

## Corporations.

## I. POWERS.

1. Powers of corporations 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. Amended by sections 107, 145, 189, 208 and 292.
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. Amended by section 210.
16. Directors and officers.
17. Amended by section 211.
18. Secretary and treasurer.
19. Other officers to be elected and hold according to by-laws.
20. Vacancies filled according to by-laws.
21. Amended by section 223.
22. Meetings, how called.
23. Certificate of stock.
24. Repealed by section 275.
25. Amended by section 212.
26. Transfer of stock.
27. Assessments on stock.
28. Penalty for non-payment of assessments.
29. Proceedings for sale of shares.
30. Amended by section 272.
31. Amended by section 273.
32. Penalty for not making certificate.
33. Amended by section 274.
34. Amended by section 122.
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. Amended by sections 128 and 287.

## IV. MANAGEMENT AND LIABILITY OF DIRECTORS, &amp;c.

50. Place of meeting to be in New Jersey, except when charter designates another place.
51. Calling of meetings by stockholders.

52. Amended by section 227.
53. Liability for refunded capital before debts are paid.
54. Payment of capital to be in money, and no loans to stockholders.
55. Amended by section 213.
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. Amended by section 178.
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, &c.
71. Evidence of insolvency.
72. Receivers may be appointed.
73. Receiver's oath.
74. Power to examine witness, &c.
75. Power to search, &c.
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, &c.
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 alienate 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. Amended by section 185.
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. Amended by section 133.

## VII. SUPPLEMENTS.

106. Time for holding annual elections and declaring dividends may be changed by vote of stockholders.  
 107. Amended by sections 145, 139, 208 and 292.  
 108. Amended by section 135.  
 109. Certain companies may cut or acquire main canals or race-ways on each side of rivers or streams.  
 110. May purchase lands, construct reservoirs, &c.  
 111. Proceedings for purchase or condemnation of lands, &c.  
 112. Proceedings in case of appeal.  
 113. Rights to action for damages not impaired.  
 114. Companies may acquire dams, &c., from existing companies.  
 115. Supply of water between this and other states shall be equally divided.  
 116. Amended by section 136.  
 117. Companies may connect dams and works with any dams and works on same rivers or streams.  
 118. May lease works to other corporations.  
 119. Franchises, rights, works and structures of any canal or railroad not to be interfered with without consent.  
 120. Not more than a majority of directors of plank road company need reside in this state.  
 121. Amended by section 133.  
 122. How companies may be dissolved.  
 123. Amended by section 271.  
 124. Change of corporate name not affected until certificate is filed.  
 125. Distribution amongst creditors of insolvent corporation, how made. Preference to laborers.  
 126. Chancellor may declare charter of insolvent corporation void.  
 127. When charter not to be void notwithstanding injunction and appointment of receiver.  
 128. Amended by section 237.  
 129. Repealer.  
 130. Amended by sections 162 and 175.  
 131. Amended by section 153.  
 132. Company in hands of receiver may mortgage property for purpose of re-organization.  
 133. Taxation of corporate property.  
 134. Repealer.  
 135. Certain companies may construct dams in rivers and streams, &c.  
 136. Such companies may issue bonds.  
 137. Corporations may change par value of stock.  
 138. Where directors of water or manufacturing companies may reside. Number of directors.  
 139. Number of shares of stock may be increased by subdivision of amount and par value.  
 140. How certain companies may become organized under general act.  
 141. Corporation taxed upon capital stock and surplus.  
 142. Repealer.  
 143. Banking corporations whose stock has been impaired may reduce par value of shares and issue additional shares.  
 144. When stock is subscribed and paid for, certificate to be filed.  
 145. Amended by sections 189, 208 and 292.  
 146. Seven or more persons may form a society for manufacturing or co-operative trade.  
 147. Only one director of manufacturing company need be a resident of this state.  
 148. Repealer.  
 149. Service of prerogative writs on foreign corporations.  
 150. Such writs may be enforced by attachment against property of corporation.  
 151. Repealer.  
 152. Foreign corporation may hold, mortgage, lease and convey real estate.  
 153. Certain companies may decrease amount of capital stock.  
 154. When certificate contains provision that directors may levy assessments no action of stockholders necessary.  
 155. Amended by section 216.  
 156. Repealer.  
 157. Superseded by section 276.  
 158. Superseded by section 276.  
 159. Superseded by section 276.  
 160. When certificate of incorporation, &c., may be filed.  
 161. Foreign charitable or benevolent corporations may hold real estate.  
 162. Amended by section 175.  
 163. Societies for the relief of clergymen may increase number of trustees or directors.  
 164. Such societies may change time of holding annual meetings.  
 165. Cashiers of banking corporations to give bonds.  
 166. Liability of directors for failure to require such bonds.  
 167. Repealer.  
 168. Amount of capital stock required by company organized to keep a herd register.  
 169. Amended by section 263.  
 170. Amended by section 264.  
 171. Electric wires to be laid certain distance from water and gas pipes.  
 172. Certain corporations may hold stock of railroad companies.  
 173. Certain companies may reduce capital stock and par value of shares.  
 174. When charter of railroad or canal company is repealed, or company dissolved, chancellor shall take charge of effects.  
 175. When and how capital stock or number of directors may be increased.  
 176. Real and personal estate of manufacturing corporation, how taxed.  
 177. Repealer.  
 178. Lien of workmen in case of insolvency.  
 179. To what cases act applies.  
 180. Amended by sections 234 and 235.  
 181. Corporations whose legal existence has expired, may file certificates extending corporate existence within limited time.  
 182. Period of existence in such cases, when revived. Limitations upon such revival.  
 183. Amended by section 251.  
 184. Secretary of state to file certificate amending defects in original certificate of incorporation.  
 185. Foreign corporations may acquire, hold, mortgage, lease and convey lands.  
 186. When corporation organized to produce steam heat and power may lay pipes and conduits in streets, &c.  
 187. How such pipes and conduits shall be laid.  
 188. Corporations organized under special acts may decrease number of directors.  
 189. Purposes for which corporations may be organized.  
 190. Proceedings for dissolution of corporations created for educational purposes.  
 191. Powers of receiver and court of chancery in such cases.  
 192. Mutual associations may provide for and create capital stock.  
 193. Corporations organized for benefit of indigent and infirm firemen, whose charter existence has expired, may extend existence.  
 194. When existence shall be revived.  
 195. Amended by section 253.  
 196. Credit companies to deposit securities with comptroller of state.  
 197. What acts such credit companies shall not perform.  
 198. Further limitations upon their powers.  
 199. Superseded by section 276.  
 200. Secretary of state to compile and publish list of corporations annually. Expenses, how paid.  
 201. Repealer.  
 202. Certain corporations may renew corporate existence.  
 203. When such existence shall be extended.  
 204. Restrictions upon such renewal.  
 205. Repealer.  
 206. Powers of companies organized to hold agricultural fairs and exhibitions.  
 207. Police power at such fairs and exhibitions.  
 208. Proviso of tenth section not to forbid formation of company to operate railroad as lessee.  
 209. To what companies act applies.  
 210. Company may carry on part of business and hold real estate out of this state.  
 211. Number and election of directors. Classification of directors. Election of president.  
 212. Power to issue general and preferred stock.

213. Stock may be issued for property purchased.  
 214. Act not to apply to certain corporations.  
 215. Repealer.  
 216. Stock issued for property purchased may contain guaranty for dividends.  
 217. Act not to apply to certain corporations.  
 218. Repealer.  
 219. Corporation may organize to dredge and deepen channels, construct docks, railway tracks, &c.  
 220. Power of corporations to change, alter or repeal restrictions or limitations as to sale or transfer of stock.  
 221. Restrictions amended or repealed on filing certificate.  
 222. Repealer.  
 223. Use of proxies and manner of calling and conducting meetings of stockholders.  
 224. When acts creating corporations, limited to take effect on the happening of some future condition, shall have effect.  
 225. Corporations having an authorized capital stock exceeding \$100,000, how organized.  
 226. Repealer.  
 227. Manufacturing corporations to declare annual dividends.  
 228. When charter and powers of corporation shall become void for failure to pay state tax.  
 229. Comptroller to report delinquent corporations annually to governor, who shall declare charters void.  
 230. Proclamation of governor to be filed and published.  
 231. Penalty for exercising powers after proclamation.  
 232. One director only of any water company need reside in this state.  
 233. Repealer.  
 234. Who may fill vacancies caused by death of incorporators of corporations.  
 235. Repealer.  
 236. How capital stock may be increased.  
 237. Repealer.  
 238. Amended by section 250.  
 239. Repealer.  
 240. Corporations may alter name, capital stock, number of shares and par value in one certificate.  
 241. Assent of stockholders and directors required.  
 242. Certificate of assents to be filed.  
 243. Changes take effect on filing certificate.  
 244. State fee on filing such certificate.  
 245. Amended by sections 286 and 299.  
 246. Stockholders may act as board of directors when directors fail to attend meetings.  
 247. Repealer.  
 248. Manner in which certificates of stock may be issued to take the place of lost certificates.  
 249. Court to order such issue upon inquiry.  
 250. Amended articles of incorporation may be filed with assent of stockholders and approval of governor.  
 251. Amended certificate of incorporation may be filed to cure defect in original certificate, &c.  
 252. Repealer.  
 253. Formation of credit companies, &c., authorized.  
 254. Deposit of securities with state comptroller required.  
 255. Limit of time for proof of loss.  
 256. To what corporations act applies.  
 257. Repealer.  
 258. Proceedings in chancery by attorney-general against corporations that have not paid their taxes.  
 259. When and how mistakes shall be corrected.  
 260. Corporations may purchase, hold, sell, &c., capital stock of other corporations.  
 261. May do so in same manner as natural persons.  
 262. Repealer.  
 263. How and when electric light, heat or power companies may use public highways.  
 264. Such companies may lay pipes, conduits and wires in highways.  
 265. How number of directors may be increased or decreased.  
 266. Capital stock may be paid wholly or in part in cash or in property.  
 267. On failure to perfect organization, corporation may file certificate of dissolution.  
 268. When dissolution of corporation shall take effect.  
 269. Meaning of terms "general stock" and "common stock."  
 270. How original certificate of incorporation may be amended.  
 271. How name of corporation may be changed.  
 272. Certificate to be filed after payment of total amount of capital stock.  
 273. Certificate of increase of capital stock to be filed.  
 274. Certificate of change of nature of business to be filed.  
 275. Repealer.  
 276. State fees to be paid on filing certificates.  
 277. Repealer.  
 278. Stockholders may repeal provisions for classification of directors and voting power of stockholders, and elect new board.  
 279. Meeting to vote on such repeal and voting power, how called.  
 280. Where meeting shall be held and how conducted.  
 281. Proceedings where books showing who are stockholders are absent.  
 282. Newly-elected directors shall be lawful board.  
 283. On repeal of any of such provisions, certificate to be filed. State fee on filing.  
 284. Religious and charitable corporations exempt from paying state fees on filing certificates.  
 285. Repealer.  
 286. Amended by section 299.  
 287. Superseded by section 293.  
 288. Repealer.  
 289. Conveyance by corporation not invalidated by the absconding, &c., of any director.  
 290. When charter of corporation that has defaulted in the payment of taxes may be revived.  
 291. Secretary of state to note payment on proclamation of governor.  
 292. Companies to operate railroads in foreign countries authorized.  
 293. Corporations required to file lists of officers and directors, and state place of business. Secretary of state to furnish blanks and advertise notices. Penalty for non-compliance with act.  
 294. When forfeitures and penalties may be remitted.  
 295. When proclamation against corporation that has defaulted in payment of taxes shall be void.  
 296. Secretary of state to note payment of tax on proclamation.  
 297. Societies incorporated for relief of aged clergymen may transfer property and contract with other corporations for assumption of contracts.  
 298. Unlawful for insolvent company, or company in contemplation of insolvency, to sell, convey or transfer its property.  
 299. Powers of president and directors on dissolution in cases not already provided for by law.  
 300. Repealer.  
 301. Corporation failing to furnish information required by law shall pay expenses of investigation.  
 302. Charter or certificate of corporation may be extended for period not exceeding fifty years.  
 303. Certificate to be filed.  
 304. Powers reserved to the state.  
 305. How corporations whose existence has been extended shall be assessed.  
 306. Act not to apply to turnpike or toll companies.  
 307. Repealer.
- VIII. MISCELLANEOUS ACTS.
308. Appointment of receivers of insolvent railroad, canal or turnpike companies. Powers of receivers.  
 309. Receiver of insolvent railroad company to operate railroad subject to order of chancellor.  
 310. Conditions on which receiver may lease a railroad.  
 311. Proceedings to elect directors when they have not been elected at the time fixed by charter.  
 312. Act not to apply to literary or religious societies.  
 313. Amended certificate of incorporation may be filed.  
 314. Pending suits not affected.  
 315. Officers of corporation acting as executors, &c., to take oath.  
 316. Only one director of a foundry or machine company need reside within the state.  
 317. Repealer.  
 318. Certain manufacturing corporations may increase number of directors.  
 319. Corporations may remove principal office. Certificate to be filed.  
 320. Masonic lodges may surrender act of incorporation.  
 321. Amended by section 323.  
 322. Amended by section 324.

- 323. Corporate bonds may be paid by issue of additional capital stock.
- 324. What certificate shall be filed in such case.
- 325. Insolvent manufacturing company may issue bonds or additional stock for settlement with creditors. When, in such case, receiver may be discharged.
- 326. Corporations may issue new certificates of stock in place of those lost or destroyed.
- 327. Judicial proceedings where such new certificates exceed, at par, \$20,000. Effect of such proceedings.
- 328. Judicial proceedings where corporation refuses to issue new certificate.
- 329. Order requiring new certificate to be made. Security to be given.
- 330. Certain corporations may consolidate.
- 331. Conditions of such consolidation and merger.
- 332. Merger to take effect upon filing certificate with secretary of state.
- 333. Capital stock may be increased to carry into effect the consolidation.
- 334. Consolidated corporation may issue bonds and secure same by mortgage.
- 335. Insolvent manufacturing companies may enter into agreement with creditors for settlement.
- 336. Commissioners may be appointed to ascertain value of dissenting creditors' claims.
- 337. Appeal from decision of commissioners.
- 338. Receiver may compromise with directors or persons liable for default, &c.
- 339. How settlement made pending suit shall be made known to the court.
- 340. Such settlement not to be made without approval of court appointing the receiver.
- 341. Where certificate of incorporation is lost after being recorded by county clerk, a certified copy may be filed with secretary of state.
- 342. Such corporation deemed incorporated as of date of recording certificate by county clerk.
- 343. No corporation to assume the name of any other corporation.
- 344. Repealer.
- 345. Corporations may own and dispose of stock of other corporations.
- 346. Certain corporations may consolidate and merge.
- 347. Consolidation and merger to be made under certain conditions.
- 348. Question of consolidation to be submitted to stockholders.
- 349. When consolidation to take effect. Powers of consolidated company. Provisions concerning dissenting stockholders.
- 350. When franchises, &c., shall be vested in consolidated company.
- 351. Certain corporations may purchase stock of other corporations and issue their own stock therefor.
- 352. Certain water companies may increase capital stock.
- 353. Amended by section 355.
- 354. Repealer.
- 355. Corporations may increase capital stock on filing certificate.
- 356. Directors may issue common for preferred stock.
- 357. Directors may control the issue.
- 358. Repealer.
- 359. A majority of commissioners to receive subscriptions to capital stock may appoint others in place of those deceased or who fail to act.
- 360. Certain corporations not deemed dissolved for failure to file reports or statements.
- 361. Act not to apply to certain corporations.
- 362. Powers of commissioners authorized to receive subscriptions to capital stock where records of organization are lost.
- 363. Certain corporations may hold stock or bonds of other corporations.
- 364. Repealer.
- 365. Only one director of any corporation need reside within the state.
- 366. Corporations may do business outside of the state.
- 367. Repealer.
- 368. Directors of corporations for support of superannuated ministers may be increased.
- 369. Manufacturing company incorporated by special act may exchange paid-up stock for assessable shares.
- 370. Certificate to be filed.
- 371. Laborers to have prior lien on assets of insolvent corporation.
- 372. Such lien to be subject to mortgage liens.
- 373. Corporations organized under the laws of this state may consolidate and merge.
- 374. Conditions under which such consolidation may be made.
- 375. When consolidation shall be effected.
- 376. Franchises, &c., to be vested in consolidated company.
- 377. Proceedings for protection of dissenting stockholders.
- 378. Consolidated company may issue bonds, &c.
- 379. To what corporations act shall not apply.
- 380. Repealer.
- 381. Superseded by section 387.
- 382. Superseded by section 388.
- 383. Amended by section 385.
- 384. Repealer.
- 385. Foreign corporations subject to what taxes.
- 386. Repealer.
- 387. Foreign corporations required to file copy of charter, &c.
- 388. Secretary of state to issue certificate to such corporations.
- 389. Unlawful to transact business until conditions are complied with.
- 390. Certificate must be obtained before commencing business.
- 391. Penalty, how enforced.
- 392. Repealer.
- 393. Amount of property which certain corporations may hold increased to \$50,000.
- 394. Corporation may borrow money to improve property.

R. S. 129, 136, 139, 146.  
 P. L. 1849, p. 300.  
 " 1850, p. 280.  
 " 1852, p. 87, 140, 367.  
 " 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.

I. Powers.

An act concerning corporations.

Revision—Approved April 7, 1875.

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)

Power of corporations in general.  
 R. S. 136.  
 To have succession.

907-1  
 RWS96-31  
 Rev 96-277  
 34V-169  
 36V-517

(a) A corporation may acquire a name by reputation. *Den, The State v. Helmes, Pen. \*1050.* Where a corporation sues by 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.* *Middletown v. McCormick, Pen. \*502.* A company must be sued by its incorpo-

To sue, &amp;c.

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

Common seal.

III. To make and use a common seal, and alter the same at pleasure; (b)

rated name. *Flax and Hemp Co. v. Ballentine*, 1 Har. 454. A misnomer of a corporation in a deed will 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 Co. v. Clarkson*, 4 Hal. Ch. 541. See *Voorhees v. Voorhees*, 2 Hal. Ch. 511. *Goodell v. Union Association, &c.*, 2 Stev. 32. *Lanning v. Sisters of St. Francis*, 8 Stev. 392. 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 Har. 222. A corporation may acquire a name by usage. *Alexander v. Berney*, 1 Stev. 90.

(c) *Assumpsit* will lie against a corporation on an implied contract. *Baptist Church v. Milford*, 3 Hal. 182. *Mendham v. Losey*, Pen. 852. *Miller v. Church of Allowaystown*, 1 Har. 251. *Worrell v. Church of Millstone*, 8 C. E. Gr. 91. And suit for malicious prosecution. *Vance v. Erie Railway*, 3 Vr. 334. And trespass for an assault and battery. *Brokaw v. N. J. R. R. Co.*, 3 Vr. 328. And for a tort committed by its servants or agents. *State v. Morris and Essex R. R. Co.*, 3 Zab. 360. They are indictable for a nuisance. *Ib.* *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. *Thasman v. Est.*, 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. An action for libel will lie against a corporation. *McDermott v. The Evening Journal*, 14 Vr. 488; *S. C. affirmed*, 15 Vr. 480. Where the charter of a city directed the common council to make compensation to landowners 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 Vr. 129. See *Conroy 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 Vr. 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 Winstow*, 6 Vr. 437. *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 Suede Iron Co.*, 3 Vr. 15. Such corporation may defend itself against an illegal taxation, although not recognized in this state. *Erie 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. Erie Railway*, 6 Vr. 115. So, in such corporation be transacting business here under legislative authority. *Austin v. New York and Erie R. R. Co.*, 1 Dutch. 381. Nor can an attachment issue against such corporation. *Phillipsburg Bank v. Leckie v. Wainna R. R. 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. *Runde 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 *Ruyson 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. *Alter* 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 18th, 1859. *Insurance Association ads. Cole*, 2 Dutch. 362. But it was held that a stockholder must transfer his stock before he could become a competent. *The Delaware and Atlantic R. R. Co. v. Irick*, 3 Zab. 321. An action for installments 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. Irick*,

3 Zab. 321. See *The President, &c., 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. A corporation created for the purpose of carrying on a manufacturing business, has implied power to make negotiable paper, but no power to become a party to bills or notes for the accommodation of others. Such accommodation paper, however, cannot be impeached in the hands of a bona fide holder for value, who acquired it before maturity. *National Bank of Republic v. Young*, 14 Stev. 531. A stockholder may bring suit in equity in his own name to enforce a right of the corporation, without first requesting the directors to sue, where the directors themselves are the wrongdoers. *Knoop v. Bohmrich*, 4 Dick. 82. 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 McCurt. 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. On the granting of an appeal from a justice's court. *Steamboat Co. v. Baldwin*, 2 Vr. 440. A corporation, foreign or domestic, need not prove its corporate existence where the defense is on the merits. *Den v. Van Houten*, 5 Hal. 270. *Bennington Iron Co. v. Rutherford*, 3 Har. 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*, *Spem*, 522. *State v. Van Hart*, 2 Har. 327. *Contra*, *Stone v. The State*, *Spem*, 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. 151. *State Bank at Morris v. Hedenberg*, 1 Har. 335. See *Runde 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. 812. 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, Aulen v. Bridgewater Co.*, 5 Hal. 227. An answer in chancery must be under the seal of the corporation. *Hoyt 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 & 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.

(b) 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. *Manchester Co. v. N. J. Stock Yards Co.*, 3 C. E. Gr. 162. But a corporation seal must be proved by testimony. *Den, Towns v. Freelandt*, 2 Hal. 352. *Osborne v. Tunis*, 1 Dutch. 634. *Waugh 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 Har. 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. Where an instrument appears to be sealed with the corporate seal, the testimony of an officer that he had no knowledge of corporate authority having been given to affix such seal, will not overcome the presumption of due execution. *Parker v. Washoe Manufacturing Co.*, 20 Vr. 465. *Van Hook v. Somerville Manuf. 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. To bind a corporation under a lease for years, execution under its corporate seal is not requisite. *Crawford v. Longstreet*, 14 Vr. 325. 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.

- IV. To hold, purchase and convey such real (a) and personal (b) estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter (c) 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; (d) 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;
- V. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation; (e)
- VI. To make by-laws (g) not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its

Hold real estate.

To mortgage property and franchises.  
P. L. 1872, p. 77.

Appoint agents.

Make by-laws.

(a) A power to convey will authorize a mortgage, since a mortgage is itself a conveyance. *Leggett v. New Jersey Manufacturing and Banking Co.*, 3 Sax. 541. 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 on error, 2 Dutch. 519. *Keen v. Johnson*, 1 Stock. 401. See *New Barabooes 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 raceway 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.

(b) A bank may hold bonds and mortgages as collateral security. *Trenton Bank v. Woodruff*, 1 Gr. Ch. 117. Or leases. *Corrigan v. Trenton Delaware Falls Co.*, 3 Hal. Ch. 489. A corporation may hold a bond unless expressly prohibited by its charter. *Bennington Iron Co. v. Rutherford*, 3 Har. 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. 687. *Morris Canal v. Lewis*, 1 Beas. 323. Or mortgages. *Leggett v. New Jersey Manufacturing Co.*, 3 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 indorse negotiable paper. *Lucas v. Pitney*, 3 Dutch. 221. *Shotwell v. McKown*, 2 South. \*823. *Savage v. Ball*, 2 C. E. Gr. 143. *Montague v. Church School District*, 5 Vr. 218. A mutual insurance company may borrow money, but cannot, under a pretense 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 Inhabitants 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. *Hackettstown v. Swackhammer*, 3 Vr. 191.

(c) A corporation, colorably organized under the statute, transacted business and incurred debts, on which judgments were recovered. After incurring those debts the corporation perfected its legal organization, and then gave certain mortgages on its property. *Held*, that the judgments were entitled to preference in payment over the mortgages. *Bergen v. Porpoise Fishing Co.*, 14 Stew. 238.

(d) The state only can object to the capacity of a corporation to hold property in excess of the amount limited in its charter. *De Camp v. Dobbin*, 2 Stew. 41.

(e) 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. Blain*, 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 Har. 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. *Brahn v. Jersey City Forge Co.*, 9 Vr. 74. 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. Kleinhaus*, 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. Mould*, 5 Dutch. 299. See *Perth Amboy ads. Smith*, 4 Har. 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 Manufacturing Co.*, 3 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. *Duray 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. Fen*, 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. *Phenix Iron Co. v. New York Chair Co.*, 3 Dutch. 484. The compensation can only be such as is authorized by the charter; thus aldermen cannot 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 cannot recover. *Bernard v. Hoboken*, 3 Dutch. 412. A director cannot make with himself, or for his own benefit, a contract which will bind the company. Such a contract is not absolutely void, but is voidable at the option of the company, and may be repudiated by the company at the instance of a stockholder. A director, for services rendered to his company, may recover on a *quantum meruit*. *Stewart v. Lehigh Valley R. R. Co.*, 9 Vr. 505. *Gardner v. Butler*, 3 Stew. 702.

(f) The power to make by-laws is incident to every corporation. *Leggett v. New Jersey Manf. Co.*, 3 Sax. 541. *State, Painter v. Mayor, &c., of Morristown*, 4 Vr. 58. *Kearney v. Andrews*, 2 Stock. 70. A by-law must be reasonable as well as constitutional and legal. *Paxson v. Sweet*, 1 Gr. 196. *Young v. Vough*, 8 C. E. Gr. 325. 9 C. E. Gr. 538. *Dayton v. Quigley*, 2 Stew. 77. *State, Long v. Mayor, &c., of Jersey City*, 3 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. Van Valkenburgh*, 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

directors for the management of its property, the regulation and government of its affairs, and for the transfer of its stock, (a) with penalties for the breach thereof not exceeding twenty dollars;

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

To wind up and dissolve.

Not necessary to specify powers. Ib.

No other powers vest except expressly given. Ib.

Banking powers never implied. Ib.

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

2. That 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. [See Secs. 8, 9 and 14, *post.*]

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

4. That 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.

5. That 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

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 Hur. 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. Puterson*, 2 Dutch. 293. *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.

(a) 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. *McCourry v. Suydam*, 5 Hal. 245. So, in case of a dispute as to the ownership of any shares, the transfer-book supersedes the others. *Downing v. Potts*, 3 Zab. 66.

(b) 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. *Zinc Co. v. Franklin Co.*, 2 Beas. 323. When a turnpike company, whose charter has 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. Snedeker*, 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.

(c) This section is a prohibition of acts not within the scope of powers granted, and contracts in contravention of it are illegal. *Camden and Atlantic R. R. Co. v. Mays Landing, &c.*, R. E. Co., 19 Vr. 576. See, also, *National Trust Co. v. Miller*, 6 Steu. 162. Public grants are to be strictly construed, and whatever is not plainly granted is withheld. *Jersey City Gas Light Co. v. Consumers' Gas Co.*, 13 Steu. 427. *Stockton v. Central R. R. Co.*, 5 Dick. 62. *Rabe v. Duntlap*, 6 Dick. 40. The acts of the *de facto* officers of a corporation are valid so far, at least, as they create rights in favor of third persons. *Mechanics' National Bank of Newark v. Burnet Mfg. Co.*, 5 Steu. 236. See *Hackensack Water Co. v. De Kay*, 9 Steu. 548, 11 Steu. 653. The legality of a corporation, which exists under the form of law, can only be impugned by proceedings instituted by the attorney-general. *West Jersey R. R. Co. v. Cape May, &c.*, R. E. Co., 5 Steu. 164. *Jersey City Gas Light Co. v. Consumers' Gas Co.*, 13 Steu. 427. No private party can take advantage of any such illegality. *Elizabethtown Gas Light Co. v. Green*, 1 Dick. 118. 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. Wonderly*, 7 Vr. 250. *Morris and Essex R. R. Co. v. Newark*, 2 Stock. 352. *State, Hoboken Land Co. v. City of Hoboken*, 6 Vr. 265. *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. 458. 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 installments 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. Trick*, 3 Zab. 321. But where a company issued bonds to be paid for by installments, 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 installments. *New Jersey Midland Co. v. Strait*, 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. 137. *Johnston v. Jones*, 8 C. E. Gr. 217. *Schwinn v. Seymour*, 9 C. E. Gr. 143. Illegal acts may be validated by subsequent legislation. *State v. City of Newark*, 3 Dutch. 156. *State, Sharp v. Appar*, 2 Vr. 559. *State, Walter v. Union*, 4 Vr. 351. *State, Trustees v. Readington*, 7 Vr. 69. *State, Copeland v. Passaic*, 7 Vr. 532. But not after they have been declared illegal and set aside by the courts. *Scudder v. Sidle, Baker*, 4 Vr. 424. *Belvidere v. Warren R. R. Co.*, 5 Vr. 194. *State, Doyle v. Newark*, 5 Vr. 237. That they have kept within their powers must appear on the face of their proceedings. *State, Wilkinson v. Trenton*, 7 Vr. 499. *State v. Council of Elizabeth*, 1 Vr. 176. *Bergen Turnpike Co. v. The State*, 1 Dutch. 554. *State v. Williamstown Turnpike Co.*, 4 Zab. 547. *State, Pope v. Union*, 3 Vr. 343. *New Jersey R. R. Co. v. Suydam*, 2 Har. 25. It cannot be presumed. *Perrine v. Furr*, 2 Zab. 356. Nor rendered valid by ratification. *State, Bazter v. Jersey City*, 7 Vr. 183. 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 compliance with the requirements of the statute. *Morrison v. Bernards*, 7 Vr. 219. See *Lane 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 *Amerman v. Willis*, 9 C. E. Gr. 13. If a corporation exceed its corporate powers, or abuse or misapply 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 misuser. *Society, &c., v. Morris Canal Co.*, Sax. 157. *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. Del., Lack. and Western R. R. Co.*, 6 C. E. Gr. 284.

the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company. (a)

6. That 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)

7. That 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 any 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 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. (c)

All charters to be subject to legislative alteration.

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

Absent or dissenting director not liable.

(a) This section is declaratory of the common law whereby stockholders are liable to pay their subscriptions, if such payment be necessary, to discharge the debts of the company. A distinction is drawn between one who holds his stock by transfer and an original subscriber. The former may, in the absence of any fraudulent purpose, discharge himself from liability for unpaid installments by due transfer of his shares, while the latter cannot obtain immunity in that way. *Hood v. McNaughton*, 25 Vr. 425. Subscriptions to capital stock are a trust fund for the payment of the debts of the corporation. The trust is created for the benefit of the creditors as a class. A judgment creditor may maintain a bill for himself and all other creditors of the corporation to compel the payment of such subscriptions. *Wetherbee v. Baker*, 8 *Stew.* 501. *Bickley v. Schlag*, 1 *Dick.* 533. The word "capital" in this section is used in a twofold sense. *Wetherbee v. Baker*, 8 *Stew.* 506.

(b) This section did not bind subsequent legislatures so that they could not grant irrevocable charters, but it created a law which can never justly be put out of sight in determining whether any charter granted was designed to be irrevocable. *Little v. Bowers*, 17 Vr. 304. Nor is it limited to grants of corporate franchises made to corporations created after its passage, but extends, also, to every grant of franchise thereafter made to corporations which were created before its passage. *State, Morris and Essex R. R. Co., pros., v. Commissioner of Railroad Taxation*, 8 Vr. 228; affirmed, 9 Vr. 472; reversed by *New Jersey v. Yard*, 95 *U. S.* 104, which holds that a statute of a state which declares that a charter of a corporation granted after its passage may be altered, amended or repealed, does not necessarily apply to a supplement to a charter already passed, though the supplement be subsequent to the statute; and that the question is, in every such case, whether the legislature making the contract intended that the former provision for repeal or amendment should become a part of the new contract by implication. See, also, *Huyler v. Crapin Cattle Co.*, 13 *Stew.* 396; *Mills v. Central R. E. Co.*, 14 *Stew.* 8; *Montclair v. N. Y. and G. L. Railway Co.*, 18 *Stew.* 444. 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. *Stony 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 *Stew.* 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. *Rader 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. Brown*, 3 *Zab.* 435. *State v. Minion*, 3 *Zab.* 529. *State v. Clarke*, 1 *Dutch.* 54. *State v. Belvidere*, 1 *Dutch.* 583. *State v. Morristown*, 4 Vr. 53. *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.* 280. So, a general provision 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.

