).

11. "**On the transfer of property in this state of a non-resident decedent,** if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations who would have been taxable under this act if such decedent had been a resident of this state, such property located within this state shall be subject to a tax, which said tax shall bear the same ratio to the entire tax which the said estate of such decedent would have been subject to under this act if such non-resident decedent had been a resident of this state, as such property located in this state bears to the entire estate of such non-resident decedent wherever situated; provided, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this state." (P. L. 1909, p. 325, sec. 12, par. 2).

IV. CORPORATIONS ENTITLED TO SAME TAX EXEMPTIONS AS NATURAL PERSONS.

1. Mortgage exemptions.

By P. L. 1902, p. 546, it is provided that mortgages which, under the laws of this state, are exempt from taxation when owned by natural persons, are to be, to the same extent, exempt from taxation when owned by corporations of this state. The value of such mortgages is to be deducted from the value of the capital stock and property of such corporations in ascertaining the net amount of capital stock and property thereof subject to taxation. (Sec. 148).

2. The act is not to be construed as in any wise affecting or reducing any franchise tax.

V. INCORPORATION FEES OR TAXES.

1. State fees.

The state imposes certain fees, which must be paid to the secretary of state at the time of filing the certificate of incorporation. The organization tax or fee is twenty cents per $1,000 of the total authorized capital stock with a minimum charge of $25. If a certified copy of the certificate be desired, the secretary of state's office will certify a copy (if such copy accompanies the original) at a charge of $1.00. There is also a charge imposed for recording the certificate in the secretary of state's office of ten cents per folio of one hundred words, with a minimum charge of $1.00.

2. County clerk's fee.

The fee of the county clerk for recording the certificate of incorporation is ten cents per folio.

3. Other state fees.

There are also fees which are to be paid to the secretary of state upon increase of capital stock, consolidation and merger of companies, and upon filing certificates of dissolution, or amended certificates. The amounts of these fees are set out in the various sections of the act. (See SCHEDULE OF FEES AND TAXES).

VI. FRANCHISE TAX; HOW MADE.

1. Not a property tax.

It should be borne in mind that the tax imposed by the state under "An Act to provide for the imposition of state taxes upon certain corporations, and for the collection thereof" (P. L. 1884, chap. 159), with the various supplements and amendments thereof; is not a property tax. It is a tax by way of license for exercising corporate franchises, and as such, is not violative of that provision of the state constitution found in article IV, section 7, paragraph 12, which directs that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." (See *Standard Underground Cable Co. v. Att'y-Gen.*, 46 E. 270). (See also *Pipe Line Co. v. Berry*, 52 L. 308; Aff'd 53 Id. 212).

VII. APPLICATION OF FRANCHISE TAX TO BUSINESS CORPORATIONS.

1. Law governing; where found.

The provisions in the law applying to the taxation by the state of business corporations are to be found in a supplement to the act of 1884, which was approved March 12th, 1906 (P. L. 1906, chap. 19, p. 31). (Sec. 163).

2. Certain corporations exempt.

This statute covers by its terms all corporations incorporated under the laws of this state, except railway, canal or banking corporations, savings banks, cemeteries or religious corporations, or purely charitable or purely educational associations not conducted for profit, or corporations subject to a state franchise tax assessed upon the basis of gross receipts. (Sec. 163).

3. Certain manufacturing or mining corporations exempt.

"Manufacturing or mining corporations at least fifty per cent. of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state and which mining or manufacturing corporations shall have stated in the annual return to the state board of assessors, where the mine or manufacturing

establishment of such corporation or corporations is or are located, the character of the ores mined or the goods manufactured, the total amount of its capital stock embarked in the business of mining or manufacturing and the amount of capital stock actually employed in New Jersey in carrying on such mining or manufacturing business." (Sec. 163).

4. **When tax return is to be made and to whom.**

This statute directs, "all corporations incorporated under the laws of this state, other than those which are subject to the payment of a state franchise tax assessed upon the basis of gross receipts, shall make annual return to the state board of assessors, on or before the first Tuesday of May in each year, and shall state therein the amount of capital stock of such corporation issued and outstanding on the first day of January preceding the making of said return, together with such other information as may be required by said board to carry out the provisions of this act." (Sec. 163).

5. **The amount of tax imposed annually** by the statute is as follows: on all amounts of capital stock issued and outstanding up to and including $3,000,000, one-tenth of one per cent.; over $3,000,000 and not exceeding $5,000,000 one twentieth of one per cent., and for each $1,000,000 or any part thereof in excess of $5,000,000 the sum of fifty dollars. (Sec. 163).

6. **When stock is deemed to be issued.**

Shares of stock either fully paid or partially paid in cash or by property purchased, whether issued or otherwise, are, by the terms of the statute, deemed to be shares of stock issued and outstanding, until such shares or any substitute therefor shall have been retired and actually cancelled. (See *Knickerbocker Imp. Co. v. Assessors*, 74 L. 583).

7. **Manufacturing and mining companies having less than fifty per cent. of their capital stock, issued and outstanding, invested in mining or manufacturing carried on within the state,** are, by the terms of the statute, entitled to a deduction from the amount of their assessable capital stock, of the assessed value of their real and personal estate used in manufacturing or mining in the state.

8. **In order that the exemption provided in the statute may be taken advantage of,** it must appear that at least fifty per cent. of the capital stock issued and outstanding is invested in mining or manufacturing carried on in this state.

9. **Simply having a place leased for the purpose of carrying on a manufacturing business, does not comply with the statute,** unless business is actually carried on there. (*Halsey Electric Gen. Co. v. Assessors*, 74 L. 321). (See also *Edison Phonograph Co. v. Assessors*, 57 L. 520).

10. The burden of establishing such exemption is on the corporation claiming it.

(*Storage Battery Co. v. Assessors,* 60 L. 66).

11. Specific examples.

So far as the capital stock of the corporation is used to acquire the right to manufacture elsewhere, it is not invested in manufacturing carried on within this state. (*Storage Battery Co. v. Assessors,* 60 L. 66; Aff'd 61 L. 289). Where the great bulk of the capital is invested in an expensive tract of city property and in lumber there stored and exposed for sale, and only a very small part of the capital is invested in a mill erected on such tract for the purpose of cutting and dressing lumber; it was held in *Yellow Pine Co. v. Assessors,* 70 L. 590, that even assuming the work done at the mill to be "manufacturing," it does not give color to the capital represented by the lumber, and the land on which it is stored, so as to exempt it from taxation, as capital invested in manufacturing carried on within the state.

Where manufacturing is done in this state under patents, purchased by stock issued therefor, for property purchased, such patents are considered as part of the capital invested in manufacturing carried on in this state. (*Mutoscope Co. v. Assessors,* 70 L. 172). For other cases on this subject of exemption from franchise taxes and the question of what constitutes manufacturing (see *Buffalo Refrigeration Machine Co. v. Assessors,* 72 L. 127; *Alton Machine Co. v. Assessors,* 69 Atl. 451; *Press Printing Co. v. Assessors,* 51 L. 75; *Evening Journal Ass'n v. Assessors,* 47 L. 36; *Phonograph Co. v. Assessors,* 54 L. 430; *Norton Naval Cons. Co. v. Assessors,* 53 L. 564).

12. Laches in claiming exemption bars relief.

Exemption from taxation is a favor, and to be secured, must be applied for in the manner designated in the statute providing for the exemption. Laches will bar right to relief on certiorari. (*Union Paper Co. v. Assessors,* 73 L. 374).

13. A manufacturing company wishing to withdraw from active business must, to escape taxation, take proceedings to dissolve and surrender its charter and wind up its affairs.

(*Edison Phonograph Co. v. Assessors,* 55 L. 55).

14. Tax based upon stock actually issued.

Manufacturing corporations organized under the General Corporation Law, are taxable with respect to the amount of capital issued and outstanding as a fixed factor, without regard to the purpose for which the capital stock was issued or whether issued for value or not. (*Storage Battery Co. v. Assessors,* 60 L. 66).

VIII. PENALTIES FOR FALSE STATEMENT, OR FAILURE TO MAKE STATEMENT.

1. Text of statute.

By an amendment to the act of 1884, approved March 17th, 1892 (P. L. 1892, p. 137), (Sec. 164), it was enacted that "If any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury; if any such company shall neglect or refuse to make such return within the time limited as aforesaid, the state board of assessors shall ascertain and fix the amount of the annual license fee or franchise tax and the basis upon which the same is determined, in such manner as may be deemed by them most practicable, and the amount fixed by them shall stand as such basis of taxation under this act."

2. Construction of statute.

In *Trenton Heat & Power Co. v. Assessors,* 73 L. 370, the corporation failed to make any return to the state board of assessors pursuant to the requirements of the statute. The authorized capital of the corporation was $500,000, but only $5,000 of its capital stock was actually issued and outstanding. The state board of assessors fixed the amount to be taxed at $500,000. On certiorari to the Supreme Court, this assessment was set aside upon the ground that while the state board may determine what the tax shall be, in case the corporation neglect or refuse to make return, it can only fix the amount to be assessed upon the capital stock that is actually issued and outstanding. The board can only tax that which by law is taxable, and there is nothing authorizing the levy of any franchise tax other than that upon stock actually issued and outstanding. This case also holds that the state board of assessors must ascertain, as best it can, what the amount of capital issued and outstanding is, and if the assessment is excessive, the corporation must pay the tax or be at the expense of correcting it through the certiorari power of the Supreme Court for the review and correction of errors of special statutory tribunals. (See also *Newark Brass Works v. Assessors,* 63 L. 500; *N. J. Zinc Co. v. Hancock,* Id. 506; *People's Invest. Co. v. Assessors,* 66 L. 175).

IX. DUTIES AND POWERS OF STATE BOARD OF ASSESSORS.

1. Must report to state comptroller.

Under section 5 of the act of 1884 (P. L. 1884, p. 235), as amended by act of March 17th, 1892 (P. L. 1892, p. 140), (Sec. 165), the state board of assessors must certify and report to the comptroller of the state, on or before the first Monday of June in each year, a statement of the basis of the annual license fee or franchise tax as returned by each company to, or ascertained by, the said board, and the amount of tax due thereon, respectively, at the rates fixed by the act.

2. Tax payable to state treasurer.

After such certification and report, the tax becomes due and payable to the state treasurer. (Sec. 165).

3. Interest on unpaid tax.

If such tax remains unpaid on the first day of July, after the same becomes due, it shall thenceforth bear interest at the rate of one per cent. for each month until paid. (Sec. 165).

4. Power of board to examine witnesses, etc.

The state board of assessors is given power to require of any corporation subject to tax under the act, such information or reports as may be necessary to carry out the provisions of the act; and it may require the production of the books of the corporation, and swear and examine witnesses in relation thereto. (Sec. 165).

X. TAX IS A DEBT; HOW COLLECTED; PREFERENCES.

1. Recovery by state.

By section 6 of the act of 1884 (P. L. 1884, p. 236), (Sec. 166), such annual license fee or franchise tax, upon its determination, becomes a debt due from such company to the state, which may be recovered by an action at law, after the same shall have been in arrears for the period of one month.

2. In case of insolvency of the company, such tax shall be a preferred debt.

(Sec. 166).

3. Where assessment is made after insolvency.

In *Crews v. U. S. Car Co.*, 57 E. 357, it was held that the assets of an insolvent corporation in the hands of receivers, are not liable to the payment of the state franchise tax assessed after the adjudication of insolvency, unless those assets are more than sufficient to pay the creditors existent at the time of the adjudication of insolvency, or unless the franchises be used by the receivers for the benefit of the trust fund or in performance of a duty with reference to the franchise. In line with this case, it was held in *C. & O. Ry. Co. v. Atl. Trans. Co.*, 62 E. 751, that a franchise tax levied by the state during the receivership of an insolvent corporation is entitled to payment in preference to the liabilities incurred by the receivers in carrying on the business of the insolvent corporation, but not to payment in preference to the receivers' allowance and the expenses of winding up the corporation.

XI. INJUNCTION AGAINST COMPANY IN ARREARS FOR THREE MONTHS.

An additional remedy for the collection of the franchise tax is given the state by section 7 of the act of 1884 (P. L. 1884, p. 236). This remedy is by injunction against the company when the tax due shall have remained in arrears for three months after becoming payable. (Sec. 167).

1. Who may bring action.

In such case, the attorney-general may either of his own motion or upon request of the state comptroller, apply to the Court of Chancery by petition, in the name of the state, on five days' notice to such corporation, which notice may be served in such manner as the chancellor may direct, for an injunction to restrain such corporation from exercising any franchise or transacting any business, until the payment of such tax with interest and costs. The Court of Chancery is authorized to grant the injunction, if a proper case appear, and the corporation is forbidden to exercise its franchises or transact any business until such an injunction be dissolved. (Sec. 167).

2. Under the statute, the injunction can only be granted "if a proper case appear."

(Sec. 167).

3. Specific examples of "a proper case."

"Where a corporation has been organized for three years, but has not transacted any business, being prevented from manufacturing by reason of injunction against the use of patents under which it expected to manufacture, a "proper case" does not appear. (*Faure Elec. Light Company's Case,* 43 E. 411). Likewise "a proper case" is not presented where the company has ceased manufacturing; not being able to find a market for its wares, and has simply preserved its organization. (*In re N. Y. File and Sharpening Co.,* Id. 413). But Bird, V. C., in *Electric Pneumatic Transit Company's case,* 51 E. 71, regards the decision in the case of *Edison Phonograph Co. v. Assessors,* 55 L. 55, as effectually overruling the decisions in *Faure Elec. Light Company's case* and *In re N. Y. File & Sharpening Co., supra,* and after citing the head notes in the Phonograph Co. case in support of his contention, the vice chancellor concluded his opinion as follows: "Consequently, the assessments not having been paid, a 'proper case' has been made out for the interference of this court by its injunction. In other words, the only power given to or duty imposed upon the Court of Chancery by the act of legislature is to issue its prohibitory writ."

XII. CHARTER FORFEITED FOR FAILURE TO PAY TAXES FOR TWO CONSECUTIVE YEARS.

(See DISSOLUTION).

XIII. COMPTROLLER TO REPORT LIST OF DELINQUENTS; GOVERNOR TO ISSUE PROCLAMATION.

(See DISSOLUTION).

XIV. PENALTY FOR EXERCISING POWERS UNDER CHARTER AFTER PROCLAMATION.

(See DISSOLUTION).

CHAPTER XIII.

INSOLVENCY.

I. What Constitutes Insolvency?

1. Origin and scope of acts.

Acts of insolvency and bankruptcy had their origin in the purpose of aiding an honest but unfortunate trader in escaping imprisonment. In more recent years their object has not been to save from imprisonment, but to encourage the honest and equal distribution of the debtor's assets among his creditors, and to permit the debtor to commence anew, free and unencumbered with debt.

2. Distinction between insolvency and bankruptcy.

Insolvency and bankruptcy with us describe a similar condition of affairs, except the former exists under and by virtue of an act of the state legislature, and the latter under an act of congress.

3. Insolvency denotes a condition antithetical to solvency, but just where the line of demarcation may be drawn between solvency and insolvency, is not to be ascertained by any fixed rule, but is rather to be determined by the facts appearing in specific cases.

4. Definition.

Insolvency is defined as, "the state of a person who from any cause is unable to pay his debts in the ordinary or usual course of trade," 11 Amer. & Eng. Encycl. Law, 168, but this definition must of necessity contemplate not alone the established rules of trade generally, but also any and every custom or rule adopted by usage, among traders in any particular line of business. The decisions of our courts furnish the best information upon this subject, and suggest various tests which may be applied in determining whether a state of insolvency actually exists.

In *Buchanan v. Smith,* 16 Wall (U. S.) 277-308, the court construed insolvency, when applied to traders, to mean: an inability to pay debts as they mature and become due and payable in the ordinary course of business, as persons carrying on trade usually do, in that which is made by the laws of the United States, lawful money and legal tender, to be used in the payment of debts, without reference to the amount of the debtor's property and without reference to the possibility or probability, or even certainty, that at a future time, on the settlement and winding up of all his affairs, his debts will be paid in full out of his property.

5. Test of insolvency.

The Corporation Act (Sec. 64), respecting conveyances of property made after insolvency or in contemplation thereof, reads as follows: "Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same" and then continuing makes void conveyances given when those conditions have arisen. Obviously, under the terms of this statute, suspension of business for want of funds is a certain condition of insolvency, but the statute makes it apparent that there are still other conditions which indicate a state of insolvency.

6. A corporation is not necessarily insolvent because of a lack of sufficient cash at hand to liquidate matured obligations.

(*Richards v. Haliday,* 92 Fed. 798). Pitney, V. C., in *Reinhardt v. Interstate Tel. Co.,* 71 E. 70, said: "The test that has been adopted is this: Can the corporation in the present or near future, meet its maturing pecuniary obligations?"

7. Protested notes as test.

The fact that the notes of a corporation have gone to protest may be, and often is, prima facie evidence of insolvency; but such evidence is not conclusive and is open to explanation. (*Regina Music Box Co. v. Otto,* 65 E. 582; Aff'd 68 E. 801).

8. Inability to meet maturing obligations.

Liabilities as they mature may be met by means of either available assets or an honest use of credit. If they cannot be met by either of these means, insolvency exists. (*Empire State Trust Co. v. Trustees of Wm. F. Fisher Co.,* 67 E. 602).

9. Impairment of capital is not per se evidence of an insolvent condition.

(*Streit v. Citizens Fire Ins. Co.,* 29 E. 21).

10. Complete suspension of business not the only test.

In *Catlin v. Vichachi Mining Co.,* 73 E. 286, Howell, V. C., held that notwithstanding there has not been a complete suspension of business, a corporation is insolvent; where it is losing money in the carrying on of its business; is seriously embarrassed for want of funds to carry out the project for which it was organized; and is without available assets to pay its present indebtedness. In such a case action for the appointment of a receiver, instituted in accordance with the provisions of the Corporation Act, will not be defeated even though brought by creditors with the ulterior purpose of securing control of the affairs of the corporation.

In the case of *Skirm v. Eastern Rubber Mfg. Co,.* 57 E. 179, the property of the corporation had been taken out of a receiver's hands. by virtue of an extension granted to the company, under an arrange-

ment between it and its creditors, by means of which the creditors hoped to obtain a larger settlement of their accounts. Under the new arrangement time notes were given creditors to cover the creditors' claims, but upon the first of the series of notes becoming due, payment was defaulted and the company, with the consent of a majority of the creditors, took up these notes by an issue of bonds in lieu of them and secured the bonds by a mortgage on the property of the corporation. Upon the question of the validity of this mortgage, the court held that the corporation was insolvent at the time of its execution and such mortgage was therefore void.

11. That a corporation owes for work and labor a sum greater than it can pay; is conclusive evidence of insolvency.

(*Tuckahoe & Cape May Ry. Co. v. Baker,* 49 E. 581).

12. Inability to resume business.

From the language of section 65 of the Corporation Act, it would appear that inability to resume business is made a test of insolvency. This section, after providing for the application for an injunction and a receiver, says: "and if upon such inquiry it shall appear to the court that the corporation has become insolvent, and is not about to resume its business with safety to the public and advantage to the stockholders, it may issue an injunction," etc. Chancellor McGill in *Ft. Wayne Elec. Corp. v. Franklin Elec. Light Co.,* 57 E. 7; Aff'd 58 E. 579, in construing this section, held that the word "resume" as used in the statute predicates some interruption of the insolvent's business, but not an entire suspension. "Insolvency carries with it inability to presently pay indebtedness and suspension of that function, and the word 'resume' is to be taken in the sense of taking up again that suspended function, so that payment of indebtedness, as well as the operation of the work of the corporation, after temporary, partial or complete paralysis, may be 'resumed' with safety to the public and advantage to its stockholders."

For further cases on this question of what constitutes insolvency (see *Bedford v. Newark Machine Co.,* 16 E. 117; *Parsons v. Monroe Mfg. Co.,* 4 E. 187; *Reinhardt v. Inter-State Tel. Co.,* 71 E. 70; *Richardson v. Gerli,* 54 Atl. 438; *Russell & Erwin Mfg. Co. v. E. C. Faitoute Hardware Co.,* 62 Atl. 421; *Miller v. Audenried,* 67 E. 252; Aff'd 68 Id. 658; *Taylor v. Cuban Land & Steamship Co.,* 106 Fed. 437).

II. WHEN CORPORATION BECOMES INSOLVENT DIRECTORS MUST CALL A MEETING OF STOCKHOLDERS.

1. Statement of assets and liabilities.

Under section 63, when a corporation becomes insolvent, the directors, within ten days thereafter, must call a meeting of the stockholders, and at this meeting lay before the stockholders all books of accounts, by-laws and minutes of the corporation, and a full and true statement of all the assets and liabilities of the corporation.

2. Directors trustees upon insolvency.

The directors of a corporation are not in a strict sense trustees, but some of our cases have held that in consequence of the duties which they are required to perform for the corporation, being in many respects similar to the duties of trustees, their relation to the corporation is, in general, essentially that of trustees. (*Marr v. Marr,* 72 E. 797). The position of the director, and his duties are not, however, to be considered solely with reference to the stockholders, but also with respect to the creditors of the corporation. Pitney, V. C., in the case of *Landis v. Hotel Co.,* 31 Atl. 755, held that the directors of a corporation stand in the posture of trustees only for stockholders or those who stand in the attitude of shareholders in the corporate property; that they are not trustees for creditors in transacting the ordinary business of the company, but only become such when dealing with the property of an insolvent company. (See *Savage v. Miller,* 56 E. 432).

3. Duties of directors to creditors arise before actual insolvency.

When the company becomes insolvent and the necessity and duty of winding up the affairs of the corporation and of distributing the assets among its creditors supervenes, then a new duty of the directors springs into existence,—the duty to use all reasonable care and diligence in preserving the property for that purpose. The directors then become trustees for the creditors. This duty of the directors to the creditors may arise before actual steps, either voluntary or involuntary, have been taken to wind up a corporate business. When such a condition of corporate affairs confronts the directors, that it is obvious that the company is insolvent and the statutory duty enjoined and the restraint imposed by sections 63 and 64 of the Corporation Act come into play, then the duty of the directors to the creditors begins. (*Bird v. Magowan,* 43 Atl. 278).

III. CONVEYANCES WHEN INSOLVENT OR IN CONTEMPLATION OF INSOLVENCY VOID AS AGAINST CREDITORS.

1. A corporation may sell and transfer its property and may prefer its creditors, although it is insolvent, unless it is prohibited by law.

Such was the declaration of the court in *Wilkinson v. Bauerle,* 41 E. 635-640.

2. Statutory prohibition; exception.

Section 64 of the Corporation Act, however, makes void as against creditors, any conveyance of property after insolvency or in contemplation of insolvency except in the case of a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency.

3. History of the statute.

Section 64 was originally enacted in 1829 as section 2 of the "Act to prevent frauds by incorporated companies," and was re-enacted and included in the revision of 1846. By the Revision of 1875, the act to prevent frauds by incorporated companies was repealed and such of its provisions as were re-enacted were included in the act concerning corporations. Section 2 of the act to prevent frauds by incorporated companies was not, however, re-enacted in the act concerning corporations or elsewhere. In 1895 (P. L. 1895, p. 166) the section was re-enacted and was included as section 64 in the Revision of 1896.

4. Omission of statute.

During the interval between 1875 and 1895, when the statute did not appear, a number of cases, including the case of *Wilkinson v. Bauerle, supra,* were decided, in which it was held that an insolvent corporation might prefer creditors for the reason that the provisions as contained in section 2 of the act to prevent frauds by incorporated companies had been construed as forbidding the preference of any creditor after insolvency, actual or contemplated, and the repeal of this statute clearly indicated a legislative intent to no longer prohibit the conduct which that statute had been construed to prohibit.

5. Cases decided during omission must be disregarded.

It is therefore necessary, in reviewing the cases involving the question of corporate conveyances or assignments during insolvency or in contemplation of insolvency, to disregard those cases decided during the time the above section was omitted from our statutes.

6. Present rule.

All those conveyances or assignments of a corporation which do not come within the exemption of the statute as to bona fide purchases are void as against creditors.

7. Assets withdrawn after the corporation has become insolvent, in order to secure directors against a liability incurred for the corporation, may be recovered by the receiver. (*Taylor v. Gray,* 59 E. 621).

8. Mortgage to creditor.

A corporation after becoming insolvent, cannot execute a mortgage to a creditor to secure a pre-existing debt, though the creditor has no notice of the insolvency. (*Frost v. Barnert,* 56 E. 290).

9. Transfers upon agreement to assume debts.

The transfer of property to some of the directors of an insolvent corporation who agree to pay certain creditors, is void; there being insufficient property remaining after such transfer to pay the corporate debts. (*Mills v. Hendershot,* 70 E. 258).

