

Bill of costs, how paid.
Amended.

28. The above bills, in ordinary cases shall be paid by the board of chosen freeholders of the county in which the death occurs; but when the expenses are occasioned in viewing a body cast upon the shores or coasts of the state by shipwreck, such bills, so taxed as aforesaid, shall be paid by the treasurer of the state, and said bills in such case shall be filed in his office.

Justice of supreme court may authorize chemical analysis.

29. If in any case it shall appear to the coroner to be necessary to have a chemical analysis made by a skilled person, of any substance which it is suspected has occasioned the death of the person whose body is found, he shall so report to a justice of the supreme court, who shall have the power in his discretion, to order such analysis to be made, and shall certify the expense thereof under his hand, which said expense so certified shall be paid, in the same manner as the expenses of holding the inquest.

Corporations.

I. POWERS.

1. Powers of corporation in general. To have succession; to sue, &c.; common seal; hold real estate; also realty taken for debt; to mortgage it and their franchises; appoint agents; make by-laws; wind up and dissolve.
 - ✓ 2. Said powers vest without specification.
 - ✓ 3. No others vest except expressly given.
 - ✓ 4. Banking powers never implied.
 5. Stockholders liable ratably to the amount of unpaid subscriptions.
 6. All charters subject to legislative alteration.
 7. Dividends of moneyed corporations not to be made except from profits, or directors to be liable; unless they dissent.
 8. Incorporation by legislative act invests company with all powers.
 9. And so also in cases of incorporation under general laws.
- II. FORMATION, CONSTITUTION, ALTERATION, DISSOLUTION.
10. Association for business purposes lawful. Certificate to be filed. Formation of certain companies not authorized.
 11. Certificate of incorporation, and what it shall set forth.
 12. Certificate and certified copy evidence.
 13. Upon making and recording certificate, persons associating incorporated.
 14. All companies under this or any law to have powers and be subject to liabilities in this act provided.
 15. Company may carry on a part of business out of state and hold real estate out of state.
 16. Directors and officers.
 17. Election of directors and president.
 18. Secretary and treasurer.
 19. Other officers to be elected and hold according to by-laws.
 20. Vacancies filled according to by-laws.
 21. Proxies allowed. By-laws to regulate elections.
 22. Meetings, how called.
 23. Certificate of stock.
 24. Stock may be increased, and how.
 25. Power to issue general and preferred stock.
 26. Transfer of stock.
 27. Assessments on stock.
 28. Penalty for non-payment of assessments.
 29. Proceedings for sale of shares.
 30. Certificate of payment of capital stock.
 31. Certificate of increase of stock.
 32. Penalty for not making certificates.
 33. Company may reduce stock and change nature of business.

34. How companies may be dissolved.
35. This act alterable. Effect of legislative action.

III. ELECTION OF OFFICERS.

36. Books of stock to be open for thirty days previous to election of directors.
37. Elections to be by ballot.
38. Each share to have a vote. Proxy allowed.
39. Persons holding stock as executors, &c., may vote.
40. Non-resident stockholders may vote.
41. List of stockholders to be produced at elections.
42. Candidate for director not to be judge of election.
43. Companies not to vote on their own stock.
44. Supreme Court to proceed summarily as to fraudulent proceedings at elections.
45. By-laws as to elections to be made thirty days previous to any election.
46. On failure to hold election new one shall be had on notice.
47. Person to be elected a director shall be a stockholder.
48. When not a stockholder he shall cease to be a director.
49. List of names and residences of directors and officers of companies to be filed with Secretary of State.

IV. MANAGEMENT AND LIABILITY OF DIRECTORS, &c.

50. Place of meeting to be in New Jersey, except when charter designates another place.
51. Calling of meetings by stockholders.
52. Manufacturing corporations to declare annual dividends.
53. Liability for refunded capital before debts are paid.
54. Payment of capital to be in money, and no loans to stockholders.
55. Stock may be issued for property purchased.
56. False certificate and penalty.

V. REMEDIES.

1. AGAINST THE CORPORATION.

57. Directors to be trustees on dissolution.
58. Powers and liabilities of such trustees.
59. Continuance of corporate existence for settling business.
60. Appointment of receiver to wind up company on petition.
61. Jurisdiction of chancellor on petition.
62. Duties of receivers.
63. Lien of workmen in case of insolvency.
64. Property to vest in stockholders on dissolution.
65. Suits not to abate on dissolution.
66. On execution against corporation, schedule of property to be shown sheriff.
67. Execution on debts due the company.
68. Penalty for refusing to answer.

69. Duty of directors in case of insolvency. Exhibit to be made.
70. Remedy in chancery, by bill, etc.
71. Evidence of insolvency.
72. Receivers may be appointed.
73. Receiver's oath.
74. Power to examine witness, etc.
75. Power to search, etc.
76. Inventory and report.
77. Further powers of receivers.
78. Trial by jury allowed at the circuit.
79. Receivers, majority may act. May be removed.
80. Distribution, how made.
81. Suits pending may be continued.
82. Appeal to chancellor. Power of the court.
83. Corporations not to transact business when receivers are appointed.
84. Land may be sold.
85. Franchises may be sold, etc.
86. Limitation of act.
87. Process what, and how served.
88. Process against foreign corporations.
89. When returned "served or summoned" defendant in court.
90. Proceeding when summons returned "not served" or "not summoned."
91. Corporations not to alien lands during suit if order for publication made
92. Suit to go on in case corporation dissolved.

2. AGAINST DIRECTORS AND STOCKHOLDERS.

93. Action for liability imposed by this act.
94. Remedy against by bill in chancery.

95. Stockholders who pay company's debts may recover of company.
96. Execution against stockholders and directors to stay till remedy exhausted against company.

VI. MISCELLANEOUS.

97. Notice to be given of application for acts of incorporation. What to specify. Proof.
98. Companies formed under manufacturing company act of 1846, may come under this act.
99. Foreign corporations authorized to hold and convey real estate in this state.
100. Contracts for sale, letting, &c., franchises, &c., shall be acknowledged and proved, and recorded in the office of the Secretary of State.
101. Repeal of manufacturing company act of 1846 and supplements.
102. Repeal of act of 1849 and supplements
103. Foreign corporations doing business in this state, subject to the provisions of the general act concerning corporations.
104. Repealer.
105. Taxation of estates of corporations. Proviso.
106. Receiver of insolvent railroad to operate road subject to order of chancellor.
107. On failure to elect directors on day required by charter, secretary on request of five stockholders shall call meeting for election of directors.
108. Preceding section not to apply to literary or religious societies.
109. Amended certificate of incorporation may be filed.
110. Pending suits or rights of action not to be affected.

R. S. 129, 136, 139,
146.

P. L. 1849, p. 300.

" 1850, p. 280.

" 1852, p. 87.

" 140, 397.

" 1853, p. 427.

" 1855, p. 706.

" 1860, p. 603.

" 1865, p. 354.

467, 707, 913.

" 1866, p. 296.

1034.

" 1869, p. 1001.

" 1870, p. 8, 27.

" 1871, p. 77.

" 1872, p. 27.

77, 89.

" 1873, p. 34, 76.

Power of corpora-

tions in general.

R. S. 136.

To have succes-

sion.

To sue, &c.

An act concerning corporations.

Revision—Approved April 7, 1875.

I. Powers.

1. That every corporation, as such, shall be deemed to 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, except so far as the constitution otherwise provides concerning banks or money corporations; (a)

II. To sue and be sued, complain and defend in any court of law or equity; (b)

(a) A corporation may acquire a name by reputation, *Den, The State v. Helmes, Pen. *1030*. Where a corporation sues by a wrong name the bill may be amended at the hearing, *The Hoboken Building Association v. Martin, 2 Beas. 427*. See *Inhabitants of Woolwich v. Forrest, Pen. *115*, *Middleton v. McCormick, Pen. *102*. A company must be sued by its incorporated name, *Fiac and Hemp Co. v. Bullentine, 1 Harr. 454*. A misnomer of a corporation in a deed will not vitiate it if its identity can be shown, *Upper Alloways v. String, 5 Hal. 323*, *Den v. Hay, 1 Zab. 174*; or, in a bequest, *Baldwin v. Baldwin, 3 Hal. Ch. 211*, *McBride v. Elmer, 2 Hal. Ch. 107*, *New York Conference v. Clarkson, 4 Hal. Ch. 541*. See *Voorhees v. Voorhees, 2 Hal. Ch. 511*; or in a contract, *Hoboken Building Co. v. Martin, 2 Beas. 427*. Whether a misnomer in an indictment be amendable, see *State v. New Jersey Turnpike Co., 1 Harr. 222*.

(b) *Assumpsit* will lie against a corporation on an implied contract, *Baptist Church v. Mulford, 3 Hal. 182*, *Mendham v. Losey, Pen. *352*, *Miller v. Church at Allowaystown, 1 Harr. 251*, *Worrell v. Church of Millstone, 8 C. E. Gr. 96*; and suit for malicious prosecution, *Vance v. Erie Railway, 3 Tr. 334*; and trespass for an assault and battery, *Brokaw v. N. J. R. Co., 3 Tr. 328*; and for a tort committed by its servants or agents, *State v. Morris and Essex R. Co., 3 Zab. 360*. They are indictable for a nuisance, *Ibid.*, *State v. Morris and*

Essex R. R., 1 Dutch. 437. The liability of a corporation for damages, (for causing back-water), does not depend upon the question, whether it is a public or private corporation, but, whether the franchise is created for private emolument or exclusively for the public good. In the former case such liability exists, in the latter, not, *Tinsman v. Bel. Del. R. R. Co., 2 Dutch. 149*. A corporation may maintain an action for libel for words published of them concerning their trade or business, *Trenton Fire Insurance Co. v. Perrine, 3 Zab. 402*. Where the charter of a city directed the common council to make compensation to land owners for damages caused by altering street grades, no action will lie against the city if the common council omit to have such damages assessed in the mode prescribed by the charter. The remedy is by *mandamus*, *Reock v. Mayor, &c., of Newark, 4 Tr. 129*. See *Kearney v. Andrews, 2 Stock. 70*. An action will lie against a township for bonds issued in the name of the township, to aid the building of a railroad, by commissioners under the authority of an act of the legislature, but the person bringing such suit, must show that all the requirements of the act were complied with before such bond was issued, *Morrison v. Inhabitants of Bernards, 7 Tr. 219*. And the township is not estopped by any recital in such bond, from denying that sufficient authority existed for issuing it, *Hudson v. Inhabitants of Winslow, 6 Tr. 437*.

Common seal.
Hold real estate.

III. To make and use a common seal, and alter the same at pleasure;(a)
IV. To hold, purchase and convey such real(b) and personal(c) estate as