(c) The statutory liability created by this section does not exonerate the stockholders who have received the money from liability to repay it for the benefit of the creditor. The statute does not transfer the liability from the stockholders to the directors, but it creates a liability on the part of the latter in favor of the corporation or the creditors in certain events. *Williams v. Boice*, 11 *Stew.* 369. See, also, *Whitaker v. Amwell National Bank*, 7 *Dick.* 402. The words "net profits" mean what shall remain as the clear gains of any business venture, after deducting the capital invested in the business, the expenses incurred in its conduct and the losses sustained in its prosecution. *Park v. Grant Locomotive Works*, 13 *Stew.* 114. A dividend declared by a corporation becomes the individual property of the stockholder, and he may maintain an action for it against the company. *King v. Paterson and Hudson River R. R. Co.*, 5 *Dutch.* 82, 504.

Incorporation by legislative act invests company with all powers.

And so also in cases of incorporation under general laws.

8. That 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.

9. That 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.

## II. Formation, constitution, alteration, dissolution.

10. [Amended by Secs. 107, 145, 189, 208 and 292, *post.*]

Certificate.

11. That such certificate, in writing, shall set forth:

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Name.

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

Place of business.

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;

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; (1)

Stockholders.

IV. The names and residences of the stockholders and the number of shares held by each; (a)

When corporations to commence and terminate.

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. [See Sec. 109.] (b)

Certificates to be acknowledged and recorded.

Ib.

Certificate and certified copy evidence.

12. That 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. That 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. (c)

(a) The corporation act treats persons named in the certificate as the stockholders who hold the shares of the company's capital stock; throughout the act, persons who have become subscribers for stock are regarded as stockholders. *Storage Co. v. Assessors*, 27, Vr. 392.

(b) In the absence of statutory provision making shareholders liable in case of failure to comply with the requirements of a charter, or with the requirements of the act under which a company is incorporated, persons who have contracted with a *de facto* corporation as a corporation cannot deny its existence in order to charge its stockholders individually as partners. *Stout v. Zulick*, 19 Vr. 599. *Yanneman v. Young*, 23 Vr. 404. The

general corporation act gives general powers to all corporations organized under the laws of New Jersey. The certificate of incorporation required by that act is the charter of the company, and the equivalent of a special act of the legislature before the amendments to the constitution. *Ellerman v. Chicago Junction Railway, &c., Co.*, 4 Dick. 218.

(c) The recording and filing of the certificate are not made by the statute a condition precedent to the legal existence of the corporation; they are merely necessary evidence of such existence. That evidence being produced, the legal existence of the corporation, "from the time of commencement fixed in said certificate," is proved. *Yanneman v. Young*, 23 Vr. 403.

(1) Amended. See Sec. 168, *post.*

14. That 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.

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

15. [Amended by Sec. 210, *post.*]

16. That 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.

Directors and officers.  
P. L. 1849, p. 300.  
Amended.

17. [Amended by Sec. 211, *post.*]

18. That 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.

Secretary and treasurer, how chosen.  
Ib.

19. That 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, how chosen.

20. That 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. [Amended by Sec. 223, *post.*]

22. That 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. That 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. [Repealed by Sec. 275, *post.*]

25. [Amended by Sec. 212, *post.*]

26. That 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. (a)

Transfer of stock.  
P. L. 1849, p. 300.

27. That 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 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 installments as the

Assessments on stock.

(a) The provisions of charters, or of by-laws, or of by-laws under this section, that stock of the corporation shall be transferable only on the books of the company, are held to be intended merely for the protection of the company. *Matthews v. Hoagland*, 3 Dick. 486. A certificate of stock, accompanied by an irrevocable power of attorney, either filled or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder. And where the party in whose hands the certificate is found is a holder for value, without notice of any intervening equity, his title cannot be impeached. The holder

of the certificate may fill up the letter of attorney, execute the power, and thus obtain the legal title to the stock. And such a power is not limited to the person to whom it was first delivered, but inures to each *bona fide* holder into whose hands the certificate and power may pass. *Frost v. Tut*, 1 Stew. 480. *Broadway Bank v. McElvath*, 2 Beas. 24. Equity will compel the transfer of stock to the equitable owner thereof, upon the books of a corporation, when such transfer is fraudulently withheld by the agents of the corporation. *Archer v. American Water Works Co.*, 5 Dick. 33.

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. (a)

Penalty for non-payment of assessments.  
Ib.

**28.** That 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.** That 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.

**30.** [Amended by Sec. 272, *post.*]

**31.** [Amended by Sec. 273, *post.*]

Penalty for not making certificates.  
Ib.

**32.** That 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. (b)

**33.** [Amended by Sec. 274, *post.*]

**34.** [Amended by Sec. 122, *post.*]

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This act alterable.

**35.** That 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.

Effect of legislative action.

### III. Election of officers.

Books of stock to be open for thirty days previous to election of directors.  
R. S. 139.

**36.** That 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 offense 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 or books, or list, and to vote in person or by proxy at any election for

List of stockholders entitled to vote.

Penalty for refusing to exhibit.

The books exclusive evidence who are stockholders.

(a) If there be a naked subscription for a certain number of shares of stock, and the statute under which the corporation has been organized empowers the directors to assess the capital stock, the implied promise is to pay such assessments. *Grosse Isle Hotel Co. v. P. Anson's Executors*, 13 Vr. 10, 14 Vr. 442.

(b) 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.

directors of said company, and the persons receiving the greatest number of votes shall be directors or managers. (a)

**37.** That 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.

Elections to be  
by ballot.  
Ib.

**38.** That 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)

Each share to  
have a vote—  
proxy allowed.  
Ib.

**39.** That 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. (c)

Persons holding  
stock as executors,  
&c., may vote.  
P. L. 1849, p. 300.

**40.** That 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.

Non-resident  
stockholders  
may vote.

**41.** That 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.

List of stock-  
holders to be  
produced at  
elections.  
R. S. 139.

**42.** That 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.

Candidate for  
director not to  
be judge of  
election.  
Ib.

P. L. 1870, p. 27.

**43.** That 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. (d)

Companies not to  
vote on their own  
stock.  
Ib.

(a) The part requiring the list to be made out, &c., is only directory, and the election will be valid, although such list be not made out. *Downing v. Potts*, 3 Zab. 66. A failure to elect officers at the time designated in the charter will not work a dissolution. *Hoboken Association v. Martin*, 2 Beas. 427. The books are the only evidence as to who are stockholders. As between parties, no other evidence of the transfer of property in the stock will avail against the books upon the question of the right to vote. *In re Election of Cape May, &c.*, Nav. Co., 22 Vr. 81. *In re Election of St. Lawrence Steamboat Co.*, 15 Vr. 540. But with respect to the qualifications of a director, the books are not conclusive. *Ib.*

(b) The list of stockholders must be true, and persons cannot 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 McCart. 380. A scheme whereby a voting trust was created was held to be void in *Hoyt v. Thomas Inflatable Tire Co.*, 7 Dick. 178.

(c) The corporation books are evidence of the ownership of stock by a testator or intestate, and this section gives to the executor, administrator, guardian or trustee, *virtute officii*, the right to vote thereon in his representative capacity, and no formal transfer on the books of the company is necessary to confer this right. *In re Election of Cape May, &c.*, Nav. Co., 22 Vr. 81.

(d) Nor can such stock be voted on by anybody. *McNeely v. Woodruff*, 1 Gr. 352. *In re Election of St. Lawrence Steamboat Co.*, 15 Vr. 539. A corporation has no lien through its by-laws on its own stock for a debt due from a stockholder to the corporation. *Del., Lack. and Western R. R. Co. v. Oxford Iron Co.*, 11 Stev. 340.

Supreme court  
may proceed  
summarily to  
review pro-  
ceedings at  
elections.  
Ib.

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By-laws as to  
elections to be  
made thirty  
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.

**44.** That 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 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.** That 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.** That 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. 311, *post*.]

**47.** That 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.** That 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.** [Amended by Secs. 128 and 287, *post*.]

(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. In the supreme court, however, a stockholder has such an interest as will give him a standing to test the regularity of an election of directors. *In re Election of St. Lawrence Steamboat Co.*, 15 Vr. 533. *Camden and Atlantic R. R.*

*Co. v. Elkins*, 10 Stew. 275. *Kean v. Union Water Co.*, 7 Dick 817.

(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. Bail*, 2 C. E. Gr. 143.

(c) The proper proceeding is by *mandamus*. *McNeely v. Woodruff*, 1 Gr. 352. See *ante*, Sec. 33, note (b).

## IV. Management, and liability of directors, &amp;c.

**50.** That 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)

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.

**51.** That 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.

Calling of meetings by stockholders.

**52.** [Amended by Sec. 227, *post.*]

**53.** That 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.

Liability for refunded capital before debts are paid.  
P. L. 1849, p. 300.

**54.** That nothing but money shall be considered as payment of any part of the capital stock of any company organized under this act, except as 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. (b)

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

**55.** [Amended by Sec. 213, *post.*]

(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. *Hiles v. Parrish*, 1 *McCurt.* 380. See *State v. Person*, 3 *Vr.* 137. *Booth ads. Wonderly*, 7 *Vr.* 250. See, also, *Coe v. N. J. Midland Railway Co.*, 4 *Stew.* 117. *Parsons v. Lent*, 7 *Stew.* 67. The statutory authority to order a company to bring its books into the state does not embrace, by implication, the authority to order it to bring all its papers and memoranda here also. *Hwyler v. Crayn Cattle Co.*, 13 *Stew.* 392, 15 *Stew.* 139. Entries in the books of a corporation are, as a general rule, competent evidence of the proceedings of the corporation, and of the acts of its officers transacted at official

meetings; but such entries are not notice to third persons of acts or resolutions entered on its minutes, so as to raise against them an equitable estoppel. *Wetherbee v. Baker*, 8 *Stew.* 501.

(b) The directors of a corporation, the incorporators of which have agreed to give sixty per cent. of the stock to a person for two patents, are justified in refusing to issue such stock, one patent not having been perfected, and the articles made under the other being worthless. *Edgerton v. Electric Improvement Co.*, 5 *Dick.* 354. Courts have inflexibly enforced the rule that payment of stock subscriptions is good as against creditors only where payment has been made in money or what may fairly be considered as money's worth. *Wetherbee v. Baker*, 8 *Stew.* 501.

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

**56.** That 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.

## V. Remedies.

### I. AGAINST THE CORPORATION.

Directors to be  
trustees on disso-  
lution.  
R. S. 947.

**57.** That 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.

Powers and lia-  
bilities of such  
trustees.  
Ib.

**58.** That 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.

Continuance of  
corporate exist-  
ence for settling  
up business.  
P. L. 1849, p. 300.

**59.** That 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. (a)

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

**60.** That 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. (b)

Jurisdiction of  
chancellor.

**61.** That 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.** That 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

(a) On the dissolution of a corporation, its property constitutes a trust fund for the payment of debts and stockholders. *American Dock and Improvement Co. v. Trustees of Public Schools*, 12 *Stew.* 419.

(b) The authority of the chancellor to interpose and take from the directors the power to close up the business of a corporation, and place its affairs in charge of a receiver, is a dis-

cretionary power, to be exercised only on good cause shown—upon circumstances disclosed by the proof which show the need of the interference of the court for the protection of creditors or stockholders from breaches of trust by the directors in the performance of their duties. *Newfoundland Railroad Construction Co. v. Schack*, 13 *Stew.* 222. See, also, *City Pottery Co. v. Yates*, 10 *Stew.* 543.

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.

**63.** [Amended by Sec. 178, *post.*]

**64.** That 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.

Property to vest in stockholders on dissolution. *Ib.*

**65.** That 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.

Suits not to abate on dissolution. P. L. 1852, p. 140.

**66.** That 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.

On execution against corporation schedule of property to be shown sheriff, &c. P. L. 1849, p. 300.

**67.** That 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. (*a*)

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

**68.** That every 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.

Penalty for refusing to transfer. *Ib.*

**69.** That 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 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.

Duty of directors in case of insolvency. R. S. 129.

Exhibit to be made.

**70.** That 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

Remedy in chancery, by bill, &c. *Ib.*

(*a*) In the payment of the creditors and distribution of the funds of an insolvent company by the receiver, a creditor who has elected to satisfy his execution by any debts due the cor-

poration, under this section, is entitled to a preference over general creditors. *Doane v. Milville Insurance Co.*, 18 *Stew.* 282, 283.

## Notice.

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)

## Injunction.

Evidence of insolvency. *Ib.*

**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.

Receivers may be appointed. *Ib.*

**72.** That 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 busi-

## Powers.

(a) Applies to companies chartered before the passage of the act (Feb. 16th, 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. *People's Bank v. Paterson Bank*, 2 Stock. 13. *Wells v. Railway 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. Railway Rubber Co.*, 4 C. E. Gr. 402. Whether by a mortgage, although the company was solvent when the resolution authorizing its execution was passed. *Ib.* Or by judgment confessed. *Stratton v. Allen*, 1 C. E. Gr. 228. Such judgment creditor will be paid proportionally with the other debtors of the company. *Ib.* But a note given for a *bona fide* debt is good although the company was insolvent. *Savage v. Ball*, 2 C. E. Gr. 143. See *People's 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. *People's 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. Cataract 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. Monroe Co.*, 3 Gr. Ch. 198. *Brundred v. Paterson Co.*, 3 Gr. Ch. 294. Or, if the injunction has been allowed and the insolvency does not appear, it will be dissolved. *Goodheart v. Raritan Co.*, 4 Hal. Ch. 73. The chancellor is not bound to issue the injunction although the company is insolvent. *Rawnsley 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. *Kean v. Colt*, 1 Hal. Ch. 365. *Hamburgh Co. v. Etsall*, 3 Hal. Ch. 298, 4 Hal. Ch. 141. *Rawnsley v. Trenton Insurance Co.*, 1 Stock. 347. Appointment refused. *Hager v. Stevens*, 2 Hal. Ch. 375. The proceeding for the appointment of a receiver may be by petition. *Receiver of State Bank v. First National Bank of Plainfield*, 7 Stew. 457. A receiver should not be appointed if it appears that the directors are closing the affairs of the company, and that such directors are in all respects trustworthy. *City Pottery Co. v. Yates*, 10 Stew. 543. In proceedings against an insolvent corporation, a person connected with the management will not be appointed receiver. *Freeholders v. State Bank*, 1 Stew. 166. *McCullough v. Merchants Loan and Trust Co.*, 2 Stew. 217. Allegations in a bill that the company is insolvent and has suspended its business for want of funds to carry on the same, are not sufficient to warrant the appointing of a receiver. The facts and circumstances must be set out from which the insolvency of the company shall appear. *Newfoundland Railroad Construction Co. v. Schack*, 13 Stew. 222. The revised corporation act of 1875 embodies the act entitled "An act to prevent frauds by incorporated companies," passed February 16th, 1829, and is found in the corporation act of 1875, in section 99 *et seq.* Section 2 of the act of 1829 was, however, omitted from the Revision. By this change in the statute there existed in the revised act no statutory prohibition against the sale of property or the preference of creditors by an insolvent corporation, except a preference by way of a confessed judgment under the provisions of section 80. Under the revised act, therefore, an insolvent company could prefer one creditor to another. *Wilkinson v. Bauerte*, 14 Stew. 635. *Bissell v. Benson*, 2 Dick. 580. *Whittaker v. Amwell National Bank*, 7 Dick. 400. In *Montgomery v. Phillips*, decided by court of errors, March 20th, 1895 (see 31 *Atl. Rep.* 622), it was, however, held that a board of directors of an insolvent corporation could not, by mortgage upon the corporate property, secure one of the directors to such director, of an antecedent debt due by the company to such director, or a previous liability incurred by such director for the corporation. All preferences by an insolvent corporation are now, however, again prohibited by the re-enactment of the second section of the act of 1829, found in section 298, *post*, which was approved March 5th, 1895.

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

Compensation.

**73.** That 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. (b)

Receiver's oath.  
Ib.921-73  
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**74.** That 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. (c)

Power to examine  
witnesses, &c.  
Ib.

**75.** That 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 daytime, 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 com-

Penalty for refus-  
ing to swear.Power to search,  
&c.  
Ib.

(a) Receivers being officers of the court, are at all times entitled to, and must receive its protection. *Cummack v. Johnson*, 1 Gr. Ch. 164. They derive all their authority from the statute. *Bunyon 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. Neshanic Co.*, 3 Hal. Ch. 579. *Potts v. Ordinance 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. Bank of New Brunswick*, 2 Gr. Ch. 114. See post, Sec. 84. The report of a master on a receiver's 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. On the appointment of a receiver of an insolvent corporation, its title to its property is divested by force of law. *Freeholders of Middlesex County v. State Bank*, 2 Stew. 298, 3 Stew. 311. But see the following cases on this point: *Willink v. Morris Canal and Banking Co.*, 3 Gr. Ch. 378. *Corrigan v. Trenton Delaware Falls Co.*, 3 Hal. Ch. 496. *National Trust Co. v. Miller*, 6 Stew. 160. *Receiver of State Bank v. First National Bank of Plainfield*,

7 Stew. 456. *Minchin v. Second National Bank*, 9 Stew. 442. *Kirkpatrick v. Corning*, 10 Stew. 59, 60. *Wilkinson v. Eutherford*, 20 Vr. 241. *State, N. J. S. R. E. Co., pros., v. Railroad Commissioners*, 12 Vr. 255. *Wilkinson v. Bauerte*, 14 Stew. 642. The court of chancery may appoint a receiver of a foreign corporation having property in this state, as auxiliary to the proceedings instituted against it in the state which created it, and confer upon him the same powers that it is authorized to grant to the receiver of a domestic corporation, so far as they may be necessary to the recovery and collection of the assets of the corporation. *National Trust Co. v. Miller*, 6 Stew. 155. Putting a corporation in charge of a receiver does not work its dissolution. The corporation continues to exist until its dissolution is effected either by surrender or judicial decision. *Kirkpatrick v. Board of Assessors*, 28 Vr. 53. By force of sections 72 and 80, the debts of a corporation are fastened upon its property the moment it is adjudged to be insolvent and a receiver is appointed to wind up its affairs; and the receiver in such case, as he is the representative of the creditors, may maintain a bill to set aside a defective chattel mortgage given by the insolvent company prior to the appointment of the receiver. *Graham Button Co. v. Spielmann*, 5 Dick. 124.

(b) Where the chancellor, under the provisions of this section, requires the receiver to execute a bond, the surety of the receiver will be concluded in a suit at law on the bond by the amount found due on an account taken in chancery, he having, by due notice, had an opportunity to intervene in the taking of such account. *Ball v. Chancellor*, 18 Vr. 133.

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

Inventory and report. Ib.	pany'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.
Further powers of receivers. Ib.	<b>76.</b> That 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 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.
To sue.	<b>77.</b> That 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) <i>provided</i> , 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.
To settle.	
Allow set-offs.	
Proviso.	
Trial by jury allowed at the circuit. Ib.	<b>78.</b> That 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 impaneled, 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.
Certified to receivers.	

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(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. *Suydam v. Bank of New Brunswick*, 2 Gr. Ch. 278. *Receivers v. Paterson Gas Co.*, 3 Zab. 283. See *Brewer v. Novross*, 2 C. E. Gr.

219. If such set-off be not allowed, the party entitled to it may appeal. *Jackson v. People's 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.

**79.** That 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. (a)

Receivers,  
majority may act.  
Ib.  
May be removed.

**80.** That 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 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. (b) [Amended by Sec. 125, *post.*]

Distribution,  
how made.

**81.** That 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.

Suits pending  
may be con-  
tinued.  
Ib.

**82.** That 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 cases of equity jurisdiction. (c)

Appeal to  
chancellor.  
Ib.

923-82  
10D-581

**83.** That 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

Power of the  
court.

Corporations not  
to transact busi-  
ness when re-  
ceivers are  
appointed.  
F. L. 1852, p. 397.

(a) The court may put an end to the functions of a receiver whenever it deems it expedient to do so, but, like all other judicial action resting in discretion, its exercise should always be grounded in some consideration of justice or convenience. It should never be exercised capriciously nor arbitrarily, but only for cause. *McCullough v. Merchants' Loan and Trust Co.*, 2 *Stew.* 218.

(b) 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.* 238. 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. Distribution of assets, how made. *Corrigan v. Trenton Falls Co.*, 1 *Hal. Ch.* 232. *Smith v. Brown*, 3 *Hal. Ch.* 526. The day on which the insolvency occurred, as adjudged by the decree, fixes the time to which the several claims must be referred for adjustment, and not the date of the decree itself. *Mayer v. Attorney-General*, 5 *Stew.* 815. By the proper construction of the

eightieth section of the corporation act, the holders of preferred stock, in the distribution of capital, are to be first paid. *McGregor v. Home Insurance Co.*, 6 *Stew.* 187. A judgment creditor whose judgment has been confessed for the purpose of preferring him, is not entitled to preference. *Vail v. Jameson*, 14 *Stew.* 650. Judgment creditors are preferred only so far as they have acquired liens. *Doane v. Millville Insurance Co.*, 18 *Stew.* 282, reversing 16 *Stew.* 533. The state of New Jersey does not possess the crown's common-law prerogative to have its debts paid in preference to the debts of other creditors. *Freeholders v. State Bank*, 2 *Stew.* 268, 3 *Stew.* 311.

(c) 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. People's Bank*, 1 *Stock.* 205. Where a creditor had delayed presenting his claim until after the time limited by the order of the court for such presentation had expired, and such delay appeared to be the result of careless indifference or of intention, relief will be denied. *Leo v. Green*, 7 *Dick* 1.

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. [Amended by Sec. 126, *post.*]

Land may be sold.  
P. L. 1866, p. 296.

**84.** That 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 incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order such receiver or receivers, or trustee or trustees, to sell the same, clear of incumbrances, 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. (a)

Franchises may be sold, &c.  
R. S. 129.

**85.** That 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 corporators 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.

Limitation of act.  
Ib.

**86.** That 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.

Process what, and how served.  
R. S. 947.

**87.** That 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. (b)

924-87  
36V-584

Amended.

(a) Under this section the receiver should be vested with large discretionary power as to the mode of sale. *Polts v. Ordinance Co.*, 2 C. E. Gr. 395. See *Middleton v. West Line R. R. Co.*, 10 C. E. Gr. 306. It is not intended by the words "the legality of which is brought into question," used in the eighty-fourth section, to confine the remedy therein provided to mischief arising from litigation of any particular character, but to all litigation between incumbrancers respecting the validity, extent or priority of their liens. *Randolph v. Larned*, 12 C. E. Gr. 557.

(b) Only applies to process issued out of the higher courts, and not to justices' courts. *Delaware and Lackawanna Railroad Co. v. Dillon*, 7 Vr. 361. Service of process on the foreman of a company is insufficient. *Flax and Hemp Co. v. Ballentine*, 1 Har. 454. So on a bookkeeper. *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 govern-

ing board of the corporation of such service, it is good. *Ib.* On A. B., "said to be one of the directors," is not sufficient. *Den. Aulen 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. E. Co. v. Bunn*, 3 Stock. 336. There is no statutory provision concerning the service of a summons against a municipal corporation. In such a case the common law must therefore prevail, and that requires that fifteen days shall intervene between the day of service and the return day of the summons. *McNeal v. Gloucester City*, 22 Vr. 444. The eighty-seventh and eighty-eighth sections do not apply to proceedings under prerogative writs. *Freeholders v. Penna. R. R. Co.*, 12 Vr. 250. See Secs. 149 and 150, *post.*

**88.** That 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. (a)

Process against foreign corporations.  
P. L. 1865, p. 467.

**89.** That 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. (b)

When defendant in court.

**90.** That 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 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.

Proceeding when summons returned "not served" or "not summoned."  
R. S. 947.

**91.** That 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. (c)

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

**92.** That 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

Suit to go on in case corporation dissolved.  
P. L. 1852, p. 140.

(a) 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. Where an officer of a foreign corporation came into this state to give testimony in an action against such corporation, the service upon him of a summons in another action against the corporation, while here as such witness, will be set aside. *Mudhearn v. Press Publishing Co.*, 24 Vr. 153. The eighty-eighth section, as well as the eighty-seventh, applies only to process issued out of the higher courts, and not to justices' courts. *Penna. E. R. Co. v. Kreiselman*, 23 Vr. 60. *Wheeler & Wilson Manufacturing Co. v. Carly*, 24 Vr. 337. A writ of attachment was issued against a foreign corporation engaged in business in this state with a fixed place of business here, and with a superintendent in charge of the business. *Held*, that such superintendent is an agent within the meaning of the eighty-eighth section. *Edison Toy Co. v. Edison Phonograph Works*, 14 N.J.L.J. 119. Process may be served, also,

upon the driver of a locomotive engine. *Devere v. D., J. and W. R. R. Co.*, 17 N.J.L.J. 147. When a foreign corporation enters this state for the transaction of business, the person to whom it commits the management and control of its business here becomes the agent of the corporation for the purpose of receiving service of process in all actions arising in this state out of the conduct of the business. *Norton v. Berlin Iron Bridge Co.*, 22 Vr. 442. See, also, *National Condensed Milk Co. v. Brandenburg*, 11 Vr. 111.

(b) What a sheriff, who has served a summons, adds in his return to the statutory return "served" or "summoned," may, if incorrect, be rejected as surplusage. *Norton v. Berlin Iron Bridge Co.*, 22 Vr. 442.

(c) 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 Manuf. Co.*, 2 South. \*433. The ameracements were afterwards set aside in error. 2 South. \*361.

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.

## 2. AGAINST DIRECTORS AND STOCKHOLDERS.

Action for liability imposed by this act.

P. L. 1849, p. 300.

**93.** That 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. (a)

Remedy by bill in chancery.

Ib.

**94.** That 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 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 company.

Ib.

**95.** That 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.** That 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.** That 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 alteration 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 alterations so to be applied for; and that due proof shall be made of such

What to specify.

Proof.

(a) Nowhere in the act does the non-payment of stock subscribed for make delinquent stockholders liable for the company's debts, except as is contained in the fifth section. *Wetherbee v. Baker*, 8 *Stew.* 505. Subscriptions to capital stock are a

trust fund for the payment of the debts of a corporation. The trust is created for the benefit of creditors as a class. Proceedings must therefore be by a general creditors' bill for the benefit of all. *Ib.* *Bickley v. Schlag*, 1 *Dick.* 533.

notice having been published previous to leave being given to bring in any bill to comply with such application.

**98.** That 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.

Companies formed under manufacturing company act of 1846 may come under this act. P. L. 1850, p. 280.

**99.** [Amended by Sec. 185, *post*.]

**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 contract 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.

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.

**101.** That "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.** That "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.

Repealer.

Foreign corporations.  
P. L. 1873, p. 76.

Repealer.

**103.** That 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. (*a*)

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

**105.** [Amended by Sec. 133, *post.*]

## VII. Supplements.

### Supplement.

Approved April 5, 1876.

P. L. 1876, p. 74.

Time for holding annual elections and declaring dividends may be changed by vote of stockholders.

**106. SEC. 1.** That when a company, incorporated under the laws of this state, is limited by its charter to certain fixed times for declaring dividends or for holding its annual meetings of stockholders for the election of directors, such corporation shall have power at any time to change the time or times for declaring its dividends and holding said annual meetings, upon the vote of two-thirds in interest of its stockholders at any regular meeting of said stockholders.

### Supplement.

Approved April 12, 1876.

P. L. 1876, p. 103.

**107. SEC. 1.** [Amending Sec. 10, *ante*; amended by Secs. 145, 189, 208 and 292, *post.*]

**108. SEC. 2.** [Amended by Sec. 135, *post.*]

Certain companies may cut or acquire main canals or raceways on each side of rivers or streams.

**109. SEC. 3.** That such companies shall have power to cut or acquire main canals or raceways on each side of said rivers or streams, from their said dams to such point or points below as may by them be deemed necessary, and also to cut, construct and erect as many lateral or branch raceways, locks, weirs, gates and other works, from their said main canals or raceways to the said rivers or streams, as may by them be deemed expedient for the purposes of creating and using the water or water-power of the said rivers and streams, for mills, manufactories, foundries, machine shops and other purposes; *provided*, that the water so diverted from such rivers and streams shall be returned again to them after being used for the purposes aforesaid, and that the water shall not be so completely diverted as to leave the general beds of the rivers and streams below such dams uncovered or bare; *and further provided*, that such companies shall commence their proposed dams and works within six months from the date of their organization, and complete their said dams and cut or acquire their main canals or raceways within two years from the date of commencement as aforesaid, and any company failing to comply with the provisions of this section shall thereby forfeit the franchises given it by this act.

Proviso.

Proviso.

May purchase lands, construct reservoirs, &c.

**110. SEC. 4.** That such companies shall have power from time to time to purchase, receive and hold, possess and enjoy, demise, grant, lease, alien, sell and convey all such lands, lots, sites, mills, manufactories, erections, hereditaments and waters, water-powers and water privileges, rights, goods, chattels and effects, or any part thereof, for such term or terms, and upon such condition or conditions as they shall from time to time deem necessary or expedient for the public purposes of this act, and also to construct, make, erect, form and maintain all such embankments, reservoirs, aqueducts, culverts, locks, weirs, gates, ways, bridges and other works as may by them be deemed convenient and necessary for the uses and purposes aforesaid, and to repair and improve the same for the better carrying on and management thereof; and further, that it shall and may be lawful for such companies, by their directors, officers, agents, engineers,

May enter upon lands, &c.

(*a*) The design of this section is very plain. It confers upon our courts the same powers, in respect to insolvent corporations, created by foreign jurisdictions, having property in this state, that they exercise over insolvent domestic corporations. An auxiliary receiver may be appointed where a receiver has already been appointed for a foreign corporation in the state which created it. *National Trust Co. v. Miller*, 6 *Stew.* 159. The

power of the court, however, over insolvent foreign corporations is mainly over their property or assets in this state. It can sequester their property in this state and administer it for the benefit of creditors and stockholders, but cannot hinder them from exercising their franchises in other states. *Minchin v. Second National Bank*, 9 *Stew.* 440.

superintendents or contractors, or any other person or persons by them employed, from time to time and at all times hereafter, to enter upon all lands, whether covered with water or not, for the purposes contemplated by this act, doing no unnecessary damage, and when the locations of their said dams, and the routes and locations of their main canals and raceways, branches and improvements shall be determined by the directors of such companies, or a majority of them, from time to time, and a survey thereof, together with the lands and portions of such rivers or streams necessary for the same, shall, by an engineer or other person employed by such companies, be completed and deposited in the office of the secretary of state, then it shall be lawful for the said companies, their agents, engineers, contractors, superintendents or other person or persons employed by them, to enter upon, take possession of and use, occupy and possess all and singular such lands and premises, subject to such compensation, and in such manner as provided in the fifth section of this act.

**III. SEC. 5.** That where any waters, streams, lands, property, materials or franchises, that may be necessary or useful for the said dams, on rivers and streams of width hereinbefore mentioned, or for the said canals or raceways, shall not be made a free gift by their owner or owners to such companies for the public purposes thereof, then such companies shall pay to the owner or owners of all such lands such compensation as shall be mutually agreed upon between them; and if any such corporation, or its agents, cannot agree with the owner or owners of any such waters, streams, lands, property, materials or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, lands or materials which such corporation may enter upon, use or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, a particular description of the waters, streams, lands, materials, franchises or other property so required for the use of such company incorporated under this act, and the act to which this is a supplement, in the construction of said dams, canals, raceways and other works, shall be given in writing, under oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this state, who shall cause said company to give notice thereof to the persons interested, if known and in this state, or, if unknown and out of this state, to make publication thereof as he shall direct, for any term not less than ten days, and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time and place, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial and judicious freeholders, residents in the county in which the waters, streams, lands, materials or other property in controversy lie, or the owners reside, commissioners to examine and appraise said waters, land or other property, and to assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, to be expressed therein, not less than ten days; and it shall be the duty of said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and to make a true report according to the best of their skill and understanding), to meet at the time and place appointed, and to proceed to view and examine the said waters, streams, lands, materials or other property, and to make a just and equitable estimate or appraisement of the value of the same, and an assessment of damages to be paid by the said company for such waters, streams, lands, materials or other property, and damages aforesaid, which said report shall be made in writing under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the waters, streams, lands,

Proceedings for purchase or condemnation of lands.