10. Ratification of mortgage by directors does not give it validity.
The president of a corporation does not have power to mortgage its lands, by implication from the ordinary duties of his office, and where he does, and the directors some time afterward, and in contemplation of insolvency, ratify such mortgage, such ratification does not give the mortgage validity, for the reason that express ratification can only avail against intervening rights in case the corporation was competent at the time of ratification, to make a valid mortgage. (*Bennett v. Keen,* 59 E. 634).

11. All liens on corporate property subject to effect of insolvency proceedings.
Every person who accepts a mortgage, or a bond secured by a mortgage, or in any way acquires a lien upon the property of a New Jersey corporation, takes subject to the effect of insolvency proceedings which may subsequently be commenced and in which a receiver may be appointed of all the corporate assets, including the property upon which the encumbrance has been so acquired, under which receivership the legality of their encumbrances might be called in question. (*Lembeck v. Jarvis Terminal Cold Storage Co.,* 68 E. 352).

12. A mortgage attempting to secure pre-existing debts owing to the mortgagee is within the prohibition of section 64 of the Corporation Act, and if given in contemplation of the insolvency of the corporation, it is invalid. (*Reed v. Helois Carbide Specialty Co.,* 64 E. 231; *Empire State Trust Co. v. Trustees of Wm. F. Fisher Co.,* 67 E. 602).

13. But a mortgage given by a corporation which is insolvent, or which is contemplating insolvency, to secure money lent at the time it is given, is valid under section 64, if the mortgagee be without notice of such insolvency, or without notice that it is in contemplation.
(*Regina Music Box Co. v. Otto,* 65 E. 582; Aff'd 68 Id. 801).

14. Who are not bona fide purchasers.
Creditors taking deferred payment notes to cover their claims against an insolvent corporation, and, on default of payment, surrendering them for corporate bonds issued to take such indebtedness, are not bona fide purchasers of the bonds. (*Skirm v. Eastern Rubber Mfg. Co.,* 57 E. 179).
(See also *Schmidt v. Perkins,* 74 L. 785; *Porch v. Agnew,* 70 E. 328; Aff'd 71 Id. 305; *Pryor v. Gray,* 70 E. 413; Aff'd 72 Id. 436; *Shinn v. Kummerle,* 72 E. 828; *Barrett v. Perth Amboy Shipbuilding, &c., Co.,* 73 E. 62).

15. As to what constitutes contemplation of insolvency.
Regina Music Box Co. v. Otto, 65 E. 582, holds that contemplation of insolvency, within the meaning of section 64, is something more than contemplation of the possibility of insolvency on a contingency which does not in fact happen. If a corporation, or its officers, regard a

suspension of its ordinary business, for want of funds, as likely to happen in the event of its not being able to borrow money with which to meet its current engagements, and it is in fact able to borrow it, and it secures the money lent by a mortgage, and goes on, it cannot be said to contemplate insolvency within the meaning of section 64, at the time the mortgage is executed, for then it contemplates not insolvency, but the reverse.

16. Corporation may make assignment; when assignee may be replaced by receiver.

Under "An Act concerning general assignments" (Revision of 1899); (P. L. 1899, chap. 54, sec. 24), a corporation may make a general assignment, but if it be adjudged insolvent at any time after making the assignment, and a receiver appointed by the Court of Chancery, the assignee may be removed and compelled to transfer the trust estate into the hands of the receiver, and in such case, the estate must be administered as assets of an insolvent corporation in the same manner as if no general assignment had been made.

IV. CREDITORS' OR STOCKHOLDERS' REMEDY; APPLICATION TO COURT OF CHANCERY FOR INJUNCTION AND APPOINTMENT OF RECEIVER.

1. Any creditor or stockholder may apply.

Any creditor or stockholder may, by petition or bill of complaint, make application to the Court of Chancery for a writ of injunction and the appointment of a receiver, whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same. (Sec. 65).

2. Summary procedure of the court.

If the court be satisfied of the sufficiency and truth of the application and allegations contained in the petition or bill, it may proceed in a summary way to hear the parties, and if it is apparent that insolvency exists, and the corporation is not about to resume its business in a short time thereafter, with safety to the public and advantage to the stockholders, it may issue an injunction and appoint a receiver. (Sec. 65).

3. Effect of procedure.

In *Pierce v. Old Dominion, &c., Smelting Co.*, 67 E. 399, Stevenson, V. C., discussed at length the effect of sections 65 and 66 and the procedure under them. The vice chancellor held that the policy of the statute was to strip the corporation of its franchises and distribute its property by a single equitable action instead of a double proceeding, first at law and then in equity. The particular stockholder or creditor who appears as the actor does not present his particular grievance, but acts as the representative of all stockholders and creditors. The action is in the nature of an action in rem, because the decree fixes the status of the corporation with respect to the exercise of its franchises as against the whole world.

4. Effect of decree.

Our present practice treats the summary hearing upon the order to show cause, as a final hearing for the determination of all the issues in the cause; and the decree thereon disabling the defendant corporation from exercising its franchises, usually called a decree of insolvency, as a final decree. (*Pierce v. Old Dominion, &c., Smelting Co., supra*). (See also *Gallagher v. Asphalt Co. of Am.*, 67 E. 441; *Rawnsley v. Trenton Mutual Life Ins. Co.*, 9 E. 95; *Mechanics Bank of Phila. v. Bank of New Brunswick*, 3 E. 437; *Albert v. Clarendon Land, &c., Co.*, 53 E. 623).

5. Principle which should control court.

Vice Chancellor Van Fleet, in *Atlantic Trust Co. v. Cons. Elec. Storage Co.*, 49 E. 402-407, in discussing the appointment of a receiver for an insolvent corporation said: "The principle which I think should control the court in the exercise of this power is this: never to appoint a receiver unless the proof of insolvency is clear and satisfactory, and unless it also appears that there is no reasonable prospect that the corporation, if left alone, will soon be placed, by the efforts of its managers, in a condition of solvency. To illustrate: Where the corporation attacked is shown to be insolvent, but it also appears that its managers are honest and capable, and that they are striving to the best of their ability, with a fair prospect of success, to relieve the corporation from its embarassment, and to put it in a condition where it may prosecute its business successfully, and the property of the corporation is free from judgment or other lien under which it may be sold speedily, at a sacrifice, the court should not interefere." (See also *Fort Wayne Elec. Corp. v. Franklin Elec. Light Co.*, 57 E. 7-13).

6. Insolvency the jurisdictional fact.

The Court of Chancery can neither issue an injunction nor appoint a receiver until insolvency is first established. (*Brundred v. Paterson Machine Co.*, 4 E. 294; *Parsons v. Monroe Mfg. Co.*, 4 E. 187; *Oakley v. Paterson Bank*, 2 E. 173; *Goodheart v. Raritan Mining Co.*, 8 E. 73). Allegations of insolvency are insufficient. The facts and circumstances from which the insolvency shall appear, must be set out in the bill. (*Newfoundland Ry. Cons. Co. v. Schack*, 40 E. 222). There must be actual insolvency; expected insolvency at some future time is not sufficient. (*Edison v. Edison Phonograph Co.*, 52 E. 620).

7. Discretion of court.

Where the appointment of a receiver would serve no beneficial purpose, the Court of Chancery will not appoint. (*Sternberg v. Wolff*, 56 E. 555). However, if the directors are proven guilty of breaches of trust, misconduct, or incapacity, the court should appoint a receiver. (*Am. Surety Co. v. Great White Spirit Co.*, 58 E. 526; *Fitzgerald v. State Mutual Bldg. & Loan Ass'n*, 69 Atl. 564). But a receiver should not be appointed if it appear that the directors are closing its affairs and that such directors are in all respects trustworthy. (*City Pottery Co. v. Yates*, 37 E. 543).

8. The motive actuating those who apply for the appointment of a receiver are not material.

(*McMullin v. McArthur Elec. Mfg. Co.*, 68 Atl. 97; *Catlin v. Vichachi Mining Co.*, 73 E. 286; *Fort Wayne Elec. Corp. v. Franklin Elec. Light Co.*, 57 E. 16).

9. A receiver will not be appointed on a preliminary hearing where all the grounds upon which such appointment is sought are fully met by proper affidavits.

(*Brady v. Bay State Gas Co.*, 106 Fed. 584; *Taylor v. Cuban Land & Steamship Co.*, 106 Fed. 437).

10. Who are creditors under the statute.

Creditors or stockholders are by the statute authorized to make application for the writ of injunction and the appointment of a receiver. In *Gallagher v. Asphalt Co. of Am.*, 65 E. 258, the court held that the word "creditor" was not used in the statute in a narrow and technical sense, but in a broad sense, and that if a party is so related to the corporation and its assets as to be entitled to a share of what is divided among creditors—if the party can come into the proceedings as a claimant and prove his claim so as to be entitled to a dividend, it must be generally true that he is qualified as a creditor to institute the proceedings which result in the distribution of the assets in part to himself. (See also *Rosenbaum v. U. S. Credit System Co.*, 61 L. 543; *Ft. Wayne Elec. Corp. v. Franklin Elec. Light Co.*, 57 E. 16; *Spader v. Mural Decoration Mfg. Co.*, 47 E. 18; *Bolles v. Crescent Drug Co.*, 53 E. 614; *N. J. Ins. Co. v. Meeker*, 37 L. 282). (See also *Lehigh & Wilkesbarre Coal Co. v. Stevens & Condit Trans. Co.*, 63 E. 107; *O'Grady v. U. S. Independent Tel. Co.*, 71 Atl. 1040).

11. Who are stockholders under the statute.

To enable one, as a stockholder, to institute proceedings under this section, he must be the actual owner of some of the stock, by virtue of which he has an interest in the assets of the corporation. (*Hoopes v. Basic Co.*, 69 E. 679; Aff'd 72 Id. 426). The holder of a voting trust certificate is the beneficial owner of the stock represented by it in the hands of the "voting trustees," and as such, he is a stockholder within the meaning of section 65. (*O'Grady v. U. S. Ind. Tel. Co., supra*).

V. COURT MAY APPOINT RECEIVER; POWERS OF RECEIVER; ACTS OF MAJORITY VALID; REMOVAL AND COMPENSATION.

1. When receiver may be appointed.

Section 66 gives the Court of Chancery the right to appoint receivers at the time of ordering the injunction or at any time afterward.

2. General powers.

The receivers are given full power to sue for, collect and receive property of every description of the corporation, and to institute suits either

at law or in equity for the recovery of any property or demand existing in favor of the corporation. This power includes the right to effect a settlement with any debtor of the corporation or with any person having possession of property of the corporation, or any one in any way responsible to the corporation, allowing to such person just set-offs. A receiver also has power to sell, convey and assign all the estate, rights and interest of the corporation, and to hold and dispose of the proceeds under the direction of the Court of Chancery. (Sec. 66).

3. Power to examine witnesses.

Section 71 gives the receiver power to examine witnesses, including creditors and claimants, or any of the officers of the corporation, under oath or affirmation. A person refusing to be sworn, or refusing to answer questions may be committed to prison by the Court of Chancery.

As to receiver's power to examine witnesses, see *Smith v. Trenton Del. Falls Co.*, 4 E. 505; but where service of summons was made by the receiver on a person without the state, the courts of the state have no authority to make an order adjudging such person in contempt for failing to appear. (*Fidelity & Casualty Co. v. MacAfee*, 72 E. 279).

4. Power to search.

Under section 72, the receiver is also given power to break open houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its property or effects have been kept or shall be, and take possession of the same. Such breaking and entering must, however, be done in the day time and with the assistance of a peace officer.

As to the power and duties of receivers. (See *Mills v. Hendershot*, 70 E. 258; *Barkalow v. Totten*, 53 E. 573; *In re Mather's Sons' Co.*, 52 E. 607; *Graham Button Co. v. Spielman*, 50 E. 120; Aff'l Id: 796; *Hood v. McNaughton*, 54 L. 425).

5. Who receiver represents.

The receiver does not represent the corporation alone. "He is not created by the corporation, nor does he derive his power or his title from it, but he is brought into existence by the same authority that gave life to the corporation. He is invested with title by act of law. He is a creation of the law for the protection of the rights of creditors and must necessarily be clothed with their attributes and equities to accomplish the purpose of his creation. He represents both the corporation and its creditors, and is invested with the rights and powers of both, so far as may be necessary to perform his functions." (*Nat'l Trust Co. v. Miller*, 33 E. 155-158). (See also *Vanderbilt v. C. R. R. Co.*, 43 E. 669).

6. Power of receiver limited.

The powers of a receiver are limited by the terms of the order of his appointment, and the statute authorizing it; he cannot borrow money on receiver's certificates unless he be authorized by the court

having jurisdiction over him and the property. The receiver of a private corporation may be authorized to borrow money on receiver's certificates, which shall be a lien prior to that of a subsisting encumbrance only for one purpose—the preservation of the property and the expenses of realizing on it by a sale, except, possibly the continuance of insolvent's business, as an absolute essential to such preservation. (*Lockport Felt Co. v. United Box Board & Paper Co.*, 74 E. 686).

7. Power of receiver of public work to sell or lease principal work, franchise, etc.

Section 82 provides that "Whenever a receiver of a corporation shall have charge of a canal, railroad, turnpike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest, the receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations and conditions contained in such charter; provided, that nothing in this section contained shall be so construed as to apply to or in anywise affect any corporation authorized by law to exercise banking privileges."

8. Acts of majority effectual.

"Every matter and thing by this act required to be done by receivers or trustees, shall be good and effectual, to all intents and purposes, if performed by a majority of them." (Sec. 73).

9. Vacancies among trustees.

The Court of Chancery may remove any receiver or trustee and appoint another or others in his place or fill any vacancy which may occur. (Sec. 73).

10. Compensation and expense of administration.

Compensation of receivers is provided for under section 85, which directs such compensation and the expenses of the administration of the receiver, to be paid out of the assets before distribution of them. That the receiver's allowances and his expenses in winding up the company are entitled to preference over state franchise taxes levied during the receivership (see *Chesapeake & Ohio Ry. Co. v. Trans. Co.*, 62 E. 751). As to what is reasonabe compensation, (*Lembeck v. Jarvis Terminal Cold Storage Co.*, 68 E. 352).

VI. BOND AND OATH OF RECEIVER.

1. Court to prescribe terms of appointment.

A receiver, before acting as such, must enter into such bond and comply with such terms as the court may prescribe. (Sec. 67).

2. Form of oath.

A receiver must also take and subscribe to an oath or affirmation in form as follows: "I, —— ——, do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the —— and that without favor or affection." (Sec. 67). This oath must be filed with the clerk in chancery within ten days after taking.

VII. PROPERTY, FRANCHISES, &C., OF INSOLVENT CORPORATION VESTS IN RECEIVER UPON APPOINTMENT.

1. Corporation divested of title.

By section 68 of the General Corporation Act, it is provided that all the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects, shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

2. Conflict of decisions.

The above section is new in the Corporation Act of 1896. Upon the law as it formerly stood, the decisions had been conflicting, and it was intended by this section to set at rest the question whether the property of an insolvent company vests at all in the receiver. In the case of *Squire v. Princeton Lighting Co.*, 72 E. 883 (1907), it was held that the title of the insolvent corporation ceases upon either an adjudication of insolvency, or the appointment of a receiver or trustee. *Willink v. Morris Canal & Banking Co.*, 4 E. 377-400, had held that title to the property was not changed by the appointment of a receiver, but that the power to take charge of and sell such property, was merely delegated to him. In *Corrigan v. Trenton Del. Falls Co.*, 7 E. 489-496, however, it was held that such appointment worked a conveyance or transfer of all the property of the insolvent corporation to the receiver. Then followed the cases of *Freeholders v. State Bank*, 29 E. 268; *Minchin v. Second Nat'l Bank*, 36 E. 436; *Receiver v. First Nat'l Bank*, 34 E. 450; *Kirkpatrick v. Corning*, 37 E. 54; *Wilkinson v. Rutherford*, 49 L. 241; *N. J. S. R. R. Co. v Railroad Comm'rs*, 41 L. 235-249; *Receiver of State Bank v. First Nat'l Bank of Plainfield*, 34 E. 450-455, the conflicting decisions of which added to the confusion on this subject.

3. The present rule.

The question is now settled by the enactment of section 68. (See *Falk v. Whittman Cigar Co.*, 55 E. 396; *Crews v. U. S. Car Co.*, 57 E. 357; *Squire v. Princeton Lighting Co.*, 72 E. 883).

4. **As to receiver's authority to make calls** upon stockholders under section 68, see *Falk v. Whittman Cigar Co.,* 55 E. 396; *Meley v. Whitaker,* 61 L. 602.

VIII. INVENTORY AND REPORT BY RECEIVER.

1. **Time of.**

The receiver, as soon as convenient, must make a full and complete inventory of all the property and effects of the corporation and present it to the Court of Chancery, and he must also make a report of his proceedings every six months thereafter during the continuance of the trust. (Sec. 74).

IX. CLAIMS TO BE UPON OATH AND COURT MAY LIMIT TIME TO PRESENT OR MAKE PROOF OF CLAIMS.

1. **Power of receiver.**

Claims against an insolvent corporation must be presented to the receiver in writing and upon oath. The receiver may examine any claimant with relation to his claim and require him to produce any data relative thereto; and he has power to examine witnesses under oath or affirmation upon questions touching the claims. The receiver must pass upon all claims and notify the claimants of his determination. The Court of Chancery may limit the time within which creditors are to present and make proof of their claims to the receiver, and prescribe what notice shall be given to creditors of such limitation. The court may bar all creditors and claimants who fail to present their claims within the time limited. (Secs. 75 and 76).

2. **Complaining creditor not excepted.**

A creditor's right to share in the assets of an insolvent corporation is not determined because of his instrumentality in bringing the action upon which the insolvency of the corporation is determined, as after the final decree for injunction has been obtained, he is obliged to prove his claim against the assets precisely as all the other creditors must prove their claims, and his entire claim may be rejected. (*Gallagher v. Asphalt Co. of Am.,* 67 E. 441-448).

3. **A receiver of an insolvent corporation has the right to contest the validity of a chattel mortgage** covering its personal assets. (*Graham Button Co. v. Spielman,* 50 E. 120).

4. **Claims for unliquidated damages** growing out of breaches of trust or contract, may be proved before the receiver, and claimants for such, stand on an equality with other creditors in the distribution of the company's assets. Thus where a contract for a term of years involving the payment of a fixed salary for such term was breached by the insolvency of the company, the party to whom such fixed salary was to be paid, is entitled to present a claim to the receiver for the

amount of damages he suffers by the breach. (*Spader v. Mural Dec. Mfg. Co.*, 47 E. 18). Likewise one, whose agreement with a corporation was for a term of years upon a commission basis, and the relationship of the agency thus established was broken by the insolvency of the company, has a right to present his claim to the receiver. (*Rosenbaum v. Credit System Co.*, 61 L. 543).

5. Tortious claims arising before insolvency, but not reduced to judgment until after insolvency, are entitled to share with other claims in the assets. (*Lehigh & Wilkesbarre Co. v. Stevens & Condit Trans. Co.*, 63 E. 107).

X. RIGHT OF CLAIMANTS, RECEIVERS AND PERSONS AGGRIEVED TO HAVE CLAIMS ADJUSTED BY COURT.

1. Right to trial by jury; procedure.

A creditor or claimant or the receiver, may demand that the claim be referred to a jury. The procedure then to be followed is as follows: The demand must be entered upon the receiver's minutes and an issue made up between the parties under the direction of one of the justices of the Supreme Court. The jury is impannelled as in other cases, and the issue is tried in the circuit court of the county in which the corporation carried on its business or had its principal office. The verdict of the jury is subject to the control of the Supreme Court, and if not set aside by the court, is to be certified by the clerk of the said court to the receiver. (Sec. 77).

2. In all cases where no trial by jury is demanded, the Court of Chancery has jurisdiction to pass upon the claims presented.

(Sec. 77).

3. Appeal to chancery by persons aggrieved.

If the insolvent corporation, or any person, feels aggrieved by the proceedings or determination of the receiver, an appeal may be had to the Court of Chancery and said court shall determine, in a summary way, the matter complained of and make such order as shall be equitable and just. (Sec. 78).

4. How appeal may be made.

In *Taylor v. Gray,* 59 E. 621, the court held that the above provision of the Corporation Act, authorizing an appeal to the Court of Chancery, was not technical; that relief may be given under an original bill or by way of cross bill, or in any proceeding by which jurisdiction may be secured. If, after the receiver's determination, a new element comes into the controversy, it is not necessary to present the same to the receiver before appealing to the court for adjudication.

5. Appeal may be taken from chancellor's order.

An order of the chancellor, on appeal from the determination of

the receiver of an insolvent corporation, is not interlocutory, but final, and an appeal may therefore be taken from such order to the Court of Errors and Appeals. (*Ellison v. Gray,* 55 E. 581.)

6. Who are parties aggrieved.

The language used in section 78 is very comprehensive and embraces every question which could possibly be brought before the receivers for their action. Parties who claim a set-off are "parties aggrieved" under the statute. (*Jackson v. Peoples Bank,* 9 E. 205). Where there is the same receiver for two corporations, one of which, as part of its assets, owns stock in the other, a creditor of the one has such interest that he may appeal from an allowance of a claim against the other. (*Blake v. Domestic Mfg. Co.,* 64 E. 480).

7. Laches a bar to relief.

A claim must be presented to the receiver during the time limited by the court for such presentation. Failure for eight years to appeal from a receiver's decision to the Court of Chancery is such culpable negligence as will bar relief. (*Leo v. Green,* 52 E. 1).

XI. SUBSTITUTION OF RECEIVER AS PLAINTIFF IN SUITS PENDING AND EFFECT OF DEATH OF RECEIVER UPON SUITS PENDING.

As further evidence of the intention to make the sections of the Corporation Act covering insolvency as comprehensive as possible, and to provide for any and every possible contingency which may affect adversely either the just claims of creditors, or the assets of the corporation, section 79 allows the receiver, (upon application by him) to be substituted as plaintiff or complainant in the place of the corporation he represents, in any action pending at the time of his appointment, and section 80 provides that in the event of the receiver's death, actions against him shall not abate, but shall be continued either against his successor, or against the corporation in case no new receiver is appointed.

XII. ENCUMBERED PROPERTY MAY BE SOLD FREE OF LIENS BY ORDER OF THE COURT.

1. Money to be paid into court.

"Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the Court of Chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct." (Sec. 81).

2. Legality of lien and character of property jurisdictional facts. As prerequisites to the exercise of the power of sale by the Court of Chancery as above provided, two jurisdictional facts must appear—first, that the prior encumbrances are disputed as to either legal or equitable rights asserted under them, and second, that the property is of such a character that it will materially deterioate in value pending the litigation. (*Reilly v. Penn. Cordage Co.,* 58 E. 459; *Randolph v. Larned,* 27 E. 557).

3. Sale subject to confirmation by Court of Chancery. Those who have liens upon the property have no control over the conditions of its sale under the above section, but they may protect themselves from misjudgment on the receiver's part by an application to the Court of Chancery to refuse confirmation of the sale. The court may refuse to confirm where the price is so inadequate that great injustice would be done were the sale allowed, but if the sale be refused confirmation on this ground, applicants for re-sale will be required to give some assurance or security that at such re-sale a higher price will be bid. (*Porch v. Agnew Co.,* 66 E. 232; *Rowan v. Congdon,* 53 E. 385).

XIII. PRIORITY OF CLAIMS.

Although section 64 has for its object the prevention of preferences in favor of creditors of an insolvent corporation, there are certain other provisions in the act which establish the priority of certain claims over other liens.

1. Liens of workmen and laborers prior to all others; conditions; exceptions. Sections 83 and 84 which though separate sections in the act, are in reality one, since each governs and conditions the other, are in substance as follows: In case of the insolvency of any corporation, the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation, except the lien and incumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation. Such lien shall be prior to all other liens that can or may be acquired upon or against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the lien

of mortgages given upon the lands and real estate of such insolvent corporation.

2. **Strict construction of statute.**

Section 83 creating, as it does, a statutory preference, should be strictly construed. The statute prescribes the capacity of those whose claims are to be preferred, qualifies the character of their service with respect to the corporation, and limits the time within which such service shall have been performed. The courts therefore have not extended the scope of the statute by a liberal construction of its provisions.

3. **Examples.**

Thus, a person, not in the employ of an insolvent corporation, who loaned money to it upon an understanding that such money would be used to pay the wages of its laborers, is not, when the corporation is decreed to be insolvent, entitled to the preference. (*Campbell v. Taylor Mfg. Co.*, 64 E. 622; Aff'd Id. 791). Neither will a superintendent who voluntarily, and supposing the company to be solvent, advances his own money to pay workmen, there being no assignment of their claims to him, nor any agreement that he was to have the benefit of their lien, be subrogated to the rights of such workmen to the statutory preference. (*In re North River Cons. Co.*, 38 E. 433). Where, however, an assignment of the lien is made after the lien has attached, in such case the assignee will hold the debt with its security. (*D. L. & W. R. R. Co. v. Oxford Iron Co.*, 33 E. 192-197).