S. C., 6 C. E. Gr. 172. It seems that if such bonds are issued with the *prima facie* proof required by the statute authorizing their issue, that the statute has been complied with, and get into the hands of innocent holders for value, the township is liable, *Lane v. Schomp*, 5 C. E. Gr. 82. See *Wood v. Allegheny County*, 3 Wall. Jr. 267. *McCoy v. Washington Co.*, 3 Wall. Jr. 381. *Van Hook v. The Somerville Manufacturing Co.*, 1 Hal. Ch. 633. A foreign corporation not doing business in this state is not suable here on a contract made in another state, *Camden Rolling Mill v. The Swede Iron Co.*, 3 Vr. 15. Such corporation may defend itself against an illegal taxation, although not recognized in this state, *Eric Railway Co. v. The State*, 2 Vr. 531. It can be sued here if incorporated under the laws of this and another state, *State, Eastern Delaware Bridge Co. v. Metz*, 3 Vr. 199. *McGregor v. Eric Railway*, 6 Vr. 115. So, if such corporation be transacting business here under legislative authority, *Austin v. New York and Eric Railroad*, 1 Dutch. 381. Nor can an attachment issue against such corporation, *Phillipsburg Bank v. Lackawanna Railroad Co.*, 3 Dutch. 206. See *State v. Del., Lack. and Western R. R. Co.*, 1 Vr. 473; 2 Vr. 531. The agents of a corporation may be sued here although their corporation cannot, *Bonaparte v. Camden and Amboy R. R. Co.*, Bald. 205. A Pennsylvania plaintiff may sue in the circuit court of the United States for New Jersey, a corporation chartered by the latter state, for consequential injuries done to plaintiff's real property lying in Pennsylvania, the cause of the injury—a canal—being in New Jersey, *Rundle v. Del. and Raritan Canal Co.*, 1 Wall. Jr. 275. A county may be sued in the United States courts, *McCoy v. Washington County*, 3 Wall. Jr. 381. An action will not lie in behalf of an individual who has sustained special damage from the neglect of a public corporation to perform a public duty, *Livermore v. Freeholders of Camden*, 2 Vr. 507; as an injury to the plaintiff's horse from a defect in a public street, *Pray v. Mayor of Jersey City*, 3 Vr. 394. See *Ranjon v. Bodine*, 2 Gr. 472. A corporation not transacting business in another state, cannot be sued there by serving process on one of its officers accidentally in such state, *Moulin v. Insurance Co.*, 4 Zab. 223. *Aüter*, where an agency is established and business carried on in such state, *Copen v. Insurance Co.*, 1 Dutch. 67. Where the company has been transacting business in such state, but has withdrawn, a suit will lie on a contract made before such withdrawal, *Moulin v. Trenton Insurance Co.*, 1 Dutch. 57. A majority of the directors of a corporation may bring suit in its name, *Johnston v. Jones*, 8 C. E. Gr. 217. The corporation must be joined as a party in a suit brought by the president to enforce a contract signed by him as president, and on behalf of the corporation, *Nichols v. Williams*, 7 C. E. Gr. 63. In a suit brought by a corporation the officers and members were not such parties to the action as would prevent their being witnesses, before the act of March 18, 1859, *Assurance Association ads. Cotes*, 2 Dutch. 362. But it was held that a stockholder must transfer his stock before he could become competent, *The Delaware and Atlantic R. R. Co. v. Trick*, 3 Zab. 321. An action for instalments due on the subscriptions to the capital stock of a corporation, made to the commissioners named in the charter, is properly brought in the name of the company after its organization, *Delaware and Atlantic R. R. Co. v. Trick*, 3 Zab. 321. See *The President & Co. of Turnpike Co. v. Inlay*, 1 South. *285(a). *Hardenburgh v. Farmers Bank*, 2 Gr. Ch. 68. Suit against officers or agents to account, or for misconduct, must be in the name of the corporation, *Brown v. Van Dyke*, 4 Hal. Ch. 795. An individual cannot use the name of a corporation to protect or recover his own rights, *Silk Co. v. Campbell*, 3 Dutch. 539. Nor can a plaintiff in *certiorari*, unless holding the rights of a corporation, assign as a reason for setting aside the action of certain officers, that such action is in violation of the rights of the company, *State v. Snedeker*, 1 Vr. 80. A stockholder in an incorporated company cannot, on a *certiorari* prosecuted by him individually, have an erroneous assessment made against such company set aside or corrected, *State v. Flavell*, 4 Zab. 370. Nor can a corporation bring up for correction taxes assessed against the stockholders individually. An application to amend by substituting names of some of the taxed stockholders, made at the hearing, was denied, *State, Farmers Bank v. Cook*, 3 Vr. 347. Where property has been given in trust for a church not incorporated, it is competent for any person belonging to that church, on behalf of himself and of all others belonging to that church and entitled to the use of the funds, to come into a court of equity to enforce the execution of the trust, *Associate Reformed Church v. Trustees of Theological Seminary*, 3 Gr. Ch. 77. The affidavit to a bill filed in chancery by a corporation must be sworn to by the officer or agent who knows the facts, *Youngblood v. Schamp*, 2 McCart. 42. An affidavit made by such officer or the attorney is sufficient to authorize the issuing of an attachment, *Trenton Bank v. Haverstick*, 6 Hal. 171; or the granting of an appeal from a justice's court, *Steamboat Co. v. Baldwin*, 2 Gr. 440. A corporation, foreign or domestic, need not prove its corporate existence, where the defence is on the merits, *Den v. Van Houten*, 5 Hal. 270. *Bennington Iron Co. v. Rutherford*, 3 Harr. 158. *Star Brick Co. v. Ridsdale*, 7 Vr. 229. *Worrell v. Church of Millstone*, 8 C. E. Gr. 96. *Washington Life Insurance Co. v. Paterson Silk Co.*, 10 C. E. Gr. 160. *Butterfield v. Third Avenue Savings Bank*, 10 C. E. Gr. 533. See *Rainier v. Howell*, 1 Stock. 121.

Nor in an indictment is it necessary to set out such incorporation, *State v. Weller, Spen*, 522. *State v. Van Hart*, 2 Harr. 327. *Contra, Stone v. The State, Spen*, 401. The venue should be laid in the county where the principal office of such corporation is located, *Thorn v. Central Railroad Co.*, 2 Dutch. 121. *State Bank at Morris v. Hedenberg*, 1 Harr. 353. See *Rundle v. Delaware and Raritan Canal Co.*, 1 Wall. Jr. 275, cited *supra*. The service of process on any officer or agent of the company, whose duty it is, either in his official capacity, or by virtue of his employment, to communicate the fact of such service to the governing body of the corporation, is good, *Dock v. Elizabethtown, &c., Co.*, 5 Vr. 312. See *Trenton Banking Co. v. Woodruff*, 1 Gr. Ch. 118. A service upon A. B. "said to be one of the directors of the within named company," is bad, *Den, Auten v. Bridgewater Co.*, 5 Hal. 237. An answer in chancery must be under the seal of the corporation, *Haight v. The Morris Aqueduct*, 4 Wash. C. C. 601. *Ransom v. Stonington Bank*, 2 Beas. 212. In declaring against an incorporated company for a tort, the correct mode is to show a case without referring to the statutory right of the company; but if a color of right to do the act in question is shown in the company, then the abuse of such right must be laid, *The Stephens and Condit Co. v. Central Railroad Co.*, 4 Vr. 229. A corporation chartered by this state, although it has no property within the state, cannot be required to give security for costs, *Pennsylvania &c. Co. v. Andrews*, 3 Hal. 177.

(a) The appearance of a corporate seal to an instrument is evidence that it was affixed by proper authority, but such presumption may be disproved. The burden of proof is on the party objecting, *Leggett v. The N. J. Manuf. &c. Co.*, Sax. 541. *Manhattan Co. v. N. J. Stock Yard Co.*, 8 C. E. Gr. 162. But a corporation seal must be proved by testimony, *Den, Tours v. Vreeland*, 2 Hal. 352. *Osborne v. Tunis*, 1 Dutch. 634. *Yaughn v. Hankinson*, 6 Vr. 79. An impression of a corporation seal upon an instrument calling for the seal of the corporation, without wax, held to be a seal, *Corrigan v. Trenton Del. Falls Co.*, 1 Hal. Ch. 52. *Contra, Hopewell v. Amwell*, 1 Hal. 175. See *Corties v. Van Note*, 1 Harr. 324. The corporate seal must be affixed by the authority of the board of directors, or it is not the seal of the corporation, *Leggett v. N. J. Manuf. Co.*, Sax. 542. *Van Hook v. Somerville Manf. Co.*, 1 Hal. Ch. 137. See S. C., 1 Hal. Ch. 633. *Osborne v. Tunis*, 1 Dutch. 634. *Holcomb v. Managers of Bridge*, 1 Stock. 457. A subsequent board of directors may ratify an invalid mortgage given by a former board, *Hoyt v. Bridgewater Co.*, 2 Hal. Ch. 253; affirmed on appeal, 2 Hal. Ch. 625. For the purpose of answering a suit in chancery a corporation may adopt any seal, *Ransom v. Stonington Savings Bank*, 2 Beas. 212.

(b) Where a corporation is empowered by its charter to acquire real estate, by deed or gift, without limitation in point of estate, it has a right to acquire a title in fee simple, *The State, The Morris Canal v. Brown*, 3 Dutch. 13. See *Barnett v. Johnson*, 2 McCart. 481. *State, Morris Canal v. Haight*, 6 Vr. 178; 7 Vr. 471. Such lands can only be held for the purposes designated in the charter, *State v. Mansfield*, 3 Zab. 510. *State v. Newark*, 1 Dutch. 315; affirmed in error, 2 Dutch. 519. *Kean v. Johnson*, 1 Stock. 401. See *New Barbadoes Bridge Co. v. Vreeland*, 3 Gr. Ch. 157. Where land in another state was owned by a corporation for a number of years, equity refused to appoint a receiver to take charge of it, when no new danger to the title was shown, *Hager v. Stevens*, 2 Hal. Ch. 374. A company authorized to draw water from a river, and owning the race-way and land upon which it is constructed, has the right to the use and disposition of the water, as part of the land itself, *Potts v. Delaware Water Power Co.*, 1 Stock. 592.

(c) A bank may hold bonds and mortgages as collateral security, *Trenton Bank v. Woodruff*, 1 Gr. Ch. 117; or leases, *Corrigan v. Trenton Del. Falls Co.*, 3 Hal. Ch. 489. A corporation may hold a bond unless expressly prohibited by its charter, *Bennington Iron Co. v. Rutherford*, 3 Harr. 467. Corporations that have the power to borrow money, have also the necessary power to give a bond and warrant to secure its repayment, *Stratton v. Allen*, 1 C. E. Gr. 229; or bonds, *Morris Canal v. Fisher*, 1 Stock. 667. *Morris Canal v. Lewis*, 1 Beas. 323; or mortgages, *Leggett v. N. J. Manf. Co.*, Sax. 542. *Hoyt v. Bridgewater Copper Co.*, 2 Hal. Ch. 253, 625. *Holcomb v. Managers of Bridge Co.*, 1 Stock. 457. See *Townsend v. Smith*, 1 Beas. 350; or to make and endorse negotiable paper, *Lucas v. Pitney*, 3 Dutch. 221. *Shotwell v. McKown*, 2 South. *828. *Savage v. Ball*, 2 C. E. Gr. 143. *Montague v. Church Schol District*, 5 Vr. 218. A mutual insurance company may borrow money, but cannot, under a pretence of borrowing money, provide a fund to give credit to the company, *Mutual Life Ins. Co. v. McKelway*, 1 Beas. 133. A religious corporation may execute a mortgage on lands conveyed for a special purpose, *Magie v. The German Church*, 2 Beas. 77; affirmed on appeal, 2 McCart. 500. A municipal corporation authorized to regulate streets, &c., may incur debts for that purpose, *Bigelow v. The Inhab. of Perth Amboy*, 1 Dutch. 297; and may issue certificates of indebtedness therefor, transferable by delivery, *Winfield v. The Mayor, &c., of Hudson*, 4 Dutch. 255. A municipal corporation, in the absence of a special grant of power, cannot borrow money; nor can a note given for such unauthorized loan be enforced, even if the money has been expended for municipal purposes, *Hackettston v. Swackhammer*, 8 Vr. 191.

the purposes of the corporation shall require, not exceeding the amount limited in its charter, and all other real estate which shall have been *bona fide* mortgaged to the said company by way of security, or conveyed to them in satisfaction of debts previously contracted in the course of dealings, or purchased at sales upon judgment or decree which shall be obtained for such debts; and to mortgage any such real or personal estate with their franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest; *provided, however*, that nothing herein contained shall prohibit manufacturing or trading corporations from accommodating their customers by making payments or disbursements out of any sum of money received from such customers;

To mortgage property and franchises.

P. L. 1872, p. 77.

Amended.

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

Appoint agents.

VI. To make by-laws (b) not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its directors for the management of its property, the regulation and government of its affairs, and for the transfer of its stock, (c) with penalties for the breach thereof not exceeding twenty dollars;

Make by-laws.

VII. To wind up and dissolve itself (d) or be wound up and dissolved in manner hereinafter mentioned.

To wind up and dissolve.

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

Not necessary to specify powers.

Ib.

3. In addition to the powers enumerated in the first section of this act, and to those expressly given in its charter, or in the act or certificate under which it is or shall be incorporated, no corporation shall possess or exercise

No others vest except expressly given.

Ib.

(a) A steward or servant need not be appointed under the seal of the corporation, *Mendham v. Losey*, Pen. §352. Officers can only be elected or appointed in the manner prescribed in the charter, *McNeely v. Woodruff*, 1 Gr. 352; thus, a city council cannot elect its own members, *Kearney v. Andrews*, 2 Stock. 70; nor appoint a poundkeeper, *White v. Tallman*, 2 Dutch. 67. But where a trustee of a school district was appointed by the two trustees remaining in office, the court refused to declare the incorporation void, although such trustee should have been elected by the people, *State, Gilbert v. Patterson*, 3 Vr. 177. So, where an election for aldermen was held on a wrong day, a *quo warranto* was refused an individual making no claim to the office, *State, Mitchell v. Tolau*, 4 Vr. 195. The acts of an officer *de facto* are binding so far as they affect third persons, *Doremus v. Dutch Reformed Church*, 2 Gr. Ch. 332. *Perth Amboy* ads. *Smith*, 4 Harr. 52. *Savage v. Ball*, 2 C. E. Gr. 142. And such third persons are also bound, thus where a tenant entered into possession of premises under a parol lease, made by the attorney of a corporation, the tenant will not be permitted to dispute the agent's authority, if the company subsequently ratifies the agent's acts, *Brahm v. Jersey City Forge Co.*, 9 Vr.; although such officer may have been sworn before a person not authorized to administer the oath, *State v. Perkins*, 4 Zab. 409. Or, the appointment of a surveyor of the highway was not under the hands and seals of the township committee, *State v. Meyers*, 5 Dutch. 392. But the officer himself, if not duly elected and qualified, acquires no rights, *Matter of Public Roads*, 1 South. §398. *Green v. Kleinhans*, 2 Gr. 477, or, if he exceeds his authority, as where an overseer of the poor grants relief without an order from a justice of the peace, *Princeton v. Mount*, 5 Dutch. 299. See *Perth Amboy* ads. *Smith*, 4 Harr. 53. A township officer who is authorized to issue the bonds of the township only when certain conditions have been complied with, will be enjoined if he exceed his authority, *Lane v. Schomp*, 5 C. E. Gr. 82. See *Hudson v. Winslow*, 6 Vr. 437. Notice to an officer, whose duty it is to communicate it to the corporation, is notice to the corporation, thus, notice to a cashier is notice to the bank, *Trenton Bank v. Woodruff*, 1 Gr. Ch. 118. See *Leggett v. New Jersey Manf. Co.*, Sax. 541. Assent to an assignment of an insurance policy given by the secretary or other agent of the company, is the assent of the directors, *Durav v. Insurance Co.*, 4 Zab. 171. But a service of process on a bookkeeper is insufficient, *Dock v. Elizabethtown Co.*, 5 Vr. 312. See *Den, Auten v. Pen*, 5 Hal. 237. The possession of an officer is the possession of the company, as where a secretary enters the minutes of a meeting in books paid for by himself, he has no right in going out of office to take such books with him, *State v. Goll*, 3 Vr. 285. Any subsequent secretary possesses all the powers of any former ones, *Phoenix Iron Co. v. N. Y. Chair Co.*, 3 Dutch. 484. The compensation can only be such as is authorized by the charter, thus aldermen can not pass an ordinance authorizing the payment of an annual salary to themselves, *State, Gregory v. Jersey City*, 5 Vr. 429. But where a by-law forbids a director to receive any emolument unless allowed by the stockholders at a general meeting, a director can recover compensation for services rendered such corporation outside of his regular duties,

although rendered while he was a director, *Chandler v. Monmouth Bank*, 1 Gr. 255. In *assumpsit* for services performed, if it appear that plaintiff has been legally discharged, or engaged in other business, or abandoned the service of defendants, he can not recover, *Bernard v. Hoboken*, 3 Dutch. 412.