Commissioners to make report.

## CORPORATIONS.

Company may enter upon and take possession on payment or tender of payment.

materials or other property, and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the said waters, streams, lands, materials or other property are situate, to remain of record therein; and thereupon and on payment or tender of payment of the amount awarded, as hereinafter provided, the said company is hereby empowered to enter upon and take possession of the said waters, streams of the width as hereinbefore mentioned, lands, materials or other property for the purposes aforesaid; and the said report, or a copy thereof, certified by the clerk of said county, and proof of payment or tender of the amount awarded, shall at all times be considered as plenary evidence of the right of any such company to have, hold, use, occupy, possess and enjoy the said waters, lands or other property, or of the said owner or owners to recover the amount of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be instituted against the said company, if they neglect or refuse to pay for twenty days after demand made of their treasurer, and shall from time to time constitute a lien upon the property of the said company in the nature of a mortgage; and the said justice of the supreme court shall, upon application of either party, and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the supreme court, commissioners, clerks and other persons performing any of the duties prescribed in this section as he shall think equitable and right, which shall be paid by the said company; *provided, always*, that should any such company, or the owner or owners of any such waters, streams, lands, materials or other property, feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the next circuit court in the county wherein the said waters, streams, lands, materials or other property may be.

Proviso.

Proceedings in case of appeal.

**112. SEC. 6.** That every appeal from the decision of the commissioners appointed under the preceding section shall be made in writing, and in the form of a petition to said court, and filed with the clerk of the said circuit court of the county wherein such waters, streams, lands, materials or other property appraised by the said commissioners shall be, and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof, which proceeding shall vest in the said circuit court full right and power to hear and adjudge the same, and to direct a proper issue for the trial of said controversy to be formed between the said parties, and to order a jury to be struck and a view of the premises to be had, and the said issue to be tried at the next term of said court to be holden in the said county, upon the like notice and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said waters, streams, lands, materials or other property, and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against any such company, and execution awarded therefor; but if the said jury shall be applied for by the owner or owners, and shall find a less sum than such company shall have offered or the said commissioners shall have awarded, then said costs shall be paid by said applicant or applicants, and either deducted out of said sum found by said jury or execution awarded therefor, as the said court shall direct; but such application shall not prevent such company from taking the said waters, streams, lands, materials or other property, upon filing the aforesaid report of the said commissioners; *provided*, that in no case whatever shall such company enter upon or take possession of any waters, streams, lands, materials or other property of any person or persons for the purpose of actually constructing said dams, reservoirs, canals, raceways, and other works, or of making any erections or improvements whatever, or otherwise appropriating said waters, streams, lands, materials or other property to the use of any such company, until they have paid or tendered to the party or parties entitled to receive the same, the amount assessed by the said commissioners as the value of such waters, streams, lands, materials or other property or damages; but in case the party or parties entitled to receive the amount assessed as afore-

Payment of costs.

Proviso.

said by the said commissioners shall refuse, upon tender thereof being made, to receive the same, or shall be out of the state or under any legal disability, then the payment of the amount assessed as aforesaid into the circuit court of the county wherein the said waters, streams, lands, materials or other property lie, shall be deemed a valid and legal payment; *and further provided*, that the party or parties entitled to receive the amount assessed by the said commissioners may, upon tender thereof being made, accept and receive the same without being barred thereby from his, her or their appeal from the report of the said commissioners; and on such tender or payment of the money into court, in case it be refused as aforesaid, such company shall be empowered to enter upon and take possession of said waters, streams, lands, materials or other property, and proceed with the work of constructing its said dams, canals, raceways and other erections and improvements.

Proviso.

**113. SEC. 7.** That nothing in this act shall be construed to impair the rights of any corporation, person or persons to an action against such companies, their agents, workmen, servants or contractors, for any damage done to his, her or their lands, hereditaments and premises by the erection or construction of said dams, canals, raceways, reservoirs and improvements, where such corporation, person or persons have not been agreed with by such companies, or his, her, or their damages paid and satisfied by such companies, under the provisions of this act.

Rights to an action for damages not impaired.

**114. SEC. 8.** That such companies shall, before the erection and construction of said dams, by agreement or by appraisal as hereinbefore provided, purchase or acquire the dams, works and franchises of any existing company or individuals interfered with and affected by said new dams, and such existing works and franchises may be maintained and used by said existing companies and individuals until said new dams hereby authorized are erected, and the works and franchises of said existing companies and individuals shall be acquired as herein provided, and after such acquisition such existing dams and works may be maintained and used by the companies herein authorized, in addition to their new dams and works hereby authorized if they shall deem it desirable so to do.

Companies may acquire dams, &amp;c., of existing companies.

**115. SEC. 9.** That the supply of water for water-power or other uses or purposes, from the dams hereby authorized to be erected, shall be equally divided between this state and any other state, whenever the rivers or streams upon which the said dams are erected shall flow between or divide this state and such other state; *provided, however*, that this shall not be construed to prohibit the use of any additional quantity of water on either side of said rivers or streams; whenever thereby the water is not reduced below the level required for the due supply of the connecting canals or raceways on the other side of the said rivers or streams; *and further*, that such companies may make and enforce such regulations as shall carry out the provisions of this section.

Supply of water between this and other states shall be equally divided.

Proviso.

Proviso.

**116: SEC. 10.** [Amended by Sec. 136, *post*.]

**117. SEC. 11.** That all companies whose dams and works shall be constructed under the provisions of this act and of the act to which this is a supplement, shall have the right to connect their said dams and works with any dams and works on the same rivers or streams, within this state or between this and any other state, upon such terms as may be agreed upon by those who have the management of such dams and works; and in case of a failure of agreement on the part of those having the management of such dams and works within this state, then, and in that case, either of said parties may apply to one of the justices of the supreme court of this state, within the jurisdiction in which said connection is proposed to be made, whose duty it shall be to appoint three disinterested citizens, as herein provided for the condemnation of land, who shall determine and fix said terms, and proceed in all respects the same as when condemning land, as provided in the fifth and sixth sections of this act, including the right of appeal by either party to the next circuit court in the county wherein the said dams and works may be.

Companies may connect dams and works with any dams and works on the same rivers or streams.

May lease works to other corporations.

**118. SEC. 12.** That it shall be lawful for any company incorporated under this act and the act to which this is a supplement, at any time during the continuance of its charter, to lease its dams and works, or any part thereof, to any other corporation or corporations, of this or any other state, or to unite and consolidate as well as merge its stock, property, franchises, dams and works with those of any other company or companies, of this or any other state, or to do both; and such other company and companies are hereby authorized to take such lease, or to unite, consolidate as well as merge its stock, property, franchises, dams and works with said company, or to do both, and after such lease or consolidation the company or companies so acquiring said stock, property, franchises, dams and works may use and operate such dams and works and their own dams and works, or all or any of them, according to the provisions and restrictions contained in this act, notwithstanding any special privilege heretofore granted to another corporation.

Franchises, rights, works and structures of any canal or railroad not to be interfered with without consent.

**119. SEC. 13.** That nothing in this act contained shall be construed to authorize any corporation organized under this act or the act to which this is a supplement, to take, condemn, obstruct, endanger or in anywise interfere, directly or indirectly, with the franchises, rights, works and structures of any canal or railroad corporation, without the written consent of such corporation, nor to authorize the leasing, consolidating or otherwise uniting the dams and works hereby authorized with the works and franchises of any railroad company in this or any other state, and that this act shall take effect immediately.

P. L. 1876, p. 237.

Supplement.

Approved April 21, 1876.

Not more than a majority of directors in plank road company need reside in state.

**120. SEC. 1.** That it shall not be necessary hereafter for more than a majority of the directors of any plank road company heretofore or hereafter organized under the act to which this is a supplement, or under any other act, or in pursuance of any special charter, to be residents of this state.

P. L. 1877, p. 19.

Supplement.

Approved February 21, 1877.

**121. SEC. 1.** [Amended by Sec. 138, *post.*]

P. L. 1877, p. 20.

Supplement.

Approved February 21, 1877.

How companies may be dissolved.

**122. SEC. 1.** That section thirty-four of the act to which this is a supplement, and which now reads as follows:

"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 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," be and the same is hereby amended so that the board of directors of any corporation desiring a dissolution thereof as therein provided, shall, in addition to the other acts and things therein required to be done, file with the secretary of state a list of the names and residences of the then existing board of directors, with its officers, which list shall have been duly verified by the secretary or president of said board, and the secretary of state shall not issue the certificate of dissolution therein mentioned until such list shall have been filed as aforesaid. (a) [See Sec. 268, *post*.]

Proviso.

Corporations desiring dissolution, to file list of directors, &amp;c., with secretary of state.

## Supplement.

Approved February 21, 1877.

P. L. 1877, p. 22.

123. [Amended by Sec. 271, *post*.]

124. SEC. 2. That no change in the name of any corporation, under the provisions of this act, shall be deemed effected until the said certificate, made and recorded as aforesaid, shall be actually filed in the office of the secretary of state, as herein directed; but no such change shall in manner lessen or impair any liability of such corporation incurred or existing at the time such change of name shall be made, which liability shall continue and be capable of being enforced against such corporation by its name as so changed, or by its original name; and no suit pending at the time of such change of name shall abate by reason thereof, but the same may be prosecuted to judgment and execution in the original name of such corporation, and under any such execution the property of said corporation, whether held by its original or amended name, may be levied on and sold to satisfy such judgment.

Change of corporate name not effected until certificate is filed.

Pending suits not affected.

## Supplement.

Approved March 8, 1877.

P. L. 1877, p. 74.

125. SEC. 1. That section eighty of the act to which this is a supplement, and which reads as follows:

"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

Distribution, how made.

(a) Where a corporation has ceased to do business, and apparently nothing remains to be done but to pay its debts and divide the surplus among the stockholders, it is the duty of the directors to call a stockholders' meeting. *Street v. Citizens' Fire Ins. Co.*, 2 *Stew.* 30. A court of equity has no authority, in virtue of its general jurisdiction, to dissolve a corporation or deprive it of its franchises, either for non-user or misuser of its corporate powers, nor because its organization was not effected in accordance with the requirements of the law by which it was created, but in violation of them. An inquiry whether a corporation exists *de jure* or not is beyond the power of a court of

chancery. *Elizabethtown Gaslight Co. v. Green*, 1 *Dick.* 118. Shareholders in a corporation cannot extinguish its charter or dissolve it, and a court of equity is without power to accomplish a similar result at their instance. In the absence of statutory provisions, the franchises can be declared forfeited and extinguished only at the suit of the state, in an appropriate proceeding at law. *Benedict v. Columbus Construction Co.*, 4 *Dick.* 23. A manufacturing company wishing to withdraw from active business must, to escape taxation, take proceedings under the above section to dissolve and surrender its charter and wind up its affairs. *Edison Phonograph Co. v. Assessors*, 26 *Vr.* 55.

debts not due, making in such case a lawful rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs and expenses as aforesaid, and the preferred stockholders, may be divided and paid to the general stockholders proportionally, according to their respective shares," be and the same is hereby amended by adding thereto:

Amendment.

[*Provided, however*, that the provisions of this section shall not be held or construed to in any way change, alter or affect the provisions of section sixty-three of said act, which reads as follows:

Wages due to laborers to be a first lien.

"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 said '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) [See Sec. 178, *post.*]

Corporation not to transact business when receiver has been appointed.

**126. SEC. 2.** That section eighty-three of the act to which this is a supplement, and which reads as follows:

"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," be and the same is hereby amended by striking out the latter portion of said section, which reads as follows: "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," and insert in lieu thereof, "and that for all other purposes the chancellor may at any time, by order, in such suit or proceeding, with or without notice to anyone, and without any further proceedings or judgment, declare the charter of said corporation forfeited and void." (b)

Amendment.

Charter may be declared void by order in chancery.

When charter not to be void by reason of injunction. Proviso.

**127. SEC. 3.** That the charter of no corporation shall be forfeited and void, notwithstanding the injunction and appointment mentioned in section eighty-three of the act to which this is a supplement, shall have continued for four months; *provided*, said corporation shall have been heretofore managed and doing business under an order of the court of chancery.

#### Supplement.

P. L. 1877, p. 103.

Approved March 8, 1877.

**128. SEC. 1.** [This section, amending Sec. 49, *ante*, is amended by Secs. 287 and 293, *post.*]

Repealer.

**129. SEC. 2.** That all acts or parts of acts to which this is a supplement conflicting with this act be and the same are hereby repealed, and that this act shall take effect immediately.

#### Supplement.

P. L. 1877, p. 179.

Approved March 9, 1877.

**130. SEC. 1.** [Amended by Secs. 162 and 175, *post.*]

(a) A superintendent of the work of constructing a railroad, without any obligation on his part, voluntarily, and supposing that the company was solvent, and merely to befriend the workmen employed, advanced his own money to pay them for their work. There was no assignment of their claims to him, and no agreement that he was to have the benefit of their lien. Afterwards the company became insolvent. *Held*, that he was not, by subrogation, entitled to the workmen's statutory lien for those payments. *North River Construction Co.'s Case*, 11

*Stew.* 434. As to distribution of the funds of insolvent mutual insurance companies, see *Mayor v. Attorney-General*, 5 *Stew.* 822. *McGregor v. Home Insurance Company of Newark*, 6 *Stew.* 186.

(b) When the directors refuse to order an election of new directors at the time designated by the by-laws for holding such annual election, the chancellor, on application for that purpose, may order such election. *Lehigh Coal and Navigation Co. v. Central R. R. Co. of N. J.*, 8 *Stew.* 349.

## Supplement.

Approved February 21, 1878. P. L. 1878, p. 25.

**131. SEC. 1.** [Amended by Sec. 153, *post.*]

## Supplement.

Approved February 26, 1878. P. L. 1878, p. 29.

**132. SEC. 1.** That any corporation which now is, or hereafter shall be, in the hands of receivers, or of a receiver, by virtue of proceedings in the court of chancery, may, whenever such corporation shall be re-organizing or arranging its property and debts to resume the management and control of its property and business, with the consent of the court of chancery, mortgage its property and franchises for such amount as may be necessary, at a rate of interest not exceeding the rate of interest secured by any pre-existing mortgage of real estate made by such corporation.

Corporation in hands of receiver may mortgage property for purpose of re-organization.

## Supplement.

Approved March 7, 1878. P. L. 1878, p. 61.

**133. SEC. 1.** That the one hundred and fifth section of the act to which this is a supplement, which reads as follows [see Rev. p. 196], be and the same is hereby amended to read as follows :

[That all the real and personal estate of every corporation incorporated by any act of the legislature, or by the filing of a certificate or otherwise under any general law of the 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. (a) [See Secs. 141 and 176, *post.*]

Taxation of corporate property.

Proviso.

**134. SEC. 2.** That all acts or parts of acts to which this is a supplement conflicting with this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

## Supplement.

Approved March 14, 1878. P. L. 1878, p. 90.

**135. SEC. 1.** That section two of the supplement to an act entitled "An act concerning corporations," approved April seventh, eighteen hundred and seventy-five, which reads as follows [see Sec. 108, *ante*], be and the same is hereby amended so as to read as follows :

[That all companies that may be hereafter established by virtue of this act, and of the act to which this is a supplement, for the purpose of damming rivers and streams in this state, or between this state and any other state, shall have power to construct, erect and maintain dams on rivers and streams of the width as hereinbefore mentioned, at such points on said rivers and streams, and on such heights as may be by them deemed necessary or advisable, not exceeding ten feet above common low water of such rivers and streams; *provided,* that such dams on all navigable rivers shall each have a good and sufficient chute in connection therewith, of not less than one hundred feet in width, to enable rafts and flat-boats to pass safely and conveniently down the same; *and also provided,* that said dams shall

Certain companies may construct dams in rivers and streams, &c.

Proviso.

Proviso.

(a) The amount of loans made by a building and loan association to its stockholders, represented by the notes, bonds and mortgages held by the association, are assets, and assessable as property of the corporation. *State, W. E. and L. Association v. Hornbaker*, 12 Vr. 519; *S. C. affirmed*, 13 Vr. 635. This act, although it excepts from its operation railway, turnpike and other corporations, is a general law within the meaning of Par. 12, Sec. 7, Art. IV., of the amended constitution. *State, Trenton Iron Co., pros., v. Yard*, 13 Vr. 357. The provision of the act of 1866 (Rev. p. 1156, § 74), that the persons holding the capital stock of a corporation shall not be assessed therefor, is not repealed, either expressly or by implication, by section 105 of the corporation act as above amended. Therefore, the shares of stock of the Hudson County Gaslight Company, owned by the Jersey City Gaslight Company, and held by it as part of its assets, are not taxable against the latter company. *Jersey City Gaslight Co. v. Jersey City*, 17 Vr. 194, reversing 16 Vr. 480. A

New Jersey corporation organized for the planting of hedges, is taxable, not upon its capital stock, but upon the true value of its real and personal estate. *New Jersey Hedge Co. v. Craig*, 22 Vr. 437. The mere franchises of corporations are not taxable under the above section. *Passaic Water Co. v. Paterson*, 27 Vr. 471. *Query*—Is a society for the promotion of learning excepted from the operation of the above section as a "purely charitable or educational association?" *Society, etc., v. New Brunswick*, 26 Vr. 65. Where the real estate of a corporation is situate partly in one township and partly in another township, and is occupied by the corporation, it will be subject to taxation in the township where its principal office is located. *State, Warren Manufacturing Co., pros., v. Warford*, 8 Vr. 397. *Warren Manufacturing Co. v. Dairymple*, 27 Vr. 449. For the method of taxing corporations engaged in the business of insuring property against fire, see *Merchants' Insurance Co. v. Newark*, 25 Vr. 138, 26 Vr. 145.

Proviso.

each be constructed with a fishway for the passage of shad and other fish, which said fishways shall be constructed and maintained under the supervision and approval of all of the fish commissioners of this state; *and also provided*, that the plans and construction of such dams shall be approved by at least three engineers and experts, to be appointed by the governor of this state on the application of such companies; they shall receive such compensation for their services as shall be fixed by said governor, and any company failing to comply with the provisions of this section shall thereby forfeit the franchises given it by this act.]

Such companies may issue bonds.

**136. SEC. 2.** That section ten of said act, which reads as follows [see Sec. 116, *ante*], be and the same is hereby amended so as to read as follows:

[That every such company may make and issue bonds, with or without coupons attached, bearing interest not exceeding the legal rate of interest, to borrow money or to secure any indebtedness created by them, and sell, exchange or otherwise dispose of the same upon such terms and conditions as they may deem advisable, and such bonds, and the interest thereon, may be secured by a mortgage or mortgages given or executed to a trustee or trustees for the use of the bondholders, upon the corporate franchises, real or personal estate, and all other property of such companies, or any part thereof; *provided*, they shall not issue bonds for a greater sum than the amount of their capital stock paid in.]

Proviso.

## Supplement.

P. L. 1878, p. 157

Approved March 20, 1878.

Corporations may change the par value of their shares of capital stock.

**137. SEC. 1.** That any company organized under the provisions of said act may change the par value of the shares of its capital stock by filing in the office of the secretary of state the assent in writing, of stockholders representing two-thirds in value of the capital stock for the time being, and also a certificate, under the hands and seals of said stockholders, or their legal representatives, stating the par value to which it is proposed to change said shares, which said certificate shall be proved or acknowledged and recorded in the manner provided in said act for the original certificate of organization, and the certificate of the secretary of state, that such assent and certificate have been filed in his office, shall be taken and accepted as evidence of such change of par value in any court of this state; *provided, however*, that such assent and certificate shall be filed as aforesaid within thirty days after the execution of the same by said stockholders. [See Secs. 139, 153, 173 and 175, *post*.]

Proviso.

A supplement to an act entitled "A further supplement to an act entitled 'An act concerning corporations,' approved April seventh, eighteen hundred and seventy-five," which said supplement was approved February twenty-first, eighteen hundred and seventy-seven.

P. L. 1878, p. 212.

Approved March 29, 1878.

Where directors of water or manufacturing company may reside.

**138. SEC. 1.** That the first section of the act to which this is a supplement, which reads as follows [see Sec. 121, *ante*], be and the same is hereby amended so as to read as follows:

[That it shall not be necessary for any of the directors of any water or manufacturing company heretofore or which may be hereafter organized under the act to which this is a further supplement, or any other act, general or special, or in pursuance of any special charter, to reside in any specified township or city in this state, although it may be so required by any such special act or special charter; neither shall it be necessary to limit the number of directors of any such company so organized or which may be so organized under any of such acts or under any such special charter, to the number named therein or in any of them; *provided*, that the directors of any such company shall not be less than three in number; *provided*, that a majority of the directors of any such company shall be residents of this state. [See Sec. 147, *post*.]

Number of directors.

Proviso.

## Supplement.

Approved March 6, 1879. P. L. 1879, p. 88.

**139. SEC. 1.** That any company or association organized under the act to which this is a supplement, or otherwise, may increase the number of its shares of stock by subdividing the amount of each share, including therein as well the par value thereof as also any assessments actually paid in thereon, into shares of such equal par value as it may agree on, by filing in the office of the secretary of state the assent in writing of stockholders representing two-thirds in value of the capital stock for the time being, and also a certificate under the hands and seals of said stockholders, or their legal representatives, stating the par value at which it is proposed to fix said shares, which certificate shall be proved or acknowledged and recorded, as required of deeds of real estate, in the book kept for recording corporation certificates, 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; and the certificate of the secretary of state that such assent and certificate have been filed in his office shall be taken and accepted as evidence of such subdivision of said shares and alteration of their par value in any court of this state; *provided, however*, that such assent and certificate shall be filed as aforesaid, within thirty days after the execution of the same by said stockholders; *and provided further*, that in no case shall the capital stock of any such company filing such certificate and assent be increased thereby beyond the amount limited in its charter or certificate of organization, except in the manner now provided by the act to which this is a supplement. [See Sec. 137, *ante*, and Secs. 153, 173 and 175, *post*.]

Number of shares of stock may be increased by subdividing the amount and par value of each share.

Proviso.

Proviso.

## Supplement.

Approved March 14, 1879. P. L. 1879, p. 348.

**140. SEC. 1.** That any company formed under and pursuant to "An act to authorize the establishment and to prescribe the duties of companies for manufacturing and other purposes," approved the second day of March, one thousand eight hundred and forty-nine, and the several supplements thereto, may come under and be subject to the provisions and liabilities of the act to which this is a supplement, 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 supplement contained shall be held to affect any transaction, liabilities or debts of any such company heretofore done, accrued or contracted.

How certain companies may become organized under general act.

Proviso.

**141. SEC. 2.** That all corporations, whether manufacturing corporations or otherwise, organized or acting under the provisions of this act, or the act to which this is a supplement, shall hereafter be taxed upon their capital stock at its actual value and accumulated surplus. [See Sec. 133, *ante*, and Sec. 176, *post*.]

Taxation of capital stock and surplus.

**142. SEC. 3.** That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed, and that this act shall go into effect immediately.

Repealer.

## Supplement.

Approved February 10, 1880. P. L. 1880, p. 23.

**143. SEC. 1.** That any banking corporation having capital stock divided into shares, and created under the laws of this state by special act of incorporation or otherwise, the capital of which has become impaired, shall have power to reduce the par value of each share of its stock to such an amount

Banking corporations whose stock has been impaired may reduce par value of shares and issue additional shares of stock.

Certificate to be filed.

Additional shares how issued.

When stock is subscribed and paid for, certificate to be filed.

P. L. 1880, p. 92.

P. L. 1880, p. 326.

Seven or more persons may form society for manufacturing or co-operative trade.

P. L. 1881, p. 122.

Only one director of any manufacturing company need be a resident of this state.  
Proviso.

Repealer.

as shall be agreed on by the consent of stockholders representing two-thirds of its capital stock, and shall also have power, by like consent, to determine to issue so many additional shares of its capital stock at the par value so fixed as by a like consent shall be agreed to, not exceeding in the whole, with the shares of stock previously issued and outstanding, at the par value so fixed, the amount of capital limited by its act of incorporation or certificate of organization; and upon filing in the office of the secretary of state a certificate in writing, signed by stockholders representing two-thirds of its capital stock, setting forth the number of shares of stock previously issued and outstanding, the reduced par value fixed and agreed on, and the number of additional shares of stock agreed on and determined to be issued, then and from thenceforth the par value of such stock shall be taken and considered to be the amount so fixed and certified, and the additional shares so determined to be issued may be issued in the following manner, viz.: the directors, managers, trustees or other governing body of such corporation shall give not less than ten days' notice, by advertisement in one or more newspapers of the state and by circulars sent by mail to the stockholders whose post-office address is known, of a time and place when they will open books of subscription for such additional shares of stock, and at such time and place shall receive subscriptions therefor; the previously-existing stockholders of such corporation shall each be entitled at such time and place to subscribe for and take such proportion of such additional stock as their shares bear to the total number of previously-existing shares, and if any additional stock is not so taken by stockholders, within ten days after the books for that purpose are opened, it may be subscribed for and taken by any person or persons.

**144. SEC. 2.** That when said stock is so subscribed, taken and paid for, the directors shall cause a certificate thereof to be filed in the office of the secretary of state, and thereupon the persons so subscribing, taking and paying for said additional stock shall become stockholders to the amount and proportion of stock so taken by them.

**Supplement.**

Approved March 3, 1880.

**145. SEC. 1.** [This section, amending Secs. 10 and 107, *ante*, amended by Secs. 189, 208 and 292, *post*.]

**Supplement.**

Approved March 12, 1880.

**146. SEC. 1.** That for the purpose of co-operation in carrying on any manufacturing or co-operative trade, authorized by the tenth section of the act to which this is a supplement [see Sec. 189, *post*], seven or more persons may associate themselves with a capital of not less than one thousand nor more than fifty thousand dollars.

**Supplement.**

Approved March 16, 1881.

**147. SEC. 1.** That it shall not be necessary for more than one of the directors of any cotton, woolen, chemical or other manufacturing company organized under any law of this state, to be an actual inhabitant and resident of this state; *provided*, that every such company having only one of its directors an actual inhabitant and resident of this state, shall, in addition to the matters required by the first section of the act entitled "A supplement to an act entitled 'An act concerning corporations,' approved April seventh, one thousand eight hundred and seventy-five," which supplement was approved March eighth, one thousand eight hundred and seventy-seven [see Sec. 128, *ante*, and Sec. 287, *post*], also at the same time and manner therein provided, designate and file in the office of the secretary of state of this state the name and place of abode of such resident director. [See Sec. 138, *ante*.]

**148. SEC. 2.** That all acts or parts of acts so far as they conflict with this supplement are hereby repealed, and that this act shall take effect immediately.

## Supplement.

Approved March 25, 1881.

P. L. 1881, p. 298.

**149. SEC. 1.** That in all proceedings in any of the courts of this state against any foreign corporation, or body corporate not holding its charter under the laws of this state, in any matter requiring the use of any prerogative writ, such writ may be served upon the president, vice president, secretary or other head officer of such corporation, or body corporate, or upon any director thereof, either personally or by leaving a copy thereof at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney or solicitor, superintendent or manager of such corporation, and such service shall be good and valid to all intents and purposes; *provided*, that this act shall only apply to or affect the service of writs of mandamus or prerogative writs hereafter to be issued in proceedings or actions hereafter to be commenced or instituted.

Service of prerogative writs on foreign corporations.

Proviso.

**150. SEC. 2.** That in case any such corporation, after the service of any such writ as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, the said courts shall have power, and authority is hereby given them, to enforce such writs by attachment against the property and estate, goods and chattels, rights and credits of such corporation that may be found within this state.

Such writs may be enforced by attachment against property of corporation.

**151. SEC. 3.** That all acts and parts of acts inconsistent with the provisions of this act be and are hereby repealed, and that this shall be a public act and take effect immediately.

Repealer.

## Supplement.

Approved March 17, 1882.

P. L. 1882, p. 137.

**152. SEC. 1.** That it shall be lawful for any corporation incorporated, created, registered or chartered by any foreign state, kingdom or government, 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 corporation in this state, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; *provided*, such state, kingdom or government under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States. [See Secs. 161 and 185, *post*.]

Foreign corporation may hold, mortgage, lease and convey real estate, &c.

Proviso.

A supplement to an act entitled "A further supplement to an act entitled 'An act concerning corporations,' approved April seventh, eighteen hundred and seventy-five," which supplement was approved February twenty-first, eighteen hundred and seventy-eight.

Approved March 17, 1882.

P. L. 1882, p. 139.

**153. SEC. 1.** That the first section of the act to which this is a supplement [see Sec. 131, *ante*] be amended so as to read as follows:

[That when any company incorporated under the laws of this state by special act of incorporation, is limited by its charter to a certain amount of capital stock, such corporation shall have power, from time to time, to decrease the amount of its capital stock on filing with the secretary of state the assent, in writing, of stockholders representing two-thirds in value of the existing capital stock, and a certificate setting forth the amount of capital stock as decreased, and published for three weeks in a newspaper circulating in the county in which the place of business of any such company is located; and in default thereof the directors of the company shall be jointly and severally liable for all debts of the company contracted before the filing of the said certificate, and the stockholders shall also be liable for any such sums as they may respectively receive of the amount so reduced; and the certificate of the secretary of state that such assent

Certain companies may decrease amount of capital stock.

Assent of stockholders and certificate to be published and filed.

and certificate have been filed in his office shall be taken and accepted as evidence of such decrease in any court of this state; *provided*, no such reduction of stock shall be construed to affect any reduction of the taxes that may be required to be paid by the special acts respectively incorporating such companies.] [See Secs. 137 and 139, *ante*, and Secs. 173 and 175, *post*.]

Proviso.

Supplement.

Approved March 31, 1882.

P. L. 1882, p. 252.

When certificate contains provision that board of directors may levy assessments, no action of stockholders necessary.

**154. SEC. 1.** That whenever the certificate provided for in section ten of the act to which this is a supplement [see Sec. 189, *post*] shall contain a provision (which is hereby authorized to be inserted therein in reference to any company conducting mining operations as a part of its business that may be formed under the act to which this is a supplement) that the board of directors shall have full power to levy assessments on general stockholders until the stock of such stockholders shall be fully paid up, that then and in every such case no action of the stockholders of such company shall be necessary in order to impose, levy and collect such assessments.

**155. SEC. 2.** [Amended by Sec. 216, *post*.]

Repealer.

**156. SEC. 3.** That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 5, 1883.

P. L. 1883, p. 62.

**157. SEC. 1.** [This section, relating to state fees on filing certificates, superseded by Sec. 276, *post*.]

**158. SEC. 2.** [This section superseded by Sec. 276, *post*.]

**159. SEC. 3.** [This section superseded by Sec. 276, *post*.]

When certificate may be filed.

**160. SEC. 4.** That it shall not be lawful for the secretary of state to file in his office any certificate of incorporation or organization, made in pursuance of the act to which this act is a supplement, until the requirements of this act are complied with.

Supplement.

Approved March 23, 1883.

P. L. 1883, p. 220.

Foreign charitable or benevolent corporations may hold certain real estate, &c.

**161. SEC. 1.** That it shall be lawful for foreign corporations, created and organized for charitable or benevolent purposes, to hold, mortgage, lease and convey such real estate in this state as may be devised or conveyed to them for the purposes of their creation, anything in the laws of this state to the contrary notwithstanding. [See Sec. 152, *ante*, and Sec. 185, *post*.]

Supplement.

Approved March 23, 1883.

P. L. 1883, p. 240.

**162. SEC. 1.** [This section, amending Sec. 130, *ante*, amended by Sec. 175, *post*.]

Supplement.

Approved February 21, 1884.

P. L. 1884, p. 26.

Societies for relief of clergymen may increase number of trustees, &c.

Proviso.