4. **Who are entitled to the lien.**

The president is not entitled to the lien (*England's Ex'rs v. Beatty Organ Co.*, 41 E. 470), but a bookkeeper in the regular employ of the corporation, even though he be a director, is entitled to it. (*Consolidated Coal Co. v. Keystone Chem. Co.*, 54 E. 309). A person who furnishes labor or services of others, under a contract to do the whole business of a corporation, or a particular branch of it, has no lien under this section, he being a contractor not an employee. (*Lehigh Coal & Nav. Co. v. C. R. R. Co. of N. J.*, 29 E. 252). A drayman, regularly employed, whose services are of a kind or class which the corporation must have in order to continue in business, is entitled to the preference. (*Watson v. Watson Mfg. Co.*, 30 E. 588). Also the general manager, even though a stockholder and director. (*Buvinger v. Evening Union Printing Co.*, 72 E. 321). The lien, however, does not apply where the claimant is a corporation. (*In re Barr Dinwiddie Printing, &c., Co.*, 42 Atl. 575).

5. **As to apprentices.**

Apprentices working under an agreement by the terms of which their wages are to accumulate until the end of their apprenticeship, have no more extensive right to preference than other unpaid workmen regularly employed. (*Mingin v. Alva Glass Mfg. Co.*, 55 E. 463).

6. As to mechanics' liens.

See *Doty v. Auditorium Pier Co.,* 56 Atl. 720; Aff'd 65 E. 768.

7. Those laborers only are entitled to priority of payment, who were in the employ of the company at the time it became insolvent.

(*Bedford v. Newark Machine Co.,* 16 E. 117-119; *D. L. & W. R. R. Co. v. Oxford Iron Co.,* 33 E. 192).

8. Waiver of lien.

The acceptance of a promissory note, without security, does not operate as a waiver of the lien given by the statute, unless it is the intention to relinquish the lien and such intention is unmistakably manifested. (*D. L. & W. R. R. Co. v. Oxford Iron Co., supra*).

9. Lien only upon assets in receiver's hands.

Whatever lien an employe may have in the assets of a corporation must be enforced through the receiver. The lien is given upon the assets in his hands. Such lien does not give an employe priority over a creditor secured by mortgage which mortgage was recorded before the employe's debt accrued. (*Hinkle v. Camden Safe Deposit, &c., Co.,* 47 E. 333).

10. What the term "assets" includes.

Wright v. Wynockie Iron Co., 48 E. 29 (1891), held that the claims of laborers were not entitled to precedence in payment over liens acquired by judgment execution and levy thereunder, which antedates the time which the court adjudges to be the time of the corporation's insolvency. The decision in this case, however, was based upon section 63 of "An Act concerning corporations (Revision of 1875)," as amended March 31st, 1887 (P. L. 1887, p. 99). Under this act it had always been held that the receiver in insolvency took the property of the corporation subject to liens of judgments obtained before adjudication of insolvency. In *Mesereau v. Mesereau Co.,* 51 E. 382, it was held that the act of April 8th, 1892 (P. L. 1892, p. 426), was intended to supercede and repeal all prior provisions of law on the subject of priority of laborers' liens of insolvent corporations. This act of 1892 was incorporated in the Revision of 1896 and forms the two sections quoted supra. (Secs. 83, 84).

Following the case of *Mesereau v. Mesereau Co., supra,* it was held in *Fitzgerald v. Maxim Power Mfg. Co.,* 33 Atl. 1064 (1896), that the words "assets" as used in the act of 1892, included all the property or entire assets of the corporation which would come into the receiver's possession for administration, whether incumbered by previous liens or not, the only exceptions being the property specifically excepted by section 84, and that in consequence of this construction, a laborer's lien was prior to the lien of a judgment entered against the corporation before its insolvency.

11. Effect of expense of receivership.

The preferred labor claims are always to be paid in full, unless it is necessary to encroach upon them to meet the expenses of the receivership. (*Lyle v. Staten Is. T. C. Lumber Co.*, 62 E. 797).

XIV. DISTRIBUTION OF ASSETS.

1. Orderly distribution.

Allowances, expenses and costs, and all special and general liens to the extent of their lawful priority, are to be first paid; then the creditors (except mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors) are to be paid proportionally to the amount of their respective debts. Creditors shall be entitled to distribution on debts not due, and in such case, when interest is not accruing on the same, a rebate of interest shall be made. If there be any surplus left, after payment as above, and the preferred stockholders, it shall be divided and paid to the general stockholders proportionally, according to their respective shares. (Sec. 86).

2. Rights of preferred stockholders.

The Corporation Act of 1875 created a statutory preference with reference to preferred stock, as it directed that in the distribution of capital, the holders of preferred stock should be paid first, before any distribution was made to the holders of common stock. It was upon this act that the case of *McGregor v. Home Ins. Co.*, 33 E. 181, was decided, and it was therein held that preferred stock was entitled to preference in the distribution of capital. In the provisions of the Revision of 1896, however, this statutory preference was eliminated and the decision in the McGregor case was overruled in *Llyod v. Penna. Elec. Vehicle Co.*, 72 Atl. 16 (1909). Section 18 of the Corporation Act reads that "Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated or expressed in the certificate of incorporation or in any certificate of amendment thereto." Obviously under this section it was intended that the rights of preferred stock should be defined in the certificate of incorporation, and the certificate alone should be consulted in determining in what respect stock should be preferred. Unless stock is preferred as to capital in the certificate, it cannot be so preferred in distribution.

3. Rights of preferred creditors.

Upon distribution of the assets of an insolvent corporation, the right of a preferred creditor to full payment outranks the right of a general creditor to partial payment. (*Lyle v. Staten Is. T. C. Lumber Co.*, 62 E. 797).

4. Rights of judgment creditors.

A judgment at law, which is fraudulent as against certain of the creditors of an insolvent corporation, but valid as against others, will not be set aside by the court in which it was entered at the instance of the receiver of such corporation by reason of the fraud. The rights of those creditors, as against whom the judgment is fraudulent, can be protected in the distribution of the company's assets by the court having control of the matter. (*Beebe v. Beebe Co.,* 64 L. 497).

5. Creditors holding secured bonds as collateral.

A creditor of an insolvent corporation who holds as collateral secured bonds of the corporation, the security for which is insufficient to pay in full either the bonds or the debts, cannot be admitted as a creditor for the balance due on the bonds as well as for the debt. (*Pattberg v. Pattberg & Bro.,* 55 E. 604).

6. As to judgment by confession, the court, in *Consolidated Coal Co. v. Nat'l State Bank,* 55 E. 800, held that the statute deals with the intention with which the judgment is confessed. The intention with which the bond and warrant of attorney to confess judgment are given, is not necessarily the intention with which the judgment is confessed, and if it appear that the object sought to be accomplished by the confession of judgment was to enable the plaintiff therein to thereby obtain a preference over other creditors, proof that such intent did not exist at the time of the making of the bond and warrant, will not operate to relieve from the consequences imposed by the statute.

7. Time as essense of judgment creditors' right to priority.

Under the theory that the title of an insolvent corporation to its property continues until there is either an adjudication of insolvency, or the appointment of a receiver, it was held in *Squire v. Princeton Lighting Co.,* 72 E. 883, that a judgment creditor, whose judgment was recovered, execution issued and levy made, after the court had made an order restraining the corporation from transferring its property or contracting additional debts, and requiring said corporation to show cause why an injunction should not issue and a receiver be appointed, but before the appointment of the receiver, was entitled to priority in payment.

8. As to proof of entire claim by creditors holding collateral security.

In *Butler v. Commonwealth Tob. Co.,* 74 E. 423, the court held that the rulings of the court in the case of *State Bank v. Receivers of the Bank of New Brunswick* (3 E. 266), decided in 1835, should still control in cases where a creditor holds collateral security of an insolvent corporation. In the latter case, it was held that the "Act to prevent frauds by incorporated companies," passed in 1829 (which by re-enactment forms a part of the present Corporation Act), was essentially a bankrupt act, and that a creditor holding collateral security of an

insolvent corporation, must apply his securities to the payment of his debt and prove only for the balance. If he does not do this, he must deliver up his security as a condition precedent to proving his whole claim.

9. State franchise tax a preferred debt.

Section 6 of the "Act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," P. L. 1884, p. 236, makes the state franchise tax a preferred debt in case of insolvency. (See *Conklin v. U. S. Shipbuilding Co.*, 148 Fed. 129; *Chesapeake & Ohio Ry. Co. v. Atl. Trans. Co.*, 62 E. 751; *Crews v. U. S. Car Co.*, 57 E. 357). (See also *Freeholders v. State Bank*, 29 E. 268; Aff'd 30 Id. 311). Where no return is made by the insolvent corporation to the state board of assessors (see *King v. Am. Elec. Vehicle Co.*, 70 E. 568; *In re U. S. Car Co.*, 60 E. 514).

XV. RECONVEYANCE OF PROPERTY AND REORGANIZATION.

1. Upon certain conditions.

When a receiver has been appointed, and it afterwards appears that the debts of the corporation have all been paid or provided for, and that there remains or can be obtained by further contributions, sufficient capital to enable the corporation to resume its business, then the Court of Chancery may direct the receiver to reconvey to the corporation all its property and effects, and in such case the corporation may resume and enjoy full control of the same. (Sec. 69).

2. Discretion of Court of Chancery.

The Court of Chancery may, however, in its discretion, dissolve the corporation and declare its charter forfeited. (Sec. 69).

3. Issuance of bonds and stock upon re-organization.

A majority in interest of the stockholders, if the property is reconveyed, as above, must agree upon a plan of resumption and reorganization, and the corporation may then, with the consent of the Court of Chancery, mortgage its property or franchises for the purpose of reorganization and may issue bonds or other evidences of indebtedness or additional stock or both, and use the same for the full or partial payment of creditors, who will accept the same, or otherwise dispose of the same for the purpose of the reorganization. (Sec. 70).

(See *Conklin v. U. S. Shipbuilding Co.*, 140 Fed. 219; *Kirkpatrick v. Bd. of Assessors*, 57 L. 53; *Fleming v. Fleming Hotel Co.*, 70 E. 509; *Lehigh Coal & Nav. Co. v. Cen. R. R. Co.*, 34 E. 88).

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THE GENERAL CORPORATION ACT OF NEW JERSEY.

CHAPTER 185, LAWS OF 1896.

"An Act concerning corporations (Revision of 1896)," with amendments and supplements to the end of the legislative session of 1911.

I.—Powers.

1. Every Corporation shall have power:

I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually;

II. To sue and be sued in any court of law or equity;

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

IV. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been bona fide conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest;

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

VI. To make by-laws fixing and altering the number of its directors, and providing for the management of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars;

VII. To wind up and dissolve itself, or be wound up and dissolved in manner hereafter mentioned.

(See Sec. 156.)
(See notes pp. 60, 62, 78, 79, 84, 87, 89, 93, 95, 96, 131, 134, 141, 144, 146, 148.)

2. Additional powers.

In addition to the powers enumerated in the first section of this act and the powers specified in its charter or in the act or certificate under which it was incorporated, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

(See notes p. 96.)

3. Banking powers prohibited.

No corporation created or to be created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

(As amended by P. L. 1899, p. 473.)
(See notes pp. 45, 60, 99, 108.)

4. Charters subject to legislative repeal and alteration.

The charter of every corporation, or any supplement thereto or amendment thereof shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation.

(See notes pp. 101, 149, 150.) (See Sec. 146.)

5. Act subject to legislative repeal or amendment.

This act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation.

(See notes pp. 101, 149.)

II. FORMATION, CONSTITUTION, ALTERATION, DISSOLUTION.

6. Purposes for which corporations may be formed.

Upon executing, recording and filing a certificate pursuant to all the provisions of this act, three or more persons may become a corporation for any lawful purpose or purposes whatever, other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of taking and condemning lands in this state, or other than a corporation provided for by "An Act concerning banks and banking (Revision of 1899)," or by "An Act concerning trust companies (Revision of 1899)," or by "An Act concerning safe deposit companies (Revision of 1899)." It shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this state; *provided*, that any company organized under the provisions of this act for cremation purposes shall, before beginning business, file a certified copy of its certificate of incorporation with the State Board of Health and obtain from said board a license to carry on said business, under such rules and regulations as said board may prescribe.

(As amended by P. L. 1907, p. 35.)
(See Sec. 150.) (See notes pp. 45, 47, 49, 109.)

7. Business outside the state.

Any corporation of this state, heretofore or hereafter organized under the laws of this state, may conduct business, have one

or more offices, and hold, purchase, mortgage and convey real and personal property outside of this state in any of the several states, territories, possessions and dependencies of the United States, the District of Columbia, and in foreign countries; *provided,* such powers are included within the objects set forth in its certificate of incorporation or charter.

(As amended by P. L. 1905, p. 515.)
(See notes pp. 89, 91, 101.)

8. The certificate; how signed; what to contain.

The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein, and shall set forth:

I. The name of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion;

II. The location (town or city, street and number, if number there be) of its principal office in the state;

III. The object or objects for which the corporation is formed;

IV. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created;

V. The names and post-office address of the incorporators and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars;

VI. The period, if any, limited for the duration of the company;

VII. The certificate of incorporation may also contain any provision which the incorporators may choose to insert, for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the

stockholders, or any class or classes of stockholders; *provided,* such provision be not inconsistent with this act.

(As amended by sec. 2, P. L. 1898, p. 407.)
(See Sec. 139.) (See notes pp. 47, 50, 82, 103, 128, 146.)

9. Authentication and record of certificate. Copy evidence.

The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and recorded in a book to be kept for that purpose in the office of the clerk of the county where the principal office of such corporation in this state shall be established, and, after being so recorded, shall be filed in the office of the secretary of state; said certificate, or a copy thereof duly certified by the secretary of state, shall be evidence in all courts and places.

(See notes pp. 49, 50, 51, 144, 145, 174.)

10. Corporate existence begins on filing certificate.

Upon making the certificate of incorporation and causing the same to be recorded and filed as aforesaid, the persons so associating, their successors and assigns, shall, from the date of such filing, be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

(See notes p. 144.)

11. By-laws; power to make.

The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

(See notes pp. 50, 53, 95, 127.)

12. Directors to manage business; directors chosen annually; classification.

The business of every corporation shall be managed by its directors, who shall respectively be shareholders therein; they shall be not less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office

for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized under this act may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; *provided,* that no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year; any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others; one director of every corporation of this state shall be an actual resident of this state, and it shall not be necessary for more than one director to be a resident of this state, notwithstanding the provisions of any special charter or other act.

(See Sec. 44.)
(See notes pp. 50, 66, 67, 90, 127, 131, 137.)

13. Officers; how chosen; tenure of office.

Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

(See notes pp. 135, 136, 140, 141.)

14. Other officers and agents.

The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.

(See notes pp. 93, 135, 136.)

15. Vacancies; how filled.

Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.

(See notes pp. 138, 139.)

16. First meeting; how called.

The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established; or said first meeting may be called without publication if two days' notice be personally served on all the incorporators; or if all the incorporators shall, in writing, waive notice and fix a time and place of meeting, no notice or publication shall be required; whenever under any of the provisions of this act, or any amendment thereto, a corporation is authorized to take any action after notice to its members or stockholders, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved and such requirements be waived, in writing, by every member or stockholder of such corporation or by his attorney thereunto authorized.

(As amended by P. L. 1902, p. 217.)
(See notes pp. 51, 65.)

17. Stockholders may vote by proxy; quorum, &c.

Absent stockholders may vote at all meetings by proxy in writing; and every corporation may determine by its certificate of incorporation, or by-laws the manner of calling and conducting all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum, and may by its original or amended certificate of incorporation provide that any action which now requires the consent of the holders of two-thirds of the stock at any meeting

after notice to them given, or requires their consent in writing to be filed, may be taken upon the consent of and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy; *provided,* in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, shall constitute a quorum.

(As amended by P. L. 1901, p. 260.)
(See notes pp. 50, 51, 52, 54, 63, 64, 69, 95, 127, 141.)

18. Preferred and other stocks.

Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate of incorporation or in any certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding eight per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; *provided,* the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.

(As amended by P. L. 1901, p. 245.)
(See notes pp. 109, 110, 111.)

19. Stock certificates; who shall sign.

Every stockholder shall have a certificate, signed by the president or a vice-president, and either the treasurer or an assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by him in such corporation. All certificates heretofore issued, which are signed as aforesaid, shall be as valid and effectual for all purposes as if signed by the president and treasurer of the corporation.

(As amended by P. L. 1911, p. 79.)
(See notes pp. 113, 127, 140.)

20. Transfer of shares; as collateral.

The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

(See notes pp. 60, 114.)

21. Stockholders liable until subscriptions are fully paid.

Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

(See notes pp. 118, 129, 143.)

22. Assessments on shares.

The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty days' notice of the assessment and of the time and place of payment either personally or by mail or by publication in a newspaper published in the county where the corporation is established.

(See notes pp. 119, 120.)

23. Shares may be sold for non-payment of assessments.

If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such number of the shares of the delinquent owner as will pay all assessments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor.

(See notes p. 120.)

24. Notice of sale.

The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week, before the sale, in some newspaper published in the county where the corporation is established, and by mailing a notice thereof to the delinquent stockholder, if he knows his post-office address.

(See notes p. 120.)

25. Certificate upon payment of capital.

The president and secretary, or treasurer, upon payment of each installment of capital stock, and of every increase thereof, shall make a certificate, stating the amount of the capital so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any, previously paid and reported; which certificate shall be signed and sworn to by the president and secretary or treasurer, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the secretary of state.

(See notes pp. 55, 140.)

26. Liability of officers for not making certificate.

If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

(See notes pp. 55, 143.)

26½. Incorporators may amend certificate of incorporation before payment of capital.

It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under the act to which this is a supplement, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; *provided, however,* that nothing herein shall permit the insertion of any matter not in conformity with the act to which this is a supplement; *and provided, however,* that this act shall not in any manner affect any proceedings pending in any court; for filing said amended certificate of incorporation, the secretary of state shall charge a fee of twenty dollars; *provided,* that where the total authorized capital stock of the corporation is increased by said amended certificate the secretary of state shall charge an additional fee of twenty cents for each one thousand dollars of said increase.

(Supplement, P. L. 1898, p. 407, sec. 1.)
(See notes pp. 55, 80.)

27. Amendments and changes after organization.

Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this state, extend its corporate existence, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice, given personally or by mail. If two-thirds in interest of each class of the stockholders

having voting powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and upon the filing of the same, the certificate of incorporation shall be deemed to be amended accordingly; *provided,* that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places.

Nothing in this act contained shall be construed in any way to amend, alter or modify the provisions of section eighteen of the act to which this act is a supplement.

(As amended by P. L. 1908, p. 127, sec. 1.) (See Sec. 147.)
(See notes pp. 56, 57, 58, 60, 62, 64, 80, 82, 84, 109, 112, 128, 144, 145.)

28. Amendments by corporations formed under other acts.

Any corporation of this state whether organized under a special act of incorporation or under general laws, excepting railroad and canal corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this state, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and fix any method of altering its by-laws permitted by the act to which this is a supplement, in the manner prescribed in the foregoing section, and any corporation may, in the same manner, relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation.

Nothing in this act contained shall be construed in any way to amend, alter or modify the provisions of section eighteen of the act to which this act is a supplement.

(As amended by P. L. 1908, p. 128, sec. 2.) (See Sec. 147.)
(See notes pp. 58, 59, 112.)

29. Decrease of capital stock; how effected.

The decrease of capital stock may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; *provided,* no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted, nor effect any reduction of the taxes that may be required to be paid by the charters of corporations incorporated by special acts.

(See Sec. 149.)
(See notes pp. 59, 60, 62, 109, 121, 130, 143.)

30. Unlawful reductions of capital and unlawful dividends; funds from which dividends may be declared.

The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law; in case of any wilful or negligent 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 upon the minutes of such directors at the time, or who not then being present, shall have caused their dissent therefrom to be so entered upon learning of such action, shall jointly and sev-

erally be liable at any time within six years after paying such dividend, to the stockholders of such corporation, severally and respectively, to the full amount of any loss sustained by such stockholders, or in case of insolvency to the corporation or its receiver to the full amount of any loss sustained by the corporation, by reason of such withdrawal, division or reduction.

2. This act shall take effect immediately, but shall not affect any action or proceeding pending in any court at the time it takes effect, or any right of any corporation, or of any creditor or stockholder of any corporation, against any director under existing law.

(As amended by P. L. 1904, p. 275.)
(See notes pp. 62, 110, 122, 143.)

31. Voluntary dissolution; procedure, etc.

Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days cause a like notice to be published in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in

the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs; whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

(See Sec. 152.)
(See notes pp. 62, 63, 64, 127, 151, 152, 153.)

32. Incorporators may dissolve corporation before payment of capital.

The incorporators named in any certificate of incorporation, before the payment of any part of the capital, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

(See notes p. 154.)

III. ELECTIONS; STOCKHOLDERS' MEETINGS.

33. Stock and transfer books must be kept in registered office; annual list of stockholders; books as evidence.

Every corporation shall keep at its principal and registered office in this state the transfer books in which the transfer of stock shall be registered, and the stock books, which shall contain the name and address of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; the directors shall cause the secretary, or other officer designated by them having charge of said books, to make, at least ten days before every election after the first

election, a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each, and the number of shares held by each, which list shall at all times during the usual hours for business be kept at such principal and registered office, and open to the examination of any stockholder at said office, and if any officer having charge of such books or list shall, upon demand by any stockholder, refuse or neglect to exhibit such books or list, or submit them to examination as aforesaid, he shall for every such offense forfeit the sum of two hundred dollars, one-half thereof to the use of the state of New Jersey and the other half to him who will sue for the same, to be recovered by action of debt in any court of record, together with costs of suit, and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at such election; and the board of directors shall produce at the time and place of such election such books and list, there to remain during the election, and the neglect or refusal of said directors to produce the same shall render them ineligible to any office at such election.

(As amended by P. L. 1898, p. 408.)
(See notes pp. 52, 53, 67, 127, 137.)

34. Election of directors; voting; quorum.

All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation; the poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; *provided, however,* that unless otherwise provided in the original or amended certificate of incorporation, or in the by-laws approved at a stockholders' meeting, in all corporations formed under the provisions of this act, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum.

(As amended by P. L. 1902, p. 201.)
(See notes pp. 50, 68, 135.)

35. No candidate to act as judge, etc., of election.

No person who is a candidate for the office of director shall act as judge, inspector or clerk of any election for directors; and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such person a director within twelve months next succeeding; this section shall not apply to the first election of directors.

(See notes p. 137.)

36. Regulations as to voting.

Unless otherwise provided in the charter, certificate or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

(See notes pp. 54, 69, 127.)

37. Voting powers of executors and trustees. Hypothecated stock.

Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, and every person, who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.

(See notes pp. 54, 70, 71.)

38. Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.

(See notes pp. 60, 71.)

38½. Cumulative voting.

The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this

state and thereunder issuing or authorized to issue shares of its capital stock, may provide that at all elections of directors, managers or trustees, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors, managers or trustees to be elected, and that he may cast all of such votes for a single director, manager or trustee or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting.

2. This act shall not be construed as affecting in anywise the determination of whether or not the right of cumulative voting has been heretofore granted by implication or the right of cumulative voting, if any, granted specifically by special charter or certificate of incorporation.

("An act to provide in terms for cumulative voting in corporations issuing or authorized to issue shares of capital stock." P. L. 1900, p. 418.)

(See notes pp. 50, 69.)

39. Directors shall be stockholders.

No person shall be elected a director of any corporation issuing stock unless he shall be, at the time of his election, a bona fide holder of some of the stock thereof; and any director ceasing to be a bona fide holder of some of the stock thereof shall cease to be a director; any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.

(See notes pp. 72, 135, 137.)

40. Stock books to determine who are stockholders; transfer books to determine who may vote.

In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

(See notes pp. 54, 73.)

41. Failure to hold election.

If the election for directors of any corporation shall not be held on the day designated by the act or certificate of incor-

poration or by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order an election to be held upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order.

(See notes pp. 74, 148, 155.)

42. Supreme Court may summarily investigate complaints touching elections.

The supreme court, upon application of any person who may be aggrieved by or complain of any election, or any proceeding, act or matter in or touching the same, reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, and in a summary way hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require; the court may, if the case require it, either order an issue to be made up in manner and form as it may direct, to try the rights of the respective parties to the office or franchise in question, or may give leave to exhibit or direct the attorney-general to exhibit, an information in the nature of a quo warranto in relation thereto.

(See notes pp. 66, 74, 75, 128, 135.)

(By a supplement, P. L. 1899, p. 563, the chancellor was given power to summarily investigate complaints touching elections. This act was however, declared unconstitutional. See notes p. 75.)

