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THE

Shareholders' and Directors' Manual

A Practical Handbook of the

LAW OF THE DOMINION OF CANADA

AND OF THE PROVINCES THEREOF,

RELATING TO

JOINT STOCK COMPANIES

TOGETHER WITH

Information Respecting the Incorporation, Organization and Management of such Companies,

AND

Forms and By-laws for the use Thereof.

By

J. D. WARDE.

SEVENTH EDITION

Price $4.

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PREFACE TO SEVENTH EDITION.

At the request of the Honourable the Provincial Secretary, the author again assisted in the preparation of the new Ontario Companies Act, which will be found herein. It contains many important changes; is a consolidation of the company law, repealing no less than twenty-eight Acts or parts of Acts; and simplifies and improves the machinery for carrying that law into effect.

The Provincial Secretary's Department has discontinued the practice of publishing in the Ontario Gazette the objects of newly incorporated companies *in full*, giving instead a mere *precis* thereof. In view of this, it has been thought well to give herein precedents for use in preparing the objects of Companies. These Forms, which number 198, have been approved of by the Secretary's Department at Ottawa or Toronto, and it is hoped they will prove useful.

The amended Dominion Companies Act, as contained in the Revised Statutes of 1906, will also be found herein.

The copious Indices will make reference to the contents perfectly easy, and they should always be referred to, if the range and fullness of the contents of the book are to be taken advantage of.

The author returns his thanks to Mr. J. E. Day, Barrister-at-Law, Toronto, who prepared Chapters III. and IV., dealing with Prospectuses and Applications for Shares, as well as the two Forms of Prospectus; to Mr. Thomas Mulvey, K.C., Assistant Provincial Secretary, for the use of his valuable notes to the Ontario Act, and to Mr. John Mackay, F.C.A., who revised the Chapter on Auditing.

J. D. WARDE.

TORONTO, August, 1907.

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PART I.

COMPENDIUM OF THE LAWS OF THE DOMINION OF CANADA AND THE PROVINCES THEREOF, RELATING TO JOINT STOCK COMPANIES.

NOTE.

This volume deals with the incorporation and management of Joint Stock Companies only. There are many Acts in the statute books of Canada and of the various Provinces, governing the powers, rights and duties of different classes of companies such as railways, banks, telegraph, trust, gas and insurance companies. In dealing with such companies reference should be had to the particular legislation governing them.

It would be well when reading Part I, containing the Compendium of Company law, to refer to and compare the sections of the various Acts with the matter under discussion.

The

Shareholders' and Directors' Manual.

CHAPTER I.

CONVERSION OF BUSINESS CONCERNS INTO COMPANIES.

§ 1. Advantages of a Company.

To convert a business into a company is a phrase very commonly used to describe concisely an arrangement which involves the formation of a company under the Companies' Acts, for the purpose of acquiring and carrying on an existing business, and the transfer to such company of the business with its assets and liabilities. Whether the business belongs to an individual or to a firm makes no difference: in either case the arrangement is, in common parlance, termed the conversion of the business into a company.

There can be no doubt that the great inducement to conversion is the power which the Acts give to a company, of trading with limited liability.

It will be borne in mind that, at common law, if you go into business either on your own account or as partner in a firm, you become personally liable for all the debts incurred in the business. Ruin may overwhelm you without any fault of your own; as, for instance, by—

An error in business judgment on the part of your partner; a contract signed, or even an oral agreement made by your partner through haste, inadvertence, or mistake; the error or dereliction of a clerk; one of your employees being accidentally injured, and a jury may give him a judgment for all you possess; some stranger being injured by your machinery, or in your elevator, or by one of your wagons,

or through the carelessness of an employee, and your all may be taken to compensate for the injury.

You are not only ruined financially, but in the absence of any bankruptcy or insolvency law enabling you to obtain your discharge as a debtor, you are practically precluded from carrying on business again in your own name.

But a company's creditors cannot make its shareholders bankrupt because of the corporation's liabilities. If the company gets into difficulties it will be wound up voluntarily or otherwise, and its creditors can take the company's property and assets, but nothing more. The shareholders are free to go into business again and are not put to the expense of defending themselves against insolvency proceedings, or humiliated by examinations as insolvents, or by the appointments of Receivers.

Where one member of a firm becomes insolvent, great inconvenience may be caused to the solvent members of the firm, for the share of the insolvent partner has to be ascertained and paid, and attachments and executions against the insolvent partner's interest in the firm are apt to follow, which discredit the firm and often wreck it. But in the case of a company the bankruptcy of a shareholder or officer does not affect the corporation; the creditor of the shareholder is not entitled to have the accounts of the company taken and the property sold, or to require the other shareholders to pay off the bankrupt's liability; accordingly the concern goes on as before, its capital remains intact, and its powers unaffected. The sheriff can never levy upon the property of the company to realize a claim against a shareholder.

To incorporate is to insure all your property not invested in the company against liability, except such as may exist on your unpaid shares.

The facility of conducting a business is greatly increased by incorporating it. For instance:—

If you want to increase your capital, you need but increase your capital stock and sell the necessary amount of shares.

If you wish to decrease the amount you have invested in a company, you require nobody's approval—you simply sell a few shares of your stock.

Incorporated, you need ask no permission to transfer a few shares of stock to your children and give them an interest.

One person's withdrawal cannot affect a company.

A partner may at any time cripple or even ruin the business by withdrawing his capital. When a shareholder leaves a company, no such result follows, for he simply sells his shares in the capital stock to another, signs a transfer to the person who takes his place, this is registered in the books of the company and the transaction is complete, the capital stock remaining the same.

If you desire to borrow money, you simply deposit your stock as security, and there is neither difficulty nor publicity.

The conversion of a private business into a company involves no serious changes in bookkeeping.

The directors of a company may declare its profits and divide them as frequently as they see fit.

If incorporated, your interest in a company will, in many cases, be worth to your estate and family more than twice what it would be worth if you had remained in business as a partner. Think of what happens in partnership in the event of your death! Your firm is dissolved. Your estate realizes simply on its share of the tangible assets. Your family practically loses absolutely all interest in the good-will of the business which you have worked so hard to build up. In a conservatively conducted business, the good-will is sometimes worth as much as the tangible assets.

§ 2. "One Man" Company.

In a leading English case, Vaughan Williams, J., and the Court of Appeal held, that where one man had an overwhelming proportion of the shares of a company, and the transaction was in other respects tainted with bad faith, the

individual shareholder might be personally liable for the debts of the company (*a*). But the House of Lords overruled this decision, and held that if the company is incorporated according to law, even if six of the shareholders hold only one share each and the seventh holds twenty thousand, the court cannot go behind the certificate of incorporation and inquire whether or no such a "one man" company is what the Legislature intended when passing the Companies' Acts. It was expressly held by the House of Lords that the company was duly formed and registered, and was not the mere "alias," or agent of, or trustee for the vendor, and that there was no fraud upon creditors or shareholders (*b*).

"The Statute," said the Lord Chancellor, "enacts nothing as to the extent or degree of interest which may be held by each of the seven, or as to the proportion of interest, or influence possessed by one or the majority of the shareholders over the others." Lord MacNaghten also said, "There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or that they or any of them should take a substantial interest in the undertaking, or that they should have a mind or will of their own, as one of the learned judges seemed to think, or that there should be anything like a balance of power in the constitution of the company." The cardinal principle of corporation law was thus fully vindicated.

This judgment was followed in an Ontario case, Rielle v. Reid, 26 Ontario Appeal Reports, page 54, and the following extract from it is quoted, as stating the law very clearly: "Once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are."

(*a*) Brodery v. Saloman, (1895) (2) Chancery, 323.
(*b*) Saloman v. Saloman & Co., (1897) A. C. 22.

§ 3. Preliminary Steps Towards Conversion.

We shall now proceed to describe the mode in which a business is converted into a company, and, by way of example, will take the case of the business of foundrymen carried on by A., B., and C., in partnership, A. being entitled to half the capital, and B. and C., each to a quarter.

The first step is to ascertain the value of the business. To arrive at this a valuation will be made of the assets of the firm, including the good-will, the stock-in-trade, business premises, moneys, bills, notes, and book and other debts due to the firm; and an account will be taken of the debts and liabilities of the firm. The valuation and account are sometimes made and taken by the partners, and sometimes by some person appointed by them. Very commonly the valuation and account are not made or taken in a detailed manner, but the position is roughly estimated, regard being had to the last balance-sheet.

The next point is to settle the limit of liability which the partners desire to fix, for on this depends the most important term of the agreement. In many cases of conversion the owners of business concerns, whether sole or in partnership, desire to incur no personal liability to the creditors of the company; they are willing to hand over the business with its assets and liabilities to the company, but desire, if the company should be unsuccessful, not to be under any personal liability to pay its debts; they wish the remedy of the creditors of the company to be exclusively against the assets of the company. Where this is the desire of the parties, the conversion must be effected on the footing that the owner or owners shall receive the value of the business in fully paid-up shares. Upon such shares there is no personal liability. They entitle the holder to votes and dividends, but no call can be made on him. Sometimes, however, a person may be willing, besides making over his business or his share of a business to a company, to incur a personal liability to a limited extent, *e.g.*, suppose a man desires to convert his business,

valued at $50,000, into a company, and is willing to incur a liability to supply $10,000 additional working capital if required; in such case the conversion will be effected on the footing that he shall receive 2,000 shares of $30 each, with $25 per share credited as paid up; he will thus be liable to pay up the balance of $5 per share—$10,000—when required, but will be under no further liability.