(b) The power to make by-laws is incident to every corporation, *Leggett v. New Jersey Manf. Co.*, Sax. 541. *State, Taimor v. Mayor & Co. of Morristown*, 4 Vr. 58. *Kearney v. Andrews*, 2 Stock. 70. A by-law must be reasonable as well as constitutional and legal, *Parson v. Sweet*, 1 Gr. 196. *Young v. Fough*, 8 C. E. Gr. 325, 9 C. E. Gr. 538. *State, Long v. Mayor & Co. of Jersey City*, 8 Vr. 348; and whether reasonable or not, is a question of law, not of fact, *State v. Overton*, 4 Zab. 435. *State, Long v. Mayor of Jersey City*, 8 Vr. 348. But whether a by-law which affects third persons, not members of such corporation, is reasonable or not, is a question of fact for the jury, *Morris and Essex R. R. Co. ads. Ayres*, 5 Dutch. 393. See *Compton v. Von Volkenburgh*, 5 Vr. 134. A corporation as a "clearing house," cannot bind persons not members, by its by-laws, *Overman v. Hoboken Bank*, 1 Vr. 61, 2 Vr. 563. The regulations of a railroad company with regard to the conduct of passengers, are not by-laws of the corporation but regulations whose validity depends not upon their being lawful but reasonable, *State v. Overton*, 4 Zab. 435. All persons applying to become members of an incorporated insurance company must be presumed to have known the terms of its charter and by-laws, *Belleville Ins. Co. v. Van Winkle*, 1 Beas. 334. A mutual insurance company cannot, by merely passing a by-law to that effect, create a capital stock, *State, Mutual Ins. Co. v. Newark*, 4 Vr. 183. See *Mutual Ins. Co. v. McKelway*, 1 Beas. 133. A municipal corporation cannot confer judicial powers on their officers, by ordinance, *Weeks v. Forman*, 1 Harr. 237. All the proceedings under a void by-law, imposing a tax, are themselves void, and no justification of the acts of a person who undertakes to execute it, *Bergen v. Clarkson*, 1 Hal. 352. *Kip v. Paterson*, 2 Dutch. 298. *State, Benson v. Hoboken*, 4 Vr. 280. See *Freeholders of Essex v. Barber*, 2 Hal. 64. A *certiorari* is proper to test the validity of a by-law, *State v. New Brunswick*, Coxe 393.

(c) If the charter provides that the shares shall be transferred in such manner as the by-laws shall prescribe, no legal transfer can be made until such by-laws are passed, *McCovry v. Snydam*, 5 Hal. 245. So, in case of a dispute as to the ownership of any shares, the transfer book supercedes the others, *Dauning v. Polts*, 3 Zab. 66.

(d) An agreement to transfer the property and stock of an incorporated company, or the actual transfer of all its real and personal estate including the stock itself, will not extinguish the charter, *Zine Co. v. Franklinton Co.*, 2 Beas. 323. When a turnpike company, whose charter had expired by its own limitation, sold their road and bridges to an individual, all the franchises were held to be destroyed, *Matter of Public Highway*, 2 Zab. 293. So, where a turnpike had been abandoned for many years, *State v. Sweetcher*, 1 Vr. 80. See *State v. Hull*, 1 Dutch. 562. A failure to elect officers at the proper time will not work a dissolution, *Hoboken Association v. Martin*, 2 Beas. 427.

any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given. (a)

Banking powers never implied.
Ib.

4. No corporation created or to be created shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold or silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money, unless such corporation is or shall be expressly incorporated for banking purposes, or unless such powers are or shall be expressly given in its charter.

Stockholders liable ratably to the amount of unpaid subscriptions.
Ib.

5. Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy the claims of its creditors, 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 company, or such proportion of that sum as shall be required to satisfy the debts of the company.

All charters to be subject to legislative alteration.

6. The charter of every corporation which shall hereafter be granted by or created under any of the acts of the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature. (b)

Dividends of moneyed corporations not to be made except from profits, or directors to be liable.
Ib.

7. It shall not be lawful for the directors of any bank, or moneyed or manufacturing corporation in this state, or corporation organized under this act, to make dividends, except from the surplus or net profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of the said corporation, or to reduce the said capital stock, except according to this act, without the consent of the legislature; and in case of any violation of the provisions of this section, the directors under whose administration the same may happen, shall, in their individual and private

(a) The presumption is that all contracts made by a corporation are within its powers, *Morris and Essex R. R. Co. v. Sussex R. R. Co.*, 5 C. E. Gr. 542. Grants to private corporations are to be strictly construed, *Pennsylvania R. R. Co. v. National Railway Co.*, 8 C. E. Gr. 441. *Greenwich v. Easton and Amboy R. R. Co.*, 9 C. E. Gr. 217, affirmed, 10 C. E. Gr. 565. *Bridge Co. v. Hoboken Co.*, 2 Beas. 81, affirmed, 2 Beas. 503. *Watson v. Acquackanonk Co.*, 7 Vr. 195. *Booth v. Wondrously*, 7 Vr. 250. *Morris and Essex R. R. Co. v. Newark*, 2 Stock. 352. *State, Hoboken Land Co. v. City of Hoboken*, 6 Vr. 205. *Attorney General v. Morris and Essex R. R. Co.*, 4 C. E. Gr. 387. Ambiguities operate against a corporation and in favor of the public, *Townsend v. Brown*, 4 Zab. 80. *Delaware and Raritan Canal Co. v. Raritan and Delaware Bay R. R. Co.*, 1 C. E. Gr. 322, 3 C. E. Gr. 546. *Morris Canal Co. v. Central Railroad Co.*, 1 C. E. Gr. 419. *Black v. Delaware and Raritan Canal Co.*, 9 C. E. Gr. 456. The purpose or object for which the incorporation was created cannot be changed, except by consent of all the stockholders, *Zabriskie v. Hackensack R. R. Co.*, 3 C. E. Gr. 178. It was held to be no objection to the recovery of the instalments due on a subscription to the stock of a railroad company that since the subscription the name of the company had been changed and the length and termini of the road altered, *Delaware and Atlantic R. R. Co. v. Erick*, 3 Zab. 321. But where a company issued bonds to be paid for by instalments, and afterwards by legislative authority was consolidated with two other companies, and tendered the bonds of such consolidated companies, no action could be maintained for the money due on the instalments, *New Jersey Midland Co. v. Straub*, 6 Vr. 322. Nor can such power be extended by implication, thus authority to construct a railroad along a river, does not authorize its construction in or upon the river, *Stevens v. Erie Railway Co.*, 6 C. E. Gr. 259; S. C. 5 Vr. 532. A power to mortgage includes a power to sell under the mortgage, *Willink v. Morris Canal Co.*, 3 Gr. Ch. 380. A corporation can only act by authority derived from a corporate meeting, *Van Hook v. Somerville Co.*, 1 Hal. Ch. 187. *Johnston v. Jones*, 8 C. E. Gr. 217. *Schumm v. Seymour*, 9 C. E. Gr. 143. Illegal acts may be validated by subsequent legislation, *State v. City of Newark*, 3 Dutch. 186. *State, Sharp v. Anger*, 2 Vr. 359. *State, Waller v. Union*, 4 Vr. 351. *State, Trustees v. Readington*, 7 Vr. 69. *State, Copeland v. Passaic*, 7 Vr. 382; but not after they have been declared illegal and set aside by the courts, *Scudder v. State, Baker*, 4 Vr. 424. *Belvidere v. Warren Railroad Co.*, 5 Vr. 194. *State, Doyle v. Newark*, 5 Vr. 277. That they have kept within their powers must appear on the face of their proceedings, *State, Willington v. Trenton*, 7 Vr. 499. *State v. Council of Elizabeth*, 1 Vr. 176. *Bergen Turnpike Co. v. The State*, 1 Dutch. 554. *State v. Williamson Turnpike Co.*, 4 Zab. 547. *State, Pope v. Union*, 3 Vr. 343. *New Jersey R. R. Co. v. Snydam*, 2 Harr. 25. It cannot be presumed, *Perrine v. Farr*, 2 Zab. 356; nor rendered valid by ratification, *State, Bazler v. Jersey City*, 7 Vr. 188. This rule does not apply to proceedings of a legislative character had before a body exercising discretionary power, *Brown v. Morris Canal Co.*, 3 Dutch. 648. So, in an action against them the declaration must show a compli-

ance with the requirements of the statute, *Morrison v. Bernards*, 7 Vr. 219. See *Lanc v. Schomp*, 5 C. E. Gr. 82; but not in an action on a promissory note, *Montague v. Church School District*, 5 Vr. 218. Nor will a court of equity allow an answer to be amended to set up *ultra vires*, *Third Avenue Savings Bank v. Dimock*, 9 C. E. Gr. 26. See *Amermon v. Willis*, 9 C. E. Gr. 13. If a corporation exceed its corporate powers, or abuse or misuse them, equity will interfere, but not if they have been exercised in good faith or are discretionary, *Scudder v. Trenton Falls Co.*, Sax. 695. Equity will not enjoin a corporation in case of doubt, *Bonaparte v. Camden and Amboy R. R. Co.*, Bald. 205; nor merely because an ordinance is illegal, *Kearney v. Andrews*, 2 Stock. 70; nor decide whether an election of directors is valid, *Owen v. Whitaker*, 5 C. E. Gr. 122. See *Van Dyke v. Stout*, 4 Hal. Ch. 333. *Hardenbergh v. Farmers Bank*, 2 Gr. Ch. 68. *Johnston v. Jones*, 8 C. E. Gr. 217. Nor declare a charter forfeited for non-user or mis-user, *Society &c. v. Morris Canal Co.*, Sax. 137. *Attorney General v. Stevens*, Sax. 369. Whether it would enjoin an appropriation of lands by a company acting *ultra vires*, see *Erie Railway Co. v. Delaware, Lack. and Western R. R. Co.*, 6 C. E. Gr. 284.

(b) Every charter granted since the passage of this section is subject to alteration, although it contain no express words so declaring, *State v. Person*, 3 Vr. 134, 566. *State v. Douglass*, 5 Vr. 83; and all contracts resulting from the act of incorporation and its acceptance by the stockholders, are presumed to have been made subject to this reservation, *Story v. Jersey City Plank Road Co.*, 1 C. E. Gr. 13. Additional powers may from time to time be given, and acts of the corporation in pursuance of such authority are binding, unless they conflict with vested rights, or impair the obligations of contracts, *Gifford v. New Jersey R. R. Co.*, 2 Stock. 171. The legislature is the proper tribunal to determine when the right shall be exercised, *State v. Miller*, 1 Vr. 369; 2 Vr. 521. It can only be exercised for the benefit of the state, and not for that of one or more stockholders, *Zabriskie v. Hackensack R. R. Co.*, 3 C. E. Gr. 178. The franchise may be resumed before it has been accepted and rights acquired under it, *State v. Blake*, 6 Vr. 209, 7 Vr. 442. It extends to municipal corporations, *Paterson v. The Society &c.*, 4 Zab. 386. *Ruder v. Road District of Union*, 7 Vr. 273. *Mayor of Jersey City v. Jersey City R. R. Co.*, 5 C. E. Gr. 360. But a general statute repealing all acts contrary to its provisions will not be held to repeal a clause in a municipal charter on the same matter, *State v. Branin*, 3 Zab. 485. *State v. Minton*, 3 Zab. 529. *State v. Clarke*, 1 Dutch. 54. *State v. Belvidere*, 1 Dutch. 563. *State v. Morristown*, 4 Vr. 58. *State v. Trenton*, 7 Vr. 201. *Cross v. Morristown*, 3 C. E. Gr. 305. Unless the intention to repeal is clearly manifested by the fact that the acts are so inconsistent that they cannot stand, *Mechanics Bank v. Bridges*, 1 Vr. 112. *State v. The Commissioner*, 8 Vr. 228. *Industrial School v. Whitehead*, 2 Beas. 290. So, a general power given to a municipal corporation will not be held to conflict with the charter of a railroad company, unless the charter of the company is altered or repealed in express terms, *State v. Jersey City*, 5 Dutch. 170.

capacities, jointly and severally, be liable at any time within the period of six years after paying any such dividend to the said corporation, and to the creditors thereof, in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with legal interest on the same from the time such liability accrued; *provided*, that any of the said directors who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may respectively exonerate themselves from such liability, by causing their dissent to be entered at large on the minutes of the said directors, at the time the same is done, or forthwith after they shall have notice of the same, and by causing a true copy of the dissent so entered on the minutes to be published, within two weeks after the same shall have been entered on said minutes, in some public newspaper published in the county where the said corporation has its office or place of business; and if none be published in such county, then in a newspaper printed in an adjoining county, and circulating in the neighborhood of such office or place of business of said corporation; *and provided also*, that this section shall not be construed to prevent a division and distribution of the capital stock of the corporation, which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

Absent or dissenting director not liable.