43. Annual report to secretary of state.

Every domestic corporation and every foreign corporation doing business within this state, shall file in the office of the secretary of state within thirty days after the first election of directors and officers and annually thereafter within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating:

I. The name of the corporation;

II. The location (town or city, street and number, if number there be) of its registered office in this state, and the name of the agent upon whom process against the corporation may be served;

III. The character of its business;

IV. The amount of its authorized capital stock, if any, and the amount actually issued and outstanding;

V. The names and addresses of all the directors and officers of the company and when the term of office of each expires;

VI. The date appointed for the next annual meeting of the stockholders for the election of directors;

VII. Whether the name of such corporation has been at all times displayed at the entrance of its registered office in this state, and whether such corporation has kept at this registered office in this state a transfer book in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law; *provided, however,* that the requirement of this subdivision shall not apply to foreign corporations nor to any railroad or canal corporation; *and further provided,* that no part of this section shall apply to corporations as are now by law under the supervision of the department of banking and insurance; if such report is not so made and so filed the corporation shall forfeit to the state two hundred dollars, to be recovered with costs in an action of debt, to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated; *and further provided,* if such report be not so made and filed, all of the directors of any such domestic corporation who shall wilfully refuse to comply with the provisions hereof and who shall be in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise; no director shall be thus disqualified for the failure to make and file such report if he shall file with the secretary of state before the time appointed for holding the next election of directors after said default, a certificate stating that he has endeavored to have such report made and filed, but that the officers have neglected to make and

file the same, and shall report the items required to be stated in such annual report so far as they are within his knowledge, or are obtainable from sources of such information open to him, verified by him to be true to the best of his knowledge, information and belief; the secretary of state shall upon application furnish blanks in proper form and shall safely keep in his office all such reports and shall prepare an alphabetical index thereof, which reports and index shall be open to the inspection of all persons at proper hours.

2. In case any domestic corporation, or any foreign corporation authorized to transact business in this state, shall fail to file such report within the time required by this section, or in case the agent of any such corporation designated by any such corporation as the agent upon whom process against the corporation may be served shall die, or shall resign, or shall remove from the state, or such agent cannot with due diligence be found, it shall be lawful, while such default continues, to serve process against any such corporation upon the secretary of state, and such service shall be as effective to all intents and purposes as if made upon the president or head officer of such corporation, and within two days after such service upon the secretary of state as aforesaid, it shall be the duty of the secretary of state to notify such corporation thereof by letter directed to such corporation at its registered office, in which letter shall be inclosed a copy of the process or other paper served, and it shall be the duty of the plaintiff in any action in which said process shall be issued to pay to the secretary of state, for the use of the state, the sum of three dollars, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein; the secretary of state shall keep a book to be called the "process book," in which shall be recorded alphabetically, by the name of the plaintiff and defendant therein, the title of all causes in which processes have been served upon him, the test of the process so served and the return day thereof, and the date and hour when such service was made.

3. The terms "principal office," "principal office in this state" and "registered office," wherever used in this act, shall be construed as synonymous terms.

(As amended by P. L. 1900, p. 313.)

(See notes pp. 75, 76, 80, 83, 137, 140, 172.)

44. Stockholders' meetings must be held at registered office in New Jersey. Corporations must maintain a New Jersey office. Directors may meet out of State.

In all cases where it is not otherwise provided by law, the meetings of the stockholders of every corporation of this state shall be held at its principal office in this state; the directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer books) outside of this state, if the by-laws or certificate of incorporation so provide; every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock; the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

(See notes pp. 52, 63, 82, 155.)

45. Name to be displayed at registered office.

The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof the directors shall be jointly and severally liable to a penalty of two hundred dollars, to be recovered with costs, by the state, before any court of competent jurisdiction, by action to be prosecuted by the attorney-general; and they shall jointly and severally be liable to a like penalty for every thirty days' additional default from and after the service of process in the first action, to be recovered in like manner.

(See notes pp. 52, 80, 81.)

46. Calling of meeting by three or more stockholders.

Whenever, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three or

more stockholders having voting powers may call such meeting by publishing ten days' notice of the time, place and purposes of the meeting in a newspaper published in the county in which its principal office in this state is located, and mailing such notice to all stockholders whose post-office address is known or can be ascertained; a meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the book of minutes of the corporation.

(See notes pp. 66, 128.)

IV.—DIVIDENDS—PAYMENT OF CAPITAL STOCK.

47. Dividends; when to be declared; working capital.

Unless otherwise provided in the original or amended certificate of incorporation, or in a by-law adopted by a vote of at least a majority of the stockholders, the directors of every corporation created under this act shall, in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand.

(As amended by P. L. 1901, p. 246.)
(See notes pp. 50, 121, 122, 123, 128.)

48. Payment of capital stock to be made in money; no loan to stockholders.

Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made the officers who make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned.

(See notes pp. 104, 105, 143, 166.)

49. Stock issued for property purchased.

Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

(See notes pp. 104, 105, 166.)

50. Certain corporations may subscribe, hold and dispose of stock and bonds of other corporations.

Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporations formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock

shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

(See notes pp. 107, 108.)

51. Any corporation may hold stock and bonds of other corporations.

Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(See notes pp. 49, 107, 108.)

52. Penalty for false certificates.

If any certificate made, or any public notice given by the officers of any corporation, 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 be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only.

(See notes pp. 124, 143.)

V.—WINDING UP.

53. Corporate existence continues for certain purposes.

All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

(See notes pp. 63, 147, 157, 161.)

54. Directors; trustees on dissolution. In case of vacancy survivors to act.

Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequent thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

(As amended by P. L. 1910, p. 51.)
(See notes pp. 63, 158, 161.)

55. Powers and liabilities of such trustees.

The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

(See notes pp. 63, 158, 161.)

56. Court of Chancery may continue directors as trustees or appoint receivers of dissolved corporation.

When any corporation shall be dissolved in any manner what-

ever, the court of chancery, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.

(See notes pp. 158, 159, 161.)

57. Jurisdiction of Court of Chancery.

The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

(See notes pp. 159, 161.)

58. Disposition of proceeds by trustees or receivers.

The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

(See notes pp. 143, 159, 160, 161.)

59. Actions not to abate on dissolution.

Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

(See notes pp. 160, 161.)

60. Copy of decree of dissolution to be filed in office of secretary of state.

A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws.

(See notes pp. 108, 160, 161.)

VI.—EXECUTION AGAINST CORPORATION.

61. On execution schedule of property to be furnished.

Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.

62. Execution may be satisfied by debts due corporation.

If any officer, holding an execution, shall be unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

VII.—INSOLVENCY.

63. Directors must call meeting of stockholders and exhibit statement when corporation becomes insolvent.

Whenever any corporation shall become insolvent, the direc-

tors, within ten days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all the books of accounts, by-laws and minutes of the corporation, and exhibit a full and true statement of all its estate, funds and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same; so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the corporation.

(See notes pp. 134, 192, 193.)

64. Conveyance or assignment of property, etc., after insolvency, or contemplation of insolvency, void as against creditors.

Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements; nor shall they or either of them make any such sale, conveyance, assignment or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; *provided,* that a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached.

(See notes pp. 134, 191, 193, 195.)

65. Remedy in chancery by injunction and appointment of a receiver in case of insolvency.

Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in

the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

(As amended by chap. 200, sec. 1, Laws of 1912, approved April 1, 1912.)
(See notes pp. 128, 192, 196.)

66. Court may appoint receivers; powers of receivers.

The court of chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or

trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the court of chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act.

(See notes pp. 198, 199.)

67. Receiver to take oath; form of oath.

Every receiver shall before acting enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation: "I, —— ——, do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the ——, and that without favor or affection," which oath or affirmation shall be filed in the office of the clerk in chancery within ten days after the taking thereof.

(See notes p. 201.)

68. Property vests in receiver upon appointment.

All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

(See notes p. 201.)

69. When debts paid or provided for, court may direct receiver to reconvey property, or may dissolve corporation.

Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the court of chancery may, in its discretion, a proper case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed; and in every case in which the court of chancery shall not direct such reconveyance, said court may, in its discretion, make a decree

dissolving the corporation and declaring its charter forfeited and void.

(See notes p. 210.)

70. Upon reorganization company may issue bonds and stock to creditors.

Whenever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the re-organization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court of chancery, upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of such re-organization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the re-organization.

(See notes pp. 92, 210.)

71. Power of receiver to examine witnesses, etc.

Such receiver shall have power to send for persons and papers and to examine any persons, including the creditors and claimants, and the president, directors and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills and choses in action, real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts and liablities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as shall be put to him, or refuse to declare the whole truth touching the subject-matter of the said examination, the court of chancery may, on report by the receiver, commit such person to prison, there to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

(See notes pp. 199.)

72. Power to search, etc.

Such receiver, with the assistance of a peace officer, may break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its goods, chattels, choses in action, notes, bills, moneys, books, papers or other writings or effects, have been usually kept, or shall be, and take possession of the same, and of the lands and tenements belonging to the corporation.

(See notes p. 199.)

73. Acts of majority valid; may be removed and others appointed.

Every matter and thing by this act required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the court of chancery may remove any receiver or trustee, and appoint another or others in his place or fill any vacancy which may occur.

(See notes p. 200.)

74. Inventory and report.

Such receiver, as soon as convenient, shall lay before the court of chancery a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of his proceedings every six months thereafter during the continuance of the trust.

(See notes p. 202.)

75. Court may limit time for creditors to present and make proof of claims.

The court of chancery may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.

(See notes p. 202.)

76. Claims to be upon oath.

Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

(See notes p. 202.)

77. Trial by jury allowed at the circuit.

Any creditor or claimant who shall lay his claim before such receiver may, at the same time, demand that a jury shall decide thereon, and in like manner the receiver may demand that the same shall be referred to a jury; and in either case such demand shall be entered on the minutes of the receiver, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impaneled as in other cases, to try the same in the circuit court of the county in which the corporation carried on its business or had its principal office; the verdict of the jury shall be subject to the control of the supreme court, as in suits originally instituted therein, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the receiver; the creditor shall be considered, in all respects, as having proved his debt or claim for the amount so ascertained to be due, and in all cases in which no trial by jury shall be demanded the court of chancery shall have jurisdiction to pass upon the claims presented and to determine the rights of the claimants, and to make such order or decree touching the same as shall be equitable and just.

(See notes p. 203.)

78. Persons aggrieved by proceedings may appeal to Court of Chancery.

Every such insolvent corporation, or any person aggrieved by the proceedings or determination of such receiver in the discharge of his duty, may appeal to the court of chancery, which

court shall, in a summary way, hear and determine the matter complained of, and make such order touching the same as shall be equitable and just.

(See notes p. 203.)

79. Upon application receiver to be substituted as plaintiff in suits pending.

Such receiver shall, upon application by him, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was pending at the time of his appointment.

(See notes p. 204.)

80. Actions not to abate by death of receiver.

No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.

(See notes p. 204.)

81. Court may order receiver to sell incumbered property in litigation free of liens.

Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deterioate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.

(See notes p. 204.)

82. Receiver of railroad, public work, etc., may sell or lease principal work, chartered rights, etc.

Whenever a receiver of a corporation shall have charge of a canal, railroad, turnpike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stock-

holders and creditors have an interest, the receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations and conditions contained in such charter; *provided,* that nothing in this section contained shall be so construed as to apply to or in anywise affect any corporation authorized by law to exercise banking privileges.

(See notes p. 200.)

83. Laborers and workmen to have first lien on assets.

In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

(See notes pp. 205, 206.)

84. Chattel mortgages to be first liens.

Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and incumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as

against the lien of mortgages given upon the lands and real estate of such insolvent corporation.

(See notes p. 205.)

85. Compensation of receivers.

Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the cost of the proceedings in said court, to be first paid out of said assets.

(See notes p. 200.)

86. Distribution; how made.

After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors; and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

(See notes pp. 111, 143, 208.)

VIII.—Service of Process.

87. Process against corporations of this state.

In any personal action commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer or agent in charge of its principal office in this state, or left at his dwelling-house or usual place of abode, at least six days before its return; and in case the president or other head officer or agent cannot be found to

be served with process, and has no dwelling-house, or usual place of abode within this state, a copy of the summons shall be served on the clerk or secretary of the corporation, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house, or usual place of abode, six days before its return.

88. Process against foreign corporations.

In all personal suits or actions hereafter brought in any court of this state, against any foreign corporation, process may be served upon any officer, director, agent, clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation; *provided,* that in case there is no officer, director, agent, clerk or engineer of said corporation residing in this state, nor any office, depot or usual place of business in this state, process may be served upon any motorman, conductor or servant of said corporation while in the discharge of his duties.

(As amended by P. L. 1908, p. 176.)
(See notes pp. 173, 176.)

89. When defendant in court.

When the sheriff or other officer shall return such summons "served" or "summoned," the defendant shall be considered as appearing in court, and may be proceeded against accordingly.

90. Proceedings when summons not served.

In case the sheriff or other officer shall return a summons, issued against any corporation of this state, "not served" or "not summoned," and an affidavit shall be made to the satisfaction of the court that process cannot be served upon it, the court shall make an order directing the defendant to cause its appearance to be entered to the action, on a day to be specified in the order, a copy of which order shall be inserted in one of the newspapers published in this state, for at least three weeks, once in each week, and a copy thereof shall also be posted in three public places in this state, as shall be ordered by the court, for at least three weeks, and if the defendant shall not appear within the time limited by the order, or within such further time as the court shall limit, then, on proof of the publication and posting of

the order, the court shall order the clerk to enter appearance for the defendant, and thereupon the action shall proceed as if the defendant had entered its appearance to the action.

91. Corporations not to alien lands during suit if order for publication is made.

No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien or convey any lands, tenements or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

IX. Remedies Against Officers and Stockholders.

92. Action for liability imposed by act; remedy in chancery.

When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them; and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

(See notes p. 134.)

93. Stockholders, etc., who pay company's debts may recover.

Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only

the property of the corporation shall be liable to be taken, and not the property of any stockholder.

(See notes pp. 128, 134.)

94. No satisfaction to be had of property until remedy against company has been exhausted.

No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made.

(See Sec. 153.) (See notes pp. 134.)

X. FOREIGN CORPORATIONS.

95. Foreign corporations may hold and convey lands, etc.

Any corporation created by any other state or by any foreign state, kingdom or government may acquire by devise or otherwise and hold, mortgage, lease and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; *provided,* such foreign state, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

(See notes pp. 89, 167.)

95½. Municipal corporations excepted.

It shall be lawful for any foreign corporation whatsoever, other than municipal corporations, to purchase and convey, to lease, hold, occupy and use for the purposes of such corporation, such real estate in this state as may be devised or conveyed to it.

("An Act to authorize foreign corporations to acquire, own and dispose of real estate in this state," P. L. 1902, p. 170, as amended by .P L. 1903, p. 41.)

(See notes pp. 89, 168.)

96. Foreign corporations subject to this act.

Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.

(See notes p. 168.)

97. Foreign corporations to file copy of charter, statement, etc., before commencing business.

Every foreign corporation, except banking, insurance, ferry and railroad corporations, before transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement the secretary of state shall issue to such corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

(See notes pp. 82, 168, 169, 172, 176.)

98. Cannot maintain action until certificate of secretary of state is obtained.

Until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; *provided,* that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

(See notes p. 169.)

99. Death of agent; appointment of another; penalty for failure.

If said agent shall die, remove from the state or become disqualified, such corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of state, upon being satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this state, and process against such corporation in actions upon any liability incurred within this state before the designation of another agent may, after such revocation, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

(See notes p. 172.)

100. Unlawful to transact business until conditions are complied with.

Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the state the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state.

(See notes p. 169.)

101. Foreign corporations to pay same taxes, etc., required of New Jersey corporations in other states.

When, by the laws of any other state or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such

other state or nation doing business within this state and upon their agents here; *provided*, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in the state.

102. Service of prerogative writ against foreign corporation.

In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation.

(See notes p. 173.)

103. How writs may be enforced.

In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this state.

(See notes p. 173.)

XI. MERGER OF CORPORATIONS.

104. Corporations of this state may merge and consolidate.

Any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation; but the provisions of this act relative to merger and consolidation shall not apply to any railroad company, insurance

company (except companies for the insurance or guaranty of the title to lands), banking company, savings bank or other corporation intended to derive profit from the loan and use of money, turnpike company or canal company.

(See notes p. 162.)

105. How consolidation or merger shall be made.

The consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereinafter mentioned:

1. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers shall be chosen or appointed; together with all such other provisions and details as such first-mentioned directors shall deem necessary to perfect the merger consolidation of said corporation.

2. The agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration; and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post-office address of each of such stockholders; and at the said meetings of stockholders the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the

adoption or rejection of the same, each share of stock entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

(See notes pp. 64, 127, 163.)

106. Corporations merged or consolidated shall be one corporation. Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of state, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

(See notes p. 164.)

107. Upon merging or consolidating, rights, etc., to be vested in new corporation. Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and

franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; *provided,* that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(See notes p. 164.)

108. Dissenting stockholder of corporation having franchise for public use may petition court for appointment of appraisers.

If any of the corporations so authorized to merge or consolidate shall have the right to exercise any franchise, for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such conolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation whose stockholders shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of three disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award (or that of a majority of them) when confirmed by the said court, shall be final and conclusive on all parties, and said consolidated corporation shall pay to such stockholder the value of his stock as aforesaid; and on receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of such award into said court, said

stockholder shall transfer his stock to the said consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders; and in case the said award is not so paid within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in the manner aforesaid unto said stockholder or said consolidated corporation, the amount of the award shall be a judgment against said corporation, and may be collected as other judgments in said court are by law collectible.

(See notes pp. 128, 164.)

108½. On merger or consolidation dissenting stockholder may have stock appraised.

1. Upon the merger or consolidation of any two or more corporations, which do not have the right to exercise any franchise for public use, into a single corporation, as provided by the act to which this act is a supplement, if any stockholder in any of said merging or consolidating corporations not voting in favor of such agreement of merger or consolidation, shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation, whose stockholder shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation for the appointment of three disinterested appraisers to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation; and thereafter the proceedings and the rights and remedies of the respective parties shall be the same as is provided in the act to which this act is a supplement in the case of the appointment of appraisers to appraise the market value of stock of dissenting stockholders of corporations enjoying the right to exercise any franchise for public use; and the judgment upon the award as provided for therein, shall be a judgment against said consolidated corporation, and shall be a lien on all the property and assets acquired by the consolidated corporation from the corpora-

tion so merged, subject only to such liens as existed against said property and assets at the time of such merger or consolidation.

2. Nothing herein shall in anywise limit, repeal or supersede the provisions of the one hundred and eighth section of the act to which this is a supplement.

(Supplement, P. L. 1902, p. 700.)
(See notes pp. 128.)

109. Consolidated corporation authorized to issue bonds and mortgage property.

When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; *provided,* such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may purchase, acquire, hold and dispose of the stocks of other corporations of this state or elsewhere, and exercise in respect thereto all the powers of stockholders thereof, and may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger or consolidation; which may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporations conveyed to the consolidated corporation, as well as upon money capital paid in.

(See notes p. 164.)

XII. Taxation.

110. Real and personal property; how taxed.

All real and personal property of every corporation shall be taxed the same as the real and personal property of an individual;

provided, that this †action shall not apply to railway, turnpike, insurance, canal or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations.

(See notes pp. 179, 180.)

XIII. Lost Certificates of Stock.

111. New certificates of stock may be issued for certificates lost or destroyed.

Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as indemnity against any claim that may be made against such corporation; a new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.

(See notes pp. 114, 128.)

112. Proceedings in case of refusal to issue new certificate of stock.

Whenever any corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of the corporation is located 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; such application shall be by petition, duly verified, in which shall be stated the name of the corporation, the number and date of the certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should

† This word should be "section."

not be required to issue a new certificate of stock in place of the one described in the petition; a copy of the petition and order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in the order.

(See notes pp. 114, 128.)

113. Court may proceed in summary manner.

At the time and place specified in the order, and on proof of due service thereof, the court shall proceed in a summary manner and in such mode as it may deem advisable to hear the proof and allegations offered in behalf of the petitioner, or the corporation, or other interested party, relative to the subject-matter of inquiry, and if upon such inquiry the court shall be satisfied that the 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 shall make an order requiring the corporation or other party, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the 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 the order the court shall direct that the petitioner deposit such security, or file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

(See notes pp. 114, 128.)

XIV.—FEES ON FILING CERTIFICATES; SUNDRY PROVISIONS.

114. Fees on filing certificates.

On filing any certificate or other paper, relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: for certificate of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorzed, but in no case less than twenty dollars; consolidation and merger of corporations, twenty cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this act; dissolution of corporation, change of name, change of nature of business, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value or of number of shares, twenty dollars; for filing list of officers and directors, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; and for all certificates not hereby provided for, five dollars; *provided,* that no fees shall be required to be paid by any religious or charitable society or association, or educational association having no capital stock.

(See Sec. 138.) (See Schedule of Fees and Taxes.)

115. Surviving incorporators may designate others for organization.

When one or more of the commissioners or incorporators of any corporation, created by or under any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be as effectual in law as if it had been effected by all the original commissioners or incorporators.

116. Mutual association may create capital stock.

The members of any mutual association heretofore or hereafter incorporated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

117. Secretary of state to compile and publish list of corporations.

The secretary of state shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

118. Repealer; vested rights not impaired.

The act entitled "An Act concerning corporations" (Revision), approved April seventh, one thousand eight hundred and seventy-five, and all acts amendatory thereof and supplemental thereto, except so far as herein expressly re-enacted, are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate of incorporation be thereby impaired or limited, and vested rights acquired under the repealed acts and actually exercised and enjoyed shall not be divested or disturbed, but no special provision relating to taxation, or immunity or exemption therefrom, contained in any special charter, shall be revived or continued by anything in this act; all acts and parts of acts, general and special, inconsistent with this act are hereby repealed; but this repealer shall not revive any act heretofore repealed.

119. Corporations may extend corporate existence.

Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence in the manner prescribed in the twenty-seventh section of this act; *provided,* that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such exten-

sion shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages.

(This new section, 119, is added to the Revision of 1896 by P. L. 1897, p. 11.)

119½. Extension, renewal and continuance of corporate existence. 1. The corporate existence of any corporation heretofore or hereafter created under or by virtue of any law of this state or of the successor of any such corporation may be extended, renewed and continued in the manner following: a meeting of the stockholders shall be called by a notice stating the object of the meeting signed by the holders of at least one-third in value of the outstanding capital stock of the company, which notice must be given personally or by mail to each stockholder at least ten days before the day of said meeting; if two-thirds in interest of each class of stockholders having voting powers shall vote in favor of such extension, renewal and continuation of corporate existence, a certificate thereof shall be signed by the presiding officer and secretary of said meeting, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent in person or by proxy of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and the certificate of the secretary of state that such certificate and assent has been filed in his office shall be taken and accepted as evidence of the extension, renewal and continuation of its corporate existence in all courts and places.

2. Upon making and filing such certificate and paying the fees now imposed or hereafter to be imposed upon corporations for certificates of incorporation, the period of existence of such corporation shall be extended as declared in such certificate; but the extension shall not be held to invest such corporation with any exclusive privileges, or exempt it from the operation of any general laws hereafter passed relating to the same class of corporations, or prevent the legislature from making applicable thereto any general law now in force relating to such class.

3. Nothing herein contained shall be construed to interfere with the right of the state of New Jersey, reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter

or amend the charter of the same, nor shall this act be construed to continue any irrepealable or other contract with the state contained in any charter beyond the time originally fixed for its expiration.

4. Nothing herein contained shall be construed as continuing in force and operation any special provision relating to taxation, or exemption therefrom, in the charter of any corporation whose corporate existence may have been or hereafter shall be extended, renewed and continued in conformity with the terms of this act; but each corporation whose corporate existence may have been or shall be extended, renewed and continued as authorized hereby shall be assessed for taxes in accordance with the provisions of the general law of this state relating to the taxation of corporations.

5. No corporation shall have the right to proceed under the provisions of this act unless it shall file with the certificate and written assent provided for in section one hereof an affidavit of the presiding officer and secretary of said meeting that it is at the time either actually engaged in, or has provided for, the conduct of the business for which it was incorporated; and in all cases where the charter of a corporation may have expired by limitation of time within four years next preceding the date when such corporation shall file the certificate herein mentioned, said corporation shall have the benefit of the right to proceed under the provisions of this act, and upon complying with the conditions set forth in this act the existence of such corporation shall be renewed, extended and continued as declared in said certificate with the same effect and force as if the certificate, written assent and affidavit provided for herein had been filed prior to the expiration of such charter period, and as fully as if said period of extension had been named in the original charter or certificate of organization of such corporation.

6. The provisions of this act shall not apply to any savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a street railroad company, a telegraph company, a telephone company, a gas company, an electric light company, a turnpike company, a plank road company, or any company which possesses the right of taking and condemning lands in this state.

("An Act concerning the extension, renewal and continuance of the existence of corporations organized under the laws of this state," P. L.

1902, p. 630; amended as to secs. 5 and 6 by chap. 205, Laws of 1903; P. L. 1903, p. 391.)

SUPPLEMENTAL AND MISCELLANEOUS ACTS.