In the present case we will suppose that A., B., and C. desire not to be under any personal liability, accordingly they will receive fully paid-up shares.

These important points having been settled, the procedure necessary for incorporation as set out hereafter must be followed.

At this point it may be well to consider the question of legal assistance.

§ 4. Legal Assistance.

There can be little question as to the advisability of employing a lawyer where a corporation of any magnitude is to be organized, particularly if promoters are to be dealt with, or if contracts are to be prepared with capitalists who are to finance or be otherwise interested in the enterprise. As will be seen by reference to the chapter on Promotion (*a*) many new points must be considered in advance of the organization, if the company is to comply with the law and avoid making the directors responsible.

In many instances a man unfamiliar with the law undertakes the formation of a company. He may be able to comply with the statutory formalities as far as preparing the petition, etc., for a charter, and to carry the organization through, but usually something of advantage will be omitted, something unnecessary included or the best possible machinery in the way of by-laws, etc., etc., will not be provided. A want of skilled advice may be very disastrous in many cases. For

(*a*) Chapter III, *post*.

example—in Ontario, a company might want to pay 20 per cent. commission to the agents who sell its stock, but will have no power to do so unless the charter expressly authorizes such payment. A company cannot hold meetings out of Ontario unless specially authorized by its charter; and, to quote a very common instance, as the law now prohibits directors from voting on contracts in which they are personally interested, the owners of a business intended to be converted into a company, or of a property or patent intended to be turned over, cannot be the directors whose vote puts such contract through or even whose presence makes the necessary quorum at the meeting when such contract is passed.

Then the many new provisions as to what must be done prior to allotment, which in effect postpone the company's power of doing business until a definite number of shares are sold, and which call for special meetings and special returns within three months from incorporation, render a knowledge of these new provisions in the Act necessary for success.

§ 5. Lawyers' Fees.

The legal fees for incorporating a company vary greatly with the work to be done and the values involved, ranging from as low as twenty-five dollars up to thousands of dollars where the enterprise is a large one. It would be well to determine in advance the cost of the services desired. Usually the lawyer can state a sum which his fees will not exceed, or at least give some general idea of his charges.

CHAPTER II.

DEFINITION OF COMPANY, CORPORATOR, SHAREHOLDER, ETC.

§ 6. **Company.**

By a company is meant an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who share the profit or loss (as the case may be) arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it or to whom it belongs are *members* or shareholders. The proportion of capital to which each member is entitled is his *share*. Shares are always transferable; although the right to transfer them is often more or less restricted.

If the members of an incorporated company are collected in a room together, we do not see the company, but the members; for the company is intangible; it exists only in contemplation of law; it has no physical body. It is in a legal point of view distinct from the persons composing it; and these persons are not personally responsible for the company's debts or engagements, unless expressly made so, and their property is affected only to the extent of their interest in the company.

This limited responsibility is one of the chief differences between an incorporated company and a partnership; in the latter, as a rule, the partners are always personally liable; in the former, it requires an express provision in the instrument of incorporation or in a governing statute to render the shareholders personally liable.

A company cannot be formed like a partnership, merely by the agreement or contract of the parties. Its creation

must be expressly authorized by law and evidenced by an act, letters patent or certificate granted by the state.

Incorporation creates a new and distinct entity recognized in its limited capacity by the public and by the law of the land. It sues and is sued by a name of its own, and its continuous existence is not affected by changes amongst its members.

§ 7. Corporator, Subscriber, Shareholder.

A Corporator is one of those to whom a charter is granted, or of those who file a certificate of incorporation under a general incorporating statute. A Subscriber is one who has agreed to take stock from the corporation. A Shareholder in this country means the same thing as a stockholder, and the terms are used interchangeably to indicate one who owns stock in a company and has been accepted as a stockholder by the company.

§ 8. Trust.

A Trust is an organization for the control of several companies under one management, the usual method or device adopted being a transfer by the shareholders in each company of all their stock to a central committee or board of trustees, who in return issue to such shareholders, certificates showing in effect that, although they have parted with their stock they are still entitled to dividends. The result is that the shareholders thereby become interested in all the companies whose stocks are thus held, and the trustees elect the directors of the several companies.

The object of this arrangement is to prevent competition, control prices and lessen the cost of production.

The word "trust" has of late, however, obtained a wider and more popular meaning, being now used to designate any combination of producers for the purpose of controlling prices and suppressing competition by the purchase or crushing out of rivals.

The economic effect of Trusts is to decrease the cost of production, and at the same time to decrease the number of small producers and transform them into employees of colossal companies.

§ 9. Syndicate.

A Syndicate is an association of persons or companies formed for the purpose of promoting or carrying on some particular enterprise, or discharging some trust. The rights and liabilities of the members of a Syndicate should always be defined by a carefully drawn agreement.

§ 10. Franchise.

This word is generally used to designate a right or privilege conferred by law. When the Legislature grants a charter it confers upon the grantees the right or privilege of forming a corporate association and of acting in a corporate capacity; this right or privilege is called the corporate franchise.

CHAPTER III.

PROMOTION, PROSPECTUS, ETC.

§ 11. Prospectus.

Some companies are formed for the purpose of taking over an existing business without any intention of having any outsiders as stockholders. But the majority of companies intend, at some time, to allow the public, or some part of the public, to become shareholders therein, and where this is the case some document or paper must be prepared, giving information as to the company or the proposed scheme. This, no matter what it may be called, is in fact the Prospectus of the Company, and is a document drawn up for the purpose of enabling possible or prospective shareholders to judge of the advisability of taking stock in it. A proper prospectus is therefore of the highest importance to the company, and in Ontario recent legislation makes it of vital importance to the directors and to their responsibility.

If the enterprise is a large one intended to appeal to the public a printed prospectus is desirable. It should be tastefully arranged, striking in appearance and interesting in its subject matter. A poorly printed, ill-arranged prospectus, such as is often presented, with necessary information and important facts omitted or badly stated, is in itself sufficient to condemn an enterprise of merit.

Where the undertaking is not large, or but comparatively few persons are to be interested in it, the prospectus may be typewritten on paper of legal cap size. Side or centre headings for subjects, wide spacing between paragraphs and good margins tend to make it attractive.

The legal requirements are many and rigorous, and the ideal prospectus requires the co-operation of a good promotor, a careful lawyer and a clever advertiser. What-

ever else it may contain it must contain certain things, which should be first considered, and after these requirements are understood and compliance with them arranged for, the attractive features should be considered. But the legal requirements are so many and so important that they should be mastered and understood before a single preliminary contract is made, or a paper drawn for incorporation, as otherwise many changes will have to be made to get matters into the shape in which they should have been from the start had the requirements of the prospectus clauses been kept in mind.

§ 12. What Companies must have Prospectuses.

By a change in the law of Ontario, which took effect 27th April, 1906, every Ontario company, no matter when incorporated, must fyle a Statutory Prospectus if it has ten shareholders over the number of those who signed the petition for incorporation, or if it has its debentures or other securities held by eleven or more persons. Every company incorporated out of Ontario must also fyle a prospectus if there are more than ten persons in Ontario who hold either its shares, debentures or securities. (7 Edward VII. cap. 34, sec. 97). What must be contained in this prospectus is dealt with later. The effect is that practically every company is called on to fyle a prospectus with the Provincial Secretary. In addition to this, no subscription for stock, debentures, etc., "induced or obtained by verbal representations," (sec. 97, sub-sec. 3), shall be binding on a subscriber unless prior to his subscribing he has received a copy of the prospectus. Even if a subscription were obtained wholly by correspondence the subscription might be void if no prospectus had been delivered. The company and its directors would each be liable to be fined for a breach of the act; and the directors would be responsible in damages for any misleading statements made or authorized by them in such correspondence if the subscriber suffered loss by being misled into subscribing. And

whether a subscriber ever saw the prospectus or not, every subscription for stock is deemed to have been induced by the prospectus, and hence, again, the directors would be liable for any misstatements contained in it. A signed agreement by a subscriber to waive this provision is void. A subscriber paying for his stock and receiving a certificate, however, would be too late to cancel his subscription if he delayed action unreasonably after he found out the true condition of affairs, or until the company was about to be wound up, though his personal right to sue for damages would remain.

A clause in this Ontario Act making it apply only to companies which offer for sale or subscription their stock or securities, or whose shares or securities are dealt in within Ontario seems hardly consistent with the foregoing provisions, but is understandable if it would exempt from the necessity of making and fyling a prospectus a company incorporated before the Act which is not selling any stock, and whose stock is not on the market publicly or privately. Certainly, in the strict meaning of the word any sale by one owner to another of stock in a company would be a dealing with it. There are no restrictions showing that "dealt in" means dealt in only on a public exchange. The only safe thing is to assume that the statutory prospectus must be fyled, and to make the preliminary arrangements keeping that in view.

§ 13. Fyling of Prospectuses. Are Advertisements Prospectuses?

Every prospectus must be signed by all persons who are named therein as directors. A signed copy must be fyled with the Provincial Secretary. It must be dated, and this date is to be taken as the date of its publication. The date may be later than but not sooner than the date of fyling, and the fact that it has been so fyled must appear on its face. The date of fyling need not be set out. Sec. 98, s.s. 3, says "no Prospectus shall be issued until it is

so fyled." This raises a great difficulty. The Imperial Act from which these Ontario clauses were copied had the same words. But the Imperial Act defines the word "Prospectus" to mean "any prospectus, circular, advertisement, or other invitation *offering to the public for subscription or purchase* any shares, etc." The Ontario Act as first passed and which came into effect 27th April, 1906, was the same, except that the words "*to the public*" were omitted; but in the new Ontario Companies Act, sec. 95, which is effective from the 1st July, 1907, the following words were added "or published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, etc."