8. If any act shall hereafter be passed by the legislature of this state which shall by its terms enact that any person therein named or described shall be incorporated by any name and for any purpose therein stated, such corporation shall immediately be vested with and possessed of all powers in this act specified and set forth, subject to all provisions and restrictions therein contained, unless such special act incorporating the same shall otherwise in whole or in part direct to the contrary.

Incorporation by legislative act invests company with all powers.

9. Any corporation organized under any general law of the legislature now or hereafter to be passed, shall, in addition to the powers and restrictions thereon to which it may become subject or of which it shall be possessed by virtue of its organization and the act authorizing the same, be additionally, possessed of all powers and be subject to all restrictions thereon in this act contained, so far as the same are consistent with the act under which it may, as aforesaid, be organized.

And so also in cases of incorporation under general laws.

II. Formation, constitution, alteration, dissolution.

10. It shall be lawful for any three or more persons to associate themselves into a company to carry on any kind of manufacturing, mining, chemical, trading or agricultural business, the transportation of goods, merchandise or passengers upon land or water, inland navigation, the building of houses, vessels, wharves or docks, or other mechanical business, the reclamation and improvement of submerged lands, the improvement and sale of lands, the making, purchasing and selling manufactured articles, and also of acquiring and disposing of rights to make and use the same, the renting of buildings and steam or other power therewith, the cutting and digging peat, stone, marl, clay, or other like substance, and dealing in the same, manufactured or unmanufactured, or any wholesale or retail mercantile business, or any lawful business or purpose whatever, upon making and filing a certificate in writing of their organization, in manner hereinafter mentioned; *provided*, that nothing herein contained shall be construed to authorize the formation of any railroad company, turnpike company, or any other company which shall need to possess the right of taking and condemning lands, nor of any insurance company, banking company, savings bank, or other corporation intended to derive profit from the loan or use of money.^(a)

Association for business purposes lawful.

- P. L. 1849, p. 300.
- " 1852, p. 87.
- " 1853, p. 427.
- " 1855, p. 706.
- " 1865, p. 707.
- " 1865, p. 913.
- " 1869, p. 1001.

Certificate to be filed.

Formation of certain companies not authorized.

11. Such certificate, in writing, shall set forth,

Certificate.

I. The name assumed to designate such company, and to be used in its business and dealings;

Name.

II. The place or places in this state or elsewhere where the business of such company is to be conducted, and the objects for which the company shall be formed;

Place of business.

(a) A company organized under the general corporation act of the state of New York, for the purpose of doing business in this state, will not be recognized as a lawful corpo-

ration; and such persons will be held liable as partners. *Hill v. Beach*, 1 *Beas.* 31. See *Booth v. Wondertj*, 7 *Vr.* 250.

Capital stock.
P. L. 1849, p. 300.
Amended.

III. The total amount of the capital stock of such company, which shall not be less than two thousand dollars, the amount with which they will commence business, which shall not be less than one thousand dollars, and the number of shares into which the same is divided, and the par value of each share;

Stockholders.

IV. The names and residences of the stockholders, and the number of shares held by each;

When corporations to commence and terminate.
Certificates to be acknowledged and recorded.
Ib.

V. The periods at which such company shall commence and terminate, not exceeding fifty years; which certificate shall be proved or acknowledged, and recorded as required of deeds of real estate, in a book to be kept for that purpose in the office of the clerk of the county where the principal office or place of business of such company in this state shall be established, and, after being so recorded, shall be filed in the office of the secretary of state; the certificate may contain any limitation upon the powers of the corporation, the directors, and the stockholders that the parties signing the same desire; *provided*, such limitation does not attempt to exempt the corporation, the directors, or the stockholders, from the performance of any duty imposed by law. (Sec. Sec. 109).

Certificate and certified copy, evidence.

12. The said certificate, or a copy thereof, duly certified by said clerk or secretary, shall be evidence in all courts and places.

Upon making and recording certificates, persons associating incorporated.
Ib.

13. Upon making said certificate, and causing the same to be recorded and filed as aforesaid, the said persons so associating, their successors and assigns, shall be, from the time of commencement fixed in said certificate, and until the time limited therein for the termination thereof, incorporated into a company, by the name mentioned in said certificate; *provided*, that the legislature may at pleasure dissolve any company created by virtue of this act.

Companies to have powers, and be subject to liabilities in this act.

14. All companies that may be hereafter established within this state, under the provisions hereinabove contained, or under any law of this state, and also the officers of every such company, and the stockholders therein, may exercise the powers, and shall be governed by the provisions, and be subject to the liabilities hereinbefore and hereinafter provided.

Company may carry on part of business and hold real estate out of the state.

15. Any company organized as aforesaid, may carry on a part of its business out of this state, and have one or more offices and places of business out of this state, and may hold, purchase, and convey real and personal property out of this state the same as if such real and personal property were situate in the state of New Jersey; *provided*, that the certificate of the organization of such company shall state what portion of its business is to be carried on out of this state, and in what place or places it is to be so carried on; and shall also state the name of the town, or city, and county, in which the principal part of the business of said company within this state is to be transacted, and such town or city and county within this state shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business in this state within the provisions of this act.

P. L. 1865, p. 354.

Directors and officers.

16. The business of every such company, shall be managed and conducted by the directors thereof, who shall respectively be shareholders therein, and such other officers, agents, and factors as the company shall think proper to authorize for that purpose; and every such company shall have a secretary and treasurer.

P. L. 1849, p. 300.
Amended.

Election of directors and president.
Ib.

17. The directors shall not be less than three in number, and they shall be chosen annually by the stockholders at such time and place as shall be provided by the by-laws of the company, and shall hold their offices for one year and until others are chosen and qualified in their stead; and one of the directors shall be chosen president, either by the directors or by the stockholders, as shall be directed by the by-laws.

Amended.

Secretary and treasurer.
Ib.

18. The secretary and treasurer shall also be chosen annually, either by the directors or the stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the votes of the company and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; and the treasurer shall give bond in such sum, and with such sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

19. All other officers, agents and factors of the company shall be chosen in such manner, and hold their offices for such terms, as shall be directed by the by-laws. Other officers.

20. When any vacancy occurs among the directors or secretary or treasurer by death, resignation, removal or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said company. Vacancies filled according to by-laws.

21. At all meetings of the company absent stockholders may vote by proxy, authorized in writing; and every company may determine, by its 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 if the quorum shall not be so determined by the company, a majority of the stockholders in interest, represented either in person or by proxy, shall constitute a quorum. Proxies allowed. By-laws to regulate elections. P. L. 1849, p. 300.

22. The first meeting of every such company shall be called by a notice, signed by a majority of the persons named in the before mentioned certificate, and designating the time, place and purposes of the meeting, and such notice shall, two weeks at least before the time of such meeting, be published in some newspaper of the county where the corporation may be established, or if there be no newspaper in the county then in a newspaper of an adjoining county, or said first meeting may be called without such notice or publication if two days' notice be personally served on all the parties named in the certificate, or if all the parties named in the certificate waive such notice and fix a time of meeting, then no notice or publication whatever shall be required of such first meeting. Meetings how called. Ib. Amended.

23. Every stockholder shall have a certificate, signed by the treasurer, certifying the number of shares owned by said stockholder in such company. Certificate of stock. Ib.

24. Every such company may, at any meeting called for that purpose, increase its capital stock and the number of shares therein, until it shall reach the amount named in the original certificate; and in case more capital is necessary an additional certificate shall be filed, under the hands and seals of two-thirds in interest of the stockholders, or their legal representatives, stating the amount of such additional capital required, which shall be proved or acknowledged and recorded in the manner heretofore provided for in this act; *provided*, that for all stock issued under such supplemental certificates such company, its directors and stockholders, shall be entitled to all the benefits and subject to all the liabilities contained in this act. Stock may be increased, and how.

25. Any such company shall have power to create and issue certificates for two kinds of stock, namely, general stock and preferred stock; which preferred stock shall at no time exceed two-thirds the actual capital paid in, and shall be subject to redemption, at par, at a fixed time, to be expressed in the certificates therefor; and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon, a fixed half-yearly sum or dividend, to be expressed in the said certificate, not exceeding four per centum, before any dividend shall be set apart or paid on the said general stock; and in no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said company; but in case of insolvency such debts or other liability shall be paid in preference to such preferred stock; *provided always*, that no such company shall create or issue certificates for such preferred stock, except by authority given to the board of directors thereof, by a vote of at least two-thirds of the stock voted at a meeting of the general stockholders duly called for that purpose. Power to issue general and preferred stock. P. L. 1860, p. 603.

26. The shares of stock in every corporation of this state shall be deemed personal property, and shall be transferable on the books of such company in such manner as the by-laws may provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, the same shall be so expressed in the entry of said transfer. Votes of two-thirds of stock necessary for issuance of preferred stock. Transfer of stock. P. L. 1849, p. 300.

27. The directors of every such company may, from time to time, assess upon each share of general stock such sums of money as two-thirds of the Assessments on stock.

(a) See *ante*, § 1, note(c).

stockholders in interest shall direct, not exceeding, in the whole, the amount at which each share shall be originally limited under the third article of the eleventh section of this act; and such sums so assessed shall be paid to the treasurer at such times and by such instalments as the directors shall direct, said directors having given thirty days' notice of the time and place of such payment in a newspaper circulating in the county where such company is established.

Penalty for non-payment of assessments.
Ib.

28. If the owner or owners of any such share or shares shall neglect to pay any sum or sums, duly assessed thereon, for the space of thirty days after the time appointed for the payment thereof, the treasurer of the company may sell, at public auction, such number of the shares of such delinquent owner or owners as will pay all assessments then due from him or them, with interest, and all necessary incidental charges; *provided*, two-thirds of the stockholders in interest shall so direct.

Proceedings for sale of shares.
Ib.

29. The treasurer shall give notice of the time and place appointed for such sale, and of the sum due on each share, by advertising the same three weeks successively, before the sale, in some newspaper circulating in the county where such company is established, and by mailing a notice to such delinquent stockholder, if he has his post office address, and shall transfer such shares to the purchaser, who shall be entitled to a certificate therefor.

Certificate of payment of capital stock.
Ib.

30. The president and directors, with the secretary and treasurer of such company, after the payment of the last instalment of the capital stock so fixed and limited by the company, shall make a certificate, stating the amount of the capital so fixed and paid in in cash; which certificate shall be signed and sworn or affirmed to by the president, secretary and treasurer, and a majority of the directors; and they shall, within thirty days after making the same, cause the same to be recorded in a book to be kept for that purpose in the office of the clerk of the county wherein the business is conducted, or where their principal place of business or office is located.

To be recorded.

Certificate of increase of stock.
Ib.

31. If any of the said companies shall increase their capital stock, as before provided in this act, the officers mentioned in the preceding section, after the payment of the last instalment of such additional stock, shall make a certificate of the amount so added and paid in cash, and sign and swear or affirm to the same, and cause it to be recorded in the manner provided in the preceding section.

Penalty for not making certificates.
Ib.

32. If any of said officers shall neglect or refuse to perform the duties required of them in the two preceding sections, for thirty days after written request so to do by a creditor or stockholder of said company, they shall be jointly and severally liable for all debts of the company contracted before such certificate shall be recorded as aforesaid.(a)

Company may reduce stock and change nature of business.
Ib.

Amended.

33. Every such company except where otherwise provided in the certificate of incorporation, may, by a vote of two-thirds in interest of the stockholders, or their legal representatives, and in all cases by unanimous consent of the stockholders at any meeting called for that purpose, reduce its capital stock or change the nature of its business; and in such case a certificate of the proceedings, signed and acknowledged as aforesaid, shall, within thirty days after the passing thereof, be recorded in the said book in the clerk's office for the county wherein the business is conducted, or where their principal place of business or office is located, and published for three weeks in a newspaper circulating in said county; and in default thereof, the directors of the company shall be jointly and severally liable for all debts of the company, contracted after said thirty days, and before the publication and recording of the copy of the vote as aforesaid; and the stockholders shall also be liable for any such sums as they may respectively receive of the amount so withdrawn.

How companies may be dissolved.
P. L. 1870, p. 8.