**163. SEC. 1.** That any society incorporated under the laws of this state, having for its object the relief of clergymen whose advanced years have a claim on the support of the church to which they belong, are hereby authorized by a vote of two-thirds of the members present, not less than a quorum, at any annual meeting of such society, to increase the number of the trustees or directors of said society and to declare that a certain number less than half of the trustees shall be laymen; *provided, however*, that notice of the proposed change in the number and composition of the board of trustees or directors shall have been given to each of the members whose address can be ascertained, by mailing the same to him at least one month before such annual meeting; and a board of trustees of the number

and composition so fixed at any annual meeting shall be elected at such meeting, and at future meetings, until a change has been made in the manner provided by this act. [See Sec. 297, *post.*]

**164. SEC. 2.** That any such society shall have power by a two-thirds vote of the members present, not less than a quorum, at any annual meeting, to change the time of holding the annual meetings of such society beginning with the next year, and notice of the change so made shall be sent by mail within one month to each of the members whose address can be ascertained.

May change time of annual meetings.

#### Supplement.

Approved March 5, 1884.

P. L. 1884, p. 43.

**165. SEC. 1.** That the directors of any banking corporations having capital stock divided into shares and created under the laws of this state by special act of incorporation or otherwise, shall require the cashier appointed by them, before he performs or enters upon any duties as such cashier, to give bond or bonds, with good and sufficient security, to be approved by the board of directors thereof, in the penal sum of at least twenty thousand dollars, conditioned for the faithful performance of the duties of such cashier, and it shall be the duty of the directors of said corporations, as often as once in every year, to pass upon the sufficiency of the said bond or bonds, and if insufficient, to require without delay new and additional bonds and securities to be given.

Cashiers of banking corporations to give bonds before entering upon duties.

**166. SEC. 2.** That if the directors of said corporation should fail to perform any or all of the requirements of the last preceding section they shall be jointly and severally liable to the said corporation to the extent of any defalcation of or deficiency in the funds of said corporation created or caused by said cashier, not in excess of the sum of twenty thousand dollars, the same to be recovered by said corporation in any court of competent jurisdiction of this state.

Directors failing to perform requirements, &c., liable.

**167. SEC. 3.** That all acts or parts of acts inconsistent or conflicting with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

#### Supplement.

Approved March 18, 1884.

P. L. 1884, p. 82.

**168. SEC. 1.** That to paragraph III. of section ten [eleven] of the act entitled "An act concerning corporations," approved April seventh, eighteen hundred and seventy-five, which now reads:

"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 shall 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," there shall be annexed the following proviso, which is:

[*Provided*, that when any corporation is to be formed for the purpose of originating and keeping a herd register for the entry therein of any kind of thoroughbred horses, cattle, swine, sheep or other domestic animals, the total amount of the said capital stock of such herd register company may be any sum not less than two hundred dollars, and the amount with which they shall commence business shall not be less than one hundred dollars.]

Amount of capital stock requisite in formation of company for keeping herd register.

#### Supplement.

Approved May 10, 1884.

P. L. 1884, p. 331.

**169. SEC. 1.** [Amended by Sec. 263, *post.*]

**170. SEC. 2.** [Amended by Sec. 264, *post.*]

**171. SEC. 3.** That any wires for conveying electricity or the conduits containing said wires, shall be laid at the greatest practicable distance from the outside of any water or gas pipe now laid down, and that such dis-

Electric wires to be laid certain distance from water and gas pipes.

tance shall not be less than three feet, except in case where it shall be necessary that the said wires or conduits shall cross or intersect any such water or gas pipe.

[See title TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT COMPANIES, *post.*]

**Supplement.**

Approved February 17, 1885.

P. L. 1885, p. 34.

Certain corporations may subscribe to capital stock of railroad company.

Proviso.

**172. SEC. 1.** That any corporation of this state now existing or hereafter to be incorporated under the provisions of the act to which this is a supplement, having for its object the improvement and sale of and owning lands at or near any of the seaside resorts of this state, and not located on the line or at the terminus of any railroads in this state, may, by a vote of the majority of the capital stock of such corporation, subscribe to the capital stock of and become a shareholder in any railroad company about to construct its line of railroad so as to extend to, through or over the lands owned by such corporation; *provided*, that such subscription shall not exceed one-fifth of the amount of the capital stock of such subscribing corporation.

**Supplement.**

Approved March 25, 1885.

P. L. 1885, p. 140.

Certain companies may reduce capital stock and par value of the shares.

Proviso.

**173. SEC. 1.** That when any company incorporated under any general law of this state, or by special act of incorporation is limited by its charter to a certain amount of capital stock, and the par value of the shares of such stock is fixed therein, such corporation shall have the power to decrease the amount of capital stock and the par value of the shares of its capital stock on filing with the secretary of the state the assent, in writing, of stockholders representing two-thirds in value of the existing capital stock, and a certificate setting forth the amount of the capital stock as decreased, and the par value of the shares of such capital stock, and published for three weeks in a newspaper circulating in the county in which the place of business or principal office of any such company is located; and in default thereof the directors of the company shall be jointly and severally liable for all debts of the company contracted before the filing of the said certificate; and the certificate of the secretary of state that such assent and certificate have been filed in his office shall be taken and accepted as evidence of such decrease of capital stock and of the par value of the shares thereof in any court of this state; *provided*, that no such reduction of stock or the par value of the shares thereof shall be construed to effect any reduction of the taxes that may be required to be paid by the special acts respectively incorporating such company. [See Secs. 137, 139 and 153, *ante*, and Sec. 175, *post.*]

**Supplement.**

Approved April 17, 1885.

P. L. 1885, p. 250.

When charter of railroad or canal company repealed or company dissolved, chancellor to take charge of effects, &c.

Proviso.

**174. SEC. 1.** That whenever the charter of any railroad or canal corporation shall be repealed, or any such railroad or canal corporation shall be dissolved in any manner whatever, the chancellor shall, upon the application of the attorney-general by petition in the name of the state, take charge of all the estates, effects and franchises of such corporation, and proceed to settle its affairs in conformity to the provisions of the act to which this is a supplement, and the provisions of any supplement thereto; and if justice and equity shall require, the chancellor may order and decree the estates, effects and franchises of such corporation to be sold at public sale; *provided*, that no franchise of immunity from taxation, and no contract wholly or partially exempting such corporation from taxation shall be sold at such sale, or in any other manner whatever, either expressly or by implication, but the purchasers of such effects, estates and franchises shall acquire and hold the same subject to such taxation as the state may impose thereon by law.

A further supplement to an act entitled "A further supplement to an act entitled 'A further supplement to an act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five,' which supplement was approved March ninth, one thousand eight hundred and seventy-seven."

Passed April 14, 1886. P. L. 1886, p. 226.

**175. SEC. 1.** That section one of an act entitled "A further supplement to an act entitled 'A further supplement to an act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five,' which supplement was approved March ninth, one thousand eight hundred and seventy-seven" [see Secs. 130 and 162, *ante*, and Sec. 318, *post*], be and the same hereby is amended so as to read as follows:

[That when any company incorporated under the laws of this state by special act of incorporation, or otherwise, is limited by its charter, or otherwise, to a certain amount of capital stock, and a certain number of directors, such corporation shall have power to increase the amount of its capital stock or the number of its directors, or both, on filing with the secretary of state the assent in writing of stockholders representing two-thirds in value of the existing capital stock, and a certificate setting forth the amount of capital stock, or number of directors as increased, and the certificate of the secretary of state that such assent and certificate have been filed in his office, shall be taken and accepted as evidence of such increase in any court of this state; *provided*, that the additional capital stock authorized under this act shall be paid for in cash, or shall be issued in payment for land and other property acquired by said company for the purposes of its incorporation and for improvements upon or to its property to the amount of the value thereof; *and provided further*, in the case of any company having two or more classes of stock, common and preferred, such increase may be in any one or more classes of stock, whether common or preferred, and such assent shall be by stockholders representing two-thirds in value of each class of existing capital stock, whether common or preferred.] [See Secs. 137, 139, 153 and 173, *ante*, and Sec. 265, *post*.]

When capital stock or number of directors may be increased, and how.

Proviso.

Proviso.

#### Supplement.

Approved May 11, 1886. P. L. 1886, p. 345.

**176. SEC. 1.** That all real and personal estate of every manufacturing company or corporation shall be taxed the same as the real and personal estate of an individual. [See Secs. 133 and 141, *ante*.]

**177. SEC. 2.** That all acts or parts of acts to which this is a supplement conflicting with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Real and personal estate of manufacturing corporations, how taxed.  
Repealer.

#### Supplement.

Approved March 31, 1887. P. L. 1887, p. 99.

**178. SEC. 1.** That section sixty-three of the said act shall be and the same hereby is amended so as to read as follows, to wit:

[That in case of the insolvency of any corporation the laborers then or theretofore in the employ thereof shall have a lien upon the assets thereof for the amount 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 employ of such corporation; and the lien shall have reference to and comprise all claims for such labor or services rendered for or in behalf of such corporations before the date which the court adjudges to be the time when the insolvency occurred which gives it jurisdiction whether such "laborers" were in the actual employ of such

Lien of workmen in case of insolvency.

corporation at that time or not.] (a) [See Secs. 80 and 125, *ante*, and Sec. 371, *post*.]

To what cases act applies.

**179. SEC. 2.** That this act shall not only apply to all proceedings in insolvency hereafter begun, but as well to any now pending where the assets have not been distributed.

P. L. 1887, p. 112.

Supplement.

Approved April 1, 1887.

**180. SEC. 1.** [Amended by Secs. 234 and 235, *post*.]

P. L. 1887, p. 137.

Supplement.

Approved April 6, 1887.

Corporations may file certificate extending corporate existence.

**181. SEC. 1.** That any corporation that has failed, during the period for its continuance named in its charter or certificate of incorporation, to file with the secretary of state a certificate extending its corporate existence, as permitted by statute, but has continued and still continues its organization and the transaction of business, may still file such certificate at any time within thirty days from the passage of this act, naming therein a period not exceeding fifty years. [See Secs. 193 and 202, *post*.]

Period of existence of corporation revived and extended upon filing certificate.

**182. SEC. 2.** That upon filing such certificate the period of the existence of such corporation shall be revived and extended as declared in such certificate as fully as if said period had been named in the original charter or certificate of organization of such corporation, but nothing herein contained shall be construed to interfere with the right of the state of New Jersey reserved by any law now or hereafter existing to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter, nor shall this act apply to any corporation against which quo warranto or other proceedings for dissolution are pending. [See Secs. 194 and 204, *post*.]

Limitations upon such revival.

P. L. 1887, p. 156.

Supplement.

Approved April 9, 1887.

**183. SEC. 1.** [Amended by Sec. 251, *post*.]

Secretary of state to file certificate amending defects in former certificate.

**184. SEC. 2.** That it shall be lawful for the secretary of state to file such certificate in his office; *provided*, said association has paid or does pay to him for the use of the state, the sum of money required to be paid upon filing amended certificates of incorporation in his office.

P. L. 1887, p. 157.

Amendatory act.

Approved April 11, 1887.

**185. SEC. 1.** That section ninety-nine of the act recited in the title hereof shall be amended so as to read as follows:

Foreign corporation may acquire, hold and convey lands, &c.

[That it shall be lawful for foreign corporations to acquire, 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 corporations in this state, or such as they may acquire by way of mortgage or otherwise in the payment of debts due to said foreign corporation; and foreign corporations

(a) The preference given by this section is in derogation of the right of creditors to be paid equally, and must not be extended by construction. *Lehigh Coal and Navigation Co. v. Central R. R. Co.*, 2 *Stew.* 252. A drayman who is in the regular employ of a corporation, and whose services are of a kind or class which the corporation must have in order to continue its business, is entitled to the protection of this section. *Watson v. Watson Manufacturing Co.*, 3 *Stew.* 538. The claims of laborers for services to a corporation which has been declared to be insolvent, are not entitled to precedence in payment over liens acquired by judgment, execution and levy thereunder, or by distress for rent, which antedate the time which the court adjudges to be the time of the corporation's insolvency. *Wright v. Wymockie Iron Co.*, 3 *Dick.* 29. Nor does an employee of a corporation have priority over a mortgage creditor. *Hinkle v. Camden Safe Deposit and Trust Co.*, 2 *Dick.* 333. A. entered into an agreement with a corporation to serve it for a term of years for a fixed salary. Before the expiration of the term the corporation became insolvent and a receiver was appointed. *Held*,

that while he was entitled to present a claim to the receiver for the amount of damages sustained by the breach of the contract, such claim was not entitled to preference under this section. *Spader v. Mural Decoration Manufacturing Co.*, 2 *Dick.* 18. The president of a corporation is not entitled to any preference under this section for what he earns while serving the company as president. *England's Executors v. Beatty Organ Co.*, 14 *Stew.* 471. A superintendent of the work of constructing a railroad, supposing the company to be solvent, voluntarily advanced his own money to pay the workmen for their work. Afterwards the company became insolvent. In the absence of an assignment of the claims of the workmen to him or of any agreement that he should have the benefit of their lien, it was held that he was not, by subrogation, entitled to the workmen's statutory lien for those payments. *North River Construction Co.'s Case*, 11 *Stew.* 433. See, also, *Bedford v. Newark Machine Co.*, 1 *C. E. Gr.* 117. *Coe v. N. J. Midland Railway Co.*, 4 *Stew.* 130. *D., L. & W. R. R. Co. v. Oxford Iron Co.*, 6 *Stew.* 192.

having charter authority to engage in the business of acquiring, holding, mortgaging, leasing and conveying real estate are hereby authorized to pursue the conduct of such business in this state, and to that end to acquire, hold, mortgage, lease and convey real estate in this state; 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.] (a) [See Secs. 152 and 161, *ante*.]

## Supplement.

Approved April 30, 1887. P. L. 1887, p. 238.

**186. SEC. 1.** That any company which shall be organized by virtue of the act to which this is a supplement, for the purpose of producing and distributing steam heat or power, shall have full authority to lay the necessary pipes and conduits beneath the public roads, highways, streets, avenues and alleys in this state; *provided, however*, that said pipes and conduits shall be laid at least two feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property; *and provided, also*, that the consent of the board of aldermen, common council or other legislative body of any such cities, towns or townships wherein or through which it is contemplated to lay such pipes and conduits beneath such public roads, highways, streets, avenues or alleys, shall first and as a condition precedent be obtained before any of such public roads, highways, streets, avenues or alleys shall be disturbed, opened or dug up, such consent of such board to be by ordinance of such board duly adopted; that such use of public streets or highways in any of the cities, towns or townships of this state shall be subject to such regulations and restrictions as may be imposed by the common council, board of aldermen or other legislative body of such cities, towns or townships, and that the portions of the surfaces of the streets disturbed in laying the said pipes shall be immediately restored to their original condition, and that any pavements which are removed for the purpose of laying or repairing the pipes shall be restored in as good condition as they were previous thereto, and so maintained for six months after the completion of the works, and in case of failure on the part of the owners of said pipes to so restore and maintain the same, the street commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the cost thereof may be recovered by the city from the owners of said pipes in any court of competent jurisdiction.

When corporation, organized to produce steam heat or power may lay pipes and conduits in streets, &c.

**187. SEC. 2.** That any pipes or conduits laid in any of the public roads, highways, streets, avenues and alleys to be used for conveying steam heat or power shall be laid at a distance not less than three (3) feet from the outside of any water or gas pipe already laid, except in cases where it shall be necessary that said pipes or conduits shall cross any such water or gas pipe and then said pipes or conduits shall be at least twelve (12) inches distant from the outside of any water or gas pipes already laid.

Pipes and conduits, how laid.

## Supplement.

Approved February 14, 1888. P. L. 1888, p. 34.

**188. SEC. 1.** That any company or association incorporated under the laws of this state by special act of incorporation shall have the power to decrease the number of its directors by filing in the office of the secretary of state the assent in writing of stockholders representing two-thirds in value of the existing capital stock, and a certificate setting forth the number of directors as decreased, under the hands and seals of said stockholders, which certificate shall be proved or acknowledged and recorded, as required of deeds of real estate, in the office of the clerk of the county where the principal office or place of business of such company in this state

Corporations organized under special acts may decrease number of directors.

(a) A foreign corporation took a mortgage on lands in this state to secure a loan already made to the mortgagor on stock collateral which became depreciated. *Held*, that although its charter may not have authorized the taking of a mortgage in another state, as an original investment, yet the corporation

might take such mortgage by way of additional security for such loan, and the mortgage, in its hands, is valid. *National Trust Co. v. Murphy*, 3 *Stew.* 408. See, also, *Boehme v. Rail*, 6 *Dick.* 541.

Certificate to be filed in office of secretary of state.

shall be established, and after being so recorded shall be filed in the office of the secretary of state, and the certificate of the secretary of state that such assent and certificate have been filed in his office shall be taken and accepted as evidence of the decrease in the number of its directors, in any court of this state; *provided, however*, that such assent and certificate shall be filed as aforesaid, within thirty days after the execution of the same by the said stockholders; *and provided further*, that in no case shall the number of directors in such company be decreased to less than three. [See Sec. 265, *post*.]

Proviso.

Proviso.

#### Amendatory act.

P. L. 1888, p. 112.

Approved February 29, 1888.

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**189.** SEC. 1. That the tenth section of the said act, and which section was amended by chapter seventy of the laws of one thousand eight hundred and eighty [see Secs. 10 and 145, *ante*], be and the same is hereby amended to read as follows:

Purposes for which companies may be formed.

[That it shall be lawful for three or more persons to associate themselves into a company to carry on any kind of manufacturing, mining, chemical, trading or agricultural business, agricultural fairs and exhibitions for the encouragement of competition in agriculture, horticulture, breed of stock and development of speed in horses; 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 examination, insurance and guaranty of the title to lands; the constructing, maintaining and operating (except in a town or city in which water works are established and owned by the corporate authorities) works for the special purpose of supplying water for extinguishing fires in mills, factories, manufacturing establishments and other buildings; the damming of rivers and streams, including the storage, transportation and sale of water, and water-power and privileges, with the right to take rivulets, raceways and lands, and erect and maintain dams, reservoirs, raceways, mills, manufactories and other erections, and lease, mortgage, sell and convey the same, or any part thereof; the making, purchasing and selling manufactured articles, and also of acquiring and disposing of rights to make and use the same; the renting 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, (a) 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 insurance company (except companies for the insurance or guaranty of the title to lands or any estates or interests in lands), banking company, savings bank or other corporation intended to derive profit from the loan and use of money, nor of any railroad company, turnpike company or any other company which shall need to possess the right of taking and condemning lands, except for the damming of rivers and streams, and for the purposes pertaining thereto, as hereinbefore specified; *and further provided*, that this act shall not apply to any river or stream of a less width and volume of water than the Delaware river, ordinarily, at Phillipsburg, in this state, below its junction with the Lehigh, nor to any river or stream below the head of tide-water in the same.] (b) [Amended by Secs. 208 and 292, *post*. See, also, Sec. 154, *ante*.]

Proviso.

Proviso.

(a) While the act permits incorporation for "any lawful business or purpose whatever," and the law gives all necessary powers thereto, it does not recognize as embraced therein powers to do those things which would deprive the corporation of its ability to carry out the objects for which it was formed, or discharge any duties which it might, under its charter, owe to the public, or which are contrary to the policy of the law. *Elterman v. Chicago Junction Railways, &c., Co.*, 4 Dick. 218. Can a safe deposit company be organized under this act? *Hull v. Kelsey*, 24 Vr. 590. Can a telegraph company be organized under this act? *Domestic Telegraph Co. v. Newark*, 20 Vr. 348. A

company organized under this section, when employed to examine the title of any particular piece of property, is entitled to the same right of access to, and examination of, the public records of the county as an individual would be. *West Jersey Title and Guaranty Co. v. Barber*, 4 Dick. 474; affirmed June 17th, 1895. See 32 *Att. Rep.* 222.

(b) 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 corporation; and such persons will be held liable as partners. *Hill v. Beach*, 1 Beas. 31. See *Booth v. Wonderly*, 7 Vr. 250.

CORPORATIONS.

Supplement.

Approved March 6, 1888. P. L. 1888, p. 137.

Preamble.

WHEREAS, Corporations created years ago for educational purposes may have acquired property which, owing to the successful operation of our state system of public schools, now is and probably, while so held, will continue to be unemployed and useless; and whereas, the stockholders and associate owners of said property are, in some instances, widely scattered and many of them unknown, so that the other owners are unable, without further legislative action, to dissolve such corporation and realize upon and secure to themselves their own property and their lawful rights therein; therefore,

190. SEC. 1. That whenever, in the judgment of the board of trustees or managers of any corporation created by any law of this state for educational purposes, it shall be deemed advisable and for the benefit of said corporation that the same should be dissolved before the expiration of its charter, it shall be lawful for such board of trustees or managers, in the name of said corporation, by petition, setting forth the facts and circumstances of the case, to apply to the chancellor for a dissolution of said corporation and for the appointment of a receiver or trustee of its estate and effects; whereupon the chancellor, being satisfied of the sufficiency of said application, shall order such reasonable notice thereof to be served or published as he may judge proper and the circumstances of the case may require, fixing a day, not less than sixty days distant, for the hearing upon the same, and if, upon inquiry into the matter, it shall be made to appear to the chancellor that such action may be taken without prejudice to the public welfare, and that it is advisable and best for said corporation that it should be dissolved, its affairs settled and its estate and effects divided and distributed among the stockholders, associate owners, creditors and others who may be entitled to the same, it shall be lawful for the chancellor to enter a decree to that effect, and to appoint a receiver or trustee with full power to demand, sue for, collect, receive and take into 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 said corporation at the time of said decree of appointment, and to sell, convey or assign all the said real and personal estate; and to pay into the court of chancery all the moneys and securities for money arising from such sales, or which may be collected by said receiver or trustee from time to time under the order of the said court of chancery, first deducting the costs of the proceedings in said court, and making to said receiver or trustee and to counsel such reasonable compensation as the chancellor may deem fit and proper.

Proceedings for dissolution of corporations created for educational purposes.

191. SEC. 2. That the said receiver or trustee shall be further clothed with all the powers conferred upon a receiver or trustee appointed under the act authorizing the appointment of a receiver or trustee in case of insolvent corporations; and it shall be lawful for the said court of chancery to make all necessary and proper orders and decrees to settle and wind up the affairs of said corporation, and to distribute its estate, property and effects, or the proceeds thereof, among those entitled to the same, and if, at the time of the final decree of distribution, the owners of any part of said property or effects remain unknown, such part, share or shares shall be retained in the court of chancery until the same shall be claimed by the rightful owner or owners thereof.

Powers of receiver and court of chancery in such cases.

Supplement.

Approved March 21, 1888. P. L. 1888, p. 186.

Mutual associations may provide for and create capital stock.

192. SEC. 1. That it shall be lawful for the members of any mutual association or corporation heretofore or hereafter incorporated or organized under or by any law of this state, to provide for and create a capital stock of such association or corporation, upon the consent in writing of all the members of such association or corporation, and to provide for the payment of such stock, and to fix and prescribe the rights and privileges of the stockholders therein.

## Supplement.

Approved March 23, 1888.

P. L. 1888, p. 224.

Certain corporations may file certificate of extension of corporate existence.

**193. SEC. 1.** That any corporation organized for the benefit of indigent and infirm firemen of any city in this state, that has failed, during the period for its continuance named in its charter or certificate of incorporation, to file with the secretary of state a certificate extending its corporate existence, as permitted by statute, but has continued and still continues its organization and the transaction of business, may still file such certificate at any time within thirty days from the passage of this act, naming therein a period not exceeding fifty years. [See Sec. 181, *ante*, and Sec. 202, *post*.]

When filed, existence of company revived.

**194. SEC. 2.** That upon filing such certificate, the period of the existence of such corporation shall be revived and extended, as declared in such certificate, as fully as if said period had been named in the original charter or certificate of organization of such corporation, but nothing herein contained shall be construed to interfere with the right of the state of New Jersey, reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter, nor shall this act apply to any corporation against which quo warranto or other proceedings for dissolution are pending. [See Sec. 182, *ante*, and Sec. 204, *post*.]

How act not to be construed.

## Supplement.

Approved February 27, 1888.

P. L. 1888, p. 34.

Credit companies to deposit securities with state comptroller.

**195. SEC. 1.** [Amended by Sec. 253, *post*.]

**196. SEC. 2.** That said company, before it shall commence the transaction of any business, or the making of any contracts or other engagements, shall deposit with the comptroller of this state first bond and mortgage security, or other security, which shall be approved by the insurance commissioner of this state, to a not less amount than ten thousand dollars, and the said insurance commissioner shall be authorized, whenever, in his judgment, for the safety of the obligations of such company, it shall be necessary to so do, to call upon and direct the said company, within sixty days after the date of such notice, to deposit additional securities of like character to an additional amount not to exceed ten thousand dollars, which securities shall be and remain in the custody of said comptroller, subject to change or re-investment, with like approval of the said insurance commissioner, as a guarantee for the fulfillment of the obligations and undertakings of the said company. [See Sec. 254, *post*.]

Additional deposit of securities may be required.

What acts such credit companies shall not perform.

**197. SEC. 3.** That no company organized under the provisions of this act shall be authorized to act as a collection agency or employ attorneys for that purpose; nor shall it be lawful for any such company, when so organized, to give certificates or pass upon the credit of any individual, partnership or company engaged in any retail business, which said individual, partnership or company shall be dealing with, or proposing to deal with, any wholesaler or jobber having, or proposing to have, any agreement with the company for the limiting or guaranteeing of such wholesaler or jobber against losses in business; nor shall it be lawful for any company organized under this act to receive, by assignment or otherwise, from any person, partnership or corporation to whom they may give a guarantee, the bad debts or claims which shall have been the cause of the loss sustained by the party or parties who may have been insured or guaranteed by them. [See Secs. 253-257, *post*.]

Further limitations upon their powers.

**198. SEC. 4.** That it shall not be lawful for any company organized under the provisions of this act to insure or guarantee any person or corporation against losses or damage on any single sale or transaction, or

in any other way than upon a basis of the average loss on the business of the person guaranteed, sustained by such person or corporation within a period of not less than one year; nor shall any company organized under the provisions hereof require of any person, partnership or company, whose loss may have been limited or guaranteed by them, that they shall make proof of any loss or losses sustained by them, to the company so guaranteeing or limiting, within a less period than six months after the expiration of the end of the contract or agreement of guarantee. [See Secs. 253-257, *post.*]

## Supplement.

Approved April 3, 1889. P. L. 1889, p. 160.

199. SEC. 1. [This section superseded by Sec. 276, *post.*]

200. SEC. 2. That it shall be the duty of the secretary of state to compile and publish in pamphlet form, during the present year, from the records of his department, a complete list of corporations organized under the corporation or other general public laws of this state prior to the first day of January, one thousand eight hundred and eighty-nine; and annually thereafter, on or before the first day of March, in like manner to compile and publish a complete list of such corporations organized during the preceding year, together with the names of the officers and the location of the principal office of each in this state; the expense incurred in carrying out the provisions of this act, shall be paid by the secretary of state from moneys collected under this act, the act to which this is a supplement or other supplements thereto.

Secretary of state to compile and publish list of corporations annually.

Expenses, by whom paid.

201. SEC. 3. That all acts and parts of acts inconsistent herewith, be and the same are hereby repealed, and this act shall take effect immediately.

Repealer.

## Supplement.

Approved May 7, 1889. P. L. 1889, p. 367.

202. SEC. 1. That it shall be lawful for any corporation hitherto created under or by virtue of any law of this state, which has maintained its organization, but which may have failed to renew or extend its corporate existence, as provided by law, to do so for a period not exceeding fifty years, by filing a certificate to that effect in the department of state; *provided*, that such corporation shall be subject to all charges, fees and taxes now imposed by law upon like corporations. [See Secs. 181 and 193, *ante.*]

Certain corporations may renew corporate existence by filing certificate in the department of state.  
Proviso.

203. SEC. 2. That upon filing such certificate the period of the existence of such corporation shall be extended as therein declared as fully as if the said period had been named in the original charter or certificate of organization of such corporation.

When certificate filed, period of existence extended.

204. SEC. 3. That nothing herein contained shall be construed to interfere with the right of the state, reserved by any law now or hereafter existing, to acquire the property or franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same; nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter, beyond the time originally fixed for its expiration; nor shall this act apply to any corporation against which quo warranto or other proceedings for dissolution are pending. [See Secs. 182 and 194, *ante.*]

Restrictions upon such renewal.

205. SEC. 4. That this act shall take effect immediately, and all acts and parts of acts inconsistent herewith are hereby repealed.

Repealer.

## Supplement.

Approved May 9, 1889. P. L. 1889, p. 409.

206. SEC. 1. That every corporation that has heretofore been organized, and that shall hereafter be organized, under the act to which this act is a supplement, and the other supplements thereto, for the purpose of holding

Powers of companies organized for holding agricultural fairs and exhibitions.

## CORPORATIONS.

agricultural fairs and exhibitions, shall have the power to hold fairs and exhibitions of agricultural, horticultural, mechanical and manufacturing productions, collections and discoveries of works of art, of horses, cattle, sheep and other live stock and animals, and for the encouragement of competition in the breed of stock and development of speed and other qualities in horses and other animals; to provide, keep and maintain grounds, buildings, road-tracks, walks and such other improvements as may be necessary or desirable for the proper display of the articles and things exhibited at said fairs and exhibitions; to encourage competition by the offer and payment of premiums and rewards for stock and articles of a superior kind, class or quality, and to ask, demand and receive reasonable fees for the admittance of exhibitors and visitors to said fairs and exhibitions.

Directors vested with police jurisdiction for maintaining order on grounds.

May suppress sale of liquors and prohibit gambling.

Appoint special officers.

Officers vested with powers of constables.

**207. SEC. 2.** That for the purpose of maintaining order and preserving the peace and decorum upon all grounds on which any fair and exhibition shall be held by any association organized under the provisions of the act to which this is a supplement, and the other supplements thereto, the directors of every such association shall have police jurisdiction upon the grounds on which such association shall hold any fair and exhibition, and for the distance of one-quarter of a mile from the boundaries of such grounds; it shall be the duty of said directors, and they shall have power, to suppress the sale of intoxicating liquors by parties not regularly licensed by the public authorities, and to prohibit every species of gambling and breach of the peace or laws of this state on said grounds and within said limits; and it shall also be lawful for said directors, or a majority of them, to appoint from time to time, as many fit and discreet persons as they may deem proper, as special police officers, who, before entering upon the duties of their respective offices, shall each take and subscribe an oath or affirmation, before a master in chancery, notary public or a justice of the peace of the county in which such fair and exhibition may be held, that he will well and truly serve the state of New Jersey as such special police officer, and will execute and perform all services, acts and duties of his office to the best of his knowledge, judgment and ability, which oath or affirmation shall be forthwith filed in the office of the clerk of the county in which such fair and exhibition may be held, the date of which filing shall be indorsed thereon by said clerk, who shall be paid for each oath or affirmation so filed the sum of twenty cents, and the persons so appointed and sworn or affirmed shall possess, so long as the said directors shall choose to retain them, the same powers and authority on the grounds where any such fair and exhibition may be held, and within the limits aforesaid, as are or may be vested in constables in criminal cases in this state, and they shall have power and authority, without process, to arrest all persons who shall be there found violating any of the laws of this state, or who shall conduct themselves in a disorderly manner, or disturb or wrongfully interfere with any such fair and exhibition, or the exhibitors thereat or visitors thereto, or who shall violate any of the rules or regulations of the association who may hold any such fair and exhibition, and any person so arrested shall be taken, as soon as conveniently may be, before a justice of the peace of the county in which such fair and exhibition may be held, there to be dealt with according to law.

## Supplement.

Approved May 9, 1889.

P. L. 1889, p. 411.

Proviso of tenth section not to be construed to forbid formation of company for operating railroad as lessee.

**208. SEC. 1.** That nothing in the proviso contained in the tenth section of the said act to which this is a supplement [see Sec. 189, *ante*] shall be construed to forbid the formation of any company under said section, which shall propose to carry on transportation by means of a railroad operated by it as lessee thereof, if such railroad be already built, and has acquired its right of way and other appurtenances, and which new corporation formed does not in fact need to acquire the right of taking or condemning lands; but such corporation shall not in any case be authorized

to acquire lands for right of way additional to that by it leased as aforesaid. [See Secs. 10, 107, 145 and 189, *ante*, and also Sec. 292, *post*.]