If by these added words it was merely meant to make plain that a company and its directors would be as liable for misstatements in their advertisements as for those in the official prospectus the object would have been clear. There seems to be no escape from the plain wording of the Act for a company or any one on its behalf who wants to sell its unissued shares or assist in selling them. Every advertisement which aims to aid in selling company stock is by that section declared to be a prospectus; every prospectus must contain many things as set out in the next part of this chapter; Section 98, provides that no prospectus shall be issued until it is fyled with the Provincial Secretary, and signed by the directors. The Act even stipulates what may be left out of the newspaper advertisement, and that is very little. If a company has issued shares, a person holding them and desirous of selling may advertise them in any way he wants. He may have only paid up five per cent. on each share (See sec. 106 (3)), and may, after he has found a purchaser, pay the balance and so give fully paid up shares to the purchaser, but they must be his shares and not the company's, and as will be seen by reference to section 99, if this person who wants to sell his shares "is or has been engaged in the formation or promotion of the company" his advertisement is a prospectus, and must comply with all the requirements of prospectuses

as to contents, signing by directors, and fyling with the Government. If a broker, (not the company's promoter,) owns some shares of a company, he may advertise them as he likes, though he could not say or suggest that they are the company's stock, or that the proceeds will be used by the company, for that would be advertising the company's unissued and not his issued stock. He may, if he likes, instead of selling his own shares try to sell the company's shares to those who answer his advertisement, and get commission on such sales, but each such applicant must have a copy of the prospectus before signing such application or his application is not binding.

If the company pays for any part of the advertising, except for the regular signed prospectus, that would be proof that such broker was acting for the company, and would make the directors responsible and would be a violation of the Act. If an applicant subscribed for stock, and his application was induced by an advertisement which would come within the definition of prospectus given by Sec. 95, and which by reason of not having been signed and fyled was therefore illegally issued, it is very probable that the company could not hold the applicant as a shareholder as its illegal act secured the application. It must not be forgotten that the clauses apply in Ontario as well to companies incorporated out of Ontario as to purely Ontario incorporations; that if the offence is committed in Ontario, the directors may be prosecuted there, and if there are material misrepresentations made in Ontario the directors may be sued for damages there; and also that these clauses apply as well to companies incorporated before the Act as to those incorporated since, and to companies before incorporation as well as after it.

The strict construction of the Act makes broker's letters, paid "write ups" of a company's property or process, or any other advertising intended to help to sell its shares if it is "by or on behalf of the company" illegal, unless it has been duly signed and fyled; and also any such adver-

tising if issued by or on behalf of the company, or of any person who is or has been interested in its formation or promotion. The company's advertising is thus strictly limited to the prospectus, and the agent who desires to attract by alluring advertising must manage in some way to own the shares he is selling. The effect will probably be that the stock seller will buy the stock at the best price the company can legally sell it to him, less any commission that may be legally allowed him, and sell at an advanced price, and the company will have to take care to see that the applicant gets a copy of the prospectus, and that it pays for no advertising except of the prospectus itself. As to that it is recommended that the application form acknowledges receipt of the prospectus, and it would be advisable to have it a part of the last page of the prospectus so that it will prove in itself that it was torn or detached from the same.

§ 14. Contents of Prospectus.

The prospectus being so essential in Ontario, careful consideration of its requirements is required. To understand them it is necessary to quote section 99 of the Ontario Companies Act of 1907, first enacted in 6 Ed. VII., Cap. 27, and taken from the Imperial Act of 1900, sec. 10.

99.—(1) Every prospectus issued by or on behalf of a company, or in relation to any intended company, or by or on behalf of any person who is, or has been engaged or interested in the formation or promotion of the company, shall state:—

This applies *before the incorporation* as well as after it, and extends to promoters as well as to directors.

(*a*) The names, descriptions and addresses of the original incorporators, and the number of shares subscribed for by them respectively;

See subsection 4 (*a*) and 6.

(*b*) The number of shares, if any, fixed as the qualification of director, and any provision in the by-laws of the company as to the remuneration of the directors;

There is no obligation to fix in the Memorandum of Agreement or by-laws any stipulation as to qualification or remuneration. See also s.s. 4 (*a*).

(*c*) The names, descriptions and addresses of the directors or proposed directors.

See also s.s. 4 (*a*).

(*d*) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted;

See the section as to allotment *post*. It will be so hard in practice to set out what has been offered and taken up in previous allotments, that it will be found wise to make one continuing offer of a large enough amount of shares to provide for all possible capital needed, fixing, however, a small amount as a minimum, on subscription of which the company may go ahead and do business. If the company, however, wishes to convey the impression that only a limited amount of shares is offered it will have to issue a new prospectus when the amount so named is taken up. The prospectus might achieve the same effect by reserving the right to raise the price of shares, or withdraw them altogether after a certain amount is subscribed, provided it is not represented or promised that such will be done.

(*e*) The time or times at which under the by-laws of the company a further call or calls may be made upon shares subscribed for;

The subscriber must know just when he may be called on to pay up the balance. If it is an issue of stock on which the intention is to call only a certain percentage, and no provision is made in the by-laws as to when future calls will be made, it should be stated that this is left to the discretion of the directors.

(*f*) The number and amount of shares issued or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and the

number and amount of bonds, debentures or other securities issued or to be issued and allotted to any person;

As these particulars would have to be set out under clauses (*g*), (*h*), (*i*), (*k*) and (*n*), particulars of the reasons would hardly have to be given here.

(*g*) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, bonds, debentures or other securities to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

The meaning of vendor is explained in s.s. 2 to this section. If the sale to the company was for stock or cash, and the sale is completed this subsection would not apply. If the company has not paid for the property the name and address of the vendor, and the price must be stated. If the company buys from an absolute owner there is no obligation to disclose the price he paid. If the company buys an option or the benefit of a contract for a purchase made by any one else, it is a sub-purchaser and the above particulars must be set out. A company is not generally speaking a "sub-purchaser" unless it has to pay purchase money in some form to someone else than its own vendor. If the promoter bought the property to sell it again to the company he must so arrange that the property is clear of any lien under his purchase contract, and is his own absolutely before the prospectus is issued. He can so arrange that sufficient of the company's stock is underwritten as to make sure of carrying out the sale from him and borrow the money (not, however, from the company) on the strength of the contract he has made with the company, and with this borrowed money pay off his vendor. This debt of the promoter need not be paid at the date of incorporation so long as the agreement between him and company is for an absolute sale, and he is absolute owner when the prospectus is issued. Brooks v. Hansen, 1906, 2 Ch. 129.

(*h*) The amount (if any) paid or payable as purchase money in cash, shares or debentures of any such property as aforesaid, specifying the amount payable for good-will;

In view of this clause it is wise to set out in the contract of purchase exactly what is paid for good will. The difference between the actual cash value, at inventory prices, if such could be made, and the amount paid for the property, represents the good will.

(*i*) The amount (if any) paid or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or for underwriting or procuring underwriting of any securities issued or to be issued by the company or the rate of any such commission.

Commission could not be legally paid out of capital prior to the Act of 1906. It can now, if and only if, the charter or supplementary letters patent permit. This clause would call for disclosure of contracts such as are sometimes made to give an underwriter a call on stock at a fixed price in consideration of underwriting shares.

(*j*) The amount or estimated amount of preliminary expenses.

See s.s. 4 (*a*).

(*k*) The amount paid or intended to be paid in cash, shares or debentures to any promoter, and the consideration for any such payment.

Just who are promoters is a question sometimes of difficulty. It is a question of fact. Payments to the servants of the promoters, such as solicitors, trust companies, and brokers, are not within this clause, unless these parties are really promoters, which perhaps happens if they share in the promoters' profits.

(*l*) The dates of and parties to every material contract, and a reasonable time and place at which any material contract, or a copy thereof may be inspected; provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus;

See part s.s. 4 (*a*) as to prospectuses published after the expiration of one year.

What is material is a question of fact and requires careful consideration. As near a rule as may be in determining materiality is, whether the contract is one which if known would have an effect on the mind of a prospective shareholder as to whether he would subscribe or not. In deciding whether the contract is one in the ordinary course of the company's business, its powers should be carefully scrutinized. See s.s. 4 as to limitation as to disclosure in prospectuses published after the first year of the company's existence. Certainly any contract which gives the promoters or directors a profit, or an advantage over the other shareholders would seem to be material. The promoter was always bound to let the directors know just what his profit was; now the directors must share this knowledge with the prospective shareholders. Full particulars of the contracts need not be given, but mention should be made as to what is the subject matter of the contracts.

(*m*) The names and addresses of the auditors, if any, of the company.

If none have been appointed that should be stated.

(*a*) Full particulars of the nature and extent of the interest if any, of every director in the promotion of, or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.

Full particulars are required. The intention and effect is that the subscriber may know whether the directors are in any way under the promoter's control, or owe him any favors. If the vendors for the purpose of making their stock more valuable have given some of it to certain directors so as to secure their services, this must be stated. Care, of course, should be taken to do this in such a manner as to show the subscriber the advantage to the company of such act.