(The following acts are given arbitrary section numbers, the numbers used being merely for convenient reference to the author's text, ante.)

138. Certificates and other corporate papers to be recorded.

It shall be the duty of the secretary of state to record in books for that purpose, all certificates and other papers relating to and in any way affecting corporations, now on file in his office and such as are required by any law of this state to be filed therein, excepting annual reports; such recording to be done upon typewriter with record ribbon of permanent color, on paper of approved durability; such records to be kept in a vault separate and away from the vault or place wherein the originals are filed; for this service the secretary of state shall, at the time of the filing of each certificate or other paper, charge a fee of ten cents per folio of one hundred words (with a minimum charge of one dollar), for the use of the state.

("An Act respecting the recording of certificates and other papers relating to and affecting corporations," P. L. 1904, p. 282.)
(See Sec. 114.) (See Schedule of Fees and Taxes.)

139. Every certificate and report must give address of New Jersey office and name of agent.

Every certificate, report or statement now or hereafter required by any law of this state to be made to any officer or department of this state, or to be published, filed or recorded by any corporation, domestic or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this state, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served; no certificate, statement or report shall hereafter be received, filed or recorded by any officer or in any office of this state unless the same shall comply with the foregoing provisions; such office of any domestic corporation so registered shall be and be deemed the office and post-office address of such domestic corporation, its officers, directors and stockholders, and whenever

by the provisions of any law of this state any notice is required to be given to the corporation, its officers, stockholders or directors, such notice shall be sent by mail or otherwise, as the law may require, to such registered office, and such notice so given shall be and be deemed sufficient notice; whenever by any law of this state in any such certificate, report or statement, the residence or post-office address of any incorporator, stockholder, director or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post-office address, the post-office address of the registered office of the company within this state.

(Supplement, P. L. 1898, p. 410.)
(See notes pp. 51, 77, 83.)

140. Every certificate and report must be in the English language.

Every certificate of incorporation including the corporate name or title, every amended or supplemental certificate, and every report, statement or other paper relative to or affecting corporations, domestic or foreign, now or hereafter required by any law of this state to be made to any officer, or recorded or filed in any office of this state, shall be in the English language; no certificate, statement, report or paper relative to or affecting corporations, shall hereafter be received, recorded or filed by any officer or in any office of this state. unless the same shall comply with the foregoing provisions.

("Act relative to corporations," P. L. 1903, p. 231.)
(See notes p. 77.)

141. Service of declaration.

The copy of the declaration * * * * when served separately from the process, may be served on a defendant whether a natural person or corporation in the same manner as a summons may be served; the plaintiff if he shall be entitled to costs in an action shall be allowed for such service the sum of two dollars for each defendant so served not exceeding three, to be taxed in the costs.

("An Act to regulate the practice of courts of law (Revision of 1903)," sec. 96, P. L. 1903, p. 537.)
(See P. L. 1906, p. 677, as to filing of affidavit of merits.)

142. Service of summons of District Court.

If the defendant be a domestic corporation, the summons shall be served on the president, or head officer, or agent in charge of its principal office, or any employee or clerk employed in any of its offices in the county, or left at his or her dwelling-house or usual place of abode, at least five days before its return. If the defendant be a foreign corporation, the summons shall be served upon any officer, director, agent, or clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode in such county, or by leaving a copy at the office, depot or usual place of business of such foreign corporation in such county, at least five days before its return.

("An Act concerning district courts (Revision of 1898)," sec. 46, as amended by P. L. 1908, p. 181.)

143. Service upon agent.

In any suit or proceeding heretofore or hereafter begun in the court of chancery against a corporation of this state, process of subpœna or other writ, notice, orders and papers of any nature whatsoever in such suit or proceedings served upon the president, vice-president, a director or the designated agent of the corporation or other officer thereof, shall be good and effective service upon the corporation.

(Supplement to "An Act respecting the Court of Chancery (Revision of 1902)," P. L. 1907, p. 76.)

144. Attachment against foreign corporations.

Attachments may issue against * * * corporations not created or recognized as corporations of this state by the laws of this state and joint stock associations.

("An Act for the relief of creditors against absent and absconding debtors," P. L. 1901, p. 158, sec. 4.)

(See notes p. 172.)

145. Corporations may not plead usury.

No corporation shall hereafter plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corpora-

tion; *provided,* that this act shall not apply to any such action which is now pending.

("An Act relating to usury," P. L. 1902, p. 459.)
(See notes p. 124.)

146. Notice of intention to repeal charter.

Of the intention to apply for the passage of a bill to repeal the charter of any corporation, or bill to repeal the charter and dispose of the property of any corporation, the public notice required by the first section of the act to which this is a supplement shall be given by publishing the same, in a daily newspaper published in Trenton, for at least six consecutive days prior to the introduction of such bill, and by serving a copy of the notice upon the president or secretary or a director or registered agent of the corporation, if such officer or agent can be found within this state, and if none of them can be found, then by personal service of such copy upon them or one of them out of this state, or by mailing a copy to them or one of them, directed to the residence or post-office address of such officer or agent, if known.

(Supplement to "An Act to prescribe the notice to be given of applications to the legislature for laws, when notice is required by the constitution," P. L. 1905, p. 17.)
(See notes p. 151.)

147. Change of location of office by directors.

The board of directors of any corporation, organized under the laws of this state, may change the location of the principal office of such corporation within this state to any other place within this state by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board; *provided,* that no certificate shall be required to be filed of the removal of any office from one point to another in the same town, township or city in this state.

Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the president and secretary of such corporation, and sealed with its corporate seal; for filing the said certificate, the secretary of state shall charge a fee of five dollars.

(Supplement, P. L. 1897, p. 175.)
(See notes pp. 58, 82.)

148. Corporations entitled to same tax exemptions as natural persons.

All mortgages which, under the laws of this state, are exempt from taxation when owned by natural persons, shall be and are hereby declared to be, to the same extent, exempt from taxation when owned by corporations of this state, and the value thereof shall be deducted from the value of the capital stock and property of such corporations in ascertaining the net amount of capital stock and property thereof subject to taxation; *provided, however,* that nothing in this act shall be construed as in any wise affecting or reducing any franchise tax.

("An Act concerning the taxation of corporate property and providing for certain exemptions therefrom," P. L. 1902, p. 546.)

(See notes p. 183.)

149. Conversion of preferred stock into bonds; issue of bonds convertible into common stock.

With the consent of two-thirds in interest of each class of the stockholders present in person or by proxy at a meeting called in the manner provided in section twenty-seven, every corporation organized under this act that shall have issued preferred stock, entitling the holders thereof to receive dividends at a rate exceeding five per centum per annum, and that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one year next preceding the meeting, and whose floating or unfunded debt at the time of the stockholders' meeting shall, in the certificate thereof filed with the secretary of state, be certified not to exceed ten per centum of the par amount of the preferred stock then outstanding, and whose assets at such time, after deducting the amount of its indebtedness, shall be certified in the judgment of the officers making such certificate to be at least equal to the amount of preferred stock issued and outstanding, may, with the consent of the holder of any such preferred stock, redeem and retire the preferred stock of such holder, out of bonds or out of the proceeds of bonds of the corporation, bearing interest at a rate not exceeding five per centum per annum, the principal of such bonds being made payable at a date not less than ten years from the date thereof; every corporation organized under this act may, from time to time, in the manner above provided, issue bonds, which, if therein so declared, shall be convertible at par at the

option of the holder, into fully-paid common stock of the corporation at par, within any period therein prescribed not less than two years from the issue thereof; and in such case the board of directors may authorize the issue of the common stock into which such bonds, by their terms, shall be convertible.

(Supplement, P. L. 1902, p. 217.) (See Sec. 29.)
(See notes pp. 61, 112, 113, 127.)

150. Use of certain words prohibited in corporate name.

1. No corporation shall hereafter be organized under the provisions of "An Act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, or any amendment thereof or supplement thereto, with the words "insurance" or "safe deposit" or "trust company" or "bank" as a part of its name, and no certificate of incorporation shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating its incorporation.

2. No corporation heretofore organized or doing business under the aforesaid act shall, by change or amendment of its name, use the words "insurance" or "safe deposit" or "trust company" or "bank" or any of them as part of its name, and no certificate of change or amendment shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating such change.

3. Nothing herein contained shall, however, be construed to apply to or affect the name of any corporation whose certificate of incorporation has heretofore been filed with the secretary of this state.

(Supplement, P. L. 1897, p. 274.)
(See notes p. 81.)

151. Certificate of incorporation; correction of errors; procedure.

Whenever, in the certificate of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The

board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution; the meeting of said stockholders shall be held upon such notice as the by-laws provide, and in the absence of such provision, then upon ten days' notice given personally or by mail; if two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of state, and upon the filing thereof, the certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

(Supplement, P. L. 1899, p. 174.)

152. Dissolution; payment of all taxes due as prerequisite.

Hereafter no corporation organized under any law of this state shall be dissolved by its stockholders until all taxes levied upon or assessed against such corporation by the state of New Jersey in accordance with the provisions of an act entitled "An Act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April eighteenth, one thousand eight hundred and eighty-four, and all acts amendatory thereof or supplementary thereto, shall have been fully paid, and a certificate to that effect, signed by the comptroller of the treasury, shall have been annexed to and filed with the certificate of dissolution.

(Supplement, P. L. 1900, p. 316.)

153. Liabilities arising under statutes of other states not to be enforced in this state.

1. No action or proceeding shall be maintained in any court

of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country.

2. No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual. if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.

(Supplement, P. L. 1897, p. 124.)

154. Pleading corporate existence.

In every suit or judicial proceeding in this state, to which a corporation is a party, the existence of such corporation shall be taken to be admitted, unless it is put in issue by the pleadings; and in courts in which the practice is that the defendant need not file a plea, the existence of such corporation shall be taken to be admitted unless the party to the suit denying the existence of such corporation shall file with the court an affidavit stating that to the best of his or its knowledge and belief such corporation does not exist.

(Supplement, P. L. 1903, p. 490.)

155. Expenses of investigation for refusal or neglect of corporation to report, etc.; collection.

On the neglect or refusal of a corporation incorporated under the laws of this state or doing business therein, to furnish the in-

formation prescribed by law to any state official required to publish a report on the standing and condition of such corporation, the expenses of the investigation authorized to be made because of such neglect or refusal shall be borne by said delinquent corporation and may be recovered therefrom in an action of debt in any court of competent jurisdiction in this state by the person authorized to make such investigation.

("An Act relative to the expense of investigating corporations delinquent in making returns," P. L. 1896, p. 321.)

156. Certain corporations may lease property and franchises to another corporation.

Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and that any such lease or assignment, or both, heretofore made, are hereby validated; *provided, however,* that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state.

("An Act concerning corporations," P. L. 1899, p. 334.)
(See notes p. 89.)

157. Certain corporations must pay employes' wages at least every two weeks.

Every person, firm, association or partnership doing business in this state, and every corporation organized under or acting by virtue of or governed by the provisions of an act entitled "An Act concerning corporations" (Revision of one thousand eight hundred and ninety six), in this state, shall pay at least every two weeks, in lawful money of the United States, to each and every employe engaged in his, their or its business, or to the duly-authorized representative of such employe, the full amount of wages earned and unpaid in lawful money to such employe, up to within twelve days of such payment; *provided, however,* that if at any

time of payment, any employe shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly-authorized representative, he or she shall be entitled to said payment at any time thereafter upon demand; any employer or employers as aforesaid who shall violate any of the provisions of this section, shall be deemed guilty of misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars for each and every offense, at the discretion of the court; *provided,* complaint of such violation be made within sixty days from the day such wages become payable according to the tenor of this act; the provisions of this section shall not apply to any employe or employes engaged in agricultural work or as watermen.

2. It shall not be lawful for any such person, firm, association, partnership or corporation, as aforesaid, to enter into or make any agreement with any employe for the payment of the wages of any such employe otherwise than as provided in section one of this act, except it be to pay such wages at shorter intervals than every two weeks; every agreement made in violation of this act shall be deemed to be null and void, and the penalties provided for in section one hereof may be enforced notwithstanding such agreement; and each and every employe with whom any agreement in violation of this act shall be made by any such person, firm, association, partnership, corporation or the agent or agents thereof, shall have his or her action and right of action against any such person, firm, association, partnership or corporation, for the full amount of his or her wages in any court of competent jurisdiction in this state.

3. The factory inspector of this state and his deputies shall make complaint against any employer or employers aforesaid who neglects to comply with the provisions of this act for a period of two weeks after having been notified in writing by said inspector or his deputies of a violation of this act; and it is hereby made the duty of county prosecutors of the pleas to appear in behalf of such proceedings brought hereunder by the factory inspector or his deputies.

("An Act to provide for the payment of wages in lawful money of the United States every two weeks," P. L. 1899, p. 69.)

(See P. L. 1911, p. 767, providing for semi-monthly payment of wages by railroads.)

158. Dissolution of educational corporation.

(Supplement, P. L. 1908, p. 113, provides for the dissolution of "any corporation created by any law of this state for educational purposes" and prescribes the methods of winding up same.)

159. Corporate shares may be levied on and sold on execution.

Bank notes, bills or other evidence of debt, circulated as money or any share or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels.

(C. S. of 1911, p. 2244, sec. 4.)

160. Certificate of corporate officer as to interest of defendant.

The clerk, cashier or other officer of such company, who has at the time the custody of the books of the company, shall upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall willfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him.

(C. S. of 1911, p. 2244, sec. 5.)

161. Non-residence of corporate official; notice by mail; posting transfer of shares.

When the clerk, cashier, or other officer of any joint stock company that is or hereafter may be incorporated under the authority of this state, who has the custody of the books of registry of the stock thereof, shall be non-resident in this state, it shall be the duty of the sheriff or other officer, receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such non-resident clerk, cashier or other officer, at the post-office nearest his reputed place of residence, stating in such notice that he, the said sheriff or other officer, holds such writ of execution, and out of what court, at whose suit, for what

amount, and against whose goods and chattels, such writ has been issued, and that by virtue of said writ, he, the said sheriff or other officer, seizes and levies upon all the shares of the stock of such company held by the defendant in execution on the day of the date of such written notice; and it shall also be the duty of such sheriff or other officer, on the day of mailing such notice, as aforesaid, to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode; and the sending, setting up, and serving of such notices in the manner aforesaid, shall constitute such levy taken, a valid levy of such writ upon all shares of stock in such company, held by the defendant in execution, which have not at the time of the receipt of such notice by the said clerk, cashier or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution, shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder.

(C. S. of 1911, p. 2244, sec. 6.)

162. Certificate of corporate officer; failure to make; false certificate; damages.

That the non-resident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice, and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff or other officer shall on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate, as aforesaid, or if he shall willfully send a false certificate, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to

be recovered in an action on the case against him; but the neglect to send, or miscarriage of such certificate, shall not impair the validity of the levy upon the stock.

(C. S. of 1911, p. 2245, sec. 7.)

Provisions of "An Act to provide for the imposition of state taxes upon certain corporations and for the collection thereof" approved April 18, 1884, P. L. 1884, p. 232, with supplements and amendments to the end of the legislative session of 1911, relating to corporations incorporated under the General Corporation Act.

163. Franchise tax on business corporations; report to state board of assessors; mining and manufacturing companies.

All corporations incorporated under the laws of this state, other than those which are subject to the payment of a state franchise tax assessed upon the basis of gross receipts, shall make annual return to the state board of assessors on or before the first Tuesday of May in each year, and shall state therein the amount of the capital stock of such corporation issued and outstanding on the first day of January preceding the making of said return, together with such other information as may be required by said board to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; and any shares of stock either fully paid or partially paid in cash or by property purchased whether issued or otherwise shall be deemed to be shares of stock issued and outstanding until such shares or any substitute therefor shall have been retired and actually canceled; *provided,* that this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or purely charitable or purely educational associations not conducted for profit, or manufacturing or mining corpora-

tions at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state, and which mining or manufacturing corporations shall have stated in the annual return to the state board of assessors where the mine or manufacturing establishment of such corporation or corporations is or are located, the character of the ores mined or the goods manufactured, the total amount of its capital stock embarked in the business of mining or manufacturing and the amount of capital stock actually employed in New Jersey in carrying on such mining or manufacturing business. If any manufacturing or mining company carrying on business in this state shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this state, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this state, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

(Supplement, P. L. 1906, p. 31.)
(See notes p. 184.)

164. Penalties for false statement, or failure to make statement.

If any officer of any company required by this act to make a return, shall in such return make a false statement, he shall be deemed guilty of perjury; if any such company shall neglect or refuse to make such return within the time limited as aforesaid, the state board of assessors shall ascertain and fix the amount of the annual license fee or franchise tax and the basis upon which the same is determined, in such manner as may be deemed by them most practicable, and the amount fixed by them shall stand as such basis of taxation under this act.

(Section 3, as amended by P. L. 1892, p. 136.)
(See notes p. 187.)

165. Duties and powers of state board of assessors.

The state board of assessors shall certify and report to the comptroller of the state, on or before the first Monday of June in each year, a statement of the basis of the annual license fee or franchise tax as returned by each company to, or ascertained

by, the said board, and the amount of tax due thereon respectively, at the rates fixed by this act; such tax shall thereupon become due and payable, and it shall be the duty of the state treasurer to receive the same; if the tax of any company remains unpaid on the first day of July, after the same becomes due, the same shall thenceforth bear interest at the rate of one per centum for each month until paid; the state board of assessors shall have power to require of any corporation subject to tax under this act, such information or reports touching the affairs of such company as may be necessary to carry out the provisions of this act; and may require the production of the books of such company, and may swear and examine witnesses in relation thereto; the comptroller shall receive as compensation for his services under this act, and under the act entitled "An Act for the taxation of railroad and canal property," approved April tenth, one thousand eight hundred and eighty-four, the sum of five hundred dollars annually.

(Section 5, as amended by P. L. 1892, p. 136.)
(See notes pp. 187, 188.)

166. Tax is a debt; how collected; preferred in case of insolvency. Such tax, when determined, shall be a debt due from such company to the state, for which an action at law may be maintained after the same shall have been in arrears for the period of one month; such tax shall also be a preferred debt in case of insolvency.

(Section 6.)
(See notes p. 188.)

167. Application by attorney-general for injunctions against company in arrears for three months. In addition to other remedies for the collection of such tax, it shall be lawful for the attorney-general, either of his own motion, or upon the request of the state comptroller, whenever any tax due under this act, from any company, shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of the state, on five days' notice to such corporation, which notice may be served in such manner as the chancellor may direct, for an injunction to restrain such corporation from the exercise of any franchise, or the transaction of any

business within this state until the payment of such tax and interest due thereon, and the costs of such application, to be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case appear, and upon the granting and service of such injunction, it shall not be lawful for such company thereafter to exercise any franchise or transact any business in this state until such injunction be dissolved.

(Section 7.)
(See notes pp. 188, 189.)

168. For failure for two consecutive years to pay state tax charter void, unless governor gives further time.

If any corporation created under any act of this state shall for two consecutive years neglect or refuse to pay the state any tax which has been or shall be assessed against it under any law of this state and made payable into the state treasury, the charter of such corporation shall be declared void as in section two of this act provided, unless the governor shall, for good cause shown to him, give further time for the payment of such tax, in which case a certificate thereof shall be filed by the governor in the office of the comptroller, stating the reasons therefor.

(Sec. 1, supplement, P. L. 1905, p. 508.)

169. Comptroller to report list of delinquents to governor who issues proclamation repealing charter.

On or before the first Monday in January in each year the comptroller shall report to the governor a list of all corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this state as above, and the governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed, and all powers conferred by law upon such corporations shall thereafter be deemed inoperative and void.

(Sec. 2, supplement, P. L. 1905, p. 508.)

170. Proclamation to be filed and published.

The proclamation of the governor shall be filed in the office of the secretary of state, and published in such newspapers and for such length of time as the governor shall designate.

(Sec. 3, supplement, P. L. 1905, p. 508.)

171. Exercise of corporate powers after repeal of charter a misdemeanor.

Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

(Sec. 4, supplement, P. L. 1905, p. 508.)

172. Attorney-general to proceed against delinquent corporations; receivership proceedings; sale of property; rights of purchaser.

After any corporation of this state has failed and neglected for the space of two consecutive years to pay the taxes imposed upon it by law, and the comptroller of this state shall have reported such corporation to the governor of this state, as provided in this act, then it shall be lawful for the attorney-general of this state to proceed against said corporation in the court of chancery of this state for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the state of New Jersey, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said state of New Jersey, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustee or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court. And if the said corporation shall neglect or refuse, within ten days from and after the serving of notice of such decree, to as-

sign and transfer the same to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

(Sec. 5, supplement, P. L. 1905, p. 508).

173. Governor may correct mistake when corporation is inadvertently reported.

Whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the comptroller as refusing or neglecting to pay the same as aforesaid, the governor is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of state.

(Sec. 6, supplement, P. L. 1905, p. 508.)

174. Governor, with advice of attorney-general, may renew void charters under certain conditions.

If the charter of any corporation organized under any law of this state shall hereafter become or shall have heretofore become inoperative or void by proclamation of the governor or by operation of law, for non-payment of taxes, the governor, by and with the advice of the attorney-general, may, upon payment by said corporation to the secretary of state of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to

be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of state shall issue his certificate entitling such corporation to continue its said business and its said franchises; *provided, however,* that the provisions of this section shall in nowise apply to any gas, electric light, telephone, telegraph, water, pipe-line, railroad, street railway company, or other corporation having the right to use the public streets or to take and condemn lands in this state; *and provided further,* that nothing in this section contained shall relieve any such corporation from the penalty of forfeiture of its franchises in case of failure to pay future taxes imposed under the act to which this is a supplement or under any law of this state.

(Sec. 7, supplement, P. L. 1905, p. 508.)

175. Proceedings for readjustment of excessive or unjust assessment. The officers of any corporation who shall consider the tax levied under the provisions of an act to which this act is a further supplement, excessive or otherwise unjust, may make application to the state board of assessors for a review of the assessment and a re-adjustment of the tax; *provided,* there be filed with the said board within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the state board of assessors shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear before said board, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of a majority of the board, it shall appear that the tax so levied as aforesaid is excessive or unjust, they shall thereupon require the officers of the corporation to file with the board a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced or amended as in the opinion of the board shall seem proper.

(Sec. 1, supplement P. L. 1897, p. 178.)

176. Right of appeal to state board waived after three months.

If the petition of appeal shall not be filed within three months from the date of assessment as aforesaid, the right to appeal to the state board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board.

(Sec. 2, supplement, P. L. 1897, p. 178.)

177. Taxes illegally assessed to be refunded.

When any corporation upon which taxes have been or shall be levied under the provisions of the act to which this is a supplement shall afterwards be found by the state board of assessors to be not liable under the said act for such tax, it shall be the duty of the said board to report and certify to the comptroller of the treasury the fact that such corporation has been found to be exempt from the tax imposed by the said act, and to cancel and declare null and void any taxes which may have been or shall be imposed upon such exempted corporation, and if any corporation has paid or shall pay the tax so improperly levied the comptroller of the treasury shall be and is hereby authorized upon receipt of such certificate to draw his warrant upon the state treasurer in favor of the proper officer of such corporation for any and all of such taxes which have been or shall be paid into the state treasury.

(Supplement, P. L. 1888, p. 118.)

SCHEDULE OF FEES AND TAXES.

FEES OF SECRETARY OF STATE.

(The minimum charge on all papers to be recorded is $1.00).

Original Certificate of Incoporation.	
Where capital stock authorized does not exceed $125,000..	$25 00
Where capital stock authorized exceeds $125,000 for each $1,000 of the total amount authorized.....	20
Certified copy where copy accompanies original.....	1 00
Recording fee per folio of one hundred words.....	10
Increase of Capital Stock.	
Where increase authorized does not exceed $100,00.....	20 00
Where increase authorized exceeds $100,000 for each $1,000 of total authorized increase.....	20
Recording fee per folio of one hundred words.....	10
Amended Certificates.	
Change of name.....	20 00
Change of nature of business.....	20 00
Decrease of capital stock.....	20 00
Increase or decrease of par value or number of shares....	20 00
Change of location of principal office under section 27....	20 00
All other amended certificates (except those authorizing increase of capital stock) for each amendment.....	20 00
Recording fee per folio of one hundred words.....	10
Certificate of change of location of principal office by directors. (Section 147)	5 00
Certificate of Dissolution.....	20 00
Certificate of extension or renewal of existence, the same fee as required for original certificate of incorporation. (Fee is computed upon amount of authorized stock at time of filing certificate of extension, not upon amount of stock authorized in original certificate of incorporation.)	
Certificate of payment of capital stock.....	5 00
Certificates not provided for.....	5 00
Recording fee on all above per folio of one hundred words,	10

Consolidation and Merger of Corporations.
For each $1,000 of authorized capital stock beyond the total authorized capital stock of the corporations merged or consolidated, twenty cents; but in no case less than 20 00
Recording fee per folio of one hundred words..... 10

Annual Report of Officers and Directors..... 1 00
No recording fee.