**209. SEC. 2.** That this act shall apply as well to corporations already formed, and in possession of leased railroads, as to those hereafter formed. To what companies act applies.

#### Supplement.

Approved May 9, 1889. P. L. 1889, p. 412.

**210. SEC. 1.** That section fifteen of the act of which this is a supplement be and hereby is amended so as to read as follows :

[That 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 situated 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 town or city, county and state its principal office or place of business out of this state is to be situated, and also in what other state or states, territory or territories of the United States, and in what other countries it proposes to carry on operations, 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 to be 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 within this state, within the provisions of this act.] Company may carry on part of business and hold real estate out of the state. Proviso.

**211. SEC. 2.** That section seventeen of the same act be and hereby is amended so as to read as follows :

[That the directors shall not be less than three in number, (a) and, except as hereinafter provided, 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 ; (b) 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 ; but by so providing in its original certificate of incorporation, any company, organized under the act to which this is a supplement, may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms ; (c) *provided*, that no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year, and such directors shall hold office accordingly ; any such company, whose directors shall be so classified and which shall have more than one kind of stock, may, by so providing in its original certificate of incorporation, or in its by-laws, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others.] [See Sec. 278, *post*.] Election of directors and president. Directors may be classified as to terms. Proviso.

**212. SEC. 3.** That section twenty-five of the same act be and hereby is amended so as to read as follows :

[That any 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 of the actual capital Power to issue general and preferred stock.

(a) A director made an assignment for the benefit of creditors, after which the remaining two directors executed chattel mortgages on the personal property of the corporation to creditors who loaned money to the corporation at the same time and took the mortgages without notice that the director who had made an assignment thereby ceased to be a stockholder, and consequently a director. The mortgages under such circumstances were held to be valid upon the ground that the director having made such an assignment must, as to third parties dealing in good faith with the company, be regarded as a director *de facto*, and the company be regarded as having three directors. The fact that no notice was given to the director who had made such an assignment of the meeting of the directors at which a chattel mortgage was authorized to be executed, will not affect its validity. That is a subject into which the mortgagee is not bound to examine. *Kuser v. Wright*, 7 Dick. 825, reversing *Wright v. First National Bank*, 7 Dick. 392.

(b) Where the charter of a corporation provides that the

annual meetings for the election of directors shall be held by the stockholders, the directors cannot, by a by-law, so change the time of holding the annual election that they will continue themselves in office more than a year against the wishes of the holders of a majority of the stock. *Elkins v. Camden and Atlantic Railroad Co.*, 9 Stev. 467.

(c) The president of a corporation has no power, in virtue of his office as president, to execute a bond and warrant of attorney for the entry of judgment by confession against the corporation. *Stokes v. New Jersey Pottery Co.*, 17 Vr. 237. Nor to execute a *cognovit*. *Raub v. Blairstown Creamery Association*, 27 Vr. 282. Questions of policy of management, of expediency of contracts or action, of adequacy of consideration, of lawful appropriation of corporate funds to advance corporate interests, are left solely to the honest decision of the directors if their powers are without limitation and free from restraint. *Elderman v. Chicago Junction, &c., Railways Co.*, 4 Dick. 217. *Edison v. Edison United Phonograph Co.*, 7 Dick. 620.

paid in, and may be made subject to redemption at par at a fixed time, to be expressed in the certificate thereof; and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon, a fixed yearly dividend, to be expressed in the said certificate, not exceeding eight per centum, payable quarterly, half-yearly or yearly, 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 liabilities shall be paid in preference to such preferred stock; *provided always*, that except where it shall be otherwise provided in its original certificate of incorporation, 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.] (a)

Proviso.

**213.** SEC. 4. That section fifty-five of the same act be and hereby is amended so as to read as follows:

Stock may be issued for property purchased.

[That the directors of any company incorporated under this act may purchase mines, manufactories or other property necessary for their business, or the stock of any company or companies owning, mining, manufacturing or producing materials, 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 be 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, "issued for property purchased," (b) and 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.] [See Sec. 216, *post.*]

Act not to apply to certain corporations.

Repealer.

**214.** SEC. 5. That this supplement shall not apply to any corporation existing under a special charter or which is in the hands of a receiver.

**215.** SEC. 6. That all acts and parts of acts inconsistent herewith be and are hereby repealed, and this act shall take effect immediately.

A supplement to an act entitled "A supplement to an act entitled 'An act concerning corporations,' approved April seventh, one thousand eight hundred and seventy-five," which supplement was approved March thirty-first, one thousand eight hundred and eighty-two.

P. L. 1889, p. 415.

Approved May 9, 1889.

**216.** SEC. 1. That the second section of the act to which this is a supplement be and hereby is amended so as to read as follows:

Stock issued for property purchased may contain guaranty for dividends.

Proviso.

[That any stock issued for property purchased under section fifty-five of the act to which this is a supplement [see Sec. 213, *ante*] may, by a vote of the board of directors, whenever the certificate of incorporation shall authorize the exercise of such a power, contain a provision guaranteeing a minimum yearly dividend, payable yearly, half-yearly or quarter-yearly, but only out of the actual profits of the business of the company; *provided*, that such provision shall not contain a guarantee of any larger dividend than is authorized to be paid on preferred stock of such company; such guaranteed dividend to be paid before any dividend paid on the general stock of said company not containing any such provision; the holder of such guaranteed stock shall be entitled to participate equally with the other holders of general stock in the profits arising out of the business of the com-

(a) Dividends on preferred stock can only be paid out of the profits; and this is so even when the stock is issued under a guaranty that a dividend of a certain sum shall be paid annually. *McGregor v. Home Insurance Co.*, 6 *Stew.* 181. The personal liability of the officers and stockholders of a corporation for a debt contracted by the corporation is inconsistent with the idea of a body corporate at common law, and can arise only out of some statutory provision. *Salt Lake City National Bank v. Hendrickson*, 11 *Vr.* 52.

(b) Where the law authorizes a corporation to exchange its capital stock for property, a court of equity cannot set aside a transaction of that kind simply because the bargain is disadvantageous to the corporation. In the absence of deceit, or some other corrupt constituent, such bargain cannot be disturbed. *Bickley v. Schlag*, 1 *Dick.* 535.

pany, and receive full dividends whenever the annual dividend, or the sum of dividends in any year, upon the entire capital stock of said company, shall exceed the dividend named in such guarantee; the holders of such guaranteed stock shall have all the rights of holders of the general stock of such company, including the right to vote and receive dividends thereon, and such guaranteed stock may be converted into an equal amount of the preferred stock of the company issuing the same, carrying no larger dividend; and the directors of any company, for the purpose of retiring the guaranteed stock of such company, may issue and exchange therefor an equal amount of its preferred stock, carrying no larger dividend than that guaranteed; *provided*, that the amount of preferred stock so issued shall, at no time, exceed two-thirds of the entire capital of the company issuing the same; *and provided further*, that the preferred stock so issued shall be entitled to dividends on a par with preferred stock before issued only with the assent of the holders of preferred stock then outstanding, or in case it shall have been so provided in the original certificate of incorporation, or in the certificates for preferred stock outstanding.

Proviso.

Proviso.

**217. SEC. 2.** That this supplement shall not apply to any corporation existing under a special charter or which is in the hands of a receiver.

Act not to apply to certain corporations.

**218. SEC. 3.** That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

Repealer.

## Supplement.

Approved May 28, 1890.

P. L. 1890, p. 403.

**219. SEC. 1.** That it shall be lawful for any corporation, organized for that purpose under and in pursuance of any law of this state, to build and own dredges and to contract for dredging, to deepen channels, and to construct basins and docks, bulkheads, wharves and piers, and reclaim lands within and without this state; to construct, build, equip and use any railway track or tracks, tunnel or tunnels, necessary to connect the constructions of any company with the track or tracks of any railroad corporation in this state, or like foreign corporations now in existence or which may hereafter be created at the state lines, with the necessary elevators and terminal facilities for receiving, storing, or for shipping or reshipping grain, merchandise, coal, ores or other property by water or rail received from any source whatever; and the authority is hereby given to construct and use any tunnel under the lands or waters of this state, or bridge or bridges, for the use of any company, and may make and operate connections and consolidations with other corporations; subject in all matters, however, to the rights of riparian and other property-owners and the interests of the state, to be ascertained and compensated for as provided by the laws of the state of New Jersey.

Corporation may organize to dredge and deepen channels, construct docks, railway tracks, &amp;c.

## Supplement.

Approved March 9, 1891.

P. L. 1891, p. 87.

**220. SEC. 1.** That when any corporation created by the act to which this is a supplement shall have or has by the terms of its certificate of organization limited or restricted the free sale or transfer of its stock, by requiring such company at a corporate meeting to fix upon the value of such stock, and by giving, in any manner, such company or its board of directors a pre-emption upon or right to purchase such stock before the transfer thereof by the owner to a third person, or by requiring any employe who shall be a stockholder thereof to hold his stock subject to such pre-emptive right in said company, or to sell the same to said company upon his or her ceasing to be a stockholder therein, such corporation shall have the power by a two-thirds vote of its board of directors at a regular or special meeting called for that purpose, to change, alter or repeal any or all of such restrictions or limitations, and any or all provisions inserted in said certificate of organization for the purpose of securing the same; *provided*, all the stockholders of such company shall surrender their stock issued under the original certificate and shall accept

Power of corporations to change, alter or repeal restrictions or limitations as to sale or transfer of stock.

Proviso.

in lieu thereof new stock to be issued in pursuance of such resolution; and if any stockholder shall refuse to convert his stock as aforesaid within thirty days after written notice to him or her of the adoption of such resolution, the said corporation may apply by petition to the court of common pleas of the county in this state where the chief office of said company may be kept, or to a judge of said court in vacation, if no court is sitting, on two days' notice to such dissenting stockholder, to appoint three disinterested persons to estimate the damage, if any, to such dissenting stockholder by said resolution, whose award, or that of a majority of them, shall be final and conclusive. and the persons so appointed shall also appraise said stock of such dissenting stockholder at the full market value thereof, without regard to any depreciation or appreciation in consequence of the said change; and the said company on payment or tender to said stockholder of the value of his said stock and the amount, if any, of the damage so as aforesaid ascertained, shall be entitled to a transfer of such stock and to enforce the same by an action for specific performance; and upon the transfer thereof, such stock shall be held or disposed of by the company at the discretion of the directors; *and provided*, said corporation cause to be made, recorded and filed a certificate in writing which shall set forth:

Proviso.

Certificate to set forth clauses proposed to be altered or repealed. Disposition to be made of such clauses or provisions.

How signed and sealed and filed.

I. The clauses or provisions in its original certificate of organization which are proposed to be altered, amended or repealed;

II. The disposition to be made of such provisions, whether by alteration, amendment or repeal; and if altered or amended, the language of such provision after such alteration or amendment shall be made;

Which certificate shall be signed by a majority of the board of directors of such corporation, the corporate seal shall be thereto affixed, and attached thereto shall be an affidavit of the secretary or treasurer of said company that all of the stock has been surrendered either voluntarily or involuntarily, as hereinabove provided for; and the said certificate having been first recorded in the office of the county clerk where the original certificate of organization is recorded, shall be filed in the office of the secretary of state.

Restrictions amended or repealed upon filing certificate.

**221. SEC. 2.** That upon the filing of such amended certificate in the office of the secretary of state the restrictions and limitations upon the transfer of the stock of such corporation named in the original certificate of organization shall be altered, amended or repealed accordingly as such amended certificate shall provide.

Repealer.

**222. SEC. 3.** That all acts and parts of acts inconsistent with this act be and they are hereby repealed, and this act shall take effect immediately.

#### Supplement.

Approved March 9, 1891.

P. L. 1891, p. 113.

**223. SEC. 1.** That section twenty-one of the said act entitled "An act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five, be and the same is hereby amended so that henceforth said section twenty-one shall be and read as follows and not otherwise, to wit:

Use of proxies and manner of calling and conducting meetings of stockholders.

[That at all meetings of the company absent stockholders may vote by proxy, (a) 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; *provided*, that in no case shall more than a majority of shares or amount of interest be required, to be represented at any meeting in order to constitute a quorum; 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.]

(a) A stockholder who desires to vote on his stock by proxy, must furnish his agent with such written evidence of the latter's right to act for him as will reasonably assure the inspectors that the agent is acting by the authority of his principal.

But the power of attorney need not be in any prescribed form nor executed with any particular formalities. *In re Election of St. Lawrence Steamboat Co.*, 15 Pr. 530.

## Supplement.

Approved March 16, 1891.

P. L. 1891, p. 141.

**224. SEC. 1.** That in all cases where acts of this state, whether general, special, local or otherwise, have heretofore been or are hereafter passed, providing for the creation or incorporation by proceedings to be taken thereunder or otherwise of any corporation or corporations, but limited to take effect only upon the happening of some future condition or event or proceedings to be taken therein named, such acts shall respectively take effect from and after the time when the persons, or a majority of the surviving persons, if any be dead, interested in any such enterprise as incorporators, commissioners, stockholders or directors as the case may be, shall make and sign in writing and file with the secretary of state a written acceptance by them duly acknowledged as a deed to be recorded of the provisions of this act, and an agreement to be approved by the governor and attorney-general, surrendering to the state all rights of exemption from taxation and all privileges and advantages arising from any alleged contract establishing any special mode of taxation in respect to such parties, and agreeing further that such acceptance shall not in any wise affect or impair the right of the state to take the property of such parties thereto under any existing law of the state, and that any law affecting such parties shall be subject to alteration or repeal by the legislature, and this act shall apply to and affect each and all of the class above mentioned without any qualification, limitation, exception or restriction of any kind or nature whatsoever, whether claimed to arise out of such act or any other act or otherwise.

When acts creating corporations, limited to take effect on the happening of some future condition, shall take effect.

## Supplement.

Approved March 16, 1891.

P. L. 1891, p. 142.

**225. SEC. 1.** That in all cases where acts of this state, general or special, have heretofore been or may hereafter be passed authorizing the organization or incorporation by any proceedings to be taken thereunder or otherwise of any corporation or corporations having in and by any such act or any certificate filed thereunder an authorized capital stock exceeding in amount the sum of one hundred thousand dollars, upon the subscription of a certain amount of such capital stock in such act or certificate filed thereunder limited, and the payment of a certain proportion thereof in cash as in such act or certificate filed thereunder stated, it shall and may be lawful to organize and incorporate such corporation or corporations upon the subscription of one hundred thousand dollars of such capital stock and the payment thereon in cash of ten thousand dollars, and the organization or incorporation so effected on such subscription and payment shall be valid, complete and effectual to and for all the uses, intent, objects and purposes of the corporation or corporations so organized and incorporated under the provisions of this act; and in case upon the organization of any corporation under the provisions of this act the total amount of capital stock subscribed shall exceed one hundred thousand dollars, a majority of the persons authorized to receive the same may reduce, reject or apportion such subscriptions among subscribers in such manner as they may deem most likely to promote the interests of the corporation so created.

Corporations having an authorized capital stock exceeding \$100,000, how organized

**226. SEC. 2.** That all acts and parts of acts, general, special, public, private, local or otherwise, in any manner inconsistent with or repugnant to the provisions of this act be and the same hereby are repealed.

Repealer.

## Supplement.

Approved March 17, 1891.

P. L. 1891, p. 176.

**227. SEC. 1.** That section fifty-two of the act to which this is a supplement be amended so as to read as follows:

[That 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

Manufacturing corporations to declare annual dividends.

## CORPORATIONS.

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 a 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; *provided, however,* that when such accumulated profits shall consist in part of real property or merchandise necessarily employed in the business of such corporations, the same shall not be regarded as profits for the purpose of the declaration or payment of such dividend, unless a majority of the board of directors or stockholders shall by resolution declare that all or some part of the accumulated profits which are invested in real estate or merchandise as aforesaid, shall be used as a part of the accumulated profits for the purpose of a dividend.]

Proviso.

## Amendatory act.

Approved March 20, 1891.

P. L. 1891, p. 199.

When charter and powers of corporation shall be come void for failure to pay state tax.

**228. SEC. 1.** That if any corporation which has been heretofore or shall hereafter be created by the legislature, or under any act of legislature, shall for two consecutive years neglect or refuse to pay the state any tax which has been or shall be assessed against it under any law of this state and made payable into the state treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are hereby declared inoperative and void, unless the governor shall, for good cause shown to him, give further time for the payment of such taxes, in which case a certificate thereof shall be filed by the governor in the office of the comptroller stating the reasons therefor. [See Secs. 258 and 259, *post.*]

Comptroller to report to governor annually all delinquent corporations, and governor to declare charters void.

**229. SEC. 2.** That on or before the first day of May in each year the comptroller shall report to the governor a list of all the corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this state as above, and the governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed.

Proclamation of governor to be filed and published.

**230. SEC. 3.** That the proclamation of the governor shall be filed in the office of the secretary of state, and published in such newspapers and for such length of time as the governor shall designate.

Penalty for exercising powers of charters after proclamation.

**231. SEC. 4.** That any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or fine not exceeding one thousand dollars, or both, in the discretion of the court.

## Supplement.

Approved March 31, 1891.

P. L. 1891, p. 274.

One director only of any water company need reside in this state.

**232. SEC. 1.** That it shall not be necessary for more than one of the directors of any water company organized under any law of this state, to be an actual inhabitant and resident of this state; *provided,* that this act shall not apply to any company specially organized to procure lands and reservoirs within this state and all water or water rights under contract to any city or municipality in this state.

Repealer.

**233. SEC. 2.** That all acts or parts of acts, so far as they conflict with this supplement, are hereby repealed, and that this act shall take effect immediately.

A supplement to the act entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five," which further supplement was approved April first, one thousand eight hundred and eighty-seven.

Approved April 4, 1891. P. L. 1891, p. 321.

**234. SEC. 1.** That the first and second sections of the act to which this act is a supplement, entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five," which said further supplement was approved April first, one thousand eight hundred and eighty-seven [see Sec. 180, *ante*], be so amended and supplemented that the same shall respectively read as follows:

[That where one or more of the persons heretofore or hereafter authorized to organize or incorporate any corporation heretofore or hereafter authorized to be created by or under any general or special act shall have died before such corporation shall have been completely organized pursuant to law, it shall and may be lawful for the survivor or a majority of the survivors to heretofore or hereafter designate in writing other persons who may take the place and act instead of those deceased in the organization, and any organization heretofore or hereafter affected by the aid of any such persons so heretofore or hereafter designated shall be as valid and effectual in law as if the organization had been effected by all the persons so authorized to organize or incorporate any corporation as aforesaid; *always provided*, that the provisions of this act shall not in any manner apply to, affect or impair the rights or liabilities of any parties in any suit or suits that may be pending at the time of its passage.

\*  
Who to fill vacancies caused by death of incorporators of corporations.

Proviso.

**235. SEC. 2.** That all acts and parts of acts, general, special, public, private, local or otherwise in any manner inconsistent with or repugnant to any of the provisions of this act, be and the same hereby are repealed.]

Repealer.

#### Supplement.

Approved April 6, 1891. P. L. 1891, p. 332.

**236. SEC. 1.** That when any corporation of this state has authorized or may hereafter authorize the increase of its capital stock, it shall be lawful for such increase to be made, and the shares issued from time to time, in such sums and in such manner as the board of directors, or trustees or managers of the corporation may determine; *provided*, that no issue of stock so increased, whether authorized by the original charter or certificate of organization or a supplemental certificate, shall be made until a certificate, under the seal of the corporation, setting forth the amount and date of such increase, as also the statute and the certificate authorizing it, and the total amount of stock issued including the increase, shall have been filed in the department of state. [See Secs. 240 and 355, *post*.]

How capital stock may be increased.

Proviso.

**237. SEC. 2.** That this act shall take effect immediately, and all acts and parts of acts inconsistent herewith, be and the same are hereby repealed.

Repealer.

#### Supplement.

Approved January 26, 1892. P. L. 1892, p. 11.

**238. SEC. 1.** [Amended by Sec. 250, *post*.]

**239. SEC. 2.** That this act shall take effect immediately, and that all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

Repealer.

#### Supplement.

Approved January 26, 1892. P. L. 1892, p. 12.

**240. SEC. 1.** That any corporation of this state, incorporated under any general law of this state, may, in one certificate, change the name of said corporation, increase or decrease the amount of the capital stock

Corporations may alter name, capital stock, number of shares and par value.

of said corporation, increase or decrease the number of shares of the capital stock of said corporation, and increase or decrease the par value of each of said shares of the capital stock of said corporation, thus making any or all of said changes in said one certificate. [See Secs. 271 and 355, *post.*]

Assent of stockholders and directors required.

**241. SEC. 2.** That, in order to avail themselves of the powers conferred by section one of this act, it shall be necessary to obtain the assent, in writing, of the stockholders representing two-thirds in value of the existing capital stock of said corporation, and the assent of the board of directors, given at a general meeting, or a special meeting called for that purpose, and expressed by a majority vote of all the directors of said board.

Certificate of assents to be recorded and filed.

**242. SEC. 3.** That a certificate, reciting these assents, executed by such officers of the company as shall be determined by a resolution of said board of directors, and under the seal of the said company, with an affidavit of the secretary of said company that the seal of the company thereto attached is the seal of said company, and that the officers executing said certificate are the officers of said corporation, as expressed therein, shall be recorded in the office of the clerk of the county where the principal office of said company is located, and thereafter filed in the office of the secretary of state, which recording shall be done within thirty days after the execution of said certificate.

Changes to take effect upon filing certificate in office of secretary of state.

**243. SEC. 4.** That upon the filing of said certificate in the office of the secretary of state, the name of the corporation shall be changed as therein stated, the amount of the capital stock, the number of shares of the capital stock and the par value of each of said shares of stock, shall thereafter be as stated therein, and a certified copy of said certificate by the secretary of state shall be taken and accepted as evidence of such changes in any court of this state.

State fee on filing such certificate.

**244. SEC. 5.** That on filing said certificate with the secretary of state, the corporation filing the same shall pay to the secretary of state twenty dollars for each change made as aforesaid in said one certificate, the same as if a separate certificate had been filed for each of said changes set forth in said certificate. [See Sec. 276, *post.*]

P. L. 1892, p. 35.

#### Supplement.

Approved February 24, 1892.

**245. SEC. 1.** [Amended by Secs. 286 and 299, *post.*]

P. L. 1892, p. 89.

Stockholders may act as board of directors when directors fail to attend meetings.

#### Supplement.

Approved March 10, 1892.

**246. SEC. 1.** That whenever by the reason of the failure, neglect or refusal of a sufficient number of the board of directors of any corporation of this state to attend any three successive meetings of such board, regular or special, duly called, a quorum is thereby prevented, the stockholders of said company shall thereupon, and until a legal meeting of a quorum of such board of directors shall be held have power to act in place of such board of directors, and for such purpose special meetings of the stockholders of said company may be called by any officer of the company, or by any three stockholders of the company, upon three days' notice mailed to each of said stockholders at his address as the same appears upon the books of the company, at which meetings it shall be lawful for the said stockholders to take such action, by a majority vote, in reference to the business of the said company as they may deem advisable, and their action thus taken shall be legal and binding upon the company.

Repealer.

**247. SEC. 2.** That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

## Supplement.

Approved March 22, 1892.

P. L. 1892, p. 166.

**248. SEC. 1.** That whenever any company incorporated under the laws of this state, or of the United States, if located and existing in this state, shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, but which is alleged to have been lost or destroyed, the owner of such lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of said company is located for an order requiring such corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition, duly verified by the owner, in which shall be stated the name of the corporation, the number and date of the certificate, if known, or can be ascertained by the petitioner, the number of shares of stock named therein and to whom issued, and as particular a statement of the circumstances attending such loss or destruction as such petitioner shall be able to give; upon the presentation of said petition, said court shall make an order requiring said corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in said petition; a copy of said petition and of said order shall be served upon the president or other head of such corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in said order for showing cause. [See Sec. 328, *post.*]

Manner in which certificates of stock may be issued by corporations to take the place of those that are lost.

**249. SEC. 2.** That at the time and place specified in said order, and on proof of due service thereof, the said court shall proceed in a summary manner and in such mode as it may deem advisable to inquire into the truth of the facts stated in said petition, and shall hear such proofs and allegations as may be offered by or in behalf of the petitioner, or by or in behalf of said corporation or other party, relative to the subject-matter of said inquiry, and if, upon such inquiry, said court shall be satisfied that such petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in said petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring said corporation or other party, within such time as shall be therein designated, to issue and deliver to such petitioner a new certificate for the number of shares of the capital stock of said corporation which shall be specified in said order as owned by said petitioner, and the certificate for which shall have been lost or destroyed; in making such order the court shall direct that said petitioner deposit such security, or file such a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct the publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person or persons who shall thereafter claim any rights under said certificate so alleged to have been lost or destroyed, shall have recourse to said indemnity, and the said corporation shall be discharged of and from all liability to such person or persons by reason of compliance with the order aforesaid; and obedience to said order may be enforced by said court by attachments against the officer or officers of such corporation, on proof of his or their refusal to comply with the same. [See Sec. 329, *post.*]

Court to order such issue upon inquiry.

Petitioner to deposit security or file a bond.

Attachments for refusal to obey order.

An act to amend an act entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five," which further supplement was approved January twenty-sixth, one thousand eight hundred and ninety-two.

P. L. 1892, p. 287.

Approved March 26, 1892.

**250. SEC. 1.** That section one of the act entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five," which further supplement was approved January twenty-sixth, one thousand eight hundred and ninety-two [see Sec. 238, *ante*], be amended so that the same shall read as follows :

Amended articles of incorporation may be filed with assent of stockholders and approval of governor.

[That it shall be lawful for any corporation existing under and by virtue of any general act for the formation of incorporated companies in this state, with the assent of a majority in interest of its stockholders, at a special meeting to be called for that purpose, and with the approval of the governor, at any time within five years from the date of its incorporation, to record with the clerk of the county in which its original certificate of incorporation was recorded, and file with the secretary of state an amended certificate, duly signed by its president, and attested by its secretary under its corporate seal, and duly acknowledged or proved as required for deeds of real estate, modifying, changing or altering its original certificate of incorporation, in whole or in part, which said amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; *provided, however*, that nothing herein shall permit the insertion of any matter not in conformity with the law under which such company was or shall have been organized; *and provided further*, that nothing herein shall affect any suit or proceeding, at the time of filing such amended certificate, pending by or against said corporation, or impairing any rights of action accrued by or against its stockholders, corporators or directors; *and provided further*, that the total authorized capital stock of any such corporation shall not be increased or decreased in the amended certificate herein provided for.] [See Secs. 251, 270 and 313, *post*.]

Proviso.

Proviso

Proviso.

A supplement to a supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five, which said supplement was approved April ninth, one thousand eight hundred and eighty-seven.

P. L. 1892, p. 362

Approved March 29, 1892.

**251. SEC. 1.** That section one of the act recited in the title hereof [see Sec. 183, *ante*] shall be amended so as to read as follows :

Amended certificate of incorporation may be filed to cure defects in original certificate, &c.

[That whenever the original certificate of incorporation filed by an association under any general law of this state for the formation of incorporated companies is defective by reason of the omission of any matter authorized or required by law to be therein stated or by reason of the object or objects therein expressed, in whole or part, being for a purpose or purposes not contemplated or recited in such general law in existence at the time of filing such original certificate, it shall be lawful for all the stockholders of such association, or the legal representatives of any deceased stockholders, to make a certificate under their hands and seals, acknowledged or proved as required for deeds of real estate, setting forth a copy of the original certificate, the time and place of recording and filing the same, and reciting the omission or defective objects of incorporation as expressed in said original certificate, and supplying such omission or the true object desired by such association for the purpose or purposes of such incorporation; the same to be of the nature or character authorized by the act to which this is a supplement, and the supplements thereto and acts amendatory thereof; which said association, upon causing said certificate to be recorded in the

office of the clerk of the county where the original certificate was recorded, which said certificate the clerk is hereby authorized to record, and file in the office of the secretary of state, shall be deemed and taken to be and to have been a legal corporation for the objects stated in said certificate, to be recorded and filed from the time of filing such original certificate; *provided, however,* that this act shall not in any manner affect any proceedings pending in any court.] [See Sec. 250, *ante*, and Sec. 270, *post*.]

Proviso.

**252.** SEC. 2. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

**An act amending an act supplementary to "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, supplement approved February twenty-seventh, one thousand eight hundred and eighty-nine.**

Approved March 10, 1893. P. L. 1893, p. 205.

**253.** SEC. 1. That the first section of the supplement to which this is amendatory [see Sec. 195, *ante*] be and the same is hereby amended to be in the following, to wit:

[That it shall be lawful for any ten or more persons to associate themselves into a company to carry on any business which has for its object the selling, guaranteeing, indorsement, insurance of credit, or the limiting, insuring or guaranteeing of the losses of wholesale dealers, manufacturers, financial institutions and others, arising by reason of bad debts or inability to collect outstanding indebtedness or obligations, upon making and filing a certificate in writing of their organization in the manner hereafter mentioned; such certificates shall set forth, first, the name assumed to designate such company and to be used in its business and dealings; second, the place or places in this state where the central office of said company is to be located; third, the object for which said company shall be formed; fourth, the total amount of capital stock of such company, which shall not be less than fifty thousand dollars; the amount with which such company will commence business, which shall not be less than ten thousand dollars, paid into the said company in cash, and the number of shares into which the said capital stock is divided, and the par value of each share; fifth, the names and residences of the stockholders, the number of shares held by each; sixth, the period at which said company shall commence and terminate, not exceeding fifty years; said certificate shall be approved or acknowledged and recorded, as required in 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 located, and after being so recorded shall be filed in the office of the secretary of state; the said certificate, or a copy thereof, duly certified by such clerk or secretary, shall be evidence in all courts and places.]

Formation of credit companies, &amp;c., authorized.

Certificate, where recorded and filed.

**254.** SEC. 2. That said company, before it shall commence the transaction of any business, or the making of any contracts or other engagements, shall deposit with the comptroller of this state first bond and mortgage security, or other security, which shall be approved by the insurance commissioner of this state, to a not less amount than ten thousand dollars, and the said insurance commissioner shall be authorized, whenever, in his judgment, for the safety of the obligations of such company, it shall be necessary to so do, to call upon and direct the said company, within sixty days after the date of such notice, to deposit additional securities of like character to an additional amount not to exceed ten thousand dollars, which securities shall be and remain in the custody of said comptroller, subject to change or re-investment, with like approval of the said insurance commissioner, as a guarantee for the fulfillment of the obligations and undertakings of the said company. [See Sec. 196, *ante*.]

Deposit of securities with state comptroller required.

**255.** SEC. 3. That it shall not be lawful for any company organized under the provisions of this act to require of any person, partnership or company, whose loss may have been limited or guaranteed by them, that

Limit of time for proof of loss.

## CORPORATIONS.

they shall make final proof of any loss or losses sustained by them, to the company so guaranteeing or limiting, within a less period than ten days after the expiration of the end of the contract or agreement of guarantee.

To what corporations act applies.

**256. SEC. 4.** That this act as amended shall apply to corporations heretofore organized under the act of which this is amendatory, in the same manner as if the certificate of organization had been filed under this act.

Repealer.

**257. SEC. 5.** That all acts and parts of acts, general and special, inconsistent with the provisions of this act in regard to credit guaranteeing companies, be and the same are hereby repealed, and this act shall take effect immediately.

A supplement to an act entitled "An act to amend an act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, which amendatory act was approved March twentieth, one thousand eight hundred and ninety-one.

P. L. 1893, p. 252.

Proceedings in chancery by attorney-general against corporations that have not paid their taxes.

Approved March 13, 1893.