(2) For the purpose of this section the word "vendor" shall extend to and include a vendor who has entered into any contract,

absolute or conditional, for the sale or purchase, or for any option of purchase of any property to be acquired by the company in any case where,—

(*a*) The purchase money is not fully paid at the date of publication of the prospectus; or

(*b*) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) The contract depends for its validity or fulfilment on the result of such issue.

See notes to subsection (*g*), section 1.

Anything in the nature of an option must be clearly set out.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the rent, and the expression "sub-purchaser" included a sub-lessee.

(4) This section shall not apply to a circular or notice inviting existing shareholders or debenture holders of the company to subscribe for further shares or debentures; but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently, provided that:

This does not obviate the necessity of the first prospectus, but in case more money is needed and the offer of shares or debentures is made only to the company's shareholders and debenture holders, the company can use any form of circular that is not misleading or unfair, and can pay commission, or for underwriting to have such new allotment taken up, provided it has power in its charter to do so.

(*a*) The requirements as to the original incorporators, and the qualification, remuneration, and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus published more than one year after the first general meeting.

This first general meeting is the one referred to in sec. 111, to be held not less than a month, and not more than three months from the date when the company is entitled to commence business, that is when the number of shares

fixed as the minimum allotment have been subscribed, and the call paid thereon, and proof thereof fyled with the Provincial Secretary as called for by section 108.

(b) In the case of a prospectus published more than one year after the date of such meeting, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

Waivers under section 102 are not affected by this clause. One may waive his right to claim damages if the waiver clause is honestly and fairly drawn, and was meant to provide for an honest mistake, but there can be no waiver of the requirements of this clause.

(6) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the names of original incorporators, and the number of shares subscribed for by them. Imp. Act, 1900, 10.

§ 15. Penalty for not Fyling proper Prospectus.

There are thus several new offences created by this Act, viz.: the non-fyling of a prospectus by a company, which is bound to fyle one: issuing it before it is dated and signed, or without also announcing that it is fyled; and the non-disclosure in the prospectus of what the statute requires. Any person who violates any of those provisions is liable on summary conviction, to a fine not exceeding $200 and costs. There are three saving clauses under which this penalty may be escaped. (1) If such person proves that he was not cognizant of the matter the non-disclosure of which is complained of, (2) or that his non-compliance with the statute arose from an honest mistake of fact (which does not include ignorance of the law) (a) on his part, and (3) if the charge is as to non-disclosure of interest of directors in the property or promotion, or shares received from promoters, the prosecution must prove know-

(a) Tait v. Mackay, (1904), 2 Ch. 631.

ledge by the accused. The rule of law (*a*) that where a statute imposes new duties, and provides a penalty for breach, that there is no right of action to a private party, would, therefore make this fine the only penalty. But sec. 102 still provides that any person who is led to invest by reason of an untrue prospectus, may sue the directors for any loss he sustained, and it is now clear that fraudulent prospectus means not only the official prospectus, but any advertising etc., as mentioned in sec. 95.

§ 16. Other liability for Statements in Prospectus.

Apart altogether from the liability described in the foregoing part, directors have a serious responsibility for statements made in the prospectus. Sec. 365 of the Criminal Code makes liable to five years' imprisonment any promoter or director in any way responsible for forming, making, or circulating a prospectus which he knows to be false in any material particular with intent to induce persons to become shareholders. And sec. 102 of the Ontario Act (*b*) provides that there must not be any untrue statement in any prospectus or notice *inviting subscriptions* for stock or debentures, or in any report or document referred to in it or published with it. Prior to 1st July, 1907, in Ontario such persons were not liable for untrue statements (if they were ignorant of the untruth) in expert's reports or official documents contained in or referred to in the prospectus, but as to prospectuses issued since that date there is now no such protection. If any person subscribed for stock or debentures on the faith of such untrue statement, he could recover damages. He can sue the company and have his subscription cancelled if he acts promptly on learning of the misrepresentation. In addition he can sue for damages. The best opinion (after some difference in the English courts) is that such suit can be

(*a*) Atkinson & Newcastle, 2 Ex. Div. 441, Pictou & Geldert, (1893). A. C. 524, Johnson v. Consumers' Gas Co., (1898). A. C. 447.
(*b*) See *post*.

brought within six years from the time such person is deceived. These damages can be recovered from any promoter who was a party to the preparation of such prospectus or notice; though a person acting solely in a professional capacity, such as a solicitor or accountant, is not liable. A suit will also lie against any one who is a director at the time of the issuing of such notice; against every person who has authorized such issue whether director or not; and against every person named in the notice as having agreed at some future time to become a director, if he has authorized such naming of him. Such proposed director may escape liability if he can prove that he withdrew his consent before such prospectus was issued. None of the above parties will be liable if he can prove that as soon as he knew of the prospectus he gave reasonable public notice of his not having known or consented to its issue; or that after its issue he became aware of some untrue statement therein, and before any shares were sold thereunder, he gave reasonable public notice of withdrawing his consent thereto, and of the reason why he withdrew such consent.

The directors and promoters are liable not only for fraud, but for statements which are untrue, even though they believed them true. A statement that lands were fit for agriculture, or that they had abundant water; that mines contained silver, or even that the title was good would, if untrue, afford ground for a suit for damages, even though experts had reported that they were true, or solicitors had certified to the title being good. The subscriber is entitled to rely upon what the directors take the responsibility of saying. Fraud is not necessary; innocent untruth is enough, if the notice invites the public to subscribe. The party complaining must prove that if he had known the truth he would not have subscribed, and if he swears to this it is hard to disprove it (*a*). He must also show that he suffered damages, and the damages are the differ-

(*a*) Nash v. Calthorpe, 1905, 2 Ch. 237; Calthorpe v. Trechman 1906, L. J. 75, Ch. D. 90.

ence between what the shares would have been worth at the date of allotment, if the statements were then true, and what they were actually worth on that date when the statements were not true, or to put it another way, the damages are the loss of the money paid, less the real value of the stock issued for such money. A statement that valuable property has been acquired is untrue, if in fact the company did not own said property at the date of the statement even if the directors thought it had acquired it, and it is in fact acquired within a few days (*a*).

In England the non-disclosure of any material contract is fraudulent. In Ontario as such is punishable by a fine, it is probable that the mere omission of mention of such contract does not give ground for an action; but as misleading statements are untrue, (*b*) and as there may be misrepresentation even though the facts stated are true, yet the effect when taken altogether is misleading (*c*) the only safe course to adopt in any official prospectus fyled, and in any document used to help sell stock, if outsiders' money is wanted, is to give a fair explanation by those who do know, to those who do not know, of the real position.

An agreement by a subscriber waiving his right to sue the directors for damages for misrepresentation would be an effectual defence if it was honestly drawn, but would not apply to protect one from the consequences of anything that would amount to fraud (*d*).

If the prospectus is published for the purpose of obtaining further capital in a company which has already legally issued stock, a director is only liable where he authorized the issue of the prospectus, or ratified it. (Ont. Act, sec. 103).

(*a*) McConnell v. Wright, 1903, 1 Ch. 546.

(*b*) Greenwood v. Leather Shod Wheel Co., 1900, 1 Ch. 421.

(*c*) Aarons Reefs v. Twiss, 1896, A. C. 273

(*d*) Calthorpe v. Trechman; Tait v. McLeay, 1906, L. J. 75 Ch. D. 90.

A person whose name is without authority inserted in a prospectus as a director, or proposed director, may recover damages for any loss he thereby sustains from any person responsible for such insertion; and any persons against whom judgment has been obtained or a fine imposed on account of irregularities in prospectus, or an improper prospectus, is entitled to make his fellow directors and fellow promoters contribute their share. (Sec. 105, Ont Act.)

§ 17. Aliens and Non-Residents as Subscribers.

No conditions as to any of the applicants or directors being British subjects or residents of the Province of Ontario are imposed by the Companies Act of that Province. The Dominion Act, however, requires that the majority of the first or provisional directors shall be residents of Canada, and the Quebec Act requires that the majority of the first directors shall not only be resident in Canada, but shall also be subjects of His Majesty.

Section 47, ss. (*c*) of the Ontario Act of 1897, allowed the directors to regulate the "stock qualification" of directors. Section 87, ss. (*c*) of the Act of 1907, allows them to regulate the qualification in any way; *e.g.*, by limiting the choice of directors to residents of Ontario, colored men, or in any other way.

§ 18. Infant as Subscriber.

Generally speaking any person who may make a valid contract may subscribe for shares in a company. A subscription and its acceptance constitute a contract; to bind a person to a subscription such person, therefore, must be one who could make a valid contract.

Infants, that is, persons under 21 years of age can not validly agree to take shares; though, if some person of age applies for stock, and pays for it he may have it issued to an infant. Directors cannot consent to a transfer of un-

paid stock, or stock on which there is any liability, to an infant, but if an infant is on the books of a company as a stockholder, and after coming of age receives dividends, or acts as a shareholder, he will be liable for calls on any stock not fully paid (*a*).

It is not wise to stipulate in the by-laws that transfers may not be made to an infant or lunatic, as otherwise if the transfer is made (of paid up stock) without the board knowing of the disability, no responsibility attaches to them. If the directors know that shares are held by an infant they cannot issue dividend cheques to such infant, as only a legal guardian can give a legal receipt therefor.

A person who subscribes for stock for an infant is personally liable to pay the subscription.

§ 19. Married Woman as Subscriber.

As to married women, the law of each locality governs. In some places they cannot make a contract (or a transfer) without their husbands' consent. In others there is joint ownership. In Ontario a married woman may be a shareholder and a subscriber.