Foreign Corporation. Filing copy of charter and statement and issuance of certificate of authority to do business; minimum fee 10 00
(But see section 101 providing for the same payment of taxes, etc., by foreign corporations as New Jersey corporations are compelled to pay in such states).
Recording fee per folio of one hundred words..... 10

Foreign Corporation: Annual Report of..... 1 00
No recording fee.

COUNTY CLERK'S FEES.

Recording certificate of incorporation, either original or amended, according to length, usually..... 3 50

FRANCHISE TAXES.

(See section 163.)

FORMS.

INCORPORATION.

Form 1. Certificate of incorporation.

Certificate of Incorporation of the

——— ——— ———

THIS IS TO CERTIFY, That we (Name all the incorporators; there must be at least three), do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST. The name of the corporation is ———.

SECOND. The location of the principal office in this state is at No. ——— ——— Street, in the ——— of ———, County of ———.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is ———.

THIRD. The objects for which this corporation is formed are (State the objects and purposes in detail. See forms No. 5, et seq., for specific object clauses and clauses embracing general powers. The specific business in which the company is to actually engage should be set out as well as subsidiary objects which may be necessary in conducting the business. Several objects may be embraced in the same certificate.)

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States and in any foreign country or place.

FOURTH. The total authorized capital stock of this corporation is (this amount may not be less than $2,000) ——— dollars, divided into ——— shares of a par value of ——— dollars each. (If a part of the stock is to be preferred, that fact should be here set out and it should also be stated in what manner such stock is to be preferred. Forms of preference clauses will be found Nos. 36 and 37 below. Preferred stock may at no time exceed two-thirds of the capital stock paid for in cash or property.)

FIFTH. The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which ($———) is the amount of capital stock with which this company will commence business (this amount may not be less than $1,000), are as follows:

NAME.	POST-OFFICE ADDRESS.	NO. OF SHARES.
——— ———	——— ———	———

SIXTH. The period of existence of this corporation is unlimited.

SEVENTH. (Here insert any provisions deemed necessary for the regulation of the business, and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders or any class or classes of stockholders. Sec. 8, sub-div. VII).

IN WITNESS WHEREOF, We have hereunto set our hands and seals the —— day of —— A. D. nineteen hundred and ——.

Signed, sealed and delivered
in the presence of

(Add Acknowledgment Form 2.)

Form 2. Acknowledgment.

STATE OF ——, } ss.
COUNTY OF ——, }

BE IT REMEMBERED, That on this —— day of ——, A. D. nineteen hundred and ——, before me, a ——, personally appeared —— ——, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Form 3. Proof by subscribing witness in New Jersey.

STATE OF ——, } ss.
COUNTY OF ——, }

BE IT REMEMBERED, That on the —— day of ——, A. D. 19 —, before me, the subscriber, personally appeared —— ——, who, being by me duly sworn, on his oath did depose and say, that he saw (insert names of incorporators), the persons named in the foregoing certificate, sign, seal and deliver the same as their voluntary act and deed, and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.

Subscribed and sworn to before me the day and year aforesaid.

Form 4. Acknowledgment outside of New Jersey.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

BE IT REMEMBERED, That on this —— day of ——, A. D. 19 —, before me, —— ——, a commissioner residing in the said county of Cook, and duly appointed by the Governor of the State of New Jersey, for the taking of the acknowledgments and proofs of deeds of lands in that state, and duly commissioned and sworn (or, a notary public in and for said county and state duly commissioned and sworn, or as the case may be), personally appeared (insert names of incorporators), who I am satisfied are the persons named in and who executed the

foregoing certificate of incorporation, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year first above written. (If the acknowledgment be taken outside New Jersey before a Master in Chancery or Foreign Commissioner of Deeds for New Jersey no certificate of authority is required. If taken before a notary public or other officer authorized by the laws of the state where taken to take the acknowledgment of deeds for lands in that state then the certificate of authority must be attached.)

GENERAL OBJECT CLAUSES.

Form 5. Power to acquire a particular business.

To acquire and take over as a going concern the business now carried on at No. —— —— street, in the city of ——, under the firm name or style of —— ——, and in connection with the acquisition of such business, to purchase the good will and all or any of the assets and to assume all or any of the liabilities of the proprietors of such business.

Form 6. Power to acquire businesses.

To acquire the good will, business, rights, properties and assets of all kinds and descriptions and to assume the whole or any part of the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock, bonds, debentures or other securities of this corporation or otherwise, as may be determined by the directors.

Form 7. Power to conduct business in other states.

To conduct its business and have one or more offices and unlimitedly and without restriction, to hold, purchase, lease, mortgage and convey real and personal property in or out of this state, and in such place or places in the several states and territories of the United States, colonial possessions or territorial acquisitions of the United States and in foreign countries, as shall from time to time be found necessary and convenient for the purposes of the company's business.

Form 8. Power to purchase property.

Generally to purchase, take on lease, or in exchange, hire or otherwise acquire, any real and personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business.

Form 9. Power to borrow money.

To borrow money, to make and issue promissory notes, bills of exchange, bonds and evidences of indebtedness of the company of all kinds, for any of the objects or purposes of the company, secured by mortgage, or otherwise, without limit as to amount, and to secure the same in any lawful manner, as may be determined by the directors.

Form 10. Power to issue bonds.

To issue bonds, debentures or obligations of the company, from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge, or lien on any or all of the real and personal property, rights, privileges and franchises of the company wheresoever situated, acquired and to be acquired, and to sell or otherwise dispose of any or all of the same, all in such manner and upon such terms as the board of directors may deem proper.

Form 11. Power to acquire and hold stock, bonds, etc., of other corporations.

To acquire by purchase or otherwise, and to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or any other evidence of indebtedness created by any other corporation or corporations, domestic or foreign, and while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

Form 12. Power to manufacture and sell.

To manufacture, import, export, purchase or otherwise acquire, hold, own, mortgage, pledge, sell, assign, transfer, invest, trade and generally deal in and deal with goods, wares, merchandise and property of every kind, class or description.

Form 13. General power.

Generally, to do any and everything necessary, convenient, or proper for the accomplishment of any of the purposes or objects herein enumerated or the accomplishment of any purpose or object arising incidentally to the purposes herein mentioned, or which may at any time appear desirable or proper for the protection or best interest of the corporation, either as holders of or interested in any property or otherwise; with all the powers now or which may hereafter be conferred by the laws of the state of New Jersey upon corporations under the act herein referred to.

Form 14. Construing object clauses.

The foregoing clauses shall be interpreted and construed both as objects and powers, and it is the intention that the powers specified are not to be limited or restricted by the terms of any clause or paragraph herein contained, unless such restriction or limitation is expressed in terms, and it is hereby provided that the objects and powers herein specified are to be regarded as independent objects and powers, and are not to be held to limit or restrict in any manner the powers of the corporation.

SPECIAL OBJECT CLAUSES.

Form 15. Automobiles.

To manufacture, import, export, buy, sell and generally to deal in automobiles, cars, carriages, wagons, trucks, boats and vehicles and conveyances of every kind and description, and engines, motors, machinery and equipment, including all kinds of boats, parts of mechanism, appliances, tools, and supplies of all kinds used in connection with or necessary parts of such vehicles or conveyances, and to repair, lease, hire, store and furnish power to automobiles and vehicles of every sort, kind and description. To manufacture, buy, sell and deal in any and every kind of generators, gasolene or any other substance from which power may be derived in connection with the use of such vehicles or conveyances.

Form 16. Brokers.

To carry on and conduct the business of agents, factors and brokers and to do a general commission and brokerage business, and in connection therewith, to carry on a general printing and publishing business; to take over either for sale, management or care thereof, any real estate or property of any description, and to conduct the business of brokers and agents in real estate, fire insurance, life insurance, marine insurance or any other form of insurance, and generally to deal in the stocks and bonds of any corporation or corporations.

Form 17. Building and contracting.

To carry on and conduct the business of builders and contractors, and to make, enter into, perform and carry out contracts for the purpose of building, constructing, altering, repairing, improving or doing any other work in connection with any and all classes of buildings and improvements of every sort and kind; to advance money to and make contracts of all kinds with builders, contractors, property owners and others, and to prepare plans and specifications and act as consulting and superintending engineers and arhitects, and generally to perform any and all work in connection with building and contracting, and to this end to manufacture, buy, sell, trade and deal in any and all kinds of material used in the business of building or contracting, and to purchase property for investment or re-sale, and generally to sell and deal in land and property both real and personal, and any interest therein.

Form 18. Collection agency.

To maintain and conduct a general agency for the collection of debts and to act as agent for creditors and for claimants in the collection and settlement of debts and claims; to adopt in connection with the conducting of such agency, any means of advertising which may be necessary in promoting the business of the company, and to this end, to print and publish such papers, periodicals or magazines, as may be suitable and expedient.

Form 19. Dealing in merchandise or dry goods.

To buy, sell, import, export, trade and generally to deal in all kinds of merchandise, including (here insert the particular line of merchandise which it is the purpose of the company to deal in), and to establish, control and maintain one or more stores, salesrooms, warehouses or any other buildings which may be needed in the conducting of such business.

Form 20. Garage.

To buy, sell, import, export, operate, lease, let for hire and generally to deal in automobiles, motor cycles, cars, carriages, wagons, trucks and motor vehicles of every kind and description, and generally to buy, sell, and deal in goods, wares, appliances and equipment necessary or incidental to the operation of such vehicles, and for the purpose of carrying on its business, to buy, hold, sell and convey property, both real and personal, which may be necessary for the conducting of said business, and to build, maintain and operate buildings, stores, storage houses and garages for the sale, storing or letting for hire of such vehicles and conveyances.

Form 21. Holding company.

To acquire by purchase, subscription or in any other manner, and to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds or other securities or evidences of indebtedness or any shares of capital stock created or issued by any other corporation or corporations, association or associations of the state of New Jersey, or in any other state, territory or country, and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote upon the shares of the capital stock of any other corporation or corporations, association or associations; and to do any and all acts or things designed to aid in any manner any corporation or association whose stock, bonds or other securities or evidences of indebtedness, are so held by this company; and to do any and all acts or things designed to protect, preserve, improve or enhance the value of any such capital stock, bonds or other securities, or evidences of indebtedness of other corporations or assoiations held by this company.

Form 22. Investments.

To issue shares, stock, debentures, debenture stock, bonds and other obligations; to invest the money so obtained in, and to hold, sell and deal with stock, shares, bonds, debentures, debenture stock and securities of any government, state, corporation, public or private, or other body or authority; to vary the investment of the company; to mortgage or charge all or any part of the property and rights of the company, including its uncalled capital; to make advances upon, hold in trust, issue on commission, sell or dispose of any of the investments aforesaid, or to act as agent for any of the above or like purposes.

Form 23. Land improvement.

To buy, sell, exchange, rent, mortgage and otherwise acquire, dispose of and deal in real property, both improved and unimproved, and to build, construct, alter, remove or tear down houses or other buildings, and to do any and all things looking toward the improvement or enhancing in value of property acquired, and to generally manage, develop and improve real property.

To do a general agency and brokerage business in real estate, and to act as agent, factor or broker for any persons, associations or corporations in acquiring, disposing of or dealing in real property, and in connection with the acquiring and disposing of real property, whether such property be the property of this company or the property of some other person, association or corporation, to acquire by purchase or otherwise, to hold, pledge in any manner or dispose of and generally to deal in any form of personal property which may properly or conveniently be connected with the business of this company.

Form 24. Manufacturing.

To purchase, lease or otherwise acquire lands and buildings in this state or elsewhere for the erection and establishment of a manufactory or manufactories, and workshops with suitable plant, engines and machinery, with a view to manufacture, buy, sell, exchange, import, export, or otherwise deal in (here insert the particular commodities which it is intended to manufacture or deal in), either directly or indirectly by means of agents, agencies or otherwise.

Form 25. Mercantile jobbing.

To buy, sell, import, export and generally to trade and deal in any and all kinds of goods, wares and merchandise, either at wholesale or retail, and either as principal or agent, and to conduct a general agency, jobbing commission and brokerage business, and to carry on the business of general importers and exporters, and to this end, to vary from time to time, the kinds of goods, wares and merchandise to be dealt in as may be deemed expedient and most for the benefit and profit of the company.

Form 26. Mining.

To carry on the business of mining, quarrying or otherwise extracting or removing from the ground, gold, silver, copper, lead, zinc, brass, iron, steel and any and all kinds of ores, metals and minerals, and to mill, concentrate, convert, smelt, treat, manufacture, buy, sell, trade, exchange, import, export, and otherwise produce and deal in any and all of such ores, metals and minerals or the products and bi-products thereof of every kind and description, and generally to deal or traffic in any one or all of such ores, metals, minerals, their products and bi-products, and to this end to acquire by purchase or otherwise, own, lease, exchange, occupy, use or develop any land or lands or property of any and every kind and description, containing any of such ores.

metals or minerals, or any woodland or land containing any form of ore, oil or lumber.

Form 27. Patents.

To apply for, obtain, register, purchase, lease or otherwise to acquire and deal in and with patents, inventions and processes of every kind, nature and description, and to this end to acquire by purchase or otherwise, any patent, invention or process acquired or taken out by others, and to grant licenses in respect thereto, and to do any and everything in connection therewith, and to use the same in any manner which may be deemed best for the interests of the company.

Form 28. Publishers.

To manufacture, print, publish, sell, distribute, circulate, and generally to deal in all kinds of books, magazines, periodicals, pamphlets or publications of every nature and kind, and stationers' supplies, and to this end, to generally deal in any and all kinds of raw material which enter into the composition of, or are necessary parts of such manufacturing, etc., as above described, and generally to do any and everything which may be suitable and expedient in the carrying on and conducting of the general business of publishing.

Form 29. Trucking.

To carry on and conduct a general trucking business in all its branches, and to that end, to do a general trucking and storage business; to acquire and deal in all kinds of trucks and vehicles, draft animals and any other appliance or apparatus properly pertaining to such business of trucking, and to conduct in connection therewith, a general livery stable, including the acquisition, boarding and disposal of vehicles, live stock, harness and equipment.

To carry on and conduct a general storage business, and to act as brokers or agents for any person, firm, association or corporation in connection with any goods, wares or merchandise of such person, firm, association or corporation.

REGULATING CLAUSES.

Form 30. Cumulative voting at all elections of directors.

Each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director, or may distribute them among the number to be voted for or any two or more of them he may see fit.

Form 31. Classification of directors.

The directors shall be divided into five classes, such division to be made with respect to the time for which such directors shall severally hold office. The first class shall be elected for a term of five years;

the second class shall be elected for a term of four years; the third class shall be elected for a term of three years; the fourth class shall be elected for a term of two years; the fifth class shall be elected for a term of one year; and at each annual election after the first, the successors to the class of directors whose terms expire in that year shall be elected to hold office for the term of five years, so that the term of office of at least one class shall expire in each year.

Form 32. Directors and officers not subject to removal.

The directors, the members of the executive committee, the president or vice-president, shall not, in any manner, be subject to removal during their respective terms of office nor their terms of office diminished.

Form 33. Limitation on power to create mortgages.

The corporation shall not issue bonds or execute any mortgage or chattel mortgage upon its property or franchises without the consent of stockholders owning at least ninety (90%) per cent. of the preferred stock of the corporation, which consent shall be in writing and be filed in the office of the corporation. (If it is desired to have the consent of a percentage of the holders of common stock, provision for same should be included in this clause.)

Form 34. Limitation on voting power of common stock.

At all meetings of the stockholders, and at all elections for directors, each holder of common stock held by him and registered on the books of the company as provided by the by-laws, shall be entitled to one vote for each five shares of common stock so held and registered; no holder of less than five shares of common stock shall be entitled to any vote on any matter whatsoever.

Form 35. Limitation on voting power of preferred stock.

The holders of shares of the preferred stock of this corporation shall have no voting power whatever on any question of the management of the affairs of this corporation, nor shall the holders of shares of the preferred stock of this corporation be entitled to vote at any meeting of the stockholders of this corporation. Such right to vote at any meeting for the election of directors, or at any meeting of the stockholders concerning the management of this corporation, shall be exercised exclusively by the holders of the common stock.

CLAUSES REFERRING TO PREFERRED STOCK.

Form 36. Non-cumulative preferred stock.

Of such capital stock —— shares shall be preferred stock, and the balance, —— shares, shall be common stock. The preferred stock may be issued as and when the board of directors shall determine, and the holders of such preferred stock shall be entitled to receive,

when and as declared from the surplus or net profits of the corporation, and the corporation shall be bound to pay thereon as and when declared by the board of directors, a non-cumulative dividend at the rate of (dividends on preferred stock may never exceed eight (8%) per centum per annum), and no more, payable half yearly on dates to be fixed by the by-laws, before any dividend shall be set apart or paid on the common stock of the corporation; the remainder of the surplus or net earnings may, in the discretion of the board of directors, be distributed as dividends among the holders of the common stock, payable as and when the board of directors shall determine.

In the event of any liquidation or dissolution, or the winding up, whether voluntary or involuntary, or the distribution of assets of the corporation, the holders of preferred stock shall be entitled to be paid in full the par amount of their preferred shares, before any amount shall be paid to the holders of common stock, and after the payment of the par amount of the common stock to the holders thereof, the remaining assets and funds shall be divided and paid ratably to all the shareholders, without preference.

Form 37. Cumulative preferred stock.

Of such capital stock —— shares shall be preferred stock, and the balance, —— shares, shall be common stock. The preferred stock may be issued as and when the board of directors shall determine, and the holders of such preferred stock shall be entitled to receive, when and as declared from the surplus or net profits of the corporation, yearly dividends at the rate of (dividends on preferred stock may never exceed eight (8%) per cent.) —— per centum per annum and no more, payable quarterly on dates to be fixed by the by-laws. The dividend on the preferred stock shall be cumulative and shall be payable before any dividend on the common stock shall be paid or set apart, so that if in any year dividends amounting to —— per cent. shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon, or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared, and shall have become payable, and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumultive dividends for previous years and such accrued quarterly installments, or have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare a dividend on the common stock, payable then or thereafter out of any remaining surplus or net profits.

In the event of any liquidation or dissolution, or winding up, whether voluntary or involuntary, or distribution of the assets of the corporation, the holders of the preferred stock shall be entitled to be paid in full, both the par amount of their preferred shares, and the amount of dividends accumulated and unpaid thereon, before any

amount shall be paid to the holders of the common stock, and after the payment of the par amount of the common stock to the holders thereof, the remaining assets and funds shall be divided and paid ratably to all the shareholders without preference.

(In connection with the above clauses referring to preferred stock, a clause providing for the redemption of preferred stock at any time after three years from its issue at a price not less than par, may be inserted, as provided for in section 18, and provision may also be inserted reserving the right to amend the certificate of incorporation with respect to the issue of either common or preferred stock as provided for by section 27).

BY-LAWS.

Matters to be provided for by the by-laws

The power to make by-laws is in the stockholders. (See Sec. 11.) A list of matters which the Corporation Act provides may be regulated by by-law, is given below, together with reference to the particular section containing such provision. The by-laws of each corporation, however, should be drafted with special reference to the needs and purposes of such corporation, and for this reason it is obvious that no form of by-laws can be given which may be used for all corporations. Great care should be exercised in framing the by-laws and particular attention should be given to those sections regulating the business conduct and internal management of the corporation. Provision should be made for the following matters:

Fixing and altering number of directors, section 1, paragraph VI.

Management of corporate property, section 1, paragraph VI.

Regulation and government of its affairs, section 1, paragraph VI.

Regulations as to transfer of stock, section 1, paragraph VI; section 20.

Fixing time of annual election, section 12.

Classifying directors, if so provided in certificate of incorporation section 12.

Choosing of president, secretary and treasurer, section 13.

Fixing sum of treasurer's bond, section 13.

Determining manner of choosing other officers and agents and of fixing their term of office, section 14.

Determining method of filling vacancies, section 15.

Manner of calling and conducting meetings, section 17.

Determining qualifications of voters at stockholders' meetings, sections 17 and 36.

Fixing quorum, sections 17 and 34.

Determining qualifications of directors, section 39.

Establishing an office outside the state, section 44.

Keeping books outside the state, section 44.

Fixing time for declaration of dividends, section 47.

Giving directors power to fix amount to be reserved as working capital, section 47.

Fixing penalty for breach of by-laws, section 1, paragraph VI.

Form 38. By-laws.

Offices.

1. The registered office shall be at the office of the —— —— company, No. —— —— street, in the city of ——, New Jersey.

2. The company may have offices at such other places as may from time to time be determined upon by the directors.

Stockholders' Meetings.

3. All meetings of the stockholders shall be held at the registered office.

4. Stockholders may vote at all meetings, either in person or by proxy.

5. A majority of the stock issued and outstanding entitled to vote, represented by the holders thereof, either in person or by proxy, shall be and constitute a quorum at all meetings of stockholders.

6. The annual meeting of the stockholders shall be held on the —— day of ——, in each year at —— o'clock — M., when they shall elect, by a plurality vote, by ballot, the board of directors, the number and tenure of which are hereinafter determined by these by-laws. Each stockholder entitled to vote at such election shall have one vote for each share of stock standing registered in his name on the twentieth day preceding the annual meeting exclusive of the day of the meeting.

7. At each election of directors, the polls shall be opened and closed, the proxies and ballots shall be received and all questions touching qualifications of voters be decided by two inspectors, who shall be appointed by the presiding officer of the meeting. Such inspectors shall be sworn faithfully to perform their duties and shall report in writing the result of the ballot.

8. Written notice of the annual meeting shall be mailed to each stockholder at his registered address upon the records of the company at least —— days prior to the meeting.

9. Special meetings of the stockholders shall, at the written request of any director, or of stockholders owning one-quarter of the capital stock issued and outstanding, be called by the secretary by mailing a notice stating the object of such meeting, at least —— days prior to the date of the meeting, to each stockholder at his registered address upon the records of the company.

Directors.

10. The directors shall be —— in number and shall be chosen from the stockholders. They shall hold office for one year, and until their successors are elected and qualify. One of the directors must at all times be an actual resident of the state of New Jersey.

Directors' Meetings.

11. Regular meetings of the directors shall be held without notice on the —— day of each month at —M., at the registered office of the company in the city of ——.

12. A majority of the directors in office shall constitute a quorum for the transaction of any business which may properly come before them.

13. Special meetings of the directors may be called by the president, and shall be called upon the written request of two directors.

14. Notice of a special meeting of the directors shall be given to each director, either personally or by mail, at least —— days prior to the meeting.

15. The directors may hold their meetings and have one or more offices and keep the books of the company, except the stock and transfer books, outside the state of New Jersey, at such place or places as shall from time to time be determined by resolution of the board.

Powers of Directors.

16. The board of directors shall have the management and control of the business and property of the company, and, subject to the provisions of the statute, the certificate of incorporation, and these by-laws, may exercise all the powers of the corporation.

(If it is desired to limit or restrict the power of the directors in any way, a clause or clauses embodying such limitations or restrictions should be inserted; e. g., the power of the directors to mortgage the property of the corporation may be prohibited unless the consent of the stockholders is first obtained.)

Executive Committee.

17. The directors may appoint an executive committee of —— members to be chosen from among the members of the board. The executive committee may meet at such times and places as the committee shall, by resolution, determine, and shall make its own rules of procedure. A majority of the members of the executive committee shall constitute a quorum.

18. The executive committee shall have authority to exercise all the powers of the board of directors in the management of the business of the company at any time when the board of directors is not in session. The committee shall, however, be subject to the specific direction of the board of directors.

Officers.

19. At the first meeting after their election, the board of directors shall appoint a president and a vice-president from their own number, who shall hold office for one year and until their successors are appointed and qualify.

20. The board of directors shall also annually appoint a secretary and a treasurer, who need not be members of the board, and who shall hold office for one year, and until their successors are appointed and qualify; subject, however, to removal by the board at any time.

21. The board of directors may also appoint such other officers and agents as they may deem proper for such periods as in the judgment of the board may seem best. Such officers and agents shall be subject to removal at the pleasure of the board.

The President.

22. The president shall be the chief executive officer of the company, and during the intervals between the meetings of the board of directors and the executive committee, shall have general control and managment of the business and affairs of the company. The president shall have custody of the seal of the company and shall affix said seal to any instrument requiring the same. Either the president or the vice-president shall sign all certificates of stock.

The Vice-President.

23. The vice-president shall be vested with all the powers and shall perform all the duties of the president in his absence, and shall also perform such other duties as shall from time to time be assigned or delegated to him by the board of directors.

The Secretary.

24. The secretary shall act as secretary of all meetings of the stockholders, the board of directors and the various committees of the company, and shall record all votes and the minutes of all proceedings in a book or books to be supplied by the company and kept for that purpose.

25. He shall give proper notice of all meetings of the stockholders and of the board of directors, and shall also give proper notice of all calls for installments to be paid by the stockholders. He shall, by his signature, attest the seal of the company to any instrument whereon such seal is properly affixed. He shall perform such other duties as shall from time to time be assigned to him by the board of directors and shall be sworn to the faithful discharge of his duty.