34. Whenever, in the judgment of the board of directors of any corporation organized under this act, or incorporated under any law of this state, it shall be deemed advisable and most for the benefit of such corporation, that the same should be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter, it shall

(a) Where the officers certified that the capital stock had been paid into the treasury in cash, when in fact it was paid in property of an uncertain value, the officers were held

liable for the debts of the company, *Waters v. Quinby*, 3 *Dutch*. 198, 296; 4 *Dutch*. 532.

and may be lawful for such board of directors, 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, and of which meeting every director shall have received at least three days' notice, to cause written or printed notice of the adoption of such resolution to be mailed to each and every stockholder of such company residing in the United States, and also within said ten days cause a like notice to be published in one or more newspapers published and circulating in the county wherein such corporation shall have their principal office, and be conducting their business, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of such stockholders to be held at the office of such company in such county, to take action upon such resolution so adopted by the board of directors, and 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 such paper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that such dissolution shall take place, and signify such their consent in writing, then, and in such case, such company shall, upon filing such consent, duly attested by their secretary, in the office of the secretary of state, and receiving from him a certificate that such consent has been filed, be dissolved; and the board of directors of such company shall cause such certificate to be published four weeks successively, at least once in each week, in one or more of the newspapers published and circulating in the county in which such company has been located and conducting its business; and at the expiration of such time the said board shall proceed to settle up and adjust the business and affairs of such company in the same manner as though the same had been dissolved by the expiration of the time mentioned in their charter or certificate of incorporation; *provided*, that the secretary of state shall not issue the certificate of dissolution hereinbefore mentioned until satisfied by due proof that the requirements aforesaid have been fully complied with by such corporation.

35. The provisions contained in this act may be amended or repealed, at the pleasure of the legislature, and every company created by 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 alterable.

Effect of legislative action.

III. Election of officers.

36. The book or books of any incorporated company in this state in which the transfer of stock in any such company shall be registered, and the books containing the names of the stockholders in any such company shall at all times during the usual hours of transacting business, be open to the examination of every stockholder of such company for thirty days previous to any election of directors; and that it shall be the duty of the secretary, clerk, treasurer, or other officer of each and every incorporated stock company who shall have charge of the transfer books of said company to prepare and make out, at least ten days before every election of said company, a full, true and complete list of all the stockholders of said company entitled to vote at the ensuing election, with the number of shares held by each, which list shall be made and arranged in alphabetical order, and shall at all times during the usual hours for business be open to the examination of any stockholder of such company; and if any officer having charge of such books or list shall, upon demand by any stockholder, as aforesaid, refuse or neglect to exhibit such books or list, or submit them to examination, as aforesaid, he shall for every such offence forfeit the sum of two hundred dollars, the one-half thereof to the use of the state of New Jersey, and the other moiety 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 further*, that the book or books aforesaid, shall be the only evidence who are the stockholders entitled to examine such book

Books of stock to be open for thirty days previous to election of directors.

R. S. 139.

List of stockholders entitled to vote.

Penalty for refusing to exhibit.

The books exclusive evidence who are stockholders.

- or books, or list, and to vote in person or by proxy at any election for directors of said company, and the persons receiving the greatest number of votes shall be directors or managers. (a)
- Elections to be by ballot. Ib. 37. All elections for managers or directors of every incorporated company in this state shall be held by ballot (unless otherwise expressly provided in their respective charters), and that 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 continue open at least one hour by daylight, and shall close before nine o'clock in the evening.
- Each share to have a vote—proxy allowed. Ib. 38. Unless otherwise provided in their respective charters, certificates or by-laws, at every such election each stockholder shall be entitled to one vote for each share of the capital stock of said company held by him or her, which vote may be given in person or by proxy; but no proxy shall be voted on, allowed or received, for more than three years from its date; nor shall any share or shares of stock be voted on at any election which have been transferred on the books of the company within twenty days next preceding such election. (b)
- Persons holding stock as executors, etc., may vote. P. L. 1849, p. 300. 39. Every person holding stock in any company as executor, administrator, guardian or trustee, shall represent the share or stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as collateral security, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.
- Non-resident stockholders may vote. 40. So much and such parts of the several acts of incorporation in this state, or any law thereof as prohibits stockholders residing out of the state from voting on stock held by them, are hereby repealed.
- List of stockholders to be produced at elections. R. S. 139. 41. The board of directors or managers of each and every incorporated company in this state issuing stock shall be required to produce at the time and place of election of such incorporated company during the whole time such election shall be open, a full, true and complete list of all the stockholders of said company entitled to vote at such election, with the number of shares held by each; which list shall be arranged in alphabetical order, and subject to the inspection of any stockholder who may be present at such election; and upon the neglect or refusal of said directors or managers to produce said list at any election of said company, they shall be ineligible to any office at such election.
- Candidate for director not to be judge of election. Ib. 42. No person who is a candidate for the office of director in any incorporated company of this state shall act as judge, inspector or clerk, or in any other character, as the conductor of any election for directors of such company; and in case any person so acting or conducting at any election shall be elected a director his election shall be void, and it shall not be lawful for the directors for the time being to appoint such person to the office of director of such company within twelve months next succeeding such election; *provided*, that this section shall not apply to the first election of directors, in any corporation.
- P. L. 1870, p. 27. 43. If any incorporated company in this state shall purchase any of the stock of such company, or take the same in payment or satisfaction of any debt due to them, such company shall not vote, in virtue of their stock so purchased or taken, either directly or indirectly, at any election for directors of said company. (c)
- Companies not to vote on their own stock. Ib. 44. It shall be the duty of the supreme court, upon the application of any person or persons, or a body corporate, who may be aggrieved by, or may 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, to proceed forthwith, and in a summary way, to 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 to order a new election, or make such order, and give such relief in the
- Supreme court may proceed summarily to review proceedings at elections. Ib. (a) The part requiring the list to be made out, etc., is only directory, and the election will be valid, although such list be not made out. *Dowling v. Potts*, 3 Zab. 66. A failure to elect officers at the time designated in the charter will not work a dissolution, *Hobbs, ex Association v. Martin*, 2 Beas. 427. (b) The list of stockholders must be true, and persons can not vote who are not stockholders on the day an election is held, although they were stockholders on the day on which

it should have been held, *Johnston v. Jones*, 8 C. E. Gr. 217. An injunction to restrain the holders of certain stock from voting thereon, applied for three days before the time of election, was refused because it gave such stockholders no opportunity to be heard, and might, if allowed, change the result of the election. *Hilles v. Parrish*, 1 McCurt. 380. (c) Nor can such stock be voted on by anybody, *McNeely v. Woodruff*, 1 Gr. 352.

premises as right and justice may appear to said supreme court to require; *provided*, that the said supreme court may, if the case shall appear to require it, either order an issue or issues to be made up in such manner and form as the supreme court may direct, in order to try the respective rights of the parties who may claim the same to the office or offices, or franchise in question, or may give leave to exhibit, or direct the attorney general to exhibit, one or more information or informations in the nature of a *quo warranto* in the premises.(a)

45. No by-law of the directors and managers of any incorporated company regulating the election of directors or officers of such company shall be valid unless the same shall have been made thirty days previous to any election of such company, and subject to the inspection of any stockholder; and in all cases where the right of voting upon any share or shares of stock of any incorporated company of this state shall be questioned, it shall be the duty of the inspectors of the election to require the transfer book of said company as evidence of stock held in the said company, and all such shares as may appear standing thereon, in the name of any person or persons shall and may be voted on by such person or persons directly by themselves or by proxy, subject to the provisions of the act of incorporation.(b)

46. If at any time hereafter, the election for directors of any bank or other incorporated company of this state, shall not be duly held on the day designated and appointed by the act incorporating such bank or other incorporated company, or by the by-laws of any such corporation, it shall be the duty of the president and directors of such bank or other incorporated company to notify and cause an election for directors to be held thereafter as soon as conveniently may be; and in all cases, no share or shares shall be voted upon, except by such person or persons who may have appeared on the transfer books of said company to have had the right to vote thereon, on the day when, by the act of incorporation of such company, or by said by-laws the election ought to have been held; which said right so to vote, shall be exercised by the person so appearing, as aforesaid, upon the transfer books of such company, on any day when such election may be held; no failure to elect directors at the time required by law shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order such election to be held upon the application of any stockholder, and punish the directors as for a contempt of court for any neglect or failure to obey the order of such justice in reference to such election.(c) (See *Sec. 108*).

47. It shall not be lawful for any person to be elected a director of any body corporate in this state, issuing stock, unless such person shall be at the time of his election a *bona fide* holder of some of the stock of said body corporate.

48. When any person, a director of any body corporate, shall cease to be a *bona fide* holder of some of the stock thereof, he shall cease thereupon to be a director thereof.

49. It shall be the duty of every corporation incorporated under the laws of this state, whether organized under general or special laws, and of all incorporated companies recognized or to be recognized by the laws of this state, and of all corporations of other states, transacting or to transact business in this state, and they are hereby required, within thirty days after the usual time of annual election of directors, managers, or trustees thereof, to furnish to the secretary of state of this state a complete list, authenticated by the signature of the president and secretary, of the names of their directors, trustees or managers and officers, with the date of election or appointment, and term of office of each such director or officer, with their places of residence, respectively, together with the business and location of principal office or place of business of the company in this state, and it shall be the duty of the secretary of state to file

By-laws as to elections to be made 30 days previous to any election.
Ib.

On failure to hold election new one shall be had on notice.
Ib.

Amended.

Director must be a stockholder.
P. L. 1872, p. 89.

When not, he shall cease to be a director.

List of names and residences of directors and officers of companies to be filed with secretary of state.

P. L. 1872, p. 27.

Amended.

(a) The court of chancery has no jurisdiction to determine as to the validity of an election of directors of a private corporation, and whether certain persons claiming to be, and acting as directors, are such, *Owen v. Whitaker*, 5 C. E. Gr. 122. But see *Hardenburgh v. Farmers' Bank*, 2 Gr. Ch. 68. *Van Dyke v. Stout*, 4 Hal. Ch. 333.

(b) The evidence of being a stockholder to be produced

at such an election, comprises the stock ledger as well as the certificate book and transfer book, but in case of dispute the transfer book controls the rest. *Downing v. Potts*, 3 Zab. 66. See *Savage v. Ball*, 2 C. E. Gr. 143.

(c) The proper proceeding is by *mandamus*, *McNeely v. Woodruff*, 1 Gr. 352. See *ante* § 38, note (b).

and keep the same in his office; and every such corporation for a failure to comply with the provisions of this section shall, for every such offence, forfeit the sum of two hundred dollars, the one-half thereof to the use of the state of New Jersey, and the other moiety to him who shall sue for the same, to be recovered by action of debt in any court of record, together with costs of suit.

IV. Management, and liability of directors, &c.

Place of meeting to be in New Jersey except where the charter designates another place.

P. L. 1849, p. 215.

Amended.

Must have an office in New Jersey and keep stock and transfer books there.

Courts may order books brought within this state under penalty of forfeiture.

Calling of meetings by stockholders.

Manufacturing corporations to declare annual dividends.

P. L. 1866, p. 1034.

Liability for refunded capital before debts are paid.

P. L. 1849, p. 300.

50. In all cases where it is not otherwise provided by law the meeting of the stockholders of all corporations of this state shall be held at the principal office or place of business of the company in this state; the directors may hold their meetings, and have an office, and keep the books of the company (except the stock and transfer books), outside of this state if the by-laws of the company so provide; *provided however*, that said company shall always maintain a principal office or place of business in this state, and have an agent of the company in charge thereof, wherein shall be kept the stock and transfer books of the company for the inspection of all who are authorized to see the same, and for the transfer of the stock; *and provided further*, that the chancellor or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said company to be forthwith brought within this state and kept therein at such place as may be designated for such time as such chancellor, court or judge may deem proper, and upon failure of any company to comply with such order its charter may be declared forfeited by the chancellor or said court, and it shall therefrom cease to be a corporation, and all the directors and officers of said company shall be liable to be punished as for contempt of court for disobedience to such order. (a)

51. Whenever, for want of sufficient by-laws for the purpose, or of officers duly authorized, or from the improper neglect or refusal of such officers, or from other legal impediment, a legal meeting of any kind of the stockholders of any corporation cannot be otherwise called, three or more stockholders thereof may call a meeting of the company by giving ten days' notice in a newspaper circulating in the county wherein the business is conducted, or where their principal place of business or office in this state is located; and such meeting so called shall be a legal meeting of the company; and if there be no officers of the company present, whose duty it is to preside at meetings, the stockholders present may elect officers for the meeting; and it shall be the duty of the secretary of the company to record the proceedings of such meeting in the book of minutes of the company.

52. All manufacturing corporations within this state shall, on the first day of August in each and every year, unless some other specific day for that purpose be fixed in their charter or by-laws, and in that case then on the day so fixed, after reserving over and above their capital stock paid in, as a working capital for said corporation, a sum to be specified by their board of directors, and not exceeding the amount of one-half of the capital stock paid or secured to be paid, declare a dividend of the whole of their accumulated profits exceeding the amount so reserved as a working capital, and pass the share or dividend of each stockholder of such profits to the credit of their respective stockholders, and pay the same to such stockholders on demand.

53. If any part of the capital stock of any such company shall be withdrawn and refunded to the stockholders before the payment of all the debts of the company contracted previously to the recording and publishing of a copy of a vote for that purpose, as prescribed in the thirty-third section hereof, the president and directors of the company shall be jointly and severally liable for the payment of the said last mentioned debts; and the stockholders shall also be liable for any such sums of money as they may respectively receive of the amount so withdrawn.

54. Nothing but money shall be considered as payment of any part of the capital stock of any company organized under this act, except as

(a) Independent of this provision a private corporation whose charter has been granted by one state, cannot hold meetings and pass votes in another state, *Hilles v. Parrish*,

1 *McCart*, 380. See *State v. Person*, 3 *Vr.* 137. *Booth ads. Wonderly*, 7 *Vr.* 250.

hereinafter provided for the purchase of property; and no loan of money shall be made to a stockholder or officer therein; and if any such loan shall be made to a stockholder or officer of the company, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

Payment of capital to be in money, and no loans to stockholders.
P. L. 1849, p. 300.
Amended.