§ 20. Corporation as Subscriber.

A corporation may subscribe for and may take by transfer shares in another company, only, if its charter gives it power to hold such shares. By ss. *e.g.*, sec. 17 of the Ontario Act of 1907, all companies incorporated after July 1, 1907, may hold shares in another company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company.

Most mining companies having been incorporated with the powers granted in sec. 4 of the old Ontario Mining Companies Incorporation Act, have not power to take shares

(*a*) *Re* Central Bank v. Hogg, 19 Ont. Rep. 7.

in other mining companies unless they have special permission by charter to do so.

§ 21. Application for Shares.

Agreements to take shares in a company about to be formed (or if technically formed already, having part of its capital still unsubscribed), are usually entered into by an application for shares on the one hand, and by an acceptance of such application on the other.

In practice, the application is generally a printed form of request, addressed to the secretary or directors of the company, or to persons named by the promoters, and expressing an agreement on the part of the applicant to take a certain number of shares in the company, or such smaller number as may be allotted to him. The form is signed by the applicant, and he generally pays to the bankers of the company or projected company a small deposit on each share applied for, and obtains from the bankers a receipt for the payment. The payment is usually made before, or at the time when the application is sent in.

These applications should be carefully preserved, as it is sometimes of the utmost importance to be able to refer to them as, for instance, when it becomes necessary to make out a list of contributories (contributories are those shareholders liable on stock when the company is being wound up) in case of the winding up of the company.

There are two ways of applying for stock, but a common method (and the usual one before incorporation) is "to take stock" by subscribing in the company's stock-book or memorandum of agreement, which will bind the person subscribing, to take from the company as many shares as they have subscribed for, whether or not the shares are actually allotted to them.

Another method is by letter of application for a certain number of shares, which, however, must be accepted before the applicant is bound, and its acceptance is not complete

by the mere entry of the applicant's name in the share-book as the owner of a certain number of shares, but the acceptance must be communicated to the applicant in order to create a contract binding on him. The question is determined on the well established principles which govern ordinary contracts.

Persons named in the charter of a company as share holders are liable as such for calls, which may be afterwards made upon the stock stated in the charter to be held by them, and no further act of the directors in allotting such stock or giving them notice of allotment is necessary (*a*).

In addition to those who are mentioned in the charter as shareholders, those who have signed the stock-book at the time of incorporation, need sign no other application. The issue of the charter constitutes the petitioners, and those who have signed the stock-book, shareholders, and they are liable for the total amount of their subscription on same being called (*b*).

It is probable that any person who, with the company's consent signs the stock-book, even after incorporation, thereby becomes a shareholder, without any further allotment (*c*).

The ordinary application after a company is incorporated generally takes the form of a letter or a proposition to take stock in the company, and is usually referred to as an application for shares. No particular form of application is required, and an application may be made verbally if the company chooses to accept a verbal applica-

(*a*) In *re* London Speaker Printing Company, 16 Appeal Reports 508; In Haggert Brothers' Mfg. Co., Peaker and Runions Case, 19 Appeal Reports, 582; Weddell's case, 20 Ontario Reports, 107; Kidwelly Canal Co. v. Raby 2 Price, 93.

(*b*) Section 3 Ont. Act of 1907.

(*c*) Patterson v. Turner, 3 O. L. R. at page 376; In Kidwelly Canal Co. v. Raby, 2 Price 93, words governing this matter were "those who have subscribed, or shall hereafter subscribe," and it was held that all subscribers to the stock book, before or after incorporation, were shareholders, if they had not discharged themselves in some other manner.

tion. An ordinary application, whether accompanied by payment of a deposit or not is only an offer to take shares, and, like any other offer, may be revoked before its acceptance, or, in most cases, before the notice of acceptance is sent. If the application was sent by post the withdrawal would be too late once the company had accepted the application and notice of acceptance had been posted. The right of revocation would not be excluded even by the insertion in the application of words to the effect that the applicant agrees to accept the shares applied for, or any less number that may be allotted to him, and consents to be registered in respect of them; for such words themselves only amount to an offer, and do not constitute an agreement until the offer they express has been accepted.

If the application, however, is "not a mere offer or proposal, but a subscription under seal, with a covenant to pay for it in the manner mentioned in the instrument," it could not be withdrawn without the company's consent, (Nelson Coke & Gas Company v. Pellatt, 4 O. L. R. 481).

A subscription can only be accepted as it is given; (*a*) it may be conditional; it will not bind the subscriber if it was obtained by material misrepresentation; and if, when the application was given a verbal agreement was made that it was not to take effect until some other event had happened, that verbal representation may be proved and will bind the company (*b*).

§ 22. How Application Accepted.

Unless it is otherwise provided in the special act of incorporation, charter or supplementary letters patent, or by some by-law of the company, the application may be accepted either by by-law or by resolution of the directors. The following form of resolution may be used.

(*a*) Halifax Carette Co. v. Moir, 28 N. S. R. 45.
(*b*) The Ontario Ladies' College v. Kendry, 10 O. L. R. 324.

"That shares in the capital of the company be allotted as follows:

Allottee.	Number of Shares.	Denoting numbers of shares, both inclusive.	
		From.	To
A. B.	Ten	1	10
C. D.	One hundred	11	110
etc.	etc.	etc.	etc.

"And that the secretary do give notice of allotment to the above named persons respectively."

No member of the board or officer has power to accept subscriptions. This must be done by the board, or in the case of companies having more than six directors, by an executive committee, if one has been appointed, and if the power of allotting shares has been delegated to it (*a*).

If the company has a large board it will be found a wise thing in practice to appoint an executive committee for this purpose; and if this committee consisted of the president, secretary and treasurer their signatures on the stock certificates would, in itself, be a record of the allotment. As the directors have power to "regulate the allotment" of shares, (*b*) in one case where a subscriber was entered in the shareholders' list and accepted a draft for the first subscription, this was taken to have been done by authority of the board (Hill's case 1 O. L. R. 501), but as this "regulation" must now be done by by-law, either each application must be adopted by by-law or a general by-law be passed dealing with the course to be pursued. It is certain that unless expressly authorized by by-law (not resolution), the directors cannot delegate this statutory power to allot stock or make calls; (Hovenden's Case, 10 Ont. P. R. 434) and the directors being the parties dele-

(*a*) Ontario Companies Act, 1907, Sec. 82.
(*b*) Ont. Act, 1907, Sec. 87.

gated by the shareholders to decide who shall become members of the company, it is by no means clear that even by a by-law could directors delegate to some officer the power of accepting subscriptions (*a*).

§ 23. Notice of Allotment.

The subscriber having applied for shares and having been accepted as a subscriber, except under special circumstances, notice of allotment must be given to the applicant or his agent in order to bind the allottee. A letter of allotment is usually sent to the applicant informing him that so many shares have been allotted to him, and that a certain sum, by way of deposit on each share, must be paid to the bankers of the company. Any official of the company may send this notice, and the seal is not needed. Notice by post is sufficient if the application is given under such circumstances that the applicant would be deemed to consent to getting his notice by post. Under ordinary circumstances such notice would be sufficient even if it failed to reach the allottee, or his agent, either owing to the default of the allottee, or to some accident in the Post Office Department. It is not necessary to prove express formal notice of the allotment; it is sufficient to show that the allottee in fact knew of it.

Such persons as become shareholders, without the necessity of any other acceptance, of course, require no notice of allotment. These would be subscribers named in the charter or in the company's agreement for incorporation. Others must have notice (*b*).

(*a*) Howard's Case, L. R. 1 Ch. 561.

(*b*) *Re* Haggert Bros., Mfg. Co., 19 Ont., A. R. 582; Magog Textile Co. v. Price 14 S. C. R., 664; Tillsonburg v. Goderich, 8 O. R., 565; Kelly Case, 7 Ont., R. 204, and 12 Ont. App. R. 486; Nasmith v. Manning, 5 S. C. R., 417; Hovenden's Case, 10 Ont. P. R., 434: *Re* Queen City Refining Co., 10 Ont. Rep., 264; Cox Case, 17 Ont. Rep., 331; 16 Ont. App. Rep., 543

It will be more convenient if the allotment of shares is postponed until after the organization meeting of the shareholders has been held, so that the only shareholders present at such meeting will be those named in the charter. The smaller the number the more easily they can get together, and it frequently happens that at an organization meeting it is desired to have present all the shareholders of the company. After organization is completed the applications can be more properly dealt with.

It must be borne in mind that all these provisions as to applications and acceptance, may be of no avail so far as allowing the company to accept the applications or to commence business, is concerned, unless the provisions of the statutes relating to the getting by the company of a certain number of applications before they can commence business, are complied with. These provisions, so far as the Province of Ontario is concerned, will be dealt with in the next chapter.

CHAPTER IV.

RESTRICTIONS AS TO ACCEPTING APPLICATIONS AND COMMENCING BUSINESS UNDER ONTARIO ACT.

§ 24. Preliminaries.

The Ontario Companies Act of 1907 has enacted as the law of Ontario certain provisions which have been contained in the Imperial Companies Act, and which very materially affect the right of the company in its early stages to accept applications, and its right to commence business at all, until a certain number of shares have been applied for, and a statutory meeting, etc., has been held. This statutory meeting is not the first meeting which the company may have held, but is an entirely new meeting. Every Ontario company must now hold a meeting called the statutory meeting. This cannot be held sooner than one month from the time when the company is entitled to commence business, and must not be held later than three months from such time. The company cannot commence business until it has received a certain number of applications and complied with other statutory provisions and given proof of same to the Government, and, it would seem, received a certificate from the Provincial Secretary that it is entitled to commence business. Every contract made by a company before that time will be provisional. This will not, of course, prevent a company from meeting and organizing and passing its general by-laws and getting in shape to sell its stock, but if it is a company which offers shares to the public, that is all it can do until it is in a position to receive such certificate and receives same.