**258. SEC. 1.** That after any corporation of this state has failed and neglected for the space of two consecutive years to pay the taxes imposed upon it by law, and the comptroller of this state shall have reported such corporation to the governor of this state, as provided in said amendatory act, then it shall be lawful for the attorney-general of this state to proceed against said corporation in the court of chancery of this state for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the state of New Jersey, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said state of New Jersey, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustee or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court; and if the said corporation shall neglect or refuse within ten days from and after the service of notice of such decree to assign and transfer the same to such receiver or trustees for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase-money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings. [See Secs. 228 to 231, *ante*, and Sec. 290, *post*.]

When and by whom mistakes corrected.

**259. SEC. 2.** That whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the comptroller as refusing or neglecting to pay the same as aforesaid, that the governor be and he is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of state.

## Supplement.

Approved March 14, 1893.

P. L. 1893, p. 301.

**260. SEC. 1.** That it shall and may be lawful for any corporation or corporations created under the provisions of the act to which this is a further supplement to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation or corporations created under the law of this or any other state, and to exercise while owners of such stock all the rights, powers and privileges, including the right to vote thereon, which natural persons, being the owners of such stock, might, could or would exercise. [See Sec. 345, *post.*]

Corporations may purchase, hold, sell, &c., shares of capital stock of other corporations.

**261. SEC. 2.** That it shall and may be lawful for any corporation described in the preceding section of this act to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any securities or evidences of debt created by other corporation or corporations of this or any other state, in the same manner and to the same extent as natural persons, being the owners thereof, might, could or would do.

May do so in same manner as natural persons.

**262. SEC. 3.** That all acts and parts of acts inconsistent with this act, to the extent of such inconsistency, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

Supplement to act entitled "A further supplement to an act entitled 'An act concerning corporations,' approved April seventh, one thousand eight hundred and seventy-five," which further supplement was approved May tenth, one thousand eight hundred and eighty-four.

Approved March 17, 1893.

P. L. 1893, p. 412.

**263. SEC. 1.** That the first section of the act entitled "A further supplement to an act entitled 'An act concerning corporations,' approved April seventh, one thousand eight hundred and seventy-five," which further supplement was approved May tenth, one thousand eight hundred and eighty-four [see Sec. 169, *ante*], be and the same is hereby amended so as to read as follows :

[That any company organized by virtue of the act to which this is a supplement, for the purpose of constructing, maintaining and operating works for the supply and distribution of electricity for electric lights, heat or power, shall have full power to use the public roads or highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, upon first obtaining the consent in writing of the owners of the soil; *provided, however,* no posts or poles shall be erected in any street of any incorporated city or town, or in any street of any township, without first obtaining from the incorporated city or town, or from the township committee of such township, a designation of the streets in which the same shall be placed and the manner of placing the same, and that the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said roads and highways, and that such use of the public streets in any of the cities, towns and townships of this state shall be subject to such regulations as may be so imposed by the corporate authorities or legislative bodies of said cities, towns and townships.]

How and when electric light, heat or power companies may use public highways.

Proviso.

**264. SEC. 2.** That section two of said further supplemental act approved May tenth, one thousand eight hundred and eighty-four [see Sec. 170, *ante*], be and the same is hereby amended so as to read as follows :

[That any such companies be and they are hereby authorized and empowered to lay pipes and conduits and to lay wires therein beneath the public roads, highways, avenues and alleys as they may deem necessary; *provided,* that said pipes or conduits shall be laid at least two feet below the surface of the same and shall not in anywise unnecessarily obstruct or interfere with public travel, or damage public or private property, and shall not be laid nearer than three feet, except as is hereinafter excepted, to any

Authorized to lay pipes, conduits and wires in highways.

water or gas main; but no public street shall be opened for the purpose of laying any such pipes, conduits or wires without the consent of the board of aldermen, common council or township committee of such city, town or township; *and provided*, that such use of the public streets in any of the cities, towns and townships of this state shall be subject to such regulations and restrictions as may be so imposed by the corporate authorities and legislative bodies of such cities, towns or townships.]

Proviso.

### Supplement.

Approved March 21, 1893.

P. L. 1893, p. 444.

Power to increase or decrease number of directors.

Certificate to be filed in department of state.

Proviso.

Capital stock may be paid wholly or partly in cash or in property.

On failure to perfect organization, corporation may file certificate and be dissolved.

When dissolution of corporation shall take effect.

Meaning of terms "general stock" and "common stock."

How original certificate of incorporation may be amended.

**265. SEC. 1.** That any company or association incorporated under any general law of this state or by special act of incorporation or otherwise shall have the power to increase or decrease the number of its directors by the assent in writing of stockholders representing two-thirds in value of the existing capital stock of said corporation, and a certificate signed by the president and secretary and under the corporate seal of the company, reciting that the assents of the said stockholders have been given, and also setting forth the number of directors as increased or decreased, shall be filed in the department of state, within ten days after the execution of said certificate, and a certified copy of said certificate by the secretary of state shall be taken and accepted as evidence of such increase or decrease of directors in any court of this state; *provided*, that in no case shall the number of directors in such company or association be decreased to less than three. [See Secs. 163, 175 and 188, *ante*, and Sec. 318, *post*.]

**266. SEC. 2.** That subscriptions to the capital stock of any corporation organized or to be organized under the act to which this is a supplement, or any supplement thereto, may be paid wholly or partly in cash, or wholly or partly in property of the full value thereof, and the stock so issued shall be declared and be 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 provisions of this act or the act to which this is a supplement.

**267. SEC. 3.** That it shall be lawful for the incorporators, or a majority of them, of any corporation incorporated or that may hereafter be incorporated under the act to which this is a supplement, or any supplement thereto, to file in the department of state, a certificate stating that they have failed, and do not intend to perfect an organization of said corporation, and surrendering all the rights and franchises of said corporation, which certificate shall be sworn or affirmed to by the incorporators signing the same, and within ten days thereafter be filed in the department of state, and upon the filing of said certificate, the corporate powers of said corporation shall thereupon cease and the corporation therein named shall be deemed to be dissolved.

**268. SEC. 4.** That the dissolution of a corporation as provided by the thirty-fourth section of the act to which this is a supplement [see Sec. 122, *ante*], shall not be considered complete until an affidavit that the certificate of dissolution issued by the secretary of state has been duly published, as required by the act, shall have been filed in the department of state.

**269. SEC. 5.** That whenever in the act to which this is a supplement, or any supplement thereto, the terms "general stock" and "common stock" occur, they shall be considered as synonymous; that either may be used, and they shall be construed interchangeably, and as both meaning ordinary unpreferred stock.

**270. SEC. 6.** That it shall be lawful for any corporation organized or that may be organized under any general law of this state, with the assent of a majority in interest of its stockholders, at a special meeting to be called for that purpose, to amend its original certificate of incorporation by a certificate which shall be duly signed by its president and attested by its secretary, under its corporate seal, and in all respects executed in the same manner as its original certificate of incorporation, which amended certificate shall be recorded in the office of the clerk of the county wherein the

original certificate was recorded and filed in the department of state; and thereupon such amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been recorded and filed on the date of the recording and filing of the original certificate; *provided*, that nothing herein contained shall permit the insertion of any matter not in conformity with the law under which such company was organized, and that nothing herein contained shall affect any suit or proceeding at the time of the filing of such amended certificate, pending by or against the said corporation, or impairing any rights of action accrued by or against its stockholders, corporators or directors; *and provided further*, that the total authorized capital stock of any such corporation shall not be increased or decreased in the amended certificate herein provided for. (a)

Proviso.

Proviso.

**271. SEC. 7.** That section one of an act entitled "A supplement to an act entitled 'An act concerning corporations,' approved April seventh, eighteen hundred and seventy-five," which supplement was approved February twenty-first, eighteen hundred and seventy-seven [see Sec. 123, *ante*], be amended so as to read as follows:

[That it shall be lawful for any corporation existing under and by virtue of the laws of this state, whether created by special charter or otherwise, to change its corporate name by a two-thirds vote of the board of directors or managers of such corporation, who shall be present at a regular or special meeting called for that purpose; *provided*, that the corporation cause to be made and filed a certificate in writing, in manner hereinafter mentioned; such certificate in writing shall set forth:

Lawful for corporations to change corporate name.

Proviso.

I. The name of such corporation in use immediately preceding the vote and making and filing the said certificate;

Proceedings upon changing name of corporation.

II. The name assumed to designate such corporation and to be used in its business and dealings in the place and stead of that referred to in the last preceding paragraph, and which said certificate shall be signed by the board of directors, or a majority of said board, and recorded, in pursuance of the act to which this is a supplement in the office of the clerk of the county where the principal office or place of business of such corporation in this state shall be established; and after being so recorded shall be filed in the office of the secretary of state; and to which certificate shall be affixed the official seal of said board and the affidavit of the secretary or acting secretary of such corporation, that the said certificate is made by the authority of the board of directors or managers of such corporation, as expressed by a two-thirds vote of the members present at a regular or special meeting of said board called for that purpose.] [See Sec. 240, *ante*.]

**272. SEC. 8.** That the thirtieth section of the act to which this is a supplement be and the same is hereby amended so as to read as follows:

[That the president and the secretary or treasurer of such company, after the payment of the last installment of the total amount of capital stock as authorized by its certificate of incorporation shall make a certificate stating the amount of the capital so authorized and paid in, which certificate shall be signed and sworn to or affirmed by the president and secretary or treasurer; and they shall within ten days thereafter cause the same to be filed in the department of state.]

Certificate to be filed after payment of total amount of capital stock.

**273. SEC. 9.** That the thirty-first section of the [act] to which this is a supplement be and the same is hereby amended to read as follows:

[That if any of the said companies shall increase their capital stock as provided by this act or any supplement thereto the officers mentioned in the preceding section, after the payment of the last installment of such additional stock, shall make a certificate of the amount so added and paid in and sign and swear to or affirm the same, and cause it to be filed in the manner provided in the preceding section.]

Certificate of increase of capital stock to be filed.

(a) As to the power of a majority of the stockholders of a corporation, organized under the general corporation act, to amend its original certificate of incorporation under the pro-

visions of the above section, see *Lowenthal v. Rubber Reclaiming Co.*, 7 Dick. 440.

## CORPORATIONS.

**274.** SEC. 10. That section thirty-three of the act to which this is a supplement be amended so as to read as follows :

Certificate of change of nature of business to be filed.

[That every such company may, by a vote of two-thirds in interest of the stockholders, in person or by proxy, at any meeting called for that purpose, change the nature of its business; and in such case a certificate of the proceedings, signed by the president and secretary under the corporate seal of the company, reciting that the assets of the said stockholders have been given, and also the change of the nature of its business shall be filed in the department of state within ten days after the meeting of the stockholders as aforesaid, and a certified copy of said certificate by the secretary of state shall be taken and accepted as evidence in any court of this state.]

Repealer.

**275.** SEC. 11. That section twenty-four of the act entitled "An act concerning corporations" [Revision], approved April seventh, eighteen hundred and seventy-five, be and the same is hereby repealed.

State fees to be paid on filing certificates.

**276.** SEC. 12. That on filing any certificate or other paper, relative to corporations, in the department of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: for certificates of organization, one-fifth of a dollar (twenty cents) per one thousand dollars of the total amount of capital authorized, but in no case less than twenty-five dollars; increase of capital stock, one-fifth of a dollar (twenty cents) per one thousand dollars of the total amount authorized, but in no case less than twenty dollars; consolidation and merger of companies, one-fifth of a dollar (twenty cents) per one thousand dollars of capital authorized, beyond the total authorized capital of the companies merged or consolidated; *provided*, that the minimum fee shall be twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this act; dissolution of corporation; change of name; change of nature of business; increase or decrease of number of directors; amended or supplemental certificates of organization other than those authorizing increase of capital stock; decrease of capital stock; increase or decrease of par value or of number of shares, twenty dollars; for filing list of officers and directors, one dollar; and for all certificates not hereby provided for, five dollars. [See Sec. 284, *post*.]

Proviso.

Repealer.

**277.** SEC. 13. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

## Supplement.

Approved March 27, 1893.

P. L. 1893, p. 478.

Stockholders may repeal provisions for classification of directors and voting power of stockholders, and elect new board.

**278.** SEC. 1. That when any corporation heretofore or hereafter created under the act to which this act is a supplement shall have heretofore or hereafter by the terms of its certificate of incorporation classified its directors in respect to the time for which they shall severally hold office pursuant to the provisions of the "Act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five, and the supplements and amendments thereof in that behalf applicable [see Sec. 211, *ante*], then and in that event any such corporation shall have the power at a meeting of the stockholders of said company, called for that purpose under the provisions of this act by the vote of a majority in amount in interest of the total number of shares of the capital stock of said company then outstanding, however represented, whether by common or preferred stock, or one or more classes, each share of stock in said company of whatever class, if classified, being entitled to one vote under the provisions of this act, to repeal any or all of the provisions whereby said classification of directors in respect to the time for which they shall severally hold office has been or may hereafter be effected, and to repeal any and all provisions, if any, whereby the right to choose the directors of any class may have been heretofore or may hereafter be conferred upon any class or classes of stockholders to the exclusion of the others, and to thereupon determine and limit the term of office of any board of directors of said company then in office, so as to have the said term of office of said entire board then and

there expire by limitation at such meeting ; on the passage of such resolution, and thereupon and after the passage of such resolution so repealing said provisions as to classification of directors, or voting rights or both as aforesaid, said stockholders shall forthwith proceed to elect a new board of directors to hold office for one year or until the next annual meeting of said stockholders, if the time fixed for the next annual meeting is less than one year from the date of such meeting at which said repeal of said provisions is made, and until their successors are chosen and qualified in their stead, and thereafter the directors of said corporation shall be chosen annually by 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.

**279. SEC. 2.** That the persons holding in their own names on the books of the company a majority in amount in interest of the total capital stock, whether made up of one or several classes as aforesaid, then outstanding of any such corporation, and desiring to avail themselves of the privileges of this act, may call a meeting of all the stockholders of said company for the purpose of considering the question of the repeal of any such provisions as to classification of directors, or voting power of both as aforesaid, and of electing a new board of directors in case of such repeal under the provisions of this act, by signing a notice of such meeting specifying the time and place of holding such meeting and in general terms the object thereof, and publishing the same at least ten days prior to the date fixed therein for said meeting in a newspaper circulating in the county wherein the business of said company is conducted, or where their principal place of business is located.

Meeting to vote on such repeal, &c., how called.

**280. SEC. 3.** That any such meeting so called shall be a legal meeting of the stockholders of the company, and shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village or town where such office or place is, or was located ; at such meeting, the stockholders attending shall constitute a quorum, and each share of stock of any kind or classes, if classified, shall be entitled to one vote on all questions properly coming before said meeting, any provision to the contrary in the certificate or by-laws of said company notwithstanding ; the stockholders attending may elect a chairman, secretary and inspectors of the vote on the consideration of said question of repealing any such provision as to the classification of directors or voting power or both as aforesaid, and of any election of new directors that may be held in case of such repeal, and may elect a new board of directors if such repeal is passed, and may adopt by-laws providing for future annual meetings and election of directors of the company, and may transact any other business which may be transacted at an annual meeting of the members of the corporation, and it shall be the duty of the secretary of the company, on receipt of the minutes of said meeting from the secretary thereof, to file the same in the office of the company, and record the same in the book of minutes of the company.

Where meeting shall be held.

What shall constitute a quorum.

Elect chairman, secretary and inspector.

Adopt by-laws providing for future annual meetings.

Minutes of meeting to be filed.

**281. SEC. 4.** That in the absence, at such meeting, of the books of the corporation, showing who are stockholders thereof, each person voting shall present his sworn statement setting forth that he is a stockholder of the corporation and the number of shares of stock owned by him and standing in his name on the books of the corporation, and if known to him, the total number of shares of stock of the corporation outstanding, including all classes if classified ; on filing such statement he may vote as a stockholder of said corporation on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation, each share of whatever class entitling him to one vote ; *always provided*, that in case of falsity or mistake in such statement and question arising as [to] the validity of the passage or rejection of any such resolution by the votes then cast, any shares not owned by any party voting as aforesaid shall be deducted from the total vote on either side then cast or represented in thereafter determining the validity of the

Proceedings where books showing who are stockholders are absent.

Proviso.

passage or rejection of any such resolution by the actual vote cast at such meeting by those actually entitled to cast votes thereat as above provided.

New directors elected shall be the lawful board of directors.

**282. SEC. 5.** That in case of a resolution shall be [being] duly passed at any such meeting pursuant to the provisions hereof repealing any such provisions as to the classification of directors or voting power or both, that then and from henceforth [thenceforth] the term of office of all directors of said company then in office shall cease and determine, and a new election for directors of said company shall be held as aforesaid, and the new directors then elected shall be the lawful board of directors of said company, and shall be forthwith entitled to the possession and control of its property and franchise.

Certificate of chairman and secretary to be filed in office of secretary of state.

**283. SEC. 6.** That in case of the repeal of any such provisions as to the classification of directors or voting power or both, it shall and may be lawful for the chairman and secretary elected by the stockholders at any such meeting to make and sign a certificate under their hands, sworn to by them as true to the best of their knowledge, information and belief, and acknowledged as a deed to be recorded setting forth and specifying in general terms the proceedings taken for the purpose of holding such meeting, including the original or a copy of the notice of meeting so signed and the affidavit of the printer as to the publication of said notice as aforesaid, and the proceedings had or action taken at said meeting, and such certificate so made as aforesaid may be filed in the office of the secretary of state, upon the payment to the secretary of the state for the use of the state the sum of twenty (20) dollars, and a copy of any such certificate so made and filed as aforesaid, duly certified by the secretary of state under his official seal, shall be evidence in all courts and places of the facts therein recited, and of the right to issue the notice of such meeting and of the due issue and publication of such notice and the holding and action of such meeting in the premises, and generally that the foregoing provisions of this act have been fully observed and complied with.

Fee for filing.

#### Supplement.

Approved April 24, 1894.

P. L. 1894, p. 117.

Religious and charitable corporations exempt from payment of state fees on filing certificates.

**284. SEC. 1.** That the fees and taxes required by law to be paid to the secretary of state on filing in the department of state any certificate or other paper relative to corporations, shall not apply to or be collected from incorporated religious or charitable societies or associations; and all certificates or other papers relative to such societies or associations may be filed in the department of state without the payment of any fee or tax.

Repealer.

**285. SEC. 2.** That all acts or parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

An act to amend an act entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five," which said supplement was approved February twenty-fourth, one thousand eight hundred and ninety-two.

P. L. 1894, p. 136.

Approved April 25, 1894.

**286. SEC. 1.** [Amending Sec. 245, *ante*, amended by Sec. 299, *post*.]

An act to amend an act entitled "A supplement to an act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five, which said supplement was approved March eighth, anno domini one thousand eight hundred and seventy-seven.

P. L. 1894, p. 194.

Approved May 1, 1894.

**287. SEC. 1.** [This section, amending Secs. 49 and 128, *ante*, is superseded by Sec. 293, *post*.]

**288.** SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately. Repealer.

## Supplement.

**289.** SEC. 1. That in all cases where any corporation organized under the laws of this state shall have heretofore executed or attempted to execute, or may hereafter execute or attempt to execute, any deed, mortgage or other conveyance or agreement requiring the action of the board of directors of such corporations to give validity thereto, such deed, mortgage or other conveyance so as aforesaid executed or attempted to be executed, or hereafter to be executed or attempted to be executed, shall not be unlawful, invalid or inefficacious for any purpose because one or more of the directors of any such corporation shall have absconded or shall abscond, or whose whereabouts have or shall not have been or shall not be known at the time of the meeting of the directors of such corporation for the purpose of the consideration of the execution of any such instrument as aforesaid; *provided, however,* that any share or shares of stock of such director shall, at the time of the meeting aforesaid, stand in the name of such director on the books of such corporation, even though such director may have made or shall make an assignment for the benefit of his creditors, or may have or shall in any way assign or hypothecate his stock in such corporation; *and provided, further,* that a majority of the directors of any such company shall have been or shall be present and participating in such meeting aforesaid; and this act shall be so construed as to excuse want of notice to any such director so absconding, or whose whereabouts shall have been or may be unknown, of the time, place and object of any such aforesaid meeting. Proviso.

A further supplement to an act entitled "An act to amend 'An act concerning corporations,' approved April seventh, one thousand eight hundred and seventy-five," which amendatory act was approved March twentieth, one thousand eight hundred and ninety-one.

**290.** SEC. 1. That whenever any corporation, which has been or shall be included in any proclamation, issued or to be issued by the governor for non-payment of taxes, shall, within ninety days after the issuance of such proclamation, pay into the state treasury the amount of all taxes due from it to the state with interest, costs and advertising fees, the said proclamation, so far as it affects said corporation, shall be void and the charter of said corporation shall thereupon be revived to the same extent as if said taxes had been duly paid and said proclamation had not been issued. [See Secs. 258 and 259, *ante*, and Sec. 295, *post*.] When charter of corporation that has defaulted in payment of taxes may be revived.

**291.** SEC. 2. That upon the payment of said taxes with interest, costs and advertising fees, and the filing of a receipt therefor signed by the treasurer and countersigned by the comptroller, it shall be the duty of the secretary of state to note the said payment upon the original proclamation and the record thereof. Secretary of state shall note payment on proclamation of governor.

## Supplement.

**292.** SEC. 1. That nothing in the proviso contained in the tenth section of said act to which this is a supplement shall be construed to forbid the formation of companies under said section for the purpose of constructing, maintaining and operating railroads wholly in foreign countries. [See Secs. 189 and 208, *ante*.] Passed May 24, 1894. P. L. 1894, p. 497. Companies to operate railroads in foreign countries authorized.

## Supplement.

Approved January 23, 1895.

P. L. 1895, p. 11.

All corporations shall file list of officers.

And designate location of principal place of business.

Secretary of state shall furnish blanks, issue certificates and make index of lists.

Requirements of act shall be published.

Penalty for non-compliance.

Proviso.

When forfeitures and penalties may be remitted.

Repealer.

**293. SEC. 1.** That it shall be the duty of all corporations which may now or hereafter be authorized to transact business in this state, whether organized under general or special laws, although such corporations may not be organized under the laws of this state, and they are hereby required (unless they have already done so) to file on or before the thirtieth day of June next, and annually thereafter, within thirty days after the usual time of the annual election of directors, managers or trustees and the officers therefor, whether such election shall have been held on the day fixed by law or not, in the department of state of this state, a complete list, duly authenticated by the signatures of the president and secretary, of the names of such directors, managers, trustees and officers, with the date of the election or appointment, term of office and the residence of each, and also to designate the business and the location of the principal office or place of business of the company in this state, as also in the state where organized, and for this purpose it shall be the duty of the secretary of state to furnish said corporations blanks, in proper form, and to safely keep in his office all lists as filed, and issue to the company so filing, his certificate thereof, and also to prepare an alphabetical index thereto, which lists and index shall be submitted to the inspection of persons interested at all proper hours; and it shall further be his duty, during the month of April next, to cause a notice of the requirements of this act to be published three times in each of the papers in this state authorized to publish the laws; and every such corporation which shall not, within thirty days of the time herein fixed, comply with the provisions of this act shall forfeit the sum of two hundred dollars to the state of New Jersey, to be recovered by action of debt, to be brought by the attorney-general of this state in the name of the state of New Jersey, in a court of competent jurisdiction, together with costs of suit; *provided, however,* that where any corporation shall file a complete list of the officers, directors, managers or trustees, as above required, at any time prior to the entry of judgment upon any suit to be commenced in manner aforesaid by said attorney-general, and shall pay the costs of such suit up to the time of filing such list, then any and all proceedings thereon shall be discontinued. [See Sec. 287, *ante.*]

**294. SEC. 2.** That all forfeitures, fines and penalties incurred by reason of the failure of any corporation to file a statement as required by the act concerning corporations, approved April seventh, one thousand eight hundred and seventy five, or any supplement thereto, be and the same are hereby remitted and released, and that all acts and parts of acts inconsistent with this act be and they are hereby repealed, and that this act shall take effect immediately.

Further supplement to an act entitled "An act to amend an act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, which amendatory act was approved March twentieth, one thousand eight hundred and ninety-one.

P. L. 1895, p. 138.

When proclamation against corporation that has defaulted in paying taxes shall be void.

Secretary of state shall note payment on proclamation.

**295. SEC. 1.** That whenever any corporation which has been or shall be included in any proclamation heretofore issued by the governor for non-payment of taxes shall, within ninety days after the passage of this act, pay into the state treasury the amount of all taxes due from it to the state, with interest, costs and advertising fees, the said proclamation, so far as it affects said corporation, shall be void, and the charter of said corporation shall thereupon be revived to the same extent as if said taxes had been duly paid and said proclamation had not been issued. [See Sec. 290, *ante.*]

**296. SEC. 2.** That upon the payment of said taxes, interest, costs and advertising fees, and the filing of the receipt therefor, signed by the treasurer and countersigned by the comptroller, it shall be the duty of the secretary of the state to note the said payment upon the original proclamation and record thereof.

Approved February 27, 1895.

## Supplement.

Approved March 5, 1895

P. L. 1895, p. 163.

**297.** SEC. 1. That any society incorporated under the laws of this state, having for its object the relief of clergymen whose advancing years have a claim on the support of the church to which they belong, is hereby authorized and empowered, by a vote of not less than two-thirds of the trustees or directors of said society, to contract with any solvent corporation or corporations of any state of the United States of America, which corporation shall have for its object the same purpose, to assume all of the contracts, obligations, liabilities, policies, stipulations and promises of the said corporation or society incorporated under the laws of this state, and to convey to said other corporation, in consideration of the assumption by the same of the contracts, obligations, liabilities, policies, stipulations and promises of the society incorporated under the laws of this state, all of the moneys, properties and assets of said corporation; *provided, however*, that before the said act of the trustees or directors of said society shall become operative, and before said contract shall be entered into and said conveyance made, the said act of the directors shall be ratified at the annual meeting of the members of the said society. [See Sec. 163, *ante*.]

Societies incorporated for relief of aged clergymen may transfer property and contract for assumption of contracts.

Proviso.

## Supplement.

Approved March 5, 1895.

P. L. 1895, p. 166.

**298.** SEC. 1. That whenever any incorporated company shall become insolvent, or shall suspend the ordinary business of the said company for want of funds to carry on the same, it shall not be lawful for the directors or managers of the said company, or for any officer or agent of the said company, to sell, convey, assign or transfer any of the estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements, of the said company; nor shall it be lawful to make any such sale, conveyance, assignment or transfer in contemplation of the insolvency of any such company, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; *provided always*, that in case of a bona fide purchase made for a valuable consideration, before the said company shall have actually suspended the ordinary business of the said company as aforesaid, by any person having no knowledge, information or notice of the insolvency of the said company, or of the sale being made in contemplation of the insolvency of the said company, such purchase shall not be invalidated or impeached. (*a*)

Unlawful for insolvent company, or company in contemplation of insolvency, to sell, convey or transfer its property.

An act to amend an act entitled "An act to amend an act entitled 'A further supplement to an act entitled "An act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five,' which said supplement was approved February twenty-fourth, one thousand eight hundred and ninety-two," which act was approved April twenty-fifth, one thousand eight hundred and ninety four.

Approved March 22, 1895.

P. L. 1895, p. 609.

**299.** SEC. 1. That the first section of an act entitled "An act to amend an act entitled 'A further supplement to an act entitled "An act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five,' which said supplement was approved February twenty-fourth, one thousand eight hundred and ninety-two," which act was approved April twenty-fifth, one thousand eight hundred and ninety-four [see Secs. 245 and 286, *ante*], be and hereby is amended so as to read as follows:

[That upon the dissolution of any corporation organized under the act to which this is a further supplement, or any amendment or supplement thereto, the president and directors, acting as trustees to settle the affairs of said corporation, shall, in cases not already provided for by law, have

Powers of president and directors on dissolution of corporation in cases not already provided for by law.

(*a*) This is a re-enactment of section 2 of act in R. S. 129. See note (*a*), page 920, *ante*.

## CORPORATIONS.

power to meet and act under regulations to be fixed and determined upon by a majority of said trustees, and shall have power to determine when and how and where the property, real or personal, of said corporation shall be sold, whether in parcels or as a whole, and shall sell all or any part for cash, or partly on credit, or take mortgages not exceeding fifty per centum of the purchase price secured by bonds, for part of the purchase price for all or any of said property, and to fix the terms and conditions of the sale of all or any part of said property; and when the distribution of the property in whole or in part shall be by allotment between the respective shareholders, deeds and suitable instruments of transfer of the lands, shares of stock and other property, so allotted or set off to each shareholder, shall be made and delivered by the trustees to each shareholder upon payment of the amount of his share of the expenses and indebtedness of said corporation as determined by said trustees; and upon the failure or refusal of any shareholder to pay the same, the said trustees shall have power to sell, at public sale, the lands, shares of stock and other property so allotted or set off to him, or so much thereof as shall be necessary to satisfy and pay said amount and the expenses of such public sale.]

Repealer.

**300. SEC. 2.** That this act shall take effect immediately, and all acts and parts of acts inconsistent herewith be and the same hereby are repealed.

## Supplement.

P. L. 1895, p. 741.

Corporation failing to furnish information required by law shall pay expenses of investigation.

Approved March 28, 1895.

**301. SEC. 1.** That on the neglect or refusal of a corporation incorporated under the laws of this state or doing business therein, to furnish the information prescribed by law to any state official required to publish a report on the standing and condition of such corporation, the expenses of the investigation authorized to be made because of such neglect or refusal shall be borne by said delinquent corporation and may be recovered therefrom in an action of debt in any court of competent jurisdiction in this state by the person authorized to make such investigation.

A further supplement to an act entitled "An act concerning corporations" [Revision], approved April seventh, eighteen hundred and seventy-five, authorizing extension of corporate existence.

P. L. 1876, p. 235.

Charter may be extended for a period not exceeding fifty years.

Approved April 21, 1876.

**302. SEC. 1.** That it shall be lawful for any corporation heretofore or hereafter created under or by virtue of any law of this state, at any time before the expiration of its charter, or of the period named in its certificate of organization, to file in the office of the secretary of state a certificate under its common seal, attested by the signature of its presiding officer, declaring its desire that the period of its existence as such corporation shall be extended for any time therein mentioned not exceeding fifty years.

Certificate to be filed with secretary of state.

**303. SEC. 2.** That upon making and filing such certificate, the period of the existence of such corporation shall be extended as declared in such certificate as fully as if the said period had been named in the original charter or certificate of organization of such corporation.

Powers reserved to the state.

**304. SEC. 3.** That nothing herein contained shall be construed to interfere with the right of the state of New Jersey, reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter beyond the time originally fixed for its expiration.

A supplement to an act entitled "A further supplement to an act entitled 'An act concerning corporations' [Revision], approved April seventh, one thousand eight hundred and seventy-five, authorizing extension of corporate existence," which said supplement was approved April twenty-first, one thousand eight hundred and seventy-six.

Approved March 9, 1882.

P. L. 1882, p. 76.

**305. SEC. 1.** That nothing contained in the act to which this is a supplement shall be construed as continuing in force and operation any special provision relating to taxation, or exemption therefrom, in the charter of any corporation whose corporate existence may have been or hereafter shall be extended in conformity with the terms of said act; but each corporation whose corporate existence may have been or shall be extended as authorized thereby, shall be assessed for taxes in accordance with the provisions of the general law of this state relating to the taxation of corporations.

Corporations whose existence has been extended, how assessed for taxes.

**306. SEC. 2.** That the provisions of the act to which this is a supplement shall not apply to any turnpike or toll company created under and by virtue of any special law of this state.

Act not to apply to turnpike or toll companies.

**307. SEC. 3.** That all acts or parts thereof, general or special, inconsistent herewith are hereby repealed, and this act shall be a public act, and go into effect immediately.

Repealer.

### VIII. Miscellaneous acts.

A supplement to "An act to prevent frauds by incorporated companies," approved April fifteenth, eighteen hundred and forty-six. (1)

Approved March 17, 1870.