55. The directors of any company incorporated under this act may purchase mines, manufactories, or other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of this act, and said stock shall have legibly stamped upon the face thereof the words "issued for property purchased;" in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the fact.

Stock may be issued for property purchased.

56. If any certificate made, or any public notice given by the officers of any company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they were stockholders or officers thereof.

False certificate and penalty.
P. L. 1849, p. 300.

V. Remedies.

I. AGAINST THE CORPORATION.

57. Upon the dissolution in any manner of any corporation already created or which may hereafter be created by or under any law of this state, the president and directors, or the managers of the affairs of the said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such moneys and property shall enable them.

Directors to be trustees on dissolution.
R. S. 947.

58. The persons constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of such corporation at the time of its dissolution, and which shall come to their hands or possession.

Powers and liabilities of such trustees.
Ib.

59. All such corporations whether they expire by their own limitation, or shall be annulled by the legislature or otherwise dissolved, shall nevertheless be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporation may be established.

Continuance of corporate existence for settling up business.
P. L. 1849, p. 300.

60. When any corporation shall be dissolved in any manner whatever, the chancellor, on application of any creditor or stockholder of such corporation at any time, may either continue such directors trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be 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 the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the chancellor shall think necessary for the purposes aforesaid.

Appointment of receiver to wind up the company on petition.
Ib.

Jurisdiction of
chancellor.

61. The chancellor shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders, injunctions, and decrees therein as justice and equity shall require.

Duties of receivers.
Ib.

62. The said trustees or receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

Lien of workmen
in case of insolvency.
Ib.

63. In case of the insolvency of any corporation, the laborers in the employ thereof, shall have a lien upon the assets thereof, for the amount of wages due to them respectively, which shall be paid prior to any other debt or debts of said company; and the word "laborers" shall be construed to include all persons doing labor or service of whatever character, for or as workmen or employes in the regular employ of such corporations.^(a)

Amended.

P. L. 1869, p. 1448.

Property to vest
in stockholders
on dissolution.
Ib.

64. On the final dissolution of any corporation created under this act, all its real and personal estate, not legally disposed of, shall be vested in the individuals who may be stockholders at the time of such dissolution, in their respective proportions, and they shall hold the same as tenants or owners in common.

Suits not to abate
on dissolution.

P. L. 1852, p. 140.

65. In any action, now pending or to be commenced in any court of record of this state, against any corporation now or heretofore existing, or that may be created hereafter, if said corporation become dissolved, by the expiration of its charter or otherwise, before final judgment obtained therein, the said action shall not abate by reason thereof; but the dissolution of said corporation being suggested, and the names of the trustees of said corporation being entered upon the record, the said action shall proceed to final judgment against the said trustees, by the name of the corporation.

On execution
against corpora-
tion schedule of
property to be
shown sheriff, etc.

P. L. 1849, p. 300.

66. Every agent or other person having charge of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish the names of the directors and secretary, or stockholders thereof, and a schedule of all its property, including debts due or to become due to such corporation, so far as he may have knowledge of the same.

Execution may
be satisfied by
debts due the
company.
Ib.

67. If any such officer, holding an execution, shall be unable to find other property belonging to such corporation liable to execution, he, or the judgment creditor, may elect to satisfy such execution, in whole or in part, by any debts due the same, not exceeding the amount thereof; and it shall be the duty of any agent or other person having the 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 such corporation, subject to such equitable set-offs on the part of the debtor as may be in other assignments.

Penalty for refu-
sing to transfer.
Ib.

68. Every such agent or other person, who shall neglect or refuse to comply with the provisions of the two preceding sections, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

Duty of directors
in case of insol-
vency.

R. S. 129.

69. Whenever any incorporated company in this state shall become insolvent, it shall be the duty of the directors or managers thereof, within ten days thereafter, to call a public meeting of the stockholders, and to lay before them for inspection and examination all the books of accounts, by-laws and minutes of the said corporation, and to exhibit to the said meeting a full and true statement of all the estate, funds and property of the said company, and of all the debts due and owing to the said company, and by whom, and of all the debts owing by the said company, and to whom, as far as the said directors and managers can at that time make

Exhibit to be
made.

^(a) Includes all laborers in the employ of the company at the time of its suspending business operations. The apprentices of such company are entitled to their wages without regard to the time that they were last actually laboring for the company, *Bedford v. Newark Machine Co.*, 1 C. E. Gr. 117.

out the same; so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the said company.

70. Whenever any incorporated company shall have become insolvent or shall suspend its ordinary business for want of funds to carry on the same, it shall and may be lawful for any creditor or stockholder to apply, by petition or bill of complaint, to the chancellor, setting forth the facts and circumstances of the case, for a writ of injunction, and the appointment of a receiver or receivers, or trustees; whereupon, the chancellor, being satisfied of the sufficiency of said application, and also of the truth of the facts and allegations contained in the said petition or bill, by affidavit or otherwise, and upon giving, when so ordered, such reasonable notice, to be served or published, as the chancellor in an order to be made for that purpose shall direct, the chancellor may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered by or on behalf of the parties; and if upon such inquiry into the matters or cause of complaint it shall be made to appear to the chancellor that the said company has become insolvent, and shall not be about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it shall and may be lawful for the chancellor to issue an injunction to restrain the said company and its officers and agents from exercising any of the privileges or franchises granted by its certificate or by the act incorporating the said company, and for collecting or receiving any debts, or from paying out, selling, assigning or transferring any of the estate, moneys, funds, lands, tenements or effects of the said company, until the court shall otherwise order. (a)

Remedy in chancery, by bill, etc. *Ib.*

Notice.

Injunction.

71. That whenever two or more of the directors, or the cashier of any banking company shall admit that the said bank is insolvent or unable to pay its debts, and the said bank shall neglect or refuse to pay its just debts, when demanded within the usual and proper hours of business; or whenever such banking company shall have stopped payment, by neglecting or refusing to redeem their bills, notes or other evidences of debt, in specie or in the notes of some other incorporated bank, current at the time in this state at par value, for want of funds, or shall have closed its doors during banking hours, or taken any other measures with intent to prevent the creditors of the said bank from demanding payment of their just debts, or from presenting the notes or bills of the said bank for redemption as aforesaid; or shall have suspended the ordinary business of the said bank for want of funds to carry on the same; the said banking company shall from the time thereof, be deemed and considered insolvent within the true intent and meaning of this act.

Evidence of insolvency. *Ib.*

72. It shall and may be lawful for the court of chancery, if the circumstances of the case and the ends of justice require it, at the time of ordering the said injunction, or at any other time afterwards during the continuance of the said injunction, to appoint a receiver or receivers, or trustee or trustees, 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 belonging to the said company at the time of their insolvency or suspension of business as aforesaid; and to sell, convey or assign all the said real or personal estate; and to pay into the court of chancery, all the moneys and securities for money arising from such sales, or which the said receiver or receivers, or trustee or trustees shall collect or receive by virtue of the authority vested in them, to be disposed of by the said receiver or receivers, or trustee or trustees, from time to time, under the order of the said court, among the creditors of the said company; first making to the receiver or receivers, or trustee or trustees, such reasonable compensation

Receivers may be appointed. *Ib.*

Powers.

Compensation.

(a) Applies to companies chartered before the passage of the act. (Feb. 16, 1829), *Suydam v. Bank of New Brunswick*, 2 Gr. Ch. 114. The only criterion of insolvency (except as to banks) is the suspension of business. *Bedford v. Newark Machine Co.*, 1 C. E. Gr. 117. The object of the act is to secure to the creditors of such corporation an equal distribution of its assets and any proceeding which defeats this object is a fraud upon the act and illegal. *State Bank v. Bank of New Brunswick*, 2 Gr. Ch. 266. *Rawnsley v. Trenton Insurance Co.*, 1 Stock. 347. *Peoples Bank v. Paterson Bank*, 2 Stock. 13. *Wells v. Rahway Rubber Co.*, 4 C. E. Gr. 402. An assignment, although made for the benefit of creditors, is void. *American Co. v. Paterson Co.*, 7 C. E. Gr. 72. No preference in favor of any creditor can be allowed. *Holcomb v. New Hope Bridge Co.*, 1 Stock. 457. *Wells v. Rahway Rubber Co.*, 4 C. E. Gr. 402; whether by a mortgage, although the company was solvent when the resolution authorizing its execution was passed, *Ibid.*; or by judgment confessed, *Stratton v. Allen*, 1 C. E. Gr. 229; such judgment creditor will be paid proportionally with the other debtors of the company, *Ibid.*. But a note given for a *bono fide* debt is good although the company was insolvent, *Savage v. Ball*, 2

as the chancellor may deem just and proper, and also deducting the costs of the proceedings in the said court.(a)

Receiver's oaths.
Ib.

73. Before the said receiver or receivers, or trustee or trustees, shall be capable of acting, he or they shall comply with such terms as the chancellor in his order appointing him or them, may prescribe, and he or they shall respectively take and subscribe the following oath or affirmation, before one of the masters of the court of chancery, or before the chancellor: "I, ———, do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me, as receiver or trustee, (as the case may be), 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.

Power to examine witnesses, etc.
Ib.

74. It shall and may be lawful for the receiver or receivers, or trustee or trustees, in order to enable them to ascertain and secure the property and effects of the company, for which he or they shall be appointed as aforesaid, to send for persons and papers, and to examine the said persons, and the president, directors, managers, cashier, and all other officers and agents of the said company, on oath or affirmation (which oath or affirmation the said receiver or receivers, or trustee or trustees, are hereby empowered to administer), respecting the affairs and transactions of the said company, and the estate, money, goods, chattels, credits, notes, bills, and *choses in action*, real and personal estate and effects of every kind of the said company; and if any such person shall refuse to be sworn or affirmed, and to make answer to such questions as shall be put to him, or shall refuse to declare the whole truth touching the subject matter of the said examination, then it shall be lawful for the chancellor, on report made to him by the said receiver or receivers, or trustee or trustees, to commit such person to prison, there to remain until he shall submit himself to be examined as aforesaid, and shall pay all the costs of such proceedings against him.(b)

Penalty for refusing to swear.

Power to search, etc.
Ib.

75. It shall be lawful for the said receiver or receivers, or trustee or trustees, with the assistance of a peace officer, to break open, in the day time, the houses, shops, warehouses, doors, trunks, chests, or other places of the said company, for which he or they shall be appointed receiver or receivers, or trustee or trustees, as aforesaid, where any of the said company's goods, chattels, *choses in action*, notes, bills, moneys, books, papers or other writings or effects, have been usually kept, or shall be; and to take possession of the same, and also to take possession of the lands and tenements belonging to said corporation.

Inventory and report.
Ib.

76. It shall be the duty of the receiver or receivers, or trustee or trustees, so to be appointed, as soon as they conveniently can, after taking possession of the estate and effects of the company for which he or they shall be appointed as aforesaid, to lay before the court of chancery a full and complete inventory of all the estate, property and effects of the said company, its nature and probable value, and an account of all the debts due from the said company and of the debts due to it, as near as the said

C. E. Gr. 143. See *Peoples Bank v. Paterson Bank*, 2 Stock. 14. Payment of the bills of a bank, by its cashier, up to the moment of its suspension, is valid. *Peoples Bank v. Paterson Bank*, 2 Stock. 13. So, a transfer of the property of a bank prior to suspension, for a valuable consideration to a bona fide purchaser without notice, *Kinsela v. Catawact City Bank*, 3 C. E. Gr. 159; but not to a purchaser who knew such bank had refused to redeem its bills. *Suydam v. Bank of New Brunswick*, 2 Gr. Ch. 276. The insolvency must be made out satisfactorily before the jurisdiction attaches. *Parsons v. The Monroe Co.*, 3 Gr. Ch. 188. *Brundret v. The Paterson Co.*, 3 Gr. Ch. 291; or, if the injunction has been allowed and the insolvency does not appear, it will be dissolved. *Goodheart v. Ravhan Co.*, 4 Hal. Ch. 73. The chancellor is not bound to issue the injunction although the company is insolvent. *Ravensley v. Trenton Insurance Co.*, 1 Stock. 95, 347. As a general rule a receiver will be appointed, unless it appear to be for the interest of the creditors and stockholders that the management be left in the directors' hands. *Nichols v. Perry Co.*, 3 Stock. 126. *Parsons v. Monroe Co.*, 3 Gr. Ch. 188; but it is not a matter of course. *Oakley v. Paterson Bank*, 1 Gr. Ch. 174. *Keen v. Coll*, 1 Hal. Ch. 365. *Hamburgh Co. v. Edsall*, 3 Hal. Ch. 288; 4 Hal. Ch. 141. *Ravensley v. Trenton Insurance Co.*, 1 Stock. 347. Appointment refused. *Hager v. Stevens*, 2 Hal. Ch. 375.