These clauses are part 8 of the Ontario Act of 1907, section 106 to 112 inclusive, and it is important to remember that they do not apply to any company whose charter was issued before July 1st, 1907, nor to any company which does not offer shares for public subscription. A company

incorporated even after that date whose shares were all held by those who had subscribed at the time of incorporation could, if it chose, offer debentures for sale and could go on and carry on business, but could not offer shares to the public.

§ 25. Minimum Subscription.

The prospectus of the company, which is the official statement on which it asks for subscriptions for stock, must contain a statement of the minimum amount of subscriptions on which the company may proceed to allotment, and before that allotment can be made the total amount which is so named in the prospectus must have been subscribed for, and the total amount which was payable on application of such shares (up to the number fixed in the prospectus as the minimum on which all might proceed) had been paid to and received by the company. If the prospectus named no amount as a minimum then the entire amount which the company offers for sale, that is, which the directors had authorized to be sold, must have been subscribed for. In any event at least five per cent. of the nominal amount of each share must have been paid. These provisions mean, in the case of mining companies selling stock at a discount, that five per cent. of the par value of the shares must have been paid to the company, no matter at what price the shares are offered to the public.

This section applies to an offer or prospectus prior to incorporation, but it does not apply to any issue of stock after the first issue which is offered in the prospectus. It is advisable, therefore, in any prospectus, to name as the minimum amount on which the company may proceed to allotment a small amount. The object is to prevent persons who are willing to take stock in a company believing that it will be successful if it is able to carry out its plans, from having their applications accepted, and the money all spent in preliminary expenses as sometimes happens where the company is not able to get in sufficient money to make the purchase proposed, or erect buildings, or carry out its

plan, whatever it may be. A subscriber who sees that it will be necessary for a company to have at least $50,000 if its plans are to be successful, and sees it stated in the prospectus that the company will not accept his application unless at least that amount is subscribed, sees one risk of loss eliminated.

At the same time there may be circumstances which make it important for a company to be able to do some business early in its career, to make contracts for the purchase of property say, in paid up shares, and it would be extremely inconvenient if that had to wait until a large amount of stock had been subscribed by the public. A prospectus might well contain a statement that in order to comply with the strict requirements of the Ontario Companies Act regarding allotment, the directors had fixed the minimum amount on which the company might go to allotment at some small figure. If this were coupled with a statement that the company had made a provisional contract for the purchase of some property which they thought was very much in the company's interests, and that they desired to fix a small amount for allotment in order to enable the company to validly make such contract, the desired effect might be attained. No application for stock made to an Ontario company coming within this part of the Act, whether made in the beginning of the company or later, can be accepted until five per cent. of the par value of the share has been paid in. The other provisions above mentioned do not apply, however, except to the first allotment of shares offered to the public.

The amount named as the minimum subscription for allotment must have been applied for. The company need not, however, accept the total amount applied for, thus, if $50,000 was the figure named, and applications for that amount had been received the company could accept $10,000 worth of these applications and validly allot that number of shares, but, as will be seen later, it could not commence business until it had accepted and alloted altogether

the total amount named as the minimum subscription. The cash to accompany the applications must actually be received by the company, and it has been held in England that before the company could pass the resolution of acceptance the money had to be actually paid, and that moneys paid by cheque would not be sufficient unless the cheques had been cashed and the money was to the company's credit (*a*).

The company has only 90 days from the date its prospectus was first issued, (which would be taken as its date unless it were proved that it did not issue its prospectus until some time later) to get in the requisite amount of applications and cash, and if sufficient subscriptions have not been received and cash paid within that time it must immediately repay to all such applicants the total amount subscribed. Ten days' grace is given for this payment, and from that time the money is a debt bearing five per cent. interest, and the directors are jointly and severally liable for its repayment. It is important, therefore, that the directors should see that the money is paid to some responsible party to hold. No condition or agreement by an applicant waiving the requirements of this clause will be valid. In reckoning the amount to be received by the company to make up the minimum, properties turned into the company cannot be counted towards making up this amount. The applications have to be for shares to be paid for in cash by others than vendors to the company.

§ 26. Effect of Irregular Allotment.

If an allotment is made by a company in violation of this section the allotment is, however, not void, but is only voidable, that is, any shareholder who does not within one month after the holding of the statutory meeting of the company take some step to have his application cancelled may be treated as having agreed to remain a shareholder, and much more so if he pays calls or attends meetings, and

(*a*) Mears v. Western Canada Pulp Co., (1905), 2 Ch. 427.

does other acts that would show that he consented to being a shareholder.

A director who knowingly violates the provisions prohibiting allotment until the minimum amount had been received, and the money is paid thereon, is liable to compensate the company and the allottee for any loss which either sustains by such act, but suit therefor must be brought within two years from the date of the allotment.

Even though the company were being wound up, an applicant whose subscription should not have been accepted by reason of the minimum amount not having been reached may have the allotment cancelled if his suit is begun within a month from the holding of the statutory meeting. If the company does not hold the statutory meeting there seems to be no time limit preventing this suit being brought.

§ 27. Restrictions on Commencing Business.

Any company coming under this part of the Act has no power either to commence business, or to borrow money until three conditions have been complied with. First; there must have been alloted a number of shares equal to the amount named as the minimum allotment and these must be shares either paid or payable in cash, and not be shares paid or payable by promoter's services, or transfer of property, or any similar method. Secondly; each director must have paid to the company on each of the shares taken or contracted to be taken by him a proportion equal to the proportion which the public had to pay on application for their subscription. This cannot be less than five per cent., and this does not apply to any shares which a director has taken for transfer of property, etc. The fact that a director by his default might thus prevent the company from commencing business makes it advisable to have a by-law of the company to the effect that any director not paying this amount thereby vacates his seat so that he can be replaced by some one else whose subscription is paid up and the company thus enabled to carry on its business.

Thirdly; the secretary or a director must fyle with the Provincial Secretary a statutory declaration proving that the shares up to the amount named as the minimum had been subscribed for and the cash paid in on same. It will be noted that although the directors can have made a valid allotment of a part, provided that the subscriptions to the total amount of the minimum number had been received, still the company cannot start business until an allotment up to the total minimum amount has been paid.

When this declaration is fyled a certificate has to be obtained from the Provincial Secretary certifying that the company is entitled to commence business. If this certificate has been obtained on untrue statements the Provincial Secretary may cancel same. In that case it is apprehended provision would be made for the protection of those who had subscribed.

Up to the time of getting this subscription the company cannot make any legal contract. It may make contracts, and in the ordinary course will have made the contracts for the purchase of property or for whatever lies within the scope of the company's incorporation, but without it being necessary so to state in the contract. These contracts are all provisional and only bind the company from the date on which it is entitled to commence business.

The company may offer debentures and may issue a prospectus offering stock and debentures for sale at the same time. In case a company commences business or borrows money before the foregoing provisions have been complied with, every person responsible therefor is liable to a fine of $50 for every day during which such violation continues. The fact of this penalty being imposed, however, does not interfere with the right of the shareholder to get back his application money. All moneys paid to the company or to any promoter, director, officer or agent of same are declared by the Act to be held in trust until the same may be deposited in a chartered bank to the credit of the company. A private bank or loan company does not

come within this section, and any person dealing with the money until the company has received its certificate is guilty of a breach of trust.

§ 28. Preliminary Report to the Government and Statutory Meeting.

(*a*) *Preliminary Report.* Every Ontario company incorporated after July 1st, 1907, must whenever it makes any allotment of its shares, if it is a company offering shares to the public, within one month after such allotment, fyle a statement with the Provincial Secretary, stating the number and par value of the shares allotted, the names, addresses and occupations of the persons to whom same are allotted and the amount that has been paid, and the balance remaining due on each share.

If any of these shares have been alloted in whole or in part for anything except cash, as for property, or services or promotion, a written contract setting out the reasons why such person is entitled to such allotment must also be filed, and the statement must show how many shares were so alloted, how far they are paid up and what was the consideration for such allotment. There is nothing in this section, as there was in the preceding ones, limiting this to the first allotment to the public, and in its terms the section applies to any allotment that may any time in the company's history be made for anything other than cash. All the directors and officers of the company who are aware of the fact that this return has not been made are liable to a fine of $50 for each day from the time when such return should be made and such contract fyled until the time when such is fyled.

In connection with the various fines that may be imposed under the Act for violation of its provisions it is to be borne in mind that there is no officer of the Provincial Government charged with the duty of enforcing these provisions. It is open for any person to take action who desires to lay a charge, and it does not seem to be contem-

plated that action will be taken unless some person feels himself sufficiently interested to lay such a charge.

(*b*) *Statutory Meeting.* After the company has got shares to the minimum number required, subscribed and properly allotted, and after it has complied with the other requirements requisite to obtaining the certificate enabling it to commence business, it is then bound to hold a special meeting, called the statutory meeting, at which a full report must be given to the shareholders covering all the details of organization, with a statement of the receipts and expenditures.

The full details of the procedure necessary at this statutory meeting are set out in section 111 of the Act, and the secretary and directors of the company should consult that section and follow its every requirement in detail.