P. L. 1870, p. 55.

**308. SEC. 1.** That whenever any railroad, canal or turnpike company, incorporated under the laws of this state, have become insolvent, or failed for ninety days after the same becomes due, to pay the principal or interest on any mortgage on the property and franchises of such company, it shall be lawful for the chancellor, upon the application of any creditor, mortgagee or stockholder of such company, to appoint a receiver or receivers, or three trustees, who shall have and exercise all the powers and authority that it is lawful for receivers and trustees to exercise under the act to which this is a supplement; and it shall be lawful for such receivers or trustees to sell or lease the canal, railroad or turnpike belonging to such company, together with all the chartered rights, privileges and franchises of such company; and the purchaser or purchasers, lessee or lessees of such 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 such 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 enjoyed the same, subject, however, to all the restrictions, limitations and conditions contained in such charter; and upon filing in the office of the secretary of state, within six months after such sale or lease, a certificate that they accept the charter of the company whose property has been sold or leased, under some corporate name different from that of the said company, such purchasers or lessees shall become a corporation under the name so specified, with all the powers, rights, privileges and franchises of the former company; the lessees or purchasers, or corporation formed by them as aforesaid, shall hold and enjoy the same, free and clear of all debts, claims and demands of creditors, mortgagees or stockholders, who shall look only to the fund arising from such lease or sale, which money, as collected, shall be paid into the court of chancery;

Whenever a railroad, canal or turnpike company becomes insolvent, receivers or trustees may be appointed.

They may sell or lease canal, railroad or turnpike.

Upon filing certificate with secretary of state the purchasers become a corporation, &c.

(1) The act to which this is a supplement is now incorporated in the act entitled "An act concerning corporations," approved April 7th, 1875, beginning page 919, *ante*, Sec. 63.

but where such property is subject to a mortgage the chancellor may, with the consent of the plaintiff, or without such consent if the principal is not due, direct a sale or lease to be made subject to the lien of the mortgage. (a)

A further supplement to an act entitled "An act to prevent frauds by incorporated companies," approved April fifteenth, one thousand eight hundred and forty-six.

P. L. 1874, p. 11.

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

Expenses first lien on receipts.

Approved February 11, 1874.

**309. 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 incumbrance whatever. (b)

A further supplement to an act entitled "An act to prevent frauds by incorporated companies," approved April fifteenth, one thousand eight hundred and forty-six.

P. L. 1875, p. 107.

Conditions on which receiver may lease a railroad.

Approved April 9, 1875.

**310. SEC. 1.** That no lease of any railroad shall be made by any trustee or receiver appointed by the court of chancery or the chancellor, except upon a rental and adequate security for the payment of the same, both to be first approved by said court and a majority of stockholders of said railroad in interest, upon such public notice to the parties in interest as said court shall direct.

A further supplement to an act entitled "An act to prevent fraudulent elections by incorporated companies, and to facilitate proceedings against them," approved April fifteenth, one thousand eight hundred and sixty-six.

P. L. 1874, p. 37.

Proceedings to elect directors when they have not been elected at the time fixed by charter.

Approved March 17, 1874.

**311. 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 policyholders, to call a meeting of the stockholders or policyholders of such company, for the purpose of electing directors; said call to be made in the same man-

(a) By this and other statutes there has been conferred upon the court of chancery the same general powers over an insolvent railroad corporation which have been conferred on it over other insolvent corporations. *Vanderbilt v. Central E. R. Co.*, 16 *Stew.* 681.

(b) The express power given by this act to operate an insolvent railroad for the use of the public, is not conferred on the receiver as an independent person, but as an officer of the court; the legislative intent is to extend the power to operate the railroad previously possessed and to require its exercise for the benefit of the public. When an insolvent railroad is operated under these powers, the court may control its operation and the chancellor may personally direct or make contracts for that purpose, or he may confer a discretionary authority to make such contracts upon the receiver. Contracts made by a receiver by virtue of such discretionary authority bind the receiver, not personally, but as the representative of the trust; and he who contracts with the receiver does so with the knowledge that for any injury received thereby he can only get redress by obtaining the permission of the court to sue at law or in equity. *Vanderbilt v. Central E. R. Co.*, 16 *Stew.* 669. A receiver of an insolvent railroad company, empowered by statute to operate the railroad for the use of the public, is not a public officer, entitled to immunity as such, but may be sued at law, in his representative capacity, by leave of the court appointing him, as the company might be, for negligence of his agents in operating the road, resulting in the death of a passenger. *Little v. Dusenberry*, 17 *Yr.* 614. The court will authorize a receiver of a railroad company to make all necessary repairs, and, if necessary, will charge the expense as a first lien on the

property prior to existing mortgages thereon. *Hoover v. Montclair and Greenwood Lake Railway Co.*, 2 *Stew.* 4. The fact that the property of an insolvent railroad company is under the charge of the court of chancery, does not in anywise secure to the company protection against lawful competition in its business or secure for its property immunity against liability to lawful condemnation. *Central E. R. Co. of N. J. v. Pennsylvania E. R. Co.*, 4 *Stew.* 475. The receiver of a railroad corporation has no power, without the authority of the chancellor, to make a contract which will bind the trust. *Lehigh Coal and Navigation Co. v. Central E. R. Co. of N. J.*, 8 *Stew.* 426. The section above (section 309) puts the franchises and property of the corporation in the possession of the chancellor for two purposes—first, to have the road operated for the use of the public; and, second, to have its franchises and property disposed of and administered for the benefit of its creditors and stockholders. The court of chancery, before granting the petition of a creditor to be allowed to sue the receiver at law, will, by a preliminary examination of the transaction, determine whether the matter cannot be disposed of in that court. A receiver is not, as such, liable to be sued at law on the contracts of his predecessor. *Lehigh Coal and Navigation Co. v. Central E. R. Co.*, 11 *Stew.* 175. The receiver of an insolvent railroad corporation has authority, as a thing necessarily incident to the duties imposed upon him, to make all such contracts for labor and supplies as are reasonably necessary to enable him to perform the duties of his appointment, and his contracts for such purposes will bind the trust. *Lehigh Coal and Navigation Co. v. Central E. R. Co.*, 14 *Stew.* 175.

ner as required by the charter or by-laws of such company for the regular election of directors thereof. [See Sec. 46, *ante.*]

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

Act not to apply to literary or religious societies.

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

Approved March 31, 1875.

P. L. 1875, p. 45.

**313.** 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 corporators 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. [See Secs. 250, 251 and 270, *ante.*]

Amended certificate of incorporation may be filed.

**314.** 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, corporators or directors.

Pending suits not to be affected.

**An act to enable certain corporations to qualify as trustees, executors, administrators or guardians.**

Approved April 21, 1876.

P. L. 1876, p. 272.

**315.** SEC. 1. That in all cases where any corporation in this state authorized by its charter to act as trustees, executors, administrators or guardian, shall be appointed executor, administrator or trustee of any estate or guardian of any infant, it shall and may be lawful for the president, cashier or treasurer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee or guardian.

Officers of corporation acting as executors, &c., to take oath.

975-313  
R96-323

**An act respecting foundries and machine companies.**

Approved February 27, 1879.

P. L. 1879, p. 62.

**316.** SEC. 1. That where any foundry and machine companies have been organized under any law of this state and are carrying on the foundry and machine business, it shall not be necessary, from and after the passage of this act, that a majority of the directors of such company be residents of this state; *provided*, that at least one of said directors be resident within this state.

Only one director of machine company need reside within the state.

Proviso.

**317.** SEC. 2. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed.

Repealer.

**An act to provide for the increase in the number of directors in certain corporations of this state.**

Approved February 10, 1880.

P. L. 1880, p. 28.

**318.** SEC. 1. That it shall be lawful for any corporations of this state incorporated under any general or special act, engaged in the business of manufacturing silk, cotton, jute and other fibrous material and the several branches of manufacture incident thereto, whose board of directors is now limited to seven persons, to increase said board to nine persons, if the said company shall desire so to do; *provided, however*, that the provisions of this act shall not apply to any such incorporation until it shall be so decided by a vote of the directors of any such company desiring an increase, passed at a regular meeting, and the written consent of at least

Certain manufacturing corporations may increase number of directors.

Proviso.

## CORPORATIONS.

two-thirds in value of all the stock outstanding against such corporation, and a certificate thereof, duly signed and properly attested and filed in the office of the secretary of state. [See Secs. 163, 175, 188 and 265, *ante.*]

**An act authorizing corporations, created by special charter or otherwise, to remove their principal office from the place designated in their charters to such other place as may be deemed best by the corporations.**

P. L. 1880, p. 49.

Corporations  
may remove  
principal office.

976-319  
R96-323

Proviso.

Approved February 25, 1880.

**319. SEC. 1.** That it shall be lawful for any corporation existing under and by virtue of the laws of this state, whether created by special charter or otherwise, to locate its principal office at such place in this state as may be for the best interests of its business, irrespective of the location of the principal office named in the charter or articles of organization of the corporation; *provided*, that such corporation cause to be made and filed a certificate in writing, in manner hereafter mentioned; such certificate shall set forth, first, the name of such corporation and the city or town in which it is located by charter, or in which its principal office had previously been located; and, second, the place, town or city in which it proposes to locate the principal office for its business and dealings in the place and stead of that referred to in last preceding paragraph, and which said certificate shall be signed by the board of directors, or a majority of said board, and filed in the office of the secretary of state, and to which certificate shall be affixed the official seal of said board and the affidavit of the secretary or acting secretary of such corporation that the said certificate is made by the authority of the board of directors or managers of such corporation, as expressed by a two-thirds vote of the members present at a regular or special meeting of said board called for that purpose; *provided*, such removal is not outside of this state.

Proviso.

**An act providing for the surrender of acts of incorporation.**

P. L. 1880, p. 49.

Masonic lodges  
may surrender  
acts of incorpora-  
tion by filing  
declaration, &c.

976-320  
R96-323

Proviso.

Approved February 25, 1880.

**320. SEC. 1.** That any masonic lodge in this state wishing to abrogate its act of incorporation, may, by a majority vote of the same, surrender said act by filing a declaration to that effect in the office of the clerk of the county in which a lodge desiring to make such surrender may be located, a notification of such intention being also published in a public newspaper in such county for the period of two weeks, once in each week; *provided*, that the act of surrender shall not affect any contract or obligation entered into previous to the revoking of said act of incorporation.

**An act concerning corporations.**

P. L. 1882, p. 39.

976-321  
322  
R96-324

Approved March 2, 1882.

**321. SEC. 1.** [Amended by Sec. 323, *post.*]

**322. SEC. 2.** [Amended by Sec. 324, *post.*]

**Amendatory act.**

P. L. 1895, p. 635.

976-323  
R96-324

Approved March 22, 1895.

**323. SEC. 1.** That section one of the act entitled "An act concerning corporations," passed March second, one thousand eight hundred and eighty-two, be amended so as to read as follows:

Corporate bonds  
may be paid by  
issue of additional  
capital stock.

[That in all cases where the bonds of any corporation created by or organized under any act of the legislature of this state have been issued and which bonds are due or about to become due or may be paid by such corporation at its option, it shall be lawful for the board of directors of such corporation to increase its capital stock in order to provide means for the payment of such bonds, and for that purpose to issue and sell the shares of such increase of capital stock for cash only, and in such manner as they

deem best, at a price not below the par value of such shares ; but no greater number of shares shall be issued or sold than shall be sufficient to raise an amount sufficient for the payment of the principal sums secured by the said bonds and the interest accrued thereon ; and certificates of stock shall be issued to the purchaser of such additional shares, upon payment in cash of the purchase price thereof, and the holders of the said shares of the increased capital stock hereby authorized, shall possess and exercise the same rights and privileges in all respects as are possessed and exercised by the holders of the other shares of the capital stock of said corporation, and the proceeds of the sale of the shares representing such increase of capital stock shall be applied to the payment of such outstanding bonds as aforesaid, and to no other purpose whatever.]

**324.** SEC. 2. That section two of said act shall be amended so as to read as follows :

[That if like capital stock of any corporation shall be increased, as is authorized by the preceding section of this act, it shall be the duty of its president and secretary, within thirty days thereafter, to make a certificate under their respective oaths or affirmations, setting forth what bonds of such corporation have been paid by the proceeds of increased capital stock, and the number of shares of the increased capital stock thereof that have been issued for that purpose, and to cause such certificate to be filed and recorded in the office of the secretary of state of this state.]

What certificate shall be filed in such case.

**An act for the relief of insolvent corporations.**

Approved March 23, 1882.

P. L. 1882, p. 167.

**325.** SEC. 1. That in any case where any company, organized under any general or special act of the legislature of this state, for manufacturing purposes, has heretofore become, or is, or may become insolvent, it shall be lawful for the directors of the said company, in the name of the company, the consent of two-thirds of the stockholders in interest or their legal representatives having been first obtained, to issue bonds, or additional stock, or both, in full or part payment or settlement of any or all claims against such company, with the consent of the claimants, and subject to the approval of the chancellor in case a receiver has been appointed ; in any case where there has been no election for directors after the insolvency became known to the stockholders, or after a receiver has been appointed, it shall be necessary to obtain the assent of two-thirds of the stockholders to the issue of such bonds or stock, and in all cases where stock is issued the total amount thereof shall not exceed the amount of the claims against the company for which stock is taken, and the amount so issued, together with the capital stock already authorized, although the same may not have been fully issued, shall be taken and considered to be the limit of the capital stock of the company, and a statement shall be filed with the secretary of state, showing the whole amount of capital stock so authorized and issued ; if bonds are issued they may be made convertible into stock, at the option of the holders, if the directors deem it for the best interests of the company, and in that case the amount of such bonds must be included in the statement filed with the secretary of state, showing the amount of capital stock authorized, and any stock issued under the provisions of this act may be issued in whole or in part as preferred stock, bearing interest not exceeding six per centum per annum, with or without further participation in the earnings of the company ; if a receiver has been appointed it shall be lawful for the chancellor to discharge and relieve him from further service on being shown that the directors have made provision for all of the claims against the company, according to this act or otherwise, excepting only such claims as were previously secured by mortgage, and to permit said company by its directors and officers to resume and conduct its business and exercise all the franchises existing at the time of the insolvency.

Insolvent manufacturing companies may issue bonds or stock for payment of claims.

977-325  
R 96-324

Stock to be issued not to exceed amount of claims.

Statement to be filed.

Bonds issued may be converted into stock.

Amount of bonds issued to be included in statement.

When chancellor may discharge and relieve receiver.

An act for the relief of the holders of stock of any corporation of this state whose certificates of stock have been lost or destroyed.

P. L. 1882, p. 205.

Approved March 23, 1882.

Corporations empowered to issue new certificates in place of those lost or destroyed, and may require owner to give bond.

978-326  
R96-324

**326. SEC. 1.** That every corporation of this state shall have the power to issue a new certificate or certificates of stock in the place of any certificate or certificates theretofore issued by it, but which, it is alleged, have been lost or destroyed, and the directors authorizing such issue of a new certificate or certificates may, in their discretion, require the owner of such lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as security against any claim that may be made against such corporation; but said directors may direct such issue of a new certificate or certificates without requiring any bond as security, when, in their judgment, it is proper for the corporation so to do; when application is to be made under section two of this act, the corporation shall require a bond to be given equal to the market value of the stock lost or destroyed.

Proceedings before chancellor when new certificate shall have been issued exceeding \$20,000.

**327. SEC. 2.** That when any corporation shall have issued a new certificate or certificates, as authorized in section one of this act, to the owner of lost or destroyed certificates representing stock exceeding the par value of twenty thousand dollars, such corporation may apply to the chancellor, or any justice of the supreme court, for an order requiring all persons in interest to show cause, at a time and place to be named therein, why the corporation should not be discharged of and from all liability, to any and all persons, by reason of the issuing of such new certificate or certificates of stock as aforesaid, and why all persons claiming any title to or interest in the old certificate or certificates so lost or destroyed as aforesaid, should not be barred from all right of action thereunder; that upon the presentation of such application, said chancellor, or any justice of the supreme court to whom the same shall be presented, shall make an order directing all persons in interest to show cause as aforesaid; the application shall be by petition, duly verified by one of the officers of the corporation, and shall state the name of the corporation; the number and date of the certificates, if known; the number of shares of stock named therein; to whom issued; the name of the owner thereof at the time the same was lost or destroyed, and of the present owner as far as known; the chancellor or justice of the supreme court, in making the order to show cause, shall direct that service of said order be made either within or without the state, upon the person named in the petition as the owner of the stock so lost or destroyed, and shall also direct a copy of said order to be served upon all others in interest, by publication thereof in one or more newspapers in this state, or elsewhere, and said order shall require said alleged owner and all other persons in interest to appear and show cause, as required by said order; and such publication shall be once a week for not less than two weeks or more than four weeks; the order to show cause shall be returnable not more than six weeks from the time of the presentation thereof to such chancellor or justice, and shall require all persons claiming any interest in said stock to appear on the return day of said order and show cause as aforesaid; and on the return day of said order, and upon proof of the service and publication as aforesaid, said chancellor or said justice shall proceed in a summary manner and in such mode as he may deem advisable, to inquire into the truth of the facts stated in the petition, and shall hear such proof and allegations as may be offered by or in behalf of the petitioner relative to the subject-matter of said application; and if, upon such inquiry, the said chancellor or justice shall be satisfied that the person to whom the new certificate of stock was issued by such corporation was the lawful owner at the time of said loss or destruction of said certificates of the capital stock of said corporation for which such new certificate was issued by said corporation, and that the new certificate is for the number of shares so lost or destroyed as aforesaid, and that the old certificate or certificates cannot, after due diligence, be found, and if no person shall appear on such return day claiming to be the owner of or interested in the

Form of petition.

Order to show cause.

old certificate so lost or destroyed other than the person to whom the new certificate or certificates were so issued as aforesaid, then said chancellor or justice may, in their discretion, make an order adjudicating that the holder of the new certificate or certificates was the owner of the old certificate so lost or destroyed, and decreeing that said old certificates shall be of no further validity or effect whatever, and shall be absolutely void, and that no person shall thereafter have or maintain any right of action thereunder, in any way thereafter, providing in such order for the protection of the rights of infants or persons under legal disabilities (if any such appear by the testimony to exist); and such order so made shall be filed in the office of the secretary of state; and upon such filing, such order shall be notice to all persons, and all persons shall be bound thereby, but any bona fide holder of the stock represented by such lost or destroyed certificate or certificates may at any time within sixty days after the date of such filing in the office of the secretary of state, apply to have said order vacated, and thereupon such proceedings shall be had by said chancellor or justice for a rehearing as they shall direct; such order shall not affect the rights of any bona fide holder of stock who has acquired the same after its loss by the rightful owner thereof and prior to the expiration of sixty days from the date of the filing of such order as aforesaid in the office of the secretary of state.

Final order to be filed in office of secretary of state.

**328. SEC. 3.** That whenever any corporation, incorporated under the laws of this state, shall have refused to issue a new certificate of stock in the place of one theretofore issued by it, but which, it is alleged, has been lost or destroyed, the owner of such lost or destroyed certificate, or his legal representatives, may apply to the chancellor or any justice of the supreme court for an order requiring such corporation to show cause why it should not be required to issue a new certificate of stock in the place of the one so lost or destroyed; such application shall be by petition, duly verified by the owner, or his legal representatives, in which shall be stated the name of the corporation; the number and date of the certificate, if known; the number of shares of stock named therein and to whom issued, and as particular a statement of the circumstances attending such loss or destruction as such petitioner shall be able to give; upon presentation of such petition the said chancellor or justice shall make an order requiring the said corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in the place of the one described in the said petition; a copy of the said petition and of the said order shall be served upon the president, or other head of such corporation, or upon the cashier, or secretary or treasurer thereof, personally, at least ten days before the time designated in said order for showing cause. [See Sec. 248, *ante.*]

Proceedings when corporation refuses to issue new certificate.

**329. SEC. 4.** That at the time and place specified in said order (provided for in section three), and upon proof of the due service thereof, the said chancellor or justice shall proceed in a summary manner and in such mode as he may deem advisable, to inquire into the truth of the facts stated in the said petition, and shall hear such proofs and allegations as may be offered by or in behalf of the petitioner, or by or in behalf of the said corporation, relative to the subject-matter of such inquiry, and if, upon such inquiry, the chancellor or justice shall be satisfied that such petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the said petition, and that the certificate therefor has been lost or destroyed, and cannot, after due diligence, be found, and no sufficient cause has been assigned why a new certificate should not be issued in place thereof, said chancellor or justice shall make an order requiring the said corporation, within such time as shall be therein designated, to issue and deliver to such petitioner a new certificate for the number of shares of the capital stock of the said corporation which shall be specified in such order as owned by such petitioner, and the certificate for which shall have been lost or destroyed; in making such order the said chancellor or justice shall direct that the said petitioner deposit such security, or file such bond, in such form and with such sureties as to the

Order requiring new certificate to be made.

Security to be given.

chancellor or justice shall appear sufficient to indemnify any person, other than the petitioner, who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen, and to indemnify the said corporation against all loss or damage which it shall sustain by reason of claims made against it by other persons upon account of such lost, stolen or destroyed certificate; and the chancellor or justice may also direct the publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person or persons who shall thereafter claim any rights under such certificate, so alleged to have been lost or destroyed, shall have recourse to the said indemnity, and the said corporation shall be discharged of and from all liability to such person or persons by reason of compliance of the order aforesaid; obedience to such order may be enforced by said chancellor or justice by attachment against the officer or officers of such corporation, upon proof of his or their refusal to comply with the same. [See Sec. 249, *ante*.]

**An act relating to the consolidation of corporations authorized to establish storehouses, piers or docks or to maintain yards and buildings for the keeping and accommodation of live stock.**

P. L. 1883, p. 242.

Certain corporations may consolidate.

Approved March 23, 1883.

**330. SEC. 1.** That it shall be lawful for any corporation or corporations of this state, created to establish ferries, storehouses, piers or docks, or to maintain yards and buildings for the keeping and accommodation of live stock, to consolidate and merge their corporate rights, franchises, powers and privileges into any one of such corporations so authorized as aforesaid, so that by virtue of this act such corporations shall be consolidated and merged, and so that all the property, rights, franchises and privileges, by law vested in such corporations so merged, shall be transferred to and vested in the corporation into which such consolidation and merger shall be made. [See Sec. 346 and 373, *post*.]

Conditions and restrictions.

Shall enter into joint agreement.

**331. SEC. 2.** That such consolidation and merger shall be made under the following conditions and restrictions, to wit:

I. The directors or managers of each corporation so authorized as aforesaid shall enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of said corporations, and of such merger, prescribing the terms and conditions thereof, and the manner of converting the capital stock of the said corporation or corporations so to be merged into the stock or obligations of the corporation into which such merger shall be made, and all other provisions as they shall deem necessary to perfect the said consolidation and merger.

Agreement to be submitted to stockholders of each corporation.

II. Said agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof, called separately, of the time, place and object of which meeting due notice shall be given by publication, once a week, for two successive weeks before said meeting, in one newspaper published in each of the counties in which such corporations, respectively, are authorized to hold real estate; and at said meeting the said agreement shall be considered, and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if a majority of all the votes cast at each of such meetings shall be in favor of said agreement, consolidation and merger, then that fact shall be certified by the secretary of such corporation, and said certificate, together with a copy of the agreement, shall be filed in the office of the secretary of state, whereupon the said agreement shall be deemed and taken to be the act of consolidation and merger of said corporation; but nevertheless, if any stockholder of either of the companies so consolidated and merged, who shall not have given assent thereto, and who shall be dissatisfied therewith, and shall signify his or her dissent by notice in writing, served on the president, secretary or treasurer of the company into which such consolidation and merger shall have been made, at any time within three months after the vote for the same, he or she shall receive from the company into which the consolidation and

Certificate, &c., to be filed in office of secretary of state.

Proceedings when stockholder does not assent to consolidation.

merger shall have been made, the fair value of his or her stock at the time when the vote for the agreement of consolidation and merger was so cast as aforesaid, which, if not agreed on, shall be appraised by three disinterested persons, resident in this state, to be appointed by the chancellor or supreme court of this state, whose duty it shall be to make such appointment on reasonable notice, on the application of either party; and thereupon, and upon the payment of the value so ascertained, such stockholder shall deliver up his or her certificate of stock, if any such has been issued; and the said company, into which the consolidation and merger shall have been made, may re-issue the same amount of stock to any other person or persons.

**332. SEC. 3.** That upon the filing of the said certificate and copy of agreement in the office of the secretary of the state, the said merger shall be deemed to have taken place, and the said corporations to be one corporation, possessing all the rights, privileges and franchises theretofore vested in either of them; and all the property, real, personal and mixed, and debts due, and rights of action, shall be deemed and taken to be transferred to and vested in the corporation into which such merger shall have been made, without further act or deed; and all property, all rights of way, and all other interests, shall be as effectually the property of such company or corporation into which such merger shall have been made, as they were of either of the former corporations, parties to said agreement; *provided*, that all rights of creditors, and all liens upon the property of either of said corporations shall continue unimpaired, and the respective corporations shall be deemed to be in existence to preserve the same, and all debts, duties and liabilities of either of said corporations shall thenceforth attach to the consolidated corporation, and may be enforced against it to the same effect and by the same process as if said debts, duties and liabilities had been contracted by it; *and provided further*, that in case of any differences or inconsistencies of any nature between the acts regulating said companies respectively, then the said consolidated corporation shall in all respects be regulated by the laws then governing and applicable to the corporation into which such merger shall have been made; *and provided further*, that a certified copy of the said certificate and copy of agreements so to be filed in the office of the secretary of state, shall be evidence of the lawful holding and action of such meeting and of the consolidation of such corporations and of the said merger.

**333. SEC. 4.** That whenever any consolidation and merger shall have taken place, under and by virtue of this act, between any two or more corporations so authorized as aforesaid, the corporation into which such merger shall be made, shall have power and authority to make such increase in its capital stock and shares as may be expedient in carrying such consolidation and merger into effect.

**334. SEC. 5.** That whenever any consolidation and merger shall have taken place, under and by virtue of this act, between any two or more corporations so authorized as aforesaid, the corporation into which such merger shall be made, shall have the power and authority to issue bonds, either registered or coupon, and to create a mortgage or mortgages on a portion, or on all of its property, real and personal, and also of all its rights, privileges and franchises, to trustees, to secure the payment of the bonds so issued, and to give and exchange the said bonds for the debts and obligations of the respective corporations so consolidated and merged; *provided*, that said bonds shall not bear a rate of interest of more than seven per centum per annum; the bonds so issued may be given in lieu, exchange and in satisfaction of and for all bonds, mortgages or other debts, or claims, or stocks, or obligations against the corporations thus consolidated and merged, upon such terms as may be agreed upon by and between the holders of such debts or claims and the corporation into which such consolidation and merger has taken place; *provided always*, that all real estate and property of said company and its successors shall be subject to taxation where located, the same as the property of individuals, and any power exercised under this act is and shall be upon the express provision that such property shall be so subject to taxation.

Merger shall be deemed to have taken place when certificate is filed in office of secretary of state.

Proviso.

Proviso.

Proviso.

May increase capital stock to carry consolidation into effect.

Consolidated corporation may issue bonds and secure same by mortgage.

Proviso.

Proviso.

An act to provide for agreements between creditors and insolvent companies.

P. L. 1884, p. 342.

Insolvent manufacturing companies may enter into agreement with creditors for settlement.

982-335  
R.96-324

Commissioners may be appointed to ascertain value of dissenting creditors' claims.

Appeal from decision of commissioners.

Approved May 14, 1884.

**335. SEC. 1.** That whenever any company organized under any law of this state, and engaged in manufacturing within this state, shall have been or shall be declared to be insolvent, and a receiver shall have been or shall be appointed, and no settlement shall have been made for three years thereafter, it shall be lawful for such company to enter into an agreement with its creditors for a settlement, with the consent and approval of the chancellor, and after such agreement shall have been signed by not less than two-thirds in amount of the holders of the valid claims against such company, said agreement shall be binding upon all of the creditors of such company the same as if they had all signed, to the end that the receiver may be discharged by the chancellor, and the effects and property of the company restored to its own possession.

**336. SEC. 2.** That any creditor who shall refuse to sign such agreement may, upon notice given to such company within sixty days from the discharge of the receiver, apply to the chancellor for an assessment of the value of the claim of such creditor, and the chancellor may appoint three commissioners to determine the actual value of the property of such company while the same was in the hands of the receiver, and the proportionate value of the claim of such creditor, and the value or proportionate amount of such claim shall be paid by the company in discharge of the debt, in order that such claimant may receive the full proportion that would have been realized if a sale of the property had been ordered by the court to be made by the receiver.

**337. SEC. 3.** That either party may have a right to appeal from the decision of the commissioners, when made under the second section of this act, to the chancellor, who shall hear and determine the same, or, at the request of either party, an issue may be framed for the trial of the questions submitted to said commissioners before the circuit court of any county of this state, and the chancellor may order that such further proceedings shall be had as may be in accordance with the practice of the court of chancery and the courts of law in the trial of feigned issues out of the court of chancery.

An act to authorize the compromise and discharge of claims against one or more of several persons liable as sureties or for certain acts of negligence.

P. L. 1885, p. 219.

Receiver may compromise with directors or persons liable for default, &c.

Approved April 7, 1885.

**338. SEC. 1.** That in any case where several trustees, managers or directors of any insolvent banking or other corporation, now are or shall be liable to action at law or in equity for unlawfully making any dividend or dividing, withdrawing or reducing capital, or for any default, negligence or malfeasance in the discharge of their duties, and in any case where several sureties on any bond for the performance of any duty or employment now are or shall be liable as aforesaid for any default, negligence or malfeasance of their principal, the receiver or trustees or such person, corporation or officer as may be empowered to bring such action on such bond, may settle and compromise with, release and discharge any one or more of the parties so liable, and such settlement, compromise, release or discharge shall not affect or constitute any defense to any such action or right of action at law or in equity against the other parties so liable; but in such case the recovery against those not so settled with and discharged, or any of them, shall not exceed the proportion to which they or he would have been bound according to the rules of equity if no such settlement and discharge had been made.

**339. SEC. 2.** That when any such settlement shall be made pending suit, it may be made known to the court by pleading and moved at the trial or hearing, and judgment or decree may be rendered against the

When settlement made pending suit, how made known to court.

other defendants or defendant not so settled with for the proper amount for which they or he may be found liable.

**340. SEC. 3.** That no compromise or settlement shall be made as aforesaid without the approval first had and obtained from the court out of which such receiver or trustee was appointed.

Not to be made without approval of court.

**An act relative to the filing of certificates of incorporation.**

Passed April 6, 1886.

P. L. 1886, p. 210.

**341. SEC. 1.** That in case any certificate of incorporation of any corporation organized under the act entitled "An act concerning corporations," [Revision], approved April seventh, one thousand eight hundred and seventy-five, and the acts amendatory thereof, shall have been heretofore or is hereafter lost after the same has been recorded with the clerk of the county where its principal place of business is located, and before it has been filed with the secretary of state, then in that case it shall be lawful for one or more stockholders of such corporation to cause a copy of the record of the original certificate of incorporation in said county clerk's office, certified by the clerk of the county in which it is recorded, to be filed with the secretary of state as of the date when it was recorded in said county clerk's office; and the secretary of state is hereby required to file the said certificate in his office as of the date when it was recorded with the clerk of the county in which the principal place of business of such corporation is situated, and to charge the same fees for such filing as was required by law at the time for which such certificate shall be filed.

When original certificate of incorporation is lost a certified copy of record may be filed in office of secretary of state.

983-341  
R96-324

**342. SEC. 2.** That for all intents and purposes any such corporation shall be deemed to have been incorporated as of the date when the original certificate of incorporation was recorded with the clerk of the county in which said corporation's principal office or place of business is located.

Corporation deemed incorporated when certificate is recorded by county clerk.

**An act relative to the titles of corporations.**

Approved March 7, 1888.

P. L. 1888, p. 152.

**343. SEC. 1.** That no corporation to be organized under the laws of this state shall assume or use a name or title already in use by another corporation so organized, or so nearly similar to the name or title of any other corporation of this state as to lead to uncertainty and confusion.

No corporation to assume name of any other corporation.

983-343  
R96-324

**344. SEC. 2.** That this act shall take effect immediately, and that all acts and parts of acts inconsistent herewith be and the same are hereby repealed.

Repealer.