(a) Receivers being officers of the court are at all times

entitled to, and must receive, its protection. *Cammack v. Johnson*, 1 Gr. Ch. 164. They derive all their authority from the statute. *Runyon v. Farmers Bank*, 3 Gr. Ch. 480. They represent all the creditors, and it is irregular for a creditor to appear and act by his own solicitor, without leave of the court. *Mechanics Bank v. Bank of New Brunswick*, 2 Gr. Ch. 438. The assignment passes the property in the same condition in which it was held by the corporation. *Receivers v. Paterson Gas Co.*, 3 Zab. 283. Rents accruing after the receiver's appointment belong to him. *Corrigan v. Trenton Falls Co.*, 3 Hal. Ch. 489. *Fish v. Potts*, 4 Hal. Ch. 277, 909. The property is considered as in court and under its control. *State Bank v. Bank of New Brunswick*, 2 Gr. Ch. 266. How the receivers should sell and what discretion they may use. *Knott v. Morris Canal Co.*, 3 Gr. Ch. 423. *Kelly v. The Neshanic Co.*, 3 Hal. Ch. 579. *Potts v. Ordnance Co.*, 2 C. E. Gr. 516. They may ratify a sale made by the company after it was insolvent, although such sale is, by the act, declared null and void against creditors. *Suydam v. The Bank of New Brunswick*, 2 Gr. Ch. 114. See post, § 81. The report of a master on a receivers account may be excepted to. *Mechanics Bank v. Bank of New Brunswick*, 2 Gr. Ch. 437. *Richards v. Morris Canal Co.*, 3 Gr. Ch. 428.

(b) They cannot maintain a bill for discovery. *Smith v. Trenton Falls Co.*, 3 Gr. Ch. 505.

receiver or receivers, or trustee or trustees, can ascertain the same at that time; and also to make a report of their proceedings to the said court every six months thereafter, until the said trust shall be completed.

77. The receiver or receivers, or trustee or trustees, so to be appointed, shall be deemed and taken to be a receiver or receivers, or trustee or trustees, for the creditors and stockholders of the company for which they shall be appointed, with full power and authority, whenever they shall deem it proper, to institute suits at law or in equity in his or their own name or names, as receiver or receivers, or trustee or trustees, as aforesaid, for the recovery of any estate, real or personal, debts, rights in action, damages and demands whatsoever and wheresoever existing in favor of the said company at the time of the insolvency or suspension of business, as aforesaid, of the said company, or accruing subsequent thereto; and with power and authority, in their discretion, to compound and settle with any debtor of the said company, or with persons having possession of their property, or in any way responsible, in law or equity, to the said company at the time of its insolvency or suspension of business as aforesaid, upon such terms and in such manner as the said receiver or receivers, or trustee or trustees, shall deem just and beneficial, under all the circumstances, to the persons interested in the funds and property of the said corporation; and in case of mutual dealing between the said corporation and any other person or persons, to allow just set-offs in favor of such persons, in all cases in which it shall appear to the said receiver or receivers, or trustee or trustees, that the same ought to be allowed, according to law and equity; (a) *provided*, that where a debtor shall have paid *bona fide* his debt to the said company, without notice that the said company had become insolvent, or had suspended its business as aforesaid, he, she or they shall not be liable to pay the same to the receiver or receivers, or trustee or trustees.

78. Any creditor who shall lay his claim before the receiver or receivers, or trustee or trustees, appointed in pursuance of this act, may, at the same time, declare his desire that a jury may decide thereon; and in like manner the said receiver or receivers, or trustee or trustees, may require that the same shall be referred to a jury; and in either case, such request shall be entered on the minutes of the said receiver or receivers, or trustee or trustees, 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 empanelled, as in other cases to try the same at the circuit court next to be holden in the county in which the said company carried on their business; the verdict of such jury shall be subject to the control of the supreme court, as in suits originally instituted in the said court, and when rendered, if not set aside by the court, (b) shall be certified by the clerk of the supreme court, to the said receiver or receivers, or trustee or trustees; and such creditor or creditors shall be considered, in all respects, as having proved their debts, for the amounts so ascertained to be due to them.

79. Every matter and thing by this act required to be done by the receiver or receivers, or trustee or trustees, of any such incorporated company shall be good and effectual, to all intents and purposes, if performed by a majority of them; and it shall and may be lawful for the court of chancery to remove any receiver or receivers, or trustee or trustees, so to be appointed, and to appoint another or others in his or their place or places, or to fill any vacancy or vacancies which may occur, as the said court may deem expedient and proper.

80. In payment of the creditors and distribution of the funds of any such company 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 that the said creditors shall be entitled to such distribution on debts not due, making in such case a lawful rebate of interest, when

(a) The act does not confine itself to legal set-offs, but refers to *just* set-offs, and expressly directs the receivers to allow them, *State Bank v. Bank of New Brunswick*, 2 Gr. Ch. 266. *Snydam v. Bank of New Brunswick*, 2 Gr. Ch. 276. *Receivers v. Paterson Gas Co.*, 3 Zab. 283. See *Brewer v. Norcross*, 2 C. E. Gr. 219. If such set-off be not allowed the party entitled to it may appeal, *Jackson v. Peoples Bank*, 1 Stock. 205.

(b) The chancellor also has the power to order a jury, but the verdict is conclusive unless set aside by an order of the supreme court, *Holcomb v. New Hope Bridge Co.*, 1 Stock. 457.

interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs and expenses as aforesaid, and the preferred stockholders, may be divided and paid to the general stockholders proportionally, according to their respective shares.^(a)

Suits pending
may be con-
tinued.
Ib.

81. In all suits in any court of law or equity, which shall be pending in the name of any such incorporated company, as aforesaid, at the time of the appointment of a receiver or receivers, or trustee or trustees, as aforesaid, it shall be lawful for the said courts and they are hereby directed, on application of the said receiver or receivers, or trustee or trustees, to cause the said receiver or receivers, or trustee or trustees, to be substituted as plaintiff or plaintiffs, in the place and stead of the said company, or to carry on such suit in the name of the said company, for the use of the said receiver or receivers, or trustee or trustees.

Appeal to chan-
cellor.
Ib.

82. In case any such company or person or persons, whatever, shall think themselves or himself aggrieved by the proceedings or determination of the said receiver or receivers, or trustee or trustees, in the discharge of their duty, it shall be lawful for the party aggrieved to appeal to the chancellor, who 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; and the chancellor, in the execution of the powers and authority under this act, is hereby vested with all the jurisdiction and power which is lawful for the court of chancery to exercise in suits depending in that court, and may proceed according to the rules, principles and practices of that court, except when otherwise directed by this act; and all cases brought before the chancellor under this act shall be considered as depending in the court of chancery, and the orders and decisions carried into effect the same as in other causes of equity jurisdiction.^(b)

Power of the
court.

Corporations not
to transact busi-
ness when re-
ceivers are
appointed.

P. L. 1852, p. 397.

83. Whenever an injunction shall have been granted against any incorporated company, as provided for in this act, and a receiver or receivers or trustee or trustees shall have been appointed, as further provided for, and said injunction and appointment shall have continued for four months, it shall not be lawful for the stockholders or directors of said corporation, or any other person whatever, to use or exercise the franchises of such corporation, or to transact any business in their name, or by color of their charter, except such as may be necessary to collect their property and assets, and to sell the same, and distribute the proceeds among the creditors and stockholders of said corporation; and that for all other purposes the charter of said corporation, by such injunction, appointment and continuance, shall be forfeited and void, without any further proceedings or judgment.

Land may be
sold.

P. L. 1866, p. 296.

84. Where the property of an insolvent corporation, in the hands of a receiver or receivers or trustee or trustees appointed under the laws of this state, is encumbered 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 such receiver or receivers or trustee or trustees to sell the same, clear of encumbrances, at public or private sale, for the best price that can be obtained, bringing the money into the court of chancery, there to remain subject to the same liens and equities of all parties in interest, as was the property before it was sold, and to be disposed of as the said court, by its decree, shall order and direct.^(c)

Franchises may
be sold, etc.

R. S. 129.

85. Whenever receivers or trustees, appointed or to be appointed by virtue of this act, for the creditors and stockholders of any company, shall have charge of any 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 cor-

^(a) A creditor who shows a reasonable excuse for his delay may be admitted to prove his claim before the receiver, at any time before distribution. *Grinnell v. Merchants Insurance Co.*, 1 C. E. Gr. 233. A judgment which was not entered until after the appointment of a receiver, or the allowance of the injunction, is not entitled to preference. *Kelly v. Neshanic Co.*, 3 Hal. Ch. 579. See *Stratton v. Allen*, 1 C. E. Gr. 229; and cases cited, *ante*, p. 37, note^(b). Distribution of assets, how made, *Corrigan v. Trenton Falls Co.*, 1 Hal. Ch. 232. *Smith v. Brown*, 3 Hal. Ch. 526.

^(b) The language of this section is very comprehensive and embraces every question which can possibly be brought before the receivers for their action, *Jackson v. Peoples Bank*, 1 Stock. 205.

^(c) Under this section the receiver should be vested with large discretionary power as to the mode of sale, *Potts v. Ordnance Co.*, 2 C. E. Gr. 395. See *Middleton v. West Line R. Co.*, 10 C. E. Gr. 306.

porators and creditors of such company have an interest, it shall be lawful for such receivers or trustees to sell or lease the principal work for the construction whereof the said company were incorporated, together with all the chartered rights, privileges and franchises belonging to said company 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 company, or during the term in such lease specified, in as full and ample a manner as the stockholders of such company 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 any wise affect any corporation authorized by law to exercise banking privileges.

Proviso.

86. Nothing in this act contained relating to insolvent corporations shall apply to any incorporated literary or religious society, or any corporation not formed for purposes of gain, or destroy or impair any right or remedy already existing against any incorporated company.

Limitation of act.
Ib.

87. When any personal action shall be 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 of the said corporation, or left at his dwelling house or usual place of abode, at least six entire days before its return; and in case the president or other head officer of the said corporation cannot be found in this state, to be served with process as aforesaid, and has no dwelling house, or usual place of abode within this state, then a copy of the said summons shall be served on the clerk or secretary of the said corporation, if any there be, and if no clerk or secretary, then on one of the directors of the corporation, or left at his dwelling house or usual place of abode, six entire days before its return. (a)

Process what,
and how served.

R. S. 947.

Amended.

88. In all personal suits or actions hereafter brought in any court of this state against any foreign corporation or body corporate, not holding its charter under the laws of this state, process may be served upon any officer, director, agent, clerk or engineer of such corporation or body corporate, either personally or by leaving a copy thereof at the dwelling house or usual place of abode of such officer, director, agent, clerk or engineer, or by leaving a true copy of such process at the office, depot or usual place of business of such foreign corporation or body corporate, and such service shall be good and valid to all intents and purposes. (b)

Process against
foreign corpora-
tions.

P. L. 1865, p. 467.

89. 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.

When defendant
in court.

90. In case the sheriff or other officer shall return such summons "not served" or "not summoned," and an affidavit shall be made to the satisfaction of the court, that process cannot be served as mentioned in the eighty-seventh section of this act, then the court shall make an order directing the defendants to cause their appearance to be entered to the said action, on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in one of the public newspapers printed in this state, for at least six weeks, and a copy of the same order shall also be posted up within the time aforesaid, in three public places in this state, as shall be ordered by the said court, for at least six weeks, and if the defendants shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the due publication of such order, the court being satisfied of the truth thereof, shall order the clerk to make an appearance for

Proceeding when
summons re-
turned, "not
served" or "not
summoned."

R. S. 947.

(a) Only applies to process issued out of the higher courts, and not to justices' courts. *Delaware and Lackawanna Railroad Co. v. Ditton*, 7 Vr. 361. Service of process on the foreman of a company is insufficient. *Flax and Hemp Co. v. Ballentine*, 1 Harr. 454; so on a book-keeper. *Dock v. Elizabeth Manf. Co.*, 5 Vr. 322. If on any officer or agent whose official duty or course of employment would require him to notify the governing board of the corporation of such service, it is good. *Ibid.* On A. B. "said to be one of the directors," is not sufficient. *Den. Asten v. Bridgewater Copper Co.*, 5 Hal. 237. Where a new railroad was called by the same name as an old one, and the president of the new

road had been president of the old, and the process had been served on him in a suit for a debt of the old company, an injunction was issued to restrain the plaintiffs from satisfying their execution out of the property of the new road. *Central R. R. Co. v. Bunn*, 3 Stock, 336.

(b) A foreign corporation which has no place of business in this state, and which at the time of the commencement of the suit is not doing business in the state, the contract sued on being made in a foreign jurisdiction, is not suable here. This act does not extend the judicial jurisdiction, it has merely prescribed the mode of serving process upon them. *Camden Rolling Mill v. Swede Iron Co.*, 3 Vr. 15.

the defendants, and thereupon the action shall be further proceeded in, as if the said defendants had caused their appearance to be entered to the said action.

Corporation not to alien lands during suit if order for publication made
Ib.

91. It shall not be lawful for any corporation, against whom any order shall be made for publication, as aforesaid, after the entry of the said order in the minutes of the court, to 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 one of the inferior courts of common pleas in this state), of which said corporation 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.^(a)

Suit to go on in case corporation dissolved.

P. L. 1852, p. 140.

92. In any action now depending or to be commenced in any court of record of this state, against any corporation now or heretofore existing, or that may be created hereafter, if said corporation become dissolved, by the expiration of its charter or otherwise, before final judgment obtained therein, the said action shall not abate by reason thereof; but the dissolution of said corporation being suggested, and the names of the trustees or other legal representatives of said corporation being entered upon the record, the same action shall proceed to final judgment against said trustees or other legal representatives by the name of the corporation.

V. Remedies.

2. AGAINST DIRECTORS AND STOCKHOLDERS.

Action for liability imposed by this act.