The Treasurer.

26. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company and shall deposit all moneys and other valuable effects in the name and to the credit of the company, in such depositories as may be designated by the board of directors.

27. He shall disburse the funds of the company as may be ordered and authorized by the president or by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and directors at the regular meetings of the board, and at such other times as the president or board may require it, an account of all his transactions as treasurer and of the financial condition of the company. Either the treasurer or secretary with either the president or vice-president shall sign all certificates of stock.

Vacancies.

28. If the office of any director or member of the executive committee, or of the president, vice-president, secretary or treasurer, one or more, becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, although less than a quorum, by a majority vote, may elect a successor or successors, who shall hold office for the unexpired term.

Duties of Officers May Be Delegated.

29. In case of the absence of any officer of the company, or for any other reason that may seem sufficient to the board, the directors may, by a majority vote of the board, delegate the powers and duties of such officer, for the time being, to any other officer, or to any director.

Notice.

30. Any notice required to be given by these by-laws may be waived by the person entitled thereto.

Seal.

31. A corporate seal shall be provided by the directors which shall be of a form and design to be determined by the board.

Books.

32. The directors shall supply to the officers of the company such books as are required by the provisions of the statute and of these by-laws.

Transfer of Shares.

33. Shares in the capital stock of the company shall be transferred only on the books of the company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

Fiscal Year.

34. The fiscal year of the company shall begin the first day of —— in each year.

Dividends.

35. Dividends upon the capital stock of the company shall be payable —— on the —— day of the month in the months of —— —— in each year.

36. Dividends shall be declared only from the surplus or from the net profits of the company, and before declaring any dividends or making any distribution of profits, the directors may set apart out of the net profits or out of the surplus of the company, as a reserve fund to be used as working capital or for any other proper purpose, such sum or sums as the directors shall, in their discretion, deem just and proper and most for the best interests of the company.

Amendments.

37. The stockholders, by the vote of a majority of the stock issued and outstanding entitled to vote, may, at any annual or special meeting, alter, amend or repeal these by-laws, if notice thereof be contained in the notice of the meeting.

38. The board of directors, by a vote of —— members, may alter or amend these by-laws at a regular or special meeting of the board; provided, —— days' notice in writing shall have been given to each of the directors of the proposed amendment.

FIRST MEETING OF INCORPORATORS.

(See chapter 3, "Procedure in Organizing and Conducting Corporations").

Form 39. Notice of first meeting.

Notice is hereby given that the first meeting of —— —— company, for the purpose of electing a board of directors, and other officers, and taking such other action as may be necessary to properly organize the said company, will be held on the —— day of ——, 19 —, at —— o'clock in the —— noon, at the office of ——, No. —— —— street, in the city of ——, New Jersey.

Dated, ——, 19—.

(This notice must be signed by a majority of the incorporators, and either published or personally served on all the incorporators, section 16.)

Form 40. Waiver of notice of meeting of incorporators and subscribers.

We, the undersigned, incorporators and subscribers to the stock of the —— —— company, a corporation organized under the laws of the state of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of the corporation, and do fix the —— day of ——, 19 —, at —— o'clock in the —— noon as the time, and the registered office of the company, ——, N. J., as the place of said meeting.

And we do hereby waive all the requirements of the statutes of New Jersey as to notice of said meeting, and publication thereof, and do consent to the transaction of such business as may come before said meeting.

Dated, ——, 19 —.

(This waiver of notice must be signed by all the incorporators, section 16.)

Form 41. Proxy.

KNOW ALL MEN BY THESE PRESENTS,

That I, the undersigned, being a subscriber to —— shares of stock of the —— —— company, do hereby appoint —— —— as proxy with full power of substitution and revocation, to vote for me and in my name at the first meeting of the incorporators of the said company to be held —— ——, 19 —, and at any adjournment thereof.

WITNESS my hand and seal this —— day of ——, 19 —,

—— —— (L. S.)

In presence of

—— ——

Form 42. Minutes of first meeting of incorporators.

The first meeting of the corporation was held on —— day of ——, 19 —, at —— o'clock in the —— noon, at the registered office of the company, No. —— —— street, in the city of ——, New Jersey. (Here insert whether meeting was held on notice or on waiver of notice.)

The following incorporators were present in person or represented by proxy. (Here insert names of incorporators, number of shares held by each and whether incorporators were present in person or represented by proxy) being all the incorporators and subscribers to the capital stock of the company.

On motion, Mr. —— —— was elected chairman and Mr. —— —— was appointed secretary of the meeting.

The chairman reported that the certificate of incorporation of the company had been duly recorded in the office of the clerk of —— county, on the —— day of ——, 19 —, and filed in the office of the secretary of state of New Jersey, and presented a certified copy of said certificate of incorporation.

(If the meeting be held upon waiver of notice, the secretary should here present and read same.)

The secretary presented a form of by-laws for the regulation and management of the affairs of the company, which were read article by article and unanimously adopted.

The secretary presented the following transfers of subscription: —— —— to —— —— for one share of stock —— ——, to —— —— for one share of stock, and upon motion duly seconded, said transfers of subscriptions were approved. (These transfers of subscriptions are made necessary in order to qualify directors, as directors must be stockholders.)

Messrs. —— —— were nominated for directors of the company to hold office for the ensuing year. (There must be at least three directors.) No other nominations having been made, the polls were duly opened and all the stockholders having voted, by ballot, the polls were declared closed, and Messrs. —— —— having been appointed inspectors of election and having taken the required oath, presented their report duly certified, showing that the aforesaid gentlemen had been elected directors of the company by the unanimous vote of all the stockholders.

Upon motion, duly made and seconded and by the affirmative vote of all present, the following resolution was adopted:

That the principal and registered office of the company in New Jersey be established and maintained at ——, and that a sign with the company's name thereon, be conspicuously displayed at the entrance to such registered office.

That a stock and transfer book be kept at said registered office open to the inspection of any stockholder during business hours.

That —— —— be and hereby is appointed the agent of this company in charge of such registered office and said books, and that process against this company may be served upon the said ——.

That the said —— —— be and hereby is authorized to register transfers of stock.

(The board of directors may be authorized to assess the stock subscribed for by the incorporators in such amounts and at such times as they shall deem best, and it is the usual custom for the incorporators to waive notice of such assessment. For form of waiver of notice of assessment, see form 45.)

Upon motion duly made and seconded, and by the affirmative vote of all present, it was

Resolved, That the board of directors be and they hereby are authorized to issue the entire capital stock of this company in such amounts as from time to time shall be determined by the directors and as may be permitted by law, and to accept in full or part payment thereof, such property as the directors may determine shall be necessary for the business of the company. (Where it is desired to acquire certain property by the issue of stock of the company, it is deemed the better practice to have the stockholders by suitable resolution, authorize the directors to make such purchase.) Such resolution may be in form as follows:

Upon motion duly made and seconded, and by the affirmative vote of all present, the following preamble and resolutions were adopted:

WHEREAS, —— —— has offered to sell to this company all his right, title and interest to certain property as follows (here insert description of property):

In consideration of the issue of stock of this company to the amount of —— dollars, —— par value; and;

WHEREAS, It appears to the stockholders after due consideration and discussion, that such property is necessary and advantageous and for the best interests of this company and for the business uses and lawful purposes thereof, and that the said property is of the value of —— dollars,

Resolved, That the board of directors of this company be and they hereby are authorized in their discretion to purchase said property for the said price and to issue the said stock in payment therefor.

On motion, the meeting thereupon adjourned.

———— ————

Secretary of the Meeting.

(The papers referred to in the minutes of the first meeting of the incorporators should be inserted in the minute book in the order of their reference immediately following the minutes of the first meeting. These papers include the certificate of incorporation, appended to which is the certificate of secretary of state as to filing of same, the by-laws, the waiver of notice of the meeting if such meeting is held upon waiver of notice, the proxies, if any, the oath and report of inspectors, the transfers of subscriptions and the waiver of notice of assessment.)

Form 43. Transfer of subscription.

For value received, the undersigned has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto —— —— all the right, title and interest of the undersigned as a subscriber to and an incorporator of the —— —— company to the extent of —— shares of the capital stock of said company and hereby requests and directs the said company to register this transfer

on the books of the said company and to issue the certificate for said shares to the said —— ——, or his nominee or assigns.

WITNESS my hand and seal this —— day of ——, 19 —,

—— —— (L. S.)

In presence of

—— ——

Form 44. Inspectors' oath and report.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ——, }

We, —— ——, and —— —— being severally sworn, upon our respective oaths do solemnly swear that we will faithfully and honestly perform the duties of inspectors of election at the election to be held this day by the stockholders of the —— —— company, and that we will perform such duties with strict impartiality and a true report make of the result of such election.

Subscribed and sworn to before me this —— day of ——, 19—.

We, the undersigned, inspectors of election of the —— —— company, hereby report that having taken oath to faithfully, honestly and impartially conduct the election of the said company, we did receive the votes of the stockholders by ballot, and that the following directors were duly elected; said directors receiving the number of votes set opposite their respective names.

DIRECTORS.	NUMBER OF VOTES.
—— ——	—— ——

Signatures of Inspectors.

Dated —— ——.

—— ——

Form 45. Waiver of notice of assessment.

We, the undersigned, subscribers to the capital stock of the —— —— company, hereby waive thirty days' notice of assessment upon our respective subscriptions to the capital stock with which the said company begins business, and also waive notice of the time and place of payment of assessment upon such subscriptions, and we hereby agree to pay said assessments to the treasurer of the company in such sum or sums, at such time or times, and at such place or places, as the board of directors shall designate.

Dated —— ——.

(Unless subscribers waive notice of assessment, section 22 requires the directors to give thirty days' notice of each assessment and of the time and place of payment of same. Such notice may be given either personally, by mail, or by publication in a newspaper in the county wherein the corporation has its registered office.)

FIRST MEETING OF DIRECTORS.

(See chapter 3, "Procedure in Organizing and Conducting Corporations").

Form 46. Waiver of notice of first meeting of the board of directors.

We, the undersigned, directors of the —— —— company, a corporation organized under the laws of the state of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of the board of directors of said company, and we do hereby designate the —— day of ——, 19 —, at —— o'clock in the —— noon, as the time, and No. —— —— street, in the city of ——, as the place of said meeting; the purpose of said meeting being the election of officers, the authorization of the issue of the capital stock of the company, the authorization of the purchase of property, and the transaction of such other business as the board may deem advisable to perfect the organization of said company and to enable it to successfully carry on the business for which the said company was organized.

Dated —— ——.

(This waiver must be signed by all the directors.)

Form 47. Minutes of first meeting of directors.

The first meeting of the board of directors was held on the —— day of ——, 19 —, at —— o'clock in the —— noon, at No. —— —— street, in the city of ——, pursuant to a written waiver of notice, signed by all the directors fixing said time and place.

There were present Messrs. —— ——, constituting a quorum of the board.

Mr. —— —— was chosen chairman of the meeting and Mr. —— —— was appointed secretary of the meeting.

The secretary presented and read a waiver of notice of the meeting signed by all the directors and the same was ordered filed.

The minutes of the first meeting of the incorporators were read and approved.

The following gentlemen were unanimously elected officers of the company to serve for one year and until their successors are elected and qualify:

President, —— ——.
Vice-President, —— ——
Secretary, —— ——.
Treasurer, —— ——.

The president thereupon took the chair.

It was ordered that the secretary take the oath of office and subscribe the written oath in the form presented at this meeting.

It was ordered that the treasurer give a bond in the sum of ——— dollars, in the form presented at this meeting, which was approved by the board, and submit said bond to the board for approval as to the sufficiency of the surety.

The secretary was authorized and directed to procure the necessary corporate books, and to send the stock book and transfer book to the registered office of the company to be kept at such registered office as required by the statute.

The treasurer was authorized and directed to procure stock certificates for the company in the form submitted at this meeting.

Upon motion, duly made and seconded, it was

(Corporate Seal.) *Resolved,* That the seal presented at this meeting, an impression of which is hereto affixed, be and the same hereby is adopted as the corporate seal of this company.

Resolved, That the president and treasurer be and they are hereby authorized to issue certificates of stock in the form submitted at this meeting.

Upon motion duly made and seconded, it was

Resolved, That the treasurer be, and he hereby is authorized to open a bank account in behalf of the company with the —— —— bank, of the city of ——.

Further Resolved, That until otherwise ordered, said bank be, and hereby is authorized to make payments from the funds of this company on deposit with it, upon and according to the check of this company signed in its name by the —— and —— of this company.

Upon motion, duly made and seconded, it was

Resolved, That an office of the company be established and maintained at No. —— —— street, in the city of ——, state of ——, and that meetings of the board of directors be held at said office.

The chairman presented and read the draft of a proposed agreement between —— —— and this company providing for the sale by the said —— —— to this company of certain property described in said draft agreement and said proposed agreement having been discussed by the board of directors, and authority having been given the board of directors, by resolution duly adopted by the stockholders of this company, to purchase said property and to issue stock in payment therefor; it was, therefore,

Resolved, That this company accept the offer of —— —— to sell to this company the property described in said draft agreement, and the board of directors do hereby adjudge and declare that said property is of the fair value of —— dollars, and said property is necessary for the business of this company to enable it to carry out the purposes for which the company was organized.

Further Resolved, That the said draft agreement for the sale of said property be and the same hereby is approved.

Further Resolved, That the president and secretary of this company be and they hereby are authorized and directed to execute and deliver said agreement in the name and on behalf of this company and to affix the corporate seal thereto.

Further Resolved, That the president and treasurer be and they hereby are authorized and directed to issue certificates of the full paid capital

stock of this company to the amount of —— dollars, as provided in said agreement.

Further Resolved, That it having been heretofore agreed between the vendor of the property described in said agreement and the incorporators of this company that the stock to be issued to the vendor and his nominees, under said agreement should include the stock subscribed by the said incorporators as evidenced by the certificate of incorporation of this company; that payment of said subscription be deemed to be made by the property agreed to be sold to the company by the vendor as set forth in the preceding resolution.

Upon motion duly made and seconded, it was

Resolved, That the proper officers of this company be, and they hereby are authorized and directed in behalf of the company, and under its corporate seal, or otherwise, to make and file the certificate or statement required by law to be filed in any state in which the officers of the company shall find it necessary to file the same to authorize the company to transact business in such state.

The secretary was ordered to prepare, have executed by the proper officers, and cause to be filed in the office of the secretary of state of New Jersey the report of officers, directors, etc., required by section 43 (as amended) of "An Act concerning corporations (Revision of 1896)," of New Jersey.

On motion the meeting adjourned.

——— ———

Secretary of Meeting.

(The papers referred to in the minutes of the first meeting of directors should be inserted in the minute book in the order of their reference immediately following the minutes of the first meeting. These papers include waiver of notice of this meeting, oath of secretary, bond of treasurer, form of stock certificate, agreement and report to secretary of state.)

Form 48. Oath of secretary.

STATE OF ——, } *ss.*
COUNTY OF ——, }

I, —— ——, having been elected secretary of the —— —— company, a corporation organized under the laws of the state of New Jersey, do solemnly swear that I will faithfully discharge the duties of secretary of the said company to the best of my skill and ability.

Subscribed and sworn to before me this —— day of ——, 19 —.

Form 49. Bond of treasurer.

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, as principal and surety, respectively, are held and firmly bound unto the —— —— company, its successors and assigns, in the sum of —— dollars ($ ——), lawful money of the United States, to be paid to said company, its successors and assigns, for which payment, well and truly to

be made, we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this —— day of —— 19 —.

The condition of the above obligation is that

WHEREAS (name of treasurer), the principal, has been duly elected and is about to enter upon the duties of his office as treasurer of the above-named company.

NOW THEREFORE, If he shall in all respects fully and faithfully discharge his duties as such treasurer, so long as he shall hold the said office or continue therein during the term for which he is now or may hereafter be elected, appointed, or hold over, and also, if, in case of his death, resignation, disqualification or removal from office, all the books, papers, accounts, vouchers, money and other property of whatever kind in his possession belonging to the company shall be forthwith restored to the company, then this obligation to be void, otherwise to be in full force and virtue.

Signed, sealed and delivered
in the presence of

—— ——

Principal —— —— (L. S.)
Surety —— —— (L. S.)

Form 50. Stock certificate. Common stock.

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

(Number.) (Shares.)

The —— —— company.

Capital stock, ——. Shares, $ —— each.

THIS IS TO CERTIFY, That —— —— is the owner of —— shares of the capital stock of the —— —— company, transferable only on the books of the company, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

WITNESS the seal of the company and the signatures of its duly authorized officers this —— day of ——, 19 —.

(Corporate Seal.) —— —— —— ——

Title of Officer. *Title of Officer.*

Form 51. Stub of certificate.

Certificate No. ——
For —— shares.
Issued for ——
Dated ——, 19—.
Issued to —— of ——
From whom transferred ——
Dated ——
Original Certificate No. ——
No. Original Shares ——
Received Certificate No. —— for —— shares, this —— day of ——

Form 52. Stock certificate—Preferred stock.

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

(Number.) (Shares.)

Capital stock, $ ——.

Preferred stock, $ ——. Common stock, $ ——.

The —— —— company.

THIS IS TO CERTIFY, That —— —— is the owner of —— shares of the preferred capital stock of this company, transferable only on the books of the company, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed.

This stock is part of an issue amounting in all to $ —— par value authorized by the certificate of incorporation filed in the office of the secretary of state of the state of New Jersey on the ——— day of ———, 19—.

The holder of this stock is entitled to receive, and the company is bound to pay thereon, a fixed yearly dividend of —— per cent. per annum, payable half-yearly from the surplus or from the net profits of the company, before any dividends shall be set apart or paid on the common stock, and the dividends on the preferred stock are (cumulative or non-cumulative as the case may be).

In the event of any liquidation or dissolution, or winding up, whether voluntary or involuntary, of the company, the holders of the preferred stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock.

The preferred stock is subject to redemption at par on the —— day of ——, 19 —. (The date of redemption must be at least three years from the date of issue. See Sec. 18.)

WITNESS the seal of the company and the signatures of its duly authorized officers this —— day of ——, 19 —.

(Corporate Seal.) —— ——

Title of Officer. *Title of Officer.*

Shares, $ —— each.

Form 53. Endorsement of stock certificate.

FOR VALUE RECEIVED,—hereby sell, assign and transfer unto —— —— —— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint —— —— attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated ——, 19 —.

In the presence of

—— ——

Form 54. Annual report by a domestic corporation.

The —— —— company, organized and registered under the laws of the state of New Jersey, does hereby make the following report in compliance with the provisions of an act of the legislature of New

Jersey, entitled "An Act concerning corporations (Revision of 1896)" and the various acts amendatory thereof and supplemental thereto:

First. The name of the corporation is —— ——.

Second. The location of the registered office is at No. —— —— street, —— and —— —— is the agent upon whom process may be served.

Third. The character of the business is ——.

Fourth. The amount of the authorized capital stock is ——. The amount actually issued and outstanding is ——. (State whether issued for cash or property.)

Fifth. The names and addresses of all the directors and officers, and the terms when the office of each expires, are as follows:

NAMES OF DIRECTORS.	ADDRESS.	EXPIRATION OF TERM.
Officers—		
President.		
Vice-President.		
Treasurer.		
Secretary.		

Sixth. The next annual meeting of the stockholders for the election of directors is appointed to be held on —— day of ——, 19 —.

Seventh. The name of the corporation has been at all times displayed at the entrance of its registered office in this state, and the corporation has kept at its registered office in this state a transfer book, in which the transfers of stock are made, and a stock book, containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

WITNESS our hands the —— day of ——, A. D. 19 —.

(This report must be signed by either the president and one other officer, or by any two directors. It must be filed with the secretary of state within thirty days after the first election of directors and officers and annually thereafter within thirty days after the time appointed for holding the annual election of directors. See Sec. 43.)

Form 55. Appointment of agent in charge of registered office.

At a meeting of the —— ——, of the —— —— Company, held on the —— day of ——, 19 —, the following resolutions were adopted:

"*Resolved,* That —— —— be and hereby is appointed the agent of this company, in charge of the registered office and upon whom process against this company may be served in accordance with the laws of the

state of New Jersey, and transfer agent of the shares of stock of this company."

"*Further Resolved,* That the secretary be and hereby is authorized and directed to sign, and seal with the company's seal, a certificate of authorization to said agent."

I, —— ——, secretary of the —— company, hereby certify that the foregoing is a true and correct copy of the original resolutions as recorded in the minute book of the said company.

WITNESS my hand and the corporate seal of the company this —— day of ——, 19 —.

——— ———,

(Corporate Seal.) *Secretary.*

Form 56. Certificate to bank upon opening corporate account.

At a meeting of the board of directors of the —— —— company held on the —— day of ——, 19 —, the following resolutions were adopted:

"*Resolved.* That the treasurer be. and he is hereby authorized to open a bank account on behalf of the company with the —— —— bank of ——."

"*Further Resolved.* That said bank be and hereby is authorized to make payments from the funds of this company on deposit with it, upon and according to the check of this company, signed by its ——."

I, —— ——, secretary of the company, hereby certify that the foregoing is a true and correct copy of the original resolutions as recorded in the minute book of the said company.

WITNESS my hand and the corporate seal of the company this —— day of ——, 19—.

——— ———,

(Corporate Seal.) *Secretary.*

Form 57. Notice of assessment of stock.

Notice is hereby given that by a resolution of the board of directors, duly authorized by the stockholders, an assessment of —— per cent. on the capital stock of the —— —— company, is now called for, payable to —— ——, treasurer, No. —— —— street, —— on or before ———, 19—. Checks should be drawn to the order of the treasurer.

By order of the board.

——— ———,

Secretary.

(Unless the subscribers waive such notice, it is necessary to give thirty days' notice of the time and place of payment of each installment as called by the directors. This notice may be served on the subscribers personally or by mail, or it may be published in a newspaper in the county where the principal office is located. Sec. 22).

(For waiver of notice of assessment see Form No. 45.)

Form 58. Notice of sale for non-payment of assessments.

SALE OF STOCK OF THE —— COMPANY.

Notice is hereby given that pursuant to an order of the board of directors, and in pursuance of the statute in such case made and provided, the undersigned, as treasurer of the —— company, will sell at public auction on the —— day of —— at —— o'clock in the —— noon, at ——, —— shares of the capital stock of said company, standing in the name of —— ——, or so many of said shares as will pay $ ——, being the amount of unpaid assessments on said —— shares now due from said —— ——, and also the interest thereon from —— to the date of sale, and all necessary incidental charges.

$ —— has been paid the company on each of said shares.

An assessment of $ —— is now due on each of said shares, which assessment the purchaser must forthwith pay on each share in addition to the amount of his bid.

Dated ——.

—— ——,
Treasurer.

(This notice must be published once a week for three weeks successively before the sale, in a newspaper published in the county wherein the corporation has its principal office, and the notice must also be mailed to the delinquent stockholder prior to the first publication. Sec. 24.)

Form 59. Certificate of payment of capital stock of the —— company.

The location of the principal office in this state is at No. —— ——street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

In accordance with the provisions of "An Act concerning corporations (Revision of 1896)," we, —— ——, president, and —— ——, secretary, of the —— —— company, a corporation of the state of New Jersey, do hereby certify that —— dollars being the (here insert whether the amount is capital stock with which the company commenced business, or is the total amount of capital stock of the company) of capital stock of said company, as authorized by its certificate of incorporation filed in the department of state on the —— day of ——, A. D. 19—, has been fully paid in; —— dollars thereof by the purchase of property, and —— dollars thereof in cash. The capital stock of said company previously paid and reported is $ —— of common stock and $ —— of preferred stock.

WITNESS our hands the —— day of ——, A. D. 19—.

—— ——,
President.

—— ——,
Secretary.

STATE OF ——, } ss.
COUNTY OF ——, }

—— ——, president, and —— ——, secretary, of the —— —— company, being severally duly sworn, on their respective oaths depose and say that the foregoing certificate by them signed is true.

—— ——,
President.

—— ——,
Secretary.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

Form 60. Certificate of payment of additional capital stock of the —— company.

The location of the principal office in this state is at No. —— —— street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

In accordance with the provisions of "An Act concerning corporations (Revision of 1896)," we, —— ——, president, and —— ——, secretary of the —— —— company, a corporation of the state of New Jersey, do hereby certify that —— dollars, being the total amount of additional capital stock of said company as authorized by the certificate of increase of capital stock and assent of stockholders thereto, filed in the department of state, on the —— day of ——, A. D. 19—, has been fully paid in; —— dollars thereof by the purchase of property and —— dollars thereof in cash.

WITNESS our hands the —— day of ——, A. D. 19—.

—— ——,
President.

—— ——,
Secretary.

STATE OF ——,
COUNTY OF ——, ss.