CHAPTER V.

FORMATION AND INCORPORATION OF COMPANIES.

§ 29. Incorporation, How Obtained.

Companies may obtain incorporation in Canada in three ways.

1. By special Act either of the Parliament of Canada, or of the Legislature of the Province in which the company desires incorporation.

2. By letters patent issued under the provisions of the Companies Act of the Dominion, Ontario, Quebec, Manitoba, Prince Edward Island and New Brunswick.

3. In British Columbia, Nova Scotia, Saskatchewan and Alberta, by subscribing and fyling a memorandum of association with the Registrar, who thereupon issues a certificate of incorporation.

§ 30. By Special Act.

Where a company is incorporated by a special Act, its powers, privileges, liabilities, etc., are determined by that Act, and by certain general provisions applicable to all such companies. These general provisions are in the case of Dominion companies contained in the "Companies Clauses Act," and they apply to all companies incorporated by special Act unless excluded by, or inconsistent with the terms of that Act (*a*).

(*a*) In Ontario these general provisions will be found in "The Ontario Companies Act," which by section 210 thereof, is made to apply to companies incorporated by special or general Act.

The Companies' Clauses Acts are as follows:—

Canada R. S. C., 1906, c. 79, Part II.

The vast majority of companies are now incorporated by letters patent or by registration, in preference to incorporation under a Special Act, as unless the incorporators want special powers and circumstances warrant the grant of such powers, incorporation by letters patent or registration, as the case may be, is much more desirable owing to there being less delay and to the fact that subsequent changes may be easily made.

§ 31. By Letters Patent.

Under the Dominion Companies Act and those of Ontario, Quebec, Manitoba, Prince Edward Island and New Brunswick, the more elaborate and formal method of incorporation by the grant of letters patent prevails. This system avoids, perhaps, a too great facility of incorporation, which has been found in all countries to have its drawbacks as well as its advantages. The effect of this method is to bring any proposed company, for which incorporation is sought, more directly under the scrutiny of the authorities, and to give to the Secretary of State or Lieutenant-Governor in Council an opportunity of refusing incorporation or of requiring modification of the powers sought, should it seem to him expedient so to do.

Quebec R. S., Que., 1888, Articles 4651 to 4693, amended by Cap. 35, 1898.

British Columbia R. S., B. C., 1897, c. 45, amended by Cap 12, 1902.

In New Brunswick, Nova Scotia, Manitoba and North-West Territories the usual method is either to incorporate in the Special Act of Incorporation in full all the requisite provisions, or to incorporate by reference to the Companies Act certain of its provisions, but, unless these are specially so incorporated, they do not apply.

Under Rule 60 of the Rules, Orders and Forms of Proceedings of the Ontario Legislative Assembly in the case of any Bill incorporating a company, or increasing the capital stock of a company already incorporated, there shall be paid to the Clerk of the House, by, or, on behalf of the applicant, before the same is reported to the House, the same fee as would be payable to the Provincial Secretary in the case of an incorporation or increase of capital under the provisions of the Ontario Companies Act, less the sum of $100 already paid to the Clerk of the House under the said Rule No. 53.

§ 32. By Registration.

In Alberta, British Columbia, Saskatchewan, N. West Territories, Nova Scotia and Newfoundland, stock companies are incorporated by registration, instead of by letters patent.

§ 33. Procedure for Incorporation by Letters Patent.

General Information. Preceding the incorporation of any company, the objects, the utility, probabilities and possibilities of its success are discussed by those who originate the idea or devise the plan of the proposed company.

The majority of companies are formed either to acquire and carry on an existing business, or undertaking, or to establish some new business or undertaking. Where the acquisition of some business, property, or right is contemplated by the parties about to form the company, it is desirable before proceeding, to procure an agreement from the owner of the business, property or right, for the sale thereof to the company. If this be not done, it may be found after the company has been formed, that the owner may refuse to sell, or may raise his price. Where the intending vendor is himself forming the company, or where the promoters are satisfied that the vendor will, when required, sign the agreement, it may be between the vendor and the company, and although it will be prepared before, it will not be executed until after the formation of the company. Examples of these agreements will be found in the forms and precedents given hereafter.

When the plans for the organization of the company are complete and sufficient subscribers to the capital stock have been secured to warrant going on with the scheme, about the first step taken, either by the solicitor, or other person attending to the matter, is to communicate with the Secretary of State, Ottawa, or with the Provincial Secretary, as the case may be, respecting the fees to be paid, the acceptability of the proposed name, etc. This

course is always advisable, as the regulations and fees are liable to be changed by Order-in-Council, and it saves time to get the information direct from the proper Department.

If it has been decided that the charter should be taken from the Dominion Government, the application should be addressed to—

The Honourable,
The Secretary of State,
Ottawa, Canada.

While, if the charter is to be a provincial one, the application should be addressed to

The Honourable,
The Provincial Secretary,
Toronto, Ont.

or Quebec or Winnipeg, as the case may be. He will forward the necessary instructions, and also blank forms of petition and stock book, and memorandum of association. These latter are generally loose sheets, intended for the subscriptions of the persons necessary to procure the charter. Where an extensive subscription is contemplated, properly printed and ruled books are prepared in the form given herein. (See Form, *post*.)

Steps to be taken. The following are the steps to be taken in the formation and establishment of companies having a capital divided into shares under the Ontario Companies Act:

1. Prepare the Memorandum of Agreement and stock book, as per form No. 202. This must be in duplicate, and must be signed by at least five subscribers, and no subscriber is to take less than one share. The amount he takes must be set opposite his signature.

2. The Memorandum of Agreement must be signed by each subscriber in the presence of, and be attested by a witness. For affidavit, see form No. 198, in list of forms. It is desirable that subscribers should not be witnesses as well. Independent witnesses are preferred.

3. Special conditions regarding preference stock or otherwise, if any, intended to have a bearing upon the stock of the company, or the manner in which it, or any portion of it, shall, or may, be subscribed for, or restrictions respecting its transfer, must be inserted in the memorandum of agreement and stock book, and in the petition, as material parts thereof. For examples of special conditions, see Forms, *post*.

4. Prepare the petition for letters patent according to form No. 196. There must be at least five petitioners, who must be subscribers for stock of the company. Minors, partnerships or other corporations should not be petitioners. The petition must state—

(*a*) The name, residence, and occupation of each applicant in full. The word "clerk" must not be used except to describe a clerk in Holy Orders, the Department of the Honourable the Attorney-General having ruled that the word may be used for this purpose only.

(*b*) The proposed corporate name of the company, which must not contain the words "Loan," "Mortgage," "Trust," "Trusts," "Investment" or "Guarantee," Evidence must also be fyled, see Form 197, showing that the corporate name of the company is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is carried on, or so nearly resembling the same as to deceive. The use of the word "royal" is not allowed in the name of a company.

(*c*) The object of the company briefly expressed in general terms, as for example: "To manufacture and sell glassware." Incidental powers are conferred by the Act.

(*d*) The place in Ontario where the head office of the company is to be situated, and where its principal books of account, and its corporation records are to be kept, and to which all communications and notices may be addressed.

(*e*) The capital of the company divided into shares.

(*f*) The names of the Provisional Directors of the com-

pany, who must be at least three in number, and who must be shareholders, and,

(*g*) The amount of stock for which each applicant has subscribed in the Memorandum of Agreement and Stock Book. It is not now necessary that any amount be paid in.

(*h*) The petition must further show that no public or private interest will be prejudicially affected by the grant of incorporation, if such be the fact.

Look carefully over the special provisions, given hereafter, (*a*) and if any of them are desired for insertion in the letters patent, as provided by the Companies Act, they must be set out in the petition.

Signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by persons who are not petitioners, or directly interested in the formation of the company. One witness for all the signatures will suffice, and, in that case, the words "Witness to the above signatures" will be used; but sometimes the same witness cannot attest all the signatures, and in that case the words "witness to the signatures of A., B., & C." will be used.

Signatures must be verified by statutory declaration, or by affidavit. See Form 198.

Signatures by Attorney must be made under a specific, not general, power duly executed. The power must be specific, both as to purpose and as to the amount to be subscribed by the Attorney, and must be fyled with that duplicate original stock book, which is to be retained by the Provincial Secretary. See Form 199.

It is necessary to take great care as regards these details. The papers of application for letters patent may be executed beyond the Province of Ontario. The papers may be wholly in writing, or on the blank forms supplied.

5. Take, or send these papers to the Provincial Secretary's Department, Toronto. They may be summarized as

(*a*) See *post*.

follows: 1. The Memorandum of Agreement and stock book; 2, the duplicate; 3, the petition; 4, the affidavit verifying signatures to both Memorandum and Petition; 5, affidavit verifying the petition and as to the name of the company; 6, a marked cheque for the fee, payable to the order of the Provincial Treasurer, (the amount of the fee, is according to the schedule given under section 132 of the Act), and if the circumstances require them; 7, Power of Attorney to sign petition, Form No. 199; 8, affidavit verifying Power of Attorney, Form 200; 9, affidavit verifying signatures to petition when signed under a Power of Attorney, Form 201.

6. These documents are there examined to see if the requirements of the Act have been complied with, and if correct, they are retained, registered and fyled, except the duplicate of the Memorandum of Agreement, which is returned to the applicants. In the course of a few days the Provincial Secretary will issue the letters patent, and give notice in the *Ontario Gazette* of the incorporation of the company.