P. L. 1849, p. 300.

93. When any of the officers or directors of any company, or stockholders thereof shall be liable, by the provisions of this act, to pay the debts of such company, or any part thereof, any person to whom they shall be so liable may have an action on the case against any one or more of the said officers, directors or stockholders; and the declaration in such action shall state the claim against the company, and the ground on which the plaintiff expects to charge the defendants personally.

Remedy against by bill in chancery.
Ib.

94. When any of the said officers, directors or stockholders are liable, as mentioned in this act, for the debts of any such company, or any part thereof, the person to whom they are so liable may, instead of the other proceedings mentioned in this act, have his remedy against the said officers, directors or stockholders by a bill in chancery.

Stockholders who pay company's debts may recover of co.
Ib.

95. Any officer, director or stockholder of a company, who shall pay any debt of the company for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

No satisfaction shall be had of property of directors or stockholders until judgment and exhaustion of the claim against corporation.

96. 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 shall have been obtained therefor against such corporation, and execution thereon returned unsatisfied, but any suit brought against any such director or stockholder for such debt shall stay after execution levied or other proceedings to acquire a lien until such return shall have been made.

VI. Miscellaneous.

Notice to be given of application for acts of incorporation.
R. S. 151.

97. When any person or persons shall be disposed to make application to the legislature of this state for an act of incorporation, for any purpose whatever, or any company or association, already incorporated, shall be disposed to make application for a renewal of their charter, or any altera-

^(a) After service of process on a corporation at the suit of A. B they confessed judgment to C. D., under which all their lands were sold. *Held*, that this was an alienation within the meaning of the act, and the sheriff was amerced for refusing to sell such lands under the judgment and execution of A. B., *Stansbury v. Patent Cloth Manf. Co.*, 2 *South*. *433. The ameracements were afterwards set aside in error, 2 *South*. *861.

tion in the law so incorporating them, or when any application shall hereafter be made for the purpose of obtaining a law authorizing the erection of a bridge over any navigable water in this state, it shall be the duty of such person or persons so applying, or the directors or stockholders of such incorporation, or some of them, to signify his or their intention, by advertisement, to be inserted for at least six weeks, successively, in one or more of the newspapers published in the county where the objects of such association or corporation are carried or intended to be carried into effect; and if no newspaper be published in such county, then in the newspaper or newspapers published nearest to the same; and specify the objects of such incorporation or application, the amount of capital stock requisite to carry their objects into effect; and in case of an application for any alteration in any charter already granted, it shall be the duty of the stockholders or directors of such incorporation to state in such notice, specifically, the alteration so to be applied for; and that due proof shall be made of such notice having been published previous to leave being given to bring in any bill to comply with such application.

98. Any company formed under and pursuant to an act entitled "An act to authorize the establishment and to prescribe the duties of manufacturing companies," approved the twenty-fifth day of February, eighteen hundred and forty-six, and the several supplements thereto may come under and be subject to the provisions and liabilities of this act, in the same manner as if formed under the same, if such company make a certificate under the hands of the president and directors of the company, that said company desires to come under the said provisions and liabilities; which certificate shall be acknowledged, recorded and filed in the same manner as the certificate required by this act; and such company, on the recording and filing of said certificate as aforesaid, shall be free from the liabilities and provisions of the said act under which said company was formed; *provided*, that nothing in this section contained shall be held to affect any transaction, liabilities or debts of any such company heretofore done, accrued or contracted.

99. *Whereas*, by the laws of this state, corporations are authorized to carry on a portion of their business out of this state, and such general provision is embraced in the laws of other states granting such powers; *and whereas*, doubts have arisen as to whether foreign corporations can hold, mortgage and convey lands in this state; therefore, it shall be lawful for foreign corporations to hold, mortgage, lease and convey such real estate in this state as may be necessary for the purpose of carrying on the business of such incorporations in this state, or such as it may acquire, by way of mortgage or otherwise, in the payment of debts due to said foreign corporations; and any conveyances or mortgages to or by such foreign corporations of lands in this state, heretofore made, are hereby declared to be good and valid in this state, both in law and equity.

100. That all contracts or agreements for the sale, letting, leasing, consolidating, merging, or in any manner disposing of or transferring the franchises, privileges, or any part thereof, of any company or organization incorporated by or under the laws of this state, shall be acknowledged or proved as conveyances of land in this state are authorized to be acknowledged or proved, and shall be recorded in the office of the secretary of state within two months after the execution thereof, at the proper cost of the parties thereto; and unless such contract or agreement is lodged with the secretary of state for record within thirty days from the date of the execution thereof, the same shall be of no effect until recorded; and copies of the said record, duly certified by the secretary of state, shall be received in evidence in any court of this state, and be as good, effectual and available in law as if the original contract or agreement was then and there produced; *provided, nevertheless*, that this act shall not be held or construed by any court, or by any officer or person whomsoever, as having rendered, or as rendering invalid or of no effect any such contract or agreement as is in said act mentioned, as between the parties to such contract or agreement, nor in favor of or for the benefit of any person or corporation having notice of such contract or agreement, although such contract or agreement has not been or may not be lodged for record or recorded according to the directions of said act; but every such con-

What to specify.

Proof.

Companies formed under manufacturing company act of 1846, may come under this act.

P. L. 1850, p. 280.

Foreign corporations authorized to hold and convey real estate in this state.

P. L. 1873, p. 76.

Contracts for sale, letting franchises, &c., shall be acknowledged and proved, and recorded in the office of the secretary of state.

P. L. 1871, p. 77.

Copies recorded, evidence.

Not to be construed as invalidating any contract or agreement not recorded as required by said act.

P. L. 1873, p. 34.

tract or agreement which has not been, and which may not hereafter be lodged for record and recorded pursuant to the directions of said act, shall, between the parties to such contract or agreement, and as to every person or corporation having notice thereof, have the same force and effect as if such contract or agreement had been lodged for record and recorded pursuant to the directions of said act, and such contracts or agreements may be lodged for record and recorded at any time, and from the time of lodging the same for record shall be considered as duly notified to all persons entitled to notice thereof.

Repealer. 101. "An act to authorize the establishment, and to prescribe the duties of manufacturing companies," approved February twenty-fifth, eighteen hundred and forty-six, and the several supplements thereto, are hereby repealed; but no company established under the said act, or any of said supplements, or any person having claims or demands against said company, shall be affected by the repeal thereof.

Repealer. 102. "An act to authorize the establishment and to prescribe the duties of companies for manufacturing and other purposes," approved March second, eighteen hundred and forty-nine, and the several supplements thereto, are hereby repealed; but no company established under the said act or any of the said supplements, or any person having claims or demands against said company shall be affected by the repeal thereof.

Foreign corporations. P. L. 1873, p. 76. 103. Foreign corporations, doing business in this state, shall be subject to all the provisions of this act, so far as the same can be applied to foreign corporations.

Repealer. 104. That all acts and parts of acts, general or special, inconsistent herewith, be and the same are hereby repealed.

Taxation of estate of corporations. 105. That all the real and personal estate of every corporation hereafter incorporated by any act of the legislature, or by the filing of a certificate or otherwise under any general law of this state, shall be taxed the same as the real and personal estate of an individual; *provided, however*, that the provisions of this section 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.

Proviso.

A further supplement to an act entitled "an act to prevent frauds by incorporated companies," approved April 15, 1846.

P. L. 1874, p. 11.

Approved February 11, 1874.

Receiver of insolvent railroad to operate road subject to order of chancellor.

106. SEC. 1. That whenever any incorporated railroad company in this state shall become insolvent, and the property of such company shall have passed into the hands of a receiver by order of the chancellor, in accordance with the act to which this is a supplement, the receiver shall, and he is hereby empowered to operate said railroad for the use of the public, subject at all times to the order of the chancellor; and all expenses incident to the operation of said railroad shall be a first lien on the receipts, to be paid before any other encumbrance whatever.(1)

Expenses first lien on receipts.

A further supplement to an act entitled "an act to prevent fraudulent elections by incorporated companies, and to facilitate proceedings against them," approved April 15, 1866.

P. L. 1874, p. 37.

Approved March 17, 1874.

On failure to elect directors on day required by charter, secretary on request of five stockholders shall call meeting for election of directors.

107. SEC. 1. That if, at any time hereafter, the election for directors of any incorporated company of this state, shall not be duly held on the day designated by the act incorporating such company, or on the day designated by the by-laws of such company, it shall be the duty of the secretary of such corporation, on the written request of five stockholders, and in mutual insurance companies on like request of five policy holders, to call a meeting of the stockholders or policy holders of such company, for the purpose of electing directors; said call to be made in the same manner as required by the charter or by-laws of such company for the regular election of directors thereof. (See *Sec. 46*).

Not to apply to literary or religious societies.

108. SEC. 2. That nothing in this act shall apply to any incorporated literary or religious society.

(1) The act to which this is a supplement was repealed by the general repealer of 1875 to the Revision. This supplement was not repealed.

An act for the relief of corporations organized under general laws.

Approved March 31, 1875. P. L. 1875, p. 45.

109. SEC. 1. That whenever the original certificate of incorporation, filed by any association under any general act for the formation of incorporated companies, is or shall be defective by reason of the omission of any matter required by law to be therein stated, or by reason of defective proof or acknowledgment, or by reason of the same not having been filed in all the offices required by law, the incorporators or directors of such association are hereby authorized to make and file an amended certificate in conformity with the law under which such association was or shall have been organized, and upon such filing and upon due recording of such amended certificate, if required by law, said association shall be deemed and taken to be, and to have been a corporation from the time of filing such original certificate.

Amended certificate of incorporation may be filed.

110. SEC. 2. That nothing herein shall affect any suit or proceeding, at the time of filing such amended certificate, pending against said corporation, or impair any rights of action accrued against the stockholders, incorporators or directors.

Pending suits or rights of act not to be affected.

Counties.

1. Bounds of Bergen county.
2. Bounds of Essex county.
3. Bounds of Somerset county.
4. Bounds of Middlesex county.
5. Bounds of Monmouth county.
6. Bounds of Burlington county.
7. Bounds of Gloucester county.
8. Bounds of Salem county.
9. Bounds of Cape May county.
10. Easterly bounds of Essex county.
11. Easterly bounds of Middlesex county.
12. Northerly bounds of Monmouth county.
13. Northern and southern bounds of Salem county.
14. Northerly and southerly bounds of Cumberland county.
15. Partition line between Cumberland and Cape May.
16. Hunterdon county first formed.
17. Morris county formed.
18. Division line between Somerset and Morris.
19. Boundary line between Somerset and Middlesex.
20. Line of Middlesex and Monmouth.
21. Repeal of former act as far as altered.
22. Annexation of part of Essex to Somerset.
23. Alteration of line between Somerset and Middlesex.
24. Land north of line annexed to Somerset, south of line, to Middlesex.
25. Division line between Middlesex and Somerset.
26. Boundary line between Somerset and Middlesex.
27. Rights and liabilities of inhabitants set over, etc.
28. Cumberland county erected; bounds thereof.
29. Divided into six precincts and bounds of each.
30. Boundary line between Salem and Cumberland.
31. Boundary lines of Salem, Cumberland and Cape May.
32. Sussex county erected; bounds thereof.
33. Warren county erected; bounds thereof.
34. Powers and privileges of county of Warren.
35. Passaic county erected; bounds thereof.
36. Atlantic county erected; bounds thereof.
37. Powers and privileges of counties of Passaic and Atlantic.
38. Mercer county erected; bounds thereof.
39. Powers, etc., of Mercer county.
40. Part of Somerset county attached to Mercer.
41. Part of Hunterdon county attached to Mercer.
42. Hudson county erected; bounds thereof.
43. Powers, etc., of Hudson county.
44. Camden county erected; bounds.
45. Ocean county erected; bounds.
46. Powers, etc., of Ocean county.
47. Division of county of Ocean into six townships.
48. Chosen freeholders a body politic, name and powers.
49. Location of county buildings in Ocean county.
50. Part of township of Howell annexed to Dover.
51. Partition line between Ocean, Burlington and Monmouth counties.
52. When act fixing said line to take effect.
53. Boundaries of Middlesex county.
54. Union county erected; bounds.
55. Part of Woodbridge township, Middlesex county, annexed to Union.
56. To form part of Rahway township, Union county.
57. Change in bounds of Union county.
58. Boundary lines changed between counties of Middlesex and Union.
59. Territory annexed.
60. Northerly bounds of Monmouth county.
61. Part of Camden county set off to Gloucester.
62. Boards of freeholders of counties of Bergen and Hudson may survey and perpetuate line between counties.
63. In making survey certain lines to be the line as near as same can be ascertained.
64. Monuments to be erected on line established.
65. Surveys to be made under direction of a joint committee of boards.
66. If map and survey rejected to be filed in Secretary of State's office.
67. The board of freeholders may apply to Supreme Court to appoint commissioners for ascertaining partition between counties.
68. Commissioners to take oath.
69. To give thirty days notice of meeting.
70. To survey and ascertain line of partition; survey to be recorded in Secretary of State's office.
71. Line so surveyed to be boundary line.
72. Expense to be paid equally by counties.
73. Commissioners to settle township lines to be appointed by court of common pleas.
74. To take oath of office and give notice of their meeting.
75. To survey and ascertain line of partition; survey to be recorded in Secretary of State's office.
76. To be line between townships.