—— ——, president, and —— ——, secretary, of the —— —— company, being severally duly sworn, on their respective oaths depose and say that the foregoing certificate by them signed is true.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

(This form is to be used where the capital stock is increased beyond the total amount authorized by the certificate of incorporation.)

AMENDMENTS.

Form 61. Amended certificate of incorporation before payment of capital.

(Set forth in full the certificate of incorporation as amended.)

THE UNDERSIGNED, Being all the incorporators of the —— —— company, a corporation organized under and in pursuance of an act of the legislature of the state of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," the certificate of incorporation of

which was duly recorded in the office of the clerk of the county of ——, New Jersey, on the —— day of ——, 19—, and duly filed in the office of the secretary of state of New Jersey, on the —— day of ——, 19—, no part of the capital stock of said corporation having been paid in, do hereby, pursuant to the provisions of section one, of an act of the legislature of the state of New Jersey, entitled "A supplement to an act entitled 'An Act concerning corporations (Revision of 1896),' approved April twenty-first, one thousand eight hundred and ninety-six, approved April nineteenth, one thousand eight hundred and ninety-eight," amend said certificate of incorporation so that the same shall read as hereinbefore set forth, and accordingly do hereunto set our hands and seals.

Dated ——, 19—.

Signatures of all the Incorporators.

STATE OF ——, } ss.
COUNTY OF ——, }

BE IT REMEMBERED, That on this —— day of ——, A. D. 19—, before me, a ——, personally appeared —— ——, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

STATE OF ——, } ss.
COUNTY OF ——, }

On this —— day of ——, A. D. 19—, before the undersigned, personally appeared —— ——, who being by me severally duly sworn, did severally depose and say that they are all of the original incorporators of the —— —— company, as set forth in the foregoing certificate and that no part of the capital stock of said —— —— company has been paid in.

Subscribed and sworn to before me at the —— of ——, the day and year aforesaid.

(See "Amendments and Changes" under chapter 3.)

Form 62. Amendment after payment of capital.

(See "Amendments and Changes after Organization" under chapter 3. Change of location of office is generally made under section 147.)

CERTIFICATE OF AMENDMENT

OF

THE —— —— COMPANY.

The location of the principal office in this state is at No. —— —— street, in —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

Resolution of Directors.

The board of directors of the —— —— company, a corporation of New Jersey, on this —— day of ——, A. D. 19—, do hereby resolve and declare that it is advisable that (here insert change or amendment

desired to be made) and do hereby call a meeting of the stockholders to be held at the company's office, in the city of ——, on the —— day of ——, 19—, at — M., to take action upon the above resolution.

Certificate of Change.

The —— —— company, a corporation of New Jersey, doth hereby certify that it has (here insert fully the change made, exactly as in the resolution of the directors), said —— having been declared, by resolution of the board of directors of said corporation (above recited), to be advisable, and having been duly and regularly assented to by the vote of two-thirds in interest of each class of stockholders having voting powers, at a meeting duly called by the board of directors for that purpose; and the written assent of said stockholders is hereto appended.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its president and secretary, and its corporate seal to be hereto affixed the —— day of ——, A. D. 19—.

—— ——,
President.

(Corporate Seal.) —— ——,
Secretary.

STATE OF ——, } ss.
COUNTY OF ——, }

BE IT REMEMBERED, That on this —— day of ——, A. D. 19—, before me, the subscriber, a —— personally appeared —— ——, secretary of the —— —— company, the corporation mentioned in and which executed the foregoing certificate, who, being by me duly sworn, on his oath says he is such secretary, and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that —— —— is president of said corporation, and signed said certificate and affixed said seal thereto, and delivered said certificate by authority of the board of directors and with the assent of at least two-thirds in interest of each class of the stockholders of said corporation having voting powers as and for his voluntary act and deed and the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

And he further says that the assent hereto appended is signed by at least two-thirds in interest of each class of stockholders of said corporation having voting powers, either in person or by their several duly constituted attorneys in fact, thereunto duly authorized in writing.

——— ———

——— ———

Stockholders' Assent to Change.

We, the subscribers, being at least two-thirds in interest of each class of the stockholders of the —— —— company having voting powers, having, at a meeting regularly called for the purpose, voted in favor of —— ——, do now, pursuant to the statute, hereby give our written assent to said change.

WITNESS our hands this —— day of ——, A. D. 19—.

STOCKHOLDERS.	NO. OF SHARES.

Form 63. Certificate of change of location of principal office.
(See "Change of location of office" under chapter 3.)

Resolution of Directors.

"The board of directors of the —— —— company, a corporation of New Jersey, on this —— day of ——, A. D. 19—, do hereby resolve and order that the location of the principal office of this corporation within this state be, and the same hereby is changed from ——, in the county of ——, to No. —— street, in the county of ——.

"The name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is ——."

Certificate of Change.

The —— —— company, a corporation of New Jersey, doth hereby certify that the foregoing is a true copy of a resolution adopted by the board of directors by a —— vote of the members thereof at a meeting held as therein stated.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its president and secretary, and its (L. S.) corporate seal to be hereto affixed, the —— day of ——, A. D. 19—.

——— ———,
President.

——— ———,
Secretary.

ANNUAL MEETING OF STOCKHOLDERS.

Form 64. Notice of annual meeting of stockholders.

Notice is hereby given that the annual meeting of the stockholders of the —— —— company will be held at the principal office of the company, No. —— —— street, ——, New Jersey, on —— the —— day of ——, at —— o'clock in the —— noon for the purpose of electing a board of directors and receiving and acting upon the reports of the officers (here insert any special business to be transacted) and for the transaction of such other business as may properly be brought before the meeting.

In accordance with the laws of the state of New Jersey, no stock

can be voted on which has been transferred on the books of the company within twenty days next preceding this election.

Dated ——, 19—.

—— ——,
Secretary.

Form 65. Call of meeting by three stockholders.

(This notice must be published for ten days previous to the date of the meeting in a newspaper published in the county wherein the principal office of the corporation is located and such notice must also be mailed to each stockholder. See Sec. 46.)

Notice is hereby given by the undersigned, three stockholders of the —— —— company, having voting powers, that a meeting of the stockholders of said company will be held at the company's principal office, No. —— —— street, ——, New Jersey, on —— the ——day of —— at —— o'clock in the —— noon, for the purpose of (here insert object of meeting). This call is issued by three stockholders because a legal meeting cannot be otherwise called.

Dated ——, 19—.

Signatures of three stockholders.

Form 66. Proxy—Stockholders' meeting.

KNOW ALL MEN BY THESE PRESENTS, That I, the undersigned, being the owner of —— shares of the capital stock of the —— —— company, do hereby constitute and appoint —— —— my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the annual (or special) meeting of the stockholders of the said company, to be held at the company's principal office, —— street, ——, N. J., on the —— day of ——, 19—, and on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at the said meeting or meetings, in voting for directors of the said company, or otherwise, and in the transaction of such other business as may properly come before the meeting, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my place, name and stead.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this —— day of ——, 19—.

Witness: —— ——, (L. S.)

—— ——.

Form 67. Minutes of annual meeting of stockholders.

The annual meeting of the stockholders of the —— —— company was held at the office of the company, No. —— —— street, ——, New Jersey, on the —— day of ——, 19—, at — M.

The meeting was called to order by Mr. —— ——.

Upon motion, Mr. —— —— was unanimously chosen chairman and Mr. —— —— was appointed secretary of the meeting. Neither the chairman nor secretary was a candidate for the office of director.

The secretary then read the roll of the stockholders entitled to vote at this meeting with the following result:

The following stockholders were present in person:

NAME.	NO. OF SHARES.
—— ——	——
—— ——	——

The following stockholders were represented by proxy:

NAME.	NAME OF PROXY.	NO. OF SHARES.
—— ——	—— ——	——
—— ——	—— ——	——

being a majortiy in interest of all the stockholders of the company.

The proxies presented were ordered to be filed with the secretary of the meeting.

The secretary presented and read a copy of the notice of the meeting, together with proof of the due mailing thereof, to each stockholder of the company, at least —— days before the meeting as required by the by-laws.

The transfer book and the stock book of the company, together with a full, true and complete list in alphabetical order of all the stockholders entitled to vote at the ensuing election, with the residence of each and the number of shares held by each, were produced, and remained during the election open to inspection.

Upon motion, duly made and seconded, the reading of the minutes of the last preceding meeting was ——.

Upon motion, duly seconded, Messrs. —— —— and —— —— (neither of them being a candidate for the office of director) were appointed inspectors of election and duly sworn.

Upon motion, duly seconded, the meeting proceeded to the election of —— directors, by ballot, in accordance with the by-laws, and the polls were opened at — M., and the stockholders prepared their ballots and delivered them to the inspectors.

The annual statement of the directors was presented and read and ordered to be received and filed with the secretary.

The report of the ——, for the past year —— presented and read and ordered to be received and filed with the secretary.

(Here insert the record of any other business transacted. Be careful to have any authorization to the directors or ratification of contracts, etc., set out in the form of resolutions and adopted in that form.)

The polls having remained open an hour, were closed, and the inspectors presented their report in writing, showing that the following gentlemen, all of whom are stockholders of the company, had received the greatest number of votes. (Here insert names of those receiving greatest number of votes.)

The chairman thereupon declared the above-named gentlemen duly elected directors of the company to hold office until the next annual election and until their successors are elected and qualify.

No further business coming before the meeting, upon motion duly made and seconded, the same adjourned.

——— ———,
Secretary of the Meeting.

(The following papers should be inserted in the minute book immediately following the minutes of the annual meeting of the stockholders: Notice of meeting, form 64; list of stockholders produced at meeting, form 68; form of proxy, form 66; reports presented, and inspectors' oath and report, form 44.)

Form 68. List of stockholders entitled to vote.

The following is a full, true and complete list in alphabetical order, of all the stockholders of the —— —— company entitled to vote at the election for directors, to be held at the principal office of the company, No. —— —— street, ——, New Jersey, on —— day of ——, 19—, at —M., with the residence of each, and the number of shares held by each, this list being made at least ten days before the date of said election at the direction of the board of directors as required by section 33 of "An Act concerning corporations (Revision of 1896)," as amended by chapter 172, section 3, Laws of 1898, P. L. 1898, p. 408.

Dated at ——, 19—.

——— ———,
Secretary.

———,
Address of Secretary.

NAMES OF STOCKHOLDERS.	RESIDENCES.	NO. OF SHARES.	
		COMMON.	PREFERRED.

Form 69. Notice of special meeting of stockholders.

Notice hereby is given of a special meeting of the stockholders of the —— —— company to be held at the principal office of the company, No. —— —— street, ——, New Jersey, on the —— day of —— at —— o'clock in the —— noon, for the purpose of (here insert the object of the meeting).

By order of —— ——.

——— ———,
Dated ——, 19—. *Secretary.*

(The method of calling a special meeting is to be determined by the by-laws. See form of by-laws, form 38, paragraph 9.)

Form 70. Notice of dividend.

The regular (insert whether quarterly, semi-annual or annual) dividend of —— per cent. on the common stock of the —— —— company has been declared, payable April 15th, 19—, to stockholders of record at the close of business March 28th, 19—. Transfer books will be closed from March 28th, 19—, to April 15th, 19—, both inclusive.

By order of the board of directors.

—— ——,

Dated ——, 19—. *Secretary.*

DISSOLUTION.

Form 71. Certificate of surrender of corporate franchise.

The location of the principal office in this state is at No. —— —— street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

We, the subscribers, being all the incorporators named in the certificate of incorporation of the —— —— company, a corporation of New Jersey, do hereby certify that no part of the capital of said corporation has been paid, and the business for which the corporation was created has not been begun.

And we do hereby surrender all our corporate rights and franchises which we have obtained by the creation of said corporation, to the end that said corporation may be forthwith dissolved.

WITNESS our hands and seals this —— day of ——, A. D. 19—.

—— —— (L. S.)
—— —— (L. S.)
—— —— (L. S.)

STATE OF ——, } ss.
COUNTY OF ——, }

—— ——, being severally duly sworn, on their oaths say that the facts stated and certified in the foregoing certificate are true.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

Form 72. Certificate of dissolution by unanimous consent of all stockholders of the —— company.

The location of the principal office in this state is at No. —— —— street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

We, the subscribers, being all of the stockholders of the —— —— company, a corporation of the state of New Jersey, deeming it advisable and most for the benefit of said corporation that the same should be forthwith dissolved, do hereby give our consent to the dissolution thereof, as provided by "An Act concerning corporations (Revision of 1896)," and do sign this consent to the end that it may be filed in the office of the secretary of state of the state of New Jersey.

WITNESS our hands this —— day of ——, A. D. 19—.

STATE OF ——, }
COUNTY OF ——, } *ss.*

—— ——, the secretary of the above-named company, being duly sworn, on his oath says, that the foregoing consent of the dissolution of said corporation has been signed by every stockholder of this company.

Subscribed and sworn to before me this —— day of ——, 19—.

(Here insert list of directors and officers at time of dissolution. See Form 76.)

Form 73. Affidavit of publication.

The location of the principal office in this state is at No. —— —— street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

STATE OF ——, }
COUNTY OF ——, } *ss.*

—— ——, the secretary of the —— —— company, being duly sworn, on his oath says, that the board of directors of the said company have caused the certificate of dissolution of the —— —— company, a copy whereof is hereto annexed, issued by the secretary of state of the state of New Jersey, dated the —— —— day of ——, 19—, to be published in the ——, a newspaper published at the —— of —— and circulated in the county of ——, being the county in which said company has been located and conducting its business, for the period of four weeks successively, at least once in each week, commencing on the —— day of ——, 19—, as required by section thirty-one of an act entitled "An Act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

Sworn and subscribed to before me this —— day of ——, A. D. 19—.

STATE OF NEW JERSEY, }
COUNTY OF ——, } *ss.*

—— ——, of lawful age, being duly sworn according to law, doth depose and say that he is —— of —— a newspaper printed and published in the —— of ——, county of ——, state of New Jersey, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, once in each week, for the period of four weeks, commencing on the —— day of ——, 19—.

Sworn and subscribed before me the ——day of ——, 19—.

(Annex copy of notice as published.)

Form 74. Certificate of dissolution issued by secretary of state.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.
CERTIFICATE OF DISSOLUTION.

To All to Whom These Presents May Come, GREETING:

WHEREAS, It appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof by the unani-

mous consent of all the stockholders, deposited in my office, that the —— —— company, a corporation of this state, whose principal office is situated at No. —— ——— street, in the ——, county of ——, state of New Jersey (—— ——, being the agent therein and in charge thereof, upon whom process may be served), has complied with the requirements of "An Act concerning corporations (Revision of 1896)," preliminary to the issuing of this

Certificate of Dissolution.

NOW THEREFORE, I, —— ——, secretary of state of the state of New Jersey, do hereby certify that the said corporation did, on the —— day of ——, 19—, file in my office a duly executed and attested consent in writing to the dissolution of said corporation executed by all the stockholders thereof, which said consent, and the record of the proceedings aforesaid, are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal, at Trenton, this —— day of ——, A. D. 19—.

—— ——,

(L. S.) *Secretary of State.*

Form 75. Certificate of dissolution by vote of directors and consent of stockholders (not unanimous).

The location of the principal office in this state is at No. —— —— street, in the ——, county of ——.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is —— ——.

We, the undersigned, being a majority of the board of directors of the —— —— company, do hereby certify that at a meeting of the said board, called for that purpose, and held on the —— day of ——, A. D. 19—, said board, by a majority of the whole board, did adopt the following resolution:

Resolved, That in the judgment of this board, it is advisable and most for the benefit of the —— —— company that the same should be forthwith dissolved; and to that end it is ordered that a meeting of the stockholders be held on ——, the —— day of ——, A. D. 19—, at — M., at the office of the company, in the —— of ——, to take action upon this resolution; and, further, that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution with a notice of its adoption, in the ——, a newspaper published in the —— of ——, for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States.

IN WITNESS WHEREOF, We have hereunto set our hands and affixed the corporate seal of said company this —— day of ——, A. D. 19—.

(L. S.)

Attest:

—— ——,

Secretary.

CONSENT OF STOCKHOLDERS TO DISSOLUTION.

WHEREAS, On the —— day of ——, A. D. 19—, the directors of the —— —— company, by a majority vote of the whole board, at a meeting called for that purpose, of which meeting every director received at least three days' notice, did adopt a resolution in the words or to the effect following, to wit:

"*Resolved,* That in the judgment of the board, it is advisable and most for the benefit of the —— —— company that the same should be forthwith dissolved, and to that end it is ordered that a meeting of the stockholders be held on ——, —— day of ——, A. D. 19—, at — M., at the office of the company, in ——, to take action upon this resolution; *and, further,* that the secretary forthwith give notice of said meeting, and of the adoption of this resolution, within ten days from this date, by publishing the said resolution with a notice of its adoption in the ——, a newspaper published in —— for at least four weeks, once a week, successively, and by mailing a written or printed copy of the same to each and every stockholder of this company in the United States."

AND, WHEREAS, the secretary of the said company did give notice of the meeting of stockholders, called by said resolution, as required by law, and the said resolution.

NOW, THEREFORE, we, the subscribers, being more than two-thirds in interest of all the stockholders assembled in pursuance of said resolution and notice, have consented, and do hereby consent, that the said company be forthwith dissolved as proposed in said resolution.

WITNESS our hands this —— day of ——, A. D. 19—.

—— Shares. —— Shares.
—— Shares. —— Shares.

Attest:

——, ——,
Secretary.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ——, }

——, being duly sworn, on his oath says, that he is the secretary of the —— —— company, that he saw ——, being more than two-thirds in interest of the stockholders of said company, at a meeting duly called for the purpose as above recited, sign the foregoing certificate of consent as their voluntary act and deed, and that deponent at the same time subscribed the same as attesting witness; and deponent further says that on the —— day of ——, A. D. 19—, he mailed a printed copy of the resolution above recited, with a notice of the adoption thereof, to each and every stockholder of said company residing in the United States, and also caused the same to be duly published as required by the said resolution; and deponent further says that the said resolution of the board of directors was duly adopted upon lawful notice as in the certificate above recited.

Sworn and subscribed before me this —— day of ——, A. D. 19—.

AFFIDAVIT OF PUBLICATION.

STATE OF NEW JERSEY, }
COUNTY OF ——, } *ss.*

—— ——, of lawful age, being duly sworn according to law, doth depose and say, that he is —— of ——, a newspaper printed and published in the —— of ——, county of ——, state of New Jersey, and that the notice of which the annexed printed slip is a true copy, has been published in said newspaper, successively, once in each week, for the period of four weeks, commencing on the —— day of ——, A. D. 19—.

Sworn and subscribed before me the ——day of ——, A. D. 19—.

(Attach copy of advertisement.)

Form 76. List of officers and directors at time of dissolution.

As required by "An Act concerning corporations (Revision of 1896)," the board of directors of the —— —— company render the following statement to be filed in the office of the secretary of state of the state of New Jersey, upon the dissolution of said company.

The location of the principal office in this state is at No. —— —— street, in the —— of ——, county of ——.

The name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is —— ——.

The following is a list of the names and residences of the directors and officers of said company:

NAMES.	RESIDENCES.

The officers of the company are:

President, —— ——.
Vice-President, —— ——.
2d Vice-President, —— ——.
3d Vice-President, —— ——.
Secretary, —— ——.
Treasurer, —— ——.

Dated ——, 19—.

The foregoing statement is correct and true.

—— ——,
President.

Attest:

—— ——,
Secretary.

Form 77. Certificate of filing of consent to dissolution issued by secretary of state.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

To All to Whom These Presents May Come, GREETING:

WHEREAS, it appears to my satisfaction by duly authenticated record of the proceedings for the voluntary dissolution thereof deposited in my office, that the —— —— company, a corporation of New Jersey, whose principal office is situated at No. —— —— street, in the —— of ——, county of ——, state of New Jersey (—— ——, being the agent therein and in charge thereof upon whom process may be served) has complied with the requirements of "An Act concerning corporations (Revision of 1896)," preliminary to the issuing of this certificate that such consent has been filed:

NOW, THEREFORE, I, —— ——, secretary of state of the state of New Jersey, do hereby certify that the said corporation did, on the —— day of ——, 19—, file in my office a duly executed attested consent in writing to the dissolution of said corporation executed by more than two-thirds in interest of the stockholders thereof, which said certificate, and the record of the proceedings aforesaid, are now on file in my said office as provided by law.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed my official seal at Trenton, this —— day of ——, A. D. 19—.

——— ———,
(Seal.) *Secretary of State.*

FOREIGN CORPORATIONS.

Form 78. Statement of foreign corporation.

THE —— —— COMPANY.

In accordance with the provisions of an act of the legislature of the state of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," the —— —— company, a corporation of the state of ——, does hereby certify and set forth:

FIRST. That the paper hereto attached is a true and correct copy of its charter or certificate of organization filed with the secretary of state of the state of ——, which copy is attested by our president and secretary under our corporate seal.

SECOND. The total amount of capital stock said company is authorized to issue is $ ——, and the amount actually issued is $ ——.

THIRD. The character of business which said corporation is to transact in this state is ——.

FOURTH. The place within the state of New Jersey which now is and is to be its principal place of business is No. —— —— street, in the city of ——.

FIFTH. —— ——, of full age, an actual resident of this state, whose abode is at No. —— —— street, ——, in the state of New Jersey, is the agent of said corporation in this state, upon which agent process against such corporation may be served in this state; said agent's office

is at the said principal place of business of said corporation in the state of New Jersey.

IN TESTIMONY WHEREOF, the said corporation hath caused its corporate seal to be hereto affixed, (Corporate Seal.) and these presents to be signed by its president and attested by its secretary, the —— day of ——, A. D. 19—.

THE —— —— COMPANY.

Attest: By —— ——, *President.*

—— ——,
Secretary.

(Attach to this statement the report as given in the form next following.)

Form 79. Annual report by a foreign corporation.

Organized under the laws of the state of ——.

The corporation above named, organized under the laws of the state of ——, does hereby make the following report in compliance with the provisions of an act of the legislature of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto:

FIRST. The name of the corporation is ——.

SECOND. The location of the registered office is at No. —— —— street, ——, and —— —— is the agent upon whom process may be served.

THIRD. The character of the business is ——.

FOURTH. The amount of the authorized capital stock is $ ——. The amount actually issued and outstanding is $ ——.

FIFTH. The names and addresses of all the directors and officers, and the term when the office of each expires is as follows.

NAMES OF DIRECTORS.	ADDRESS.	EXPIRATION OF TERM.
Officers—		
President,		
Vice-President,		
2d Vice-President,		
Treasurer,		
Secretary,		

SIXTH. The next annual meeting of the stockholders for election of directors is appointed to be held on ——.

WITNESS our hands —— the —— day of ——, A. D. 19—.

—— ——, *President.*

—— ——, *Secretary.*

(Annex to the statement as given in Form 78 and the report as given in Form 79, a copy of the charter or certificate of incorporation, and attest such charter or certificate as in the form following.)

Form 80. Attestation of charter or certificate of incorporation of foreign corporation.

The undersigned, president and secretary, respectively, of the —— —— company, do hereby certify that the annexed is a true and correct copy of the certificate of incorporation of the aforesaid company, and the whole thereof.

IN ATTESTATION WHEREOF, We have affixed our
(Corporate Seal.) hands and the corporate seal of the company, this —— day of ——, 19—.

——, *President.*
——, *Secretary.*

Form 81. Certificate of substitution of agent of a foreign corporation.

—— —— company, a corporation organized under the laws of the state of —— does hereby revoke, cancel and annul the appointment of (name of present agent) as its agent, upon whom process may be served, said appointment having been made heretofore and filed in the office of the secretary of state of the state of New Jersey, under the seal of the aforesaid company, by its president and attested by its secretary, under and in pursuance of the statutes of the state of New Jersey, and in substitution of the aforesaid designation so filed with the secretary of state of the state of New Jersey, the company above named does hereby make, designate and appoint —— ——, with an office at No. —— —— street, ——, New Jersey, which is the principal office of the company, as the agent of said company therein and in charge thereof, upon whom process against said company may be served.

IN ATTESTATION WHEREOF, said corporation has caused this certificate to be signed by its president
(Corporate Seal.) and secretary, and its corporate seal to be hereto affixed, the —— day of ——, A. D. 19—.

For the company,

——, *President.*

Attest:

——, *Secretary.*

Form 82. Corporate acknowledgment.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ——, }

BE IT REMEMBERED, That on this —— day of ——, one thousand nine hundred and ——, before me, the subscriber, a —— of said state, personally appears —— —— who, being by me duly sworn, doth depose and make proof to my satisfaction that he is the secretary and well knows the corporate seal of —— the —— named in the —— hereunto

annexed; that the seal thereto affixed is the proper corporate seal of the said corporation; that the same was so affixed thereto, and the said —— signed and delivered by —— ——, who was at the date and execution thereof, the —— of said corporation, in the presence of the said deponent, as the voluntary act and deed of the said corporation, and that deponent thereupon signed the same as a subscribing witness.

Sworn and subscribed before me at the —— of —— the date aforesaid.

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