**An act concerning corporations of this state, and of other states, doing business in this state.**

Approved April 4, 1888.

P. L. 1888, p. 385.

**345. SEC. 1.** That it shall be lawful for any corporation of this state, or of any other state, doing business in this state and authorized by law to own and hold shares of stock and bonds of corporations of other states, to own and hold and dispose thereof in the same manner and with all the rights, powers and privileges of individual owners of shares of the capital stock and bonds or other evidences of indebtedness of corporations of this state. [See Sec. 260, *ante*.]

Corporations may own and dispose of stocks and bonds of corporations of other states.

983-345  
R96-324

An act relating to the consolidation of corporations formed under the act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts amending and supplementing the same, for the purposes of the improvement and sale of lands, the construction, maintenance and operation of hotels and carrying on the business of an innkeeper, and the transportation of goods, merchandise or passengers upon land or water.

P. L. 1888, p. 441.

Certain corporations may consolidate and merge into one corporation.

984-946  
R96-324

Consolidation and merger to be made under certain conditions.

Question of consolidation to be submitted to stockholders.

Approved April 17, 1888.

**346.** SEC. 1. That it shall and may be lawful for any corporation or corporations of this state, formed under the provisions of an act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts supplementing and amending the same, for all or any of the following purposes: the improvement and sale of lands, the construction, maintenance and operation of hotels and carrying on the business of an innkeeper, and the transportation of goods, merchandise or passengers upon land or water, having their principal office in, or carrying on business, in whole or in part, in the same county, at any time, to consolidate and merge such companies and their corporate rights, franchises, powers and privileges into a single corporation in the manner following, so that by virtue of this act such corporations shall be consolidated and merged into one company and so that all the property, rights, franchises and privileges by law vested in such corporations so merged shall be transferred to and vested in the corporation into which such consolidation and merger shall be made. (a) [See Sec. 330, *ante*, and Sec. 373, *post*.]

**347.** SEC. 2. That such consolidation and merger shall be made under the following conditions and restrictions, to wit: a majority of the directors of any two or more of such corporations may enter into an agreement under their respective corporate seals, for the consolidation and merger of the said corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the place or places in this state or elsewhere where the business of the said company is to be conducted, the number of directors thereof, the amount of the capital stock of such company, and the number of shares into which the same shall be divided and the par value of each share, and the periods during which such company shall continue, not exceeding fifty years, and the manner of converting the capital stock of the said corporation or corporations so to be merged, into the stock or obligations of the new company into which such merger shall be made, and all other provisions as they shall deem necessary to perfect the said consolidation and merger; and it shall and may be lawful for said agreement of consolidation to provide that such merger of any one or more of said companies so desired to be consolidated may take place by the new company purchasing and holding stock of said old company and issuing its stock, as for property purchased in lieu thereof, when, and in that event, the said old company whose stock is so purchased, shall remain in existence and no merger of its property or franchise into the new company shall take place, anything herein contained to the contrary in anywise notwithstanding.

**348.** SEC. 3. That such agreement of the directors shall not be deemed to be the agreement of the said corporations so proposing to consolidate until after it has been submitted to the stockholders of each of said corporations respectively, separately, at a meeting thereof, to be called upon a notice of at least fourteen days, specifying the time and place of such meeting, and that its object is to consolidate said companies into said new company, to be addressed to each of such stockholders at his last known place of residence known to the secretary, and deposited in the post-office, the affidavit of the secretary to be evidence of said mailing, said notice of meeting of each corporation to be published in a newspaper pub-

(a) See *Rabe v. Dunlap*, 6 Dick. 40, referring to the rights of the holders of stock in a company consolidated with other corporations under the authority of the above act.

lished in the county where said corporation has its principal office, at least one week before said meeting of said company, and has been sanctioned and approved by such stockholders by a majority vote in amount of the stockholders present at such meetings respectively, voting by ballot in regard to such agreement, either in person or by proxy, each share of such capital stock being entitled to one vote, and when such agreement of the directors has been sanctioned and approved by each of the meetings of the respective stockholders separately, after being submitted to the meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said several corporations, and a sworn copy of the notice of meeting, proof of service and proceedings of such meeting, made by the presidents or secretaries thereof respectively, and attached to the said agreement, shall be evidence of the notice, service of notice, holding and action of such meetings in the premises.

**349. SEC. 4.** That upon filing said agreement with said sworn copy of notice, proof of service and proceedings of such meeting attached, or a duplicate or counterpart thereof, in the office of the secretary of state, the said corporation shall, except as herein stated, be merged in the new corporation provided for in the said agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein, and the said new company so formed shall have all the powers conferred by the act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts supplementing and amending the same, but nevertheless, if any stockholder shall, at said meeting of stockholders, or within twenty days thereafter, object to said consolidation and demand payment for his stock, and serve a notice in writing to that effect upon the president, secretary or treasurer of the new company within ten days after they are elected, he or she shall receive from the new company the fair value of his or her stock at the time when the vote for the agreement of consolidation and merger was so cast as aforesaid, which, if not agreed on, shall be appraised by three disinterested persons to be appointed by the chancellor or a justice of the supreme court of this state, whose duty it shall be to make such appointment on reasonable notice, on the application of either party; and thereupon and upon the payment of the value so ascertained, such stockholder shall deliver up his or her certificate of stock, if any such has been issued, and the said new company into which the consolidation and merger shall have been made may issue the same amount of its own stock to any person or persons.

**350. SEC. 5.** That upon the filing of the said agreement with said sworn copy of notice, proof of service and proceedings of such meetings attached, or a duplicate or counterpart thereof, in the office of the secretary of state, all and singular the rights, franchises and interests of the said several corporations so consolidated in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed to be transferred to and vested in such new corporation without any other deed or transfer; such new corporation shall be deemed to possess all the rights, privileges, property and franchises theretofore vested in said former companies, in the same manner and to the same extent as if the said several corporations so consolidated should have continued to retain the title and transact the business of such corporations, and the title and real estate acquired by either of the said old corporations shall not be deemed to revert or be impaired by means of such act of consolidation or anything relating thereto; *provided*, that all rights and liens of the creditors of each of said old companies against the property of said company so purchased by the new company shall remain and continue unimpaired, and the respective corporations as to this shall be deemed to be in existence to preserve the same until the same are fully paid and satisfied, and no suit, action or other proceeding now pending before any court or tribunal in which any of said companies that may be so consolidated is a party, shall be deemed to have abated or discontinued by reason of any such agreement

When agreement, &c., filed in office of secretary of state, corporation merged.

Powers of new company.

Stockholders objecting to consolidation, to be paid fair value of stock.

When agreement filed, rights, franchises, &c., vested in new corporation.

Proviso.

## CORPORATIONS.

of consolidation; but the same may be prosecuted or defended in the same manner as if the said corporation had not entered into such agreement of consolidation, or the said new corporation may, on its application, be substituted as a party in the place of any corporation of which it shall be composed, by order of the court in which such action, suit or proceeding may be pending.

An act to authorize corporations formed under the act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts amending and supplementing the same, for the purpose of the improvement and sale of lands, or the building, operation and maintenance of hotels and carrying on the business of an innkeeper, or of the transportation of goods, merchandise or passengers upon land or water, to purchase and hold stock in any one or more of said companies in certain cases.

P. L. 1888, p. 445.

Certain corporations may purchase stock of other corporations and issue their own stock therefor.

986-351  
R96-324

Proviso.  
Proviso.

**351. SEC. 1.** That it shall and may be lawful for any company heretofore or hereafter organized under the provisions of an act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts supplementing and amending the same, for the purposes of the improvement and sale of land, or the building, operation and maintenance of hotels and the carrying on the business of an innkeeper, or of the transportation of goods, merchandise or passengers upon land or water, to purchase and hold stock in the capital of any one or more corporations formed under said acts for either of the said purposes, and issue its own stock as for property purchased therefor; *provided*, that said corporations shall have their principal office in, or be carrying on business, in whole or in part, in the same county; *and further provided*, that the said business of transportation carried on by said transportation company, may be incidental or necessary to the furnishing of proper facilities of travel to and from the lands or hotel of said other company or companies to the nearest points of established railroad transportation.

Approved April 17, 1888.

An act to authorize water companies in this state, having a less capital stock than twenty thousand dollars, to increase their capital stock to fifty thousand dollars.

P. L. 1889, p. 69.

Certain water companies may increase capital stock.

Approved March 19, 1889.

**352. SEC. 1.** That all water companies in this state, having a less capital stock than twenty thousand dollars, be authorized to increase their capital stock to an amount not exceeding fifty thousand dollars, by and with the consent of three-fourths of the stockholders of such company or companies, upon filing certificate of such action in the office of the secretary of state.

An act concerning corporations.

P. L. 1889, p. 155.

Repealer.

**353. SEC. 1.** [Amended by Sec. 355, *post*.]  
**354. SEC. 2.** That all acts and parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed, and this act shall take effect immediately.

Approved April 3, 1889.

Amendatory act.

P. L. 1895, p. 607.

Corporations may increase capital stock on filing certificate.

**355. SEC. 1.** That section one of an act entitled "An act concerning corporations," approved April third, one thousand eight hundred and eighty-nine [see Sec. 353, *ante*], be and the same is hereby amended so as to read as follows:

Approved March 22, 1895

[That it shall be lawful for any corporation organized or which may hereafter be organized under any law of this state, excepting always railroad and canal corporations, to increase its capital stock to such an amount

986-353  
R96-325

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as may be determined by its board of directors; *provided*, that such corporation shall, previous to the issuing of any share of stock representing the increase of its capital stock by this section authorized, file in the department of state a certificate, signed by its president, under its corporate seal, attested by its secretary, setting forth the amount of the proposed increase of capital and the number of shares into which the same is to be divided and the assent in writing to said proposed increase of stockholders owning at least two-thirds in value of the existing capital stock.] [See Secs. 175 and 240, *ante*.]

**356.** SEC. 2. That it shall be lawful for the board of directors or trustees or managers of any such corporation having outstanding preferred or guaranteed stock to issue common stock to an amount equaling the total of said preferred and guaranteed stock; *provided*, that such issue of common stock shall in nowise prejudice or impair the rights of owners of such preferred or guaranteed stock; *and provided further*, that before the issue of any stock by this section authorized a certificate, under the seal of the corporation, setting forth the amount and date of such increase, shall be filed in the department of state.

**357.** SEC. 3. That the issues of capital stock hereby authorized shall be made from time to time in such sums, in such manner and on such terms and conditions as the board of directors, trustees or managers of the corporation may determine.

**358.** SEC. 4. That this act shall take effect immediately, and that all acts and parts of acts inconsistent herewith be and the same are hereby repealed.

**An act to provide a method for appointing commissioners in the places of other commissioners who have deceased or who shall fail to act in certain cases touching the organization of companies.**

Approved May 7, 1889. P. L. 1889, p. 366.

**359.** SEC. 1. That in all cases where acts of incorporation have heretofore been passed, in which certain commissioners are named to receive subscriptions to the capital stock of any company, and to do certain things mentioned in said acts of incorporation, and where any of said commissioners shall have deceased before the organization of said company or companies, or shall fail, for any reason, to act with a majority of the surviving commissioners named in said acts, respectively, when required to organize any of said companies, that a majority of said commissioners who shall attend the organization of said company or companies shall have the power to elect other commissioners to take the places of those who have deceased, or who shall fail to attend the first meeting of said commissioners, upon due notice, and to perform all of the duties which would have devolved upon the said deceased or absent commissioners in regard to the organization of said company or companies.

**An act concerning corporations.**

Passed May 23, 1890. P. L. 1890, p. 344.

**360.** SEC. 1. That in case any association, corporation or company hitherto created under or by virtue of any law of this state, shall have deemed it advisable to suspend its ordinary business (except in case of insolvency or for want of funds to carry on the same), and is not now transacting business, or may have omitted to file some of the reports or statements of its condition or management required by law to be filed, such corporation or company shall not be deemed dissolved, nor liable to be dissolved, by reason thereof; *provided*, that such corporation or company has maintained and still continues its corporate organization and has an appointed place or office in this state where its books of account, and stock and transfer-books, are kept in charge of the cashier, secretary or other appointed officer of such company, and that a majority of its stock is held by residents of this state; *and provided further*, that such corporation or company shall, on resuming business, pay into the department of state all

Proviso.

Directors may issue common stock for preferred stock.

Proviso.

Proviso.

Directors may control issue.

Repealer.

A majority of commissioners to receive subscriptions to capital stock may appoint others in place of those who have deceased or fail to act.

Certain corporations not deemed dissolved on failure to file reports or statements.

Proviso.

Proviso.

fees and taxes remaining due and unpaid, and shall file therein a certificate, in the form prescribed by law, giving a full statement of its condition and affairs, and shall pay to the secretary of state, for the use of the state, the sum of money provided by law to be paid on the filing of such certificate.

Act not to apply to certain corporations.

**361. SEC. 2.** That this act shall not apply to any corporation or company against which any legal proceedings for dissolution are pending.

**An act to provide a method for appointing commissioners in the place of other commissioners who have deceased or who shall fail to act in certain cases touching the organization of companies, and providing for the organization of companies in certain cases.**

P. L. 1890, p. 415.

Approved June 6, 1890.

Powers of commissioners authorized to receive subscriptions to capital stock where records of organization are lost.

**362. SEC. 1.** That in all cases where acts of incorporation have heretofore been passed, in which certain commissioners therein named, or a majority of them, are authorized to receive subscriptions to the capital stock of any company, and to do certain things mentioned in said acts of incorporation, and where a majority of said commissioners are now living, and it appears by a newspaper published in the county where the principal place of business of said company is to be situated, that the company has heretofore organized, but the records of such organization, if it were organized, shall, by affidavit of any competent person, appear to have been lost or destroyed, that a majority of the survivors of the persons named as commissioners in any such act or acts of incorporation shall have the power and authority to receive subscriptions to the capital stock of such company or companies, and to perform all the duties which would have devolved upon the incorporators named in said act in regard to the organization of such company or companies, the same as if the commissioners had regularly acted under their charter.

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**An act to authorize corporations formed for the purpose of constructing or repairing either railroads, water, gas, or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any or all such works of internal improvement or public use or utility, to subscribe for, take, pay for in property, materials or services, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works.**

P. L. 1891, p. 329.

Approved April 6, 1891.

Certain corporations may hold stock or bonds of other corporations.

**363. SEC. 1.** That in all cases where corporations have heretofore been or are hereafter incorporated under the provisions of an act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, having for their general object or purpose the building, constructing or repairing of railroads, water, gas, or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any or all such works of internal improvement or public use or utility, it shall and may be lawful for such corporations to subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation or corporations formed for the purpose of constructing, maintaining and operating any such public works, with the same rights and privileges as individuals would be entitled to in like case; and it shall and may be lawful for the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work or works of the character and description aforesaid to accept in payment of any such subscription or purchase, property real or personal necessary for the purposes of such corporation or work, labor and services performed or materials furnished to or for such corporation for the uses and purposes thereof to the amount of the value thereof, and from time to time to issue upon any such subscription or purchase in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any

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part of such subscription or purchase, 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 any act and said stock shall have legibly stamped upon the face thereof "issued for property purchased," and 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.

**364.** SEC. 2. That all acts and parts of acts, whether general, special, local or otherwise in any manner inconsistent with or repugnant to the provisions of this act be and the same hereby are repealed. Repealer.

**An act relative to the residence of directors of corporations in this state.**

Approved March 10, 1892. P. L. 1892, p. 90.

**365.** SEC. 1. That it shall not hereafter be necessary for more than one director of any company, corporation or association incorporated under the laws of this state by special or general acts of incorporation to reside in New Jersey. Only one director of any corporation need reside within the state.

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**An act concerning corporations.**

Approved March 10, 1892. P. L. 1892, p. 90.

**366.** SEC. 1. That it shall be lawful for any corporation of this state, incorporated under any general or special act, to carry on and conduct its business outside of the state of New Jersey, although not provided for in the act or certificate of incorporation of any such corporation; *provided, however,* such corporation shall have an office in the state of New Jersey. Corporations may do business outside the state.

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**367.** SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately. Repealer.

**An act to authorize the increasing of the number of managers or directors of corporations to provide for the support and maintenance of supernumerary or superannuated ministers of the gospel or the widows and orphans of deceased ministers of the gospel, or to provide for both or any of such objects.**

Approved March 22, 1892. P. L. 1892, p. 165.

**368.** SEC. 1. That it shall and may be lawful for the body in which the power of election or appointment of the managers or directors of any corporation of this state, the object of which is to provide for the support and maintenance of supernumerary or superannuated ministers of the gospel, or to provide for the support of the widows and orphans of deceased ministers of the gospel, or for both or any of those objects is vested by law, whether it be in the members of the corporation itself or in any annual conference or other ecclesiastical body, to add to the number of such managers or directors as specified in the law now governing the corporation, so that the whole number of managers or directors shall not exceed fifteen, and if such increase be made, to provide that some of such managers or directors, not to exceed two-fifths of the whole number as increased, shall be laymen, residents of this state and members of the church to which the appointing or electing body belongs or is attached; and it shall also be lawful for said appointing or electing body to fix the term of office of the managers or directors so added; no such term, however, to exceed three years. Directors of corporations for the support of superannuated ministers may be increased.

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An act to empower any manufacturing company incorporated by special act of incorporation of this state to exchange any portion of its paid-up stock for assessable shares and for preferred shares and common shares in lieu thereof.

P. L. 1892, p. 413.

Manufacturing company incorporated by special act may exchange any portion of its paid-up stock for assessable shares.

Issue of preferred shares.

Issue of shares of common stock.

Proviso.

Proviso.

Certificate to be filed in office of secretary of state.

Approved April 8, 1892.

**369. SEC. 1.** That it shall and may be lawful for any manufacturing company duly incorporated by special act of incorporation of this state, to exchange any portion of its full-paid capital stock, by and with the consent of the holders thereof, for assessable shares, which shall acknowledge the payment in the aggregate of the same amount of money as may be represented by the full-paid shares so surrendered; and the directors of the said company may call from time to time for installments on the said assessable shares until the same shall be fully paid, and the directors of any such company may, with the consent of all the stockholders thereof first had and obtained in writing, issue any portion of its capital stock in preferred shares bearing a fixed rate of dividend not exceeding eight per centum per annum, which shares shall be subjected to redemption and retirement upon such conditions as may be expressed in the certificates of said stock; and the said directors may use the said preferred shares at par, or the proceeds thereof, to provide additional capital or to pay the debts of the said corporation; it shall be lawful for the said directors in their discretion to make an issue of shares of common stock equal in number to the preferred shares so issued, which common stock shall be subject to assessment from time to time by the directors of the said company for the redemption and retirement of the said preferred stock in accordance with the provisions thereof or for the general uses of the said company; *provided always*, that any stock of any company which may at any time have been retired or surrendered may be re-issued at par for money or in payment of debts; *and provided further*, that at no time shall the total amount of the capital stock outstanding at any one time exceed the amount authorized by law.

**370. SEC. 2.** That whenever any additional stock shall be issued, or any stock shall be retired or re-issued, a certificate thereof shall be filed in the office of the secretary of state, showing the total amount of stock outstanding at the date of the filing of such certificate.

An act to secure to laborers and workmen in the employ of corporations a prior lien for wages in cases of insolvency.

P. L. 1892, p. 426.

Laborers to have prior lien on assets of insolvent corporation.

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Such lien to be subject to mortgage liens.

Approved April 8, 1892.

**371. SEC. 1.** That in case of the insolvency of any corporation the laborers and workmen and all persons doing labor or service of whatever character in the regular employ of such corporation shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all such labor, work and services as may have been done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation. (a) [See Sec. 178, *ante*.]

**372. SEC. 2.** That such lien shall be prior to any and all other liens that can or may be acquired upon or against such assets, except the lien and incumbrance of a chattel mortgage or chattel mortgages thereon, and which mortgage or mortgages shall have been actually given and recorded (or filed for record) more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporations, and except the lien and incumbrance of such chattel mortgage or chattel mortgages thereon as shall have been actually given within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent cor-

(a) This act, giving workmen in the employ of corporations a lien for two months' wages in case of insolvency, supersedes and repeals the prior statutes on that subject. *Mersereau v Mersereau Co.*, 6 Dick. 382.

poration for money loaned or for goods purchased within said period of two months; and also except as against the lien and incumbrance of any and all mortgages given upon the lands and real estate of such insolvent corporation.

An act to authorize corporations incorporated under the laws of this state to merge and consolidate their corporate franchises and other property.

Approved March 8, 1893.

P. L. 1893, p. 121.

**373. SEC. 1.** That any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or a similar nature, may merge or consolidate such corporations into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation. [See Secs. 330 and 346, *ante*.]

Corporations organized under the laws of this state may merge and consolidate.

**374. SEC. 2.** That the said consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereafter mentioned and contained, that is to say:

How the consolidation or merger shall be made.

I. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors shall be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, either common or preferred, and the amount of par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation how and when the directors and officers shall be chosen or appointed; together with all such other provisions and details as such first-mentioned directors shall deem necessary to perfect the merger or consolidation of said corporation.

Mode of proceeding for the merger and consolidation of corporations.

II. The said agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration; and twenty days' notice of the time, place and object of such meeting shall be mailed to the last-known post-office address of each of such stockholders respectively; and, at the said meetings of stockholders, the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

Agreement shall be submitted to the stockholders.

Notice of the time, &c., of meeting.

Votes of the holders of two-thirds of all the capital stock required.

Agreement to be filed in office of secretary of state.

**375. SEC. 3.** That upon the making and perfecting the said agreement and act of merger or consolidation, as provided in the preceding section, and filing the same in the office of the secretary of state, as aforesaid, the several corporations, parties thereto, shall be deemed and taken to be one

When consolidation shall be effected.

corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

Franchises, &c.,  
to be vested in  
consolidated  
company.

**376. SEC. 4.** That upon the consummation of said act of merger or consolidation, as aforesaid, all and singular, the rights, privileges, powers and franchises of each of said corporations, parties to the same, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be deemed and taken without further act or deed to be transferred to and vested in the corporation into which such merger or consolidation shall have been made; and all property rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the said new or consolidated corporation as they were of the several and respective former corporations, parties to said agreement; and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not be deemed to revert or be in any way impaired by reason of this act; *provided, however,* that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said new or consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Proviso.

Proceedings for  
protection of dis-  
senting stock-  
holder.

**377. SEC. 5.** That where the corporation or corporations authorized to merge or consolidate by the first section of this act, shall have the right to exercise any franchise, for public use, then if any stockholder of any corporation hereby authorized to be merged or consolidated with any other or others, not voting in favor of such agreement, shall dissent therefrom and shall refuse or neglect to convert his or her stock into the stock of such new or consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such new or consolidated corporation may, at any time within thirty days after the adoption and filing of the said agreement of consolidation by the stockholders as in this act provided, apply by petition to the court of common pleas of the county in which the chief office of the corporation whose stockholders shall so dissent or neglect, was or is located, or to a judge of said court in vacation (if no such court sits within said period), on reasonable notice to be prescribed by said court or judge to said new or consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of three disinterested appraisers to appraise the full market value of his or her stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award (or that of a majority of them), when confirmed by the said court, shall be final and conclusive on all parties, and said new or consolidated corporation shall pay to such stockholder the value of his or her stock as aforesaid; and on receiving such payment, or on a tender of such value, or in case of any legal disability or absence from the state, on the payment of such value into said court, said stockholder shall transfer his or her said stock to the said new or consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders thereof; and in case the value of said stock as aforesaid is not so paid or tendered within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in manner aforesaid unto said stockholder or said new or consolidated corporation, the amount of the value of

The award, when  
confirmed by said  
court, shall be  
final and conclu-  
sive on all parties.

The value of said  
stock, if not paid,  
shall be a judg-  
ment against said  
corporation.

said stock, so found and confirmed, shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable.

**378. SEC. 6.** That in all cases of merger or consolidation of two or more corporations under and by virtue of the provisions of this act, the said new or consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; *provided*, such bonds shall not bear a greater rate of interest than six per centum per annum; and that it shall also be lawful for said new or consolidated corporation to purchase, acquire, hold and dispose of the stocks of other corporations of this state or elsewhere, and to exercise in respect thereto all the powers of stockholders thereof; and that it shall also be lawful for said new or consolidated corporation to issue capital stock, either common or preferred or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in said agreement of merger or consolidation; which agreement may also provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporations conveyed to the new or consolidated corporation, as well as upon money capital paid in, and may fix the amount of such preferred stock.

New or consolidated corporation authorized to issue bonds, &c.

Proviso.

**379. SEC. 7.** That the provisions of this act shall not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands or any estates or interests in lands), banking company, savings bank or other corporation intended to derive profit from the loan and use of money, turnpike company or canal company.

To what corporations act shall not apply.

**380. SEC. 8.** That all acts and parts of acts inconsistent herewith, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

#### An act relative to corporations.

Approved May 15, 1894. P. L. 1894, p. 346.

**381. SEC. 1.** [Superseded by Sec. 387, *post*.]

**382. SEC. 2.** [Superseded by Sec. 388, *post*.]

**383. SEC. 3.** [Amended by Sec. 385, *post*.]

**384. SEC. 4.** That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

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#### Supplement.

Approved May 17, 1894. P. L. 1894, p. 446.

**385. SEC. 1.** That section three of an act entitled "An act relative to corporations," approved May fifteenth, one thousand eight hundred and ninety-four, be and the same is hereby amended so that it shall read as follows:

[That when, by the laws of any other state or nation, any other taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon such corporations of this state, doing business in such other state or nation, or upon their agents therein, so long as such laws continue in force, the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all such corporations of such other state or nation doing business within this state and upon their agents here; *provided*, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in this state.]

Foreign corporation shall be liable to same taxes, &c., as imposed at home.

Proviso.

Repealer.

**386. SEC. 2.** That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

## Supplement.

Approved March 14, 1895.

P. L. 1895, p. 293.

Foreign corporations required to file copy of charter, &c.

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Agents shall have office in this state.

Upon failure to comply, authority to transact business shall be revoked.

Notices may be served on secretary of state when agent is disabled or disqualified.

Secretary of state to issue certificate to such corporation.

Proviso.

Unlawful to transact business until conditions are complied with.

Penalty.

**387. SEC. 1.** That each and every corporation, not organized under the laws of the state of New Jersey (foreign corporations), other than banking, insurance, ferry and railroad corporations, shall before transacting any business in any manner whatsoever in this state file in the department of state a copy of its charter or certificate of organization, duly attested by its president or vice president and treasurer or secretary, under its corporate seal, and a statement by the same officers, also under corporate seal, setting forth the total amount of capital stock it is authorized to issue and the amount actually issued, the character of the business in which it is engaged and in which it proposes to engage within this state, a citizen or corporation of this state as its agent, upon whom legal process against such foreign corporation may be served; such citizen or corporation so designated shall have an office or place of business in this state which shall be held to be the principal place of business within this state of such foreign corporation; and the agency so designated shall continue in force until revoked in writing, and some other citizen or New Jersey corporation shall be substituted therefor; if the citizen so designated dies or removes his office, or such New Jersey corporation becomes disqualified, and such foreign corporation does not within thirty days after such death, removal or disqualification designate in like manner another citizen or New Jersey corporation upon whom process against it may be served within this state, the secretary of state shall revoke the authority of such corporation to do business within this state, and process against such corporations in actions upon any liability incurred within this state before such revocation may, after such death, removal or disqualification, and before any other designation shall have been made, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs and disbursements of such plaintiff, and the secretary of state shall forthwith mail a copy of such notice to such corporation or the address of any officer thereof, if known to him.

**388. SEC. 2.** That upon filing the papers hereinbefore designated, the secretary of state shall issue to the said foreign corporation a certificate that it has complied with all the requirements of law to authorize it to transact business in this state, and that the business of such corporation to be carried on within this state is such as may be lawfully carried on by corporations incorporated under the laws of New Jersey for similar business; until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state upon any contract made by it in this state, but any lawful contract made prior to the passage of this act may be performed and enforced within this state subsequent to that date; for each certificate issued and paper filed by the secretary of state as herein provided for, he shall receive for the use of the state the sum of five dollars; *provided*, that all expenses incurred in carrying out the provisions of this act shall be paid by the secretary of state out of the fees so received.

**389. SEC. 3.** That it shall not be lawful for any person to act as agent or transact any business in any manner whatsoever, directly or indirectly, for or on behalf of any such corporation, until such corporation has fully complied with the requirements of this act; and whosoever shall act as agent or transact any business for any such corporation without such corporation having first complied with the provisions of this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, forfeit and pay to the state the sum of fifty dollars, or be imprisoned in the county jail of the county where such conviction is had for a period not exceeding six months.

**390.** SEC. 4. That it shall be unlawful for any such foreign corporation to transact any business in any manner whatsoever, directly or indirectly, in this state before filing the instruments and obtaining the certificate provided for in sections one and two of this act; and any such corporation that transacts any business in this state, either by itself or agent or agents, before complying with the provisions of this act, shall for each offense forfeit and pay to the state of New Jersey the sum of one hundred dollars.

Certificate must be obtained before commencing business.

Penalty.

**391.** SEC. 5. That every penalty provided for in this act shall be enforced, sued for and recovered in the name of the state of New Jersey by the attorney-general of this state, together with the costs of suit, and when so collected must be paid into the state treasury, and in case of the non-payment of such penalty as prescribed in the fourth section of this act, then that levy be made upon the book accounts or other assets of such offending corporation.

Penalty, how enforced.

**392.** SEC. 6. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

**An act concerning corporations and benevolent associations.**

Approved May 22, 1894. P. L. 1894, p. 478.

**393.** SEC. 1. That where the charter of any body corporate or of any benevolent association, by whatsoever name the same may be called or for whatsoever purpose the same may be incorporated, which provides by the charter of such corporation or of such benevolent association that such corporation or association shall not hold or own property exceeding in value the sum of ten thousand dollars, that it shall and may be lawful for such body corporate or such benevolent association to hold and own property not to exceed in value the sum of fifty thousand dollars.

Amount of property which certain corporations may hold increased to \$50,000.

**394.** SEC. 2. That such body corporate or such benevolent association shall have full authority and power to improve such property and to borrow money for such purpose, and to give its corporate bond therefor, to be secured by mortgage in fee on such property so owned by such body corporate or such benevolent association.

May borrow money to improve property.

**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. Northerly and southerly bounds of Salem county.
14. Northerly and southerly bounds of Cumberland county.
15. Partition line between Cumberland and Cape May.
16. Bounds of Bergen, Hudson, Union, Middlesex and Monmouth counties.
17. Indefinite boundary lines extended. Bounds of Middlesex and Hudson counties.
18. Hunterdon county formed.
19. Line of Somerset and Middlesex counties.
20. Line of Middlesex and Monmouth counties.
21. Repealer.
22. Morris county formed.
23. Bounds of Somerset county.
24. Cumberland county formed.
25. Precincts in Cumberland county.
26. Line between Somerset and Morris counties.
27. Sussex county formed.
28. Line between Salem and Cumberland counties.
29. Islands in the Delaware annexed to the contiguous counties.
30. Alteration of line between Middlesex and Somerset counties.
31. Lands north of line in Somerset; south of line in Middlesex.
32. Where reciprocal jurisdiction shall be had.
33. Where offenses committed on rivers, &c., dividing counties shall be tried.
34. The board of freeholders may apply to supreme court to appoint commissioners for ascertaining partition line between counties.
35. Commissioners to take oath.
36. To give thirty days' notice of meeting.
37. To survey and ascertain line of partition; survey to be recorded in secretary of state's office.
38. Line so surveyed to be boundary line.
39. Expense to be paid equally by counties.
40. Commissioners to settle township lines to be appointed by court of common pleas.
41. To take oath of office and give notice of their meeting.
42. To survey and ascertain line of partition; survey to be recorded in secretary of state's office.
43. To be line between townships.
44. Act not to affect lines of lands of any person.
45. Township to comprehend precinct, &c.
46. If commissioner die, &c., another to be appointed.
47. Where new county formed or lines altered, two maps to be made. Where to be deposited.
48. Duty, how performed.
49. Warren county formed.
50. Powers and privileges of Warren county.