7. On the issue of the letters patent, the company is competent to commence business forthwith, unless it be a company offering shares for public subscription, in which case, see previous chapter.

8. If it is proposed to invite the public to subscribe for shares, prepare the prospectus of the company, see Forms 203, 204 and 205, taking special care to comply with the provisions of part VII of the Act, respecting the issue of prospectuses.

Sometimes the prospectus, books, forms, etc., etc., are prepared *before* the incorporation of the company, but this is not a safe course as the name selected may be objectionable and must be altered; changes may occur in the directorate because of reconsideration, etc., etc. It is safer to wait until the receipt of the letters patent before preparing such papers, etc.

§ 34. The Letters Patent.

The letters patent when issued passes into the custody of the company therein named. It should be carefully preserved, but its loss or destruction does not dis-incorporate or invalidate the company. A certified copy can be obtained from the authority that issued the original, on payment of a fixed fee. The record can also be inspected at any time by any person on payment of a small fee.

§ 35. Special Provisions. (*a*)

Under some of the Companies Acts (*b*) it is provided that the petition for incorporation may ask for the embodying in the letters patent of any provision which, under the Act, might be made by by-law of the company; and the Dominion and Quebec Acts recite that such provision so embodied shall not, unless provision to the contrary is made in the letters patent, be subject to repeal or alteration by by-law.

The importance of the insertion of rules and regulations for the government of the company, and restrictions and limitations upon the powers of the shareholders and directors in the charter, is very great, and the advantage of so creating limitations and rules and regulations, with which the public are bound to acquaint themselves, cannot be too highly estimated. At the same time the reader is warned that unless the provision to the contrary already alluded to, is made in the letters patent, no change or alteration of such provisions can be made by the shareholders of the company, however desirous they may be of doing so, except subject to the same formalities by which the charter was obtained.

(*a*) For examples of Special Provisions, see *post*.

(*b*) Special provisions may be inserted in charters under Ontario Companies Act, Sec. 4; Dominion Companies Act, Sec 8; Quebec Companies Act, article 4698; Manitoba Companies Act, Sec. 6; Prince Edward Island Companies Act, Sec. 5; New Brunswick Companies Act, Sec. 6.

§ 36. Advertising in the Official Gazette.

The Dominion, Ontario, Nova Scotia, Manitoba, Alberta, Saskatchewan and British Columbia Acts, do not require that notice of application for a charter be given in the *Gazette* except in rare special cases where the Department directs that it be given. In Quebec, one month's notice in the *Official Gazette* is necessary; New Brunswick, two weeks' notice if the capital exceeds $5,000. Prince Edward Island in two issues.

§ 37. Procedure for Incorporation by Registration.

In Alberta, British Columbia, Saskatchewan, N.W. Territories, Nova Scotia and Newfoundland stock companies are formed by registration instead of by letters patent, as in the other provinces.

In British Columbia, Alberta, Saskatchewan, N. W. Territories and Nova Scotia, no company consisting of more than twenty persons, and in Newfoundland ten persons, can carry on business within the scope of the Companies' Act for the purpose of gain, unless registered as a stock company, or unless working under some other Act or letters patent.

The following five sections will give the method of incorporation by registration, and copies of the Act may be had from the several Provincial Secretaries.

§ 38. Memorandum of Association.

In British Columbia to form a company any five or more persons, twenty-one years of age, may subscribe their names to the Memorandum of Association, and forward the same with the necessary affidavits, Government fee, etc., to the registrar of joint stock companies, and thus become an incorporated company either with or without limited liability, according to the articles of association.

If any incorporated company carries on business when the number of members is less than five, for a period of six months thereafter, every member that is cognizant of that fact becomes personally liable for debts contracted during such period, the same as in a general partnership.

In Alberta, Saskatchewan and N. W. Territories, any three or more persons twenty-one years of age may sign the Memorandum of Association addressed to the Registrar of joint stock companies. After registration, if the company carries on business when the number is less than three for six months, every member who knows that fact becomes personally liable for the debts contracted during such period.

In Newfoundland any three or more persons may subscribe their names to a Memorandum of Association, and register as a company.

There are three classes of companies under this system, described in the three following sections:

§ 39. Liability Limited to Unpaid Shares.

Where the liability is to be limited to the amount unpaid on the shares, the Memorandum of Association must contain:

1. The name of the proposed company, with the addition of the word "limited" as the last word of the name.

2. The place where the registered office of the company is to be located.

3. The objects for which the company is to be established.

4. The time for its continuance, if for a fixed time.

5. A declaration that the liability of the members is to be limited.

6. The amount of capital, divided into shares of fixed amount.

No subscriber can take less than one share.

Mining companies may have their liabiltiies restricted to the amount paid on their shares if such provision is made in their memorandum of association.

§ 40. Liability Limited by Guarantee.

Where the liability of members is to be limited to the amount they respectively undertake to contribute to the assets in the event of the company being wound up, the memorandum of association must contain:

(1) The name of the proposed company, with the addition of the words "limited by guarantee" as the last words of the name.

(2) Object for which the company is to be formed.

(3) Place in which the registered office is to be situated.

(4) A declaration that each member undertakes to contribute to the assets of the company a sum not exceeding a specified amount in case the company is wound up while he is a member, or within one year afterwards, in settlement of liabilities contracted before the time at which he ceased to be a member.

§ 41. Unlimited Liability.

In companies where there is no limit placed on the liability of members (general partnership) the memorandum of association, besides giving the proposed name of the company, place of business, and object, must also be signed by each subscriber in the presence of, and be attested by, at least one witness. This, when registered, binds the company and the members their heirs, executors and administrators, to observe all its conditions, as though it were an instrument under seal. This is the same for the other forms of company as well.

§ 42. Articles of Association.

The Memorandum of Association *may* in case of companies limited by *shares*, and *shall* in case of a company

"limited by guarantee," or an unlimited company be accompanied by articles of association prescribing the regulations by which the company is to be conducted. The articles of association are to be printed and signed by each subscriber in the presence of, and attested by, at least one witness, and when registered bind the company, the members, their heirs, executors and administrators to the conditions.

It is generally required that the articles of association be written in separate paragraphs numbered arithmetically. In case of a company with the capital divided into shares it must state the amount of capital with which the company proposes to be registered; and in case of a company whose capital is not divided into shares it must state the number of members with which the company proposes to be registered.

§ 43. Name of Company.

Every incorporated company or trading corporation must have a name by which it may sue and be sued, enter into contracts, make and receive grants and perform all legal acts. Such a name is the "very being of its constitution, the knot of its combination." No alteration can be made in its name by the corporate body itself; if this is desired, application must be made to the authority from which its charter is derived.

A taking name is much to be desired for the purpose of designating a business company. A short name—one that will express what is wanted, and one that comes easily to the tongue—is always to be preferred. A long name—or combination of names, particularly if they are polysyllabic words, is not only a nuisance in talking, but becomes doubly so in writing. Names which require the full length of an envelope in addressing, or which take up all the space in writing a cheque, are inconvenient and cumbersome.

The amount of litigation which has in times past arisen from a confusion of names, has led to a provision, in all the more recent Acts, putting the promoters on their guard against selecting a name liable to be confounded with one already in use. At the same time it is said that "a company cannot acquire an exclusive right to use in its title of incorporation, a general term, descriptive merely of the locality with which the business carried on by the company is connected." Thus a company could not claim the exclusive use of the word "colonial," even though it be prejudiced by another using it.

For the use of the word "royal" in the name of a Canadian company, the permission of the Imperial Authorities is requisite. The rule in England in regard to this subject is very strict, and permission to use the word is confined to institutions devoted to national, charitable, or scientific objects. Its use in the names of companies has been refused by the Secretary of State at Ottawa, and the Provincial Secretary, Toronto. Under the English Trade Marks Act of 1905, clause 68, any person, who, without proper royal authority uses in connection with any trade, business, calling or profession, the Royal Arms, or any similar device, emblem or title may be restrained by injunction, or interdict from continuing so to use the same.

Under the Ontario Act the name of the company must not contain the words "loan," "mortgage," "trust," "trusts," "investment" or "guarantee."

In Ontario a going concern may be incorporated under its old name with merely the addition of the word "limited."

A man cannot sell or lend his name to a trading company to enable it to start business in opposition to some one who has a well-established business under that name. Thus, in an English case (*b*) where a glass-roofing business had been for a long time carried on in the name of Edgecumbe Rendle, and a partner in it had started on his own

(*b*) Rendle v. J. Edgecumbe Rendle & Co., 63 L. T. 94.

account and failed, and made an assignment to his creditors, the court restrained a company which he had got up for glass-roofing from carrying on business under the title of Edgecumbe Rendle & Co.

The following are instances where changes were made in the names of companies after incorporation, because of conflicting with names already in use.

The William Davies Company, Limited, objected to the incorporation by Ontario letters patent of a company under the name of "The Toronto Packing Company, Limited," on the ground that the first mentioned company had, for many years, in connection with its business, and with certain brands of meat used the words "Toronto Packing House." To remove the objection the Toronto Packing Company applied for a change of its name to that of "The Toronto Pork Packing and Beef Company, Limited."

The Electrical Supply Company of Hamilton, Limited, applied for a change of its corporate name to that of "The Electrical Power and Manufacturing Company of Hamilton, Limited," to avoid the liability of being confounded with the partnership carried on under the name of "The Electrical Supply Company of Hamilton."

To sum up—any name may be chosen subject to the following restrictions:

1. The last word of the name must be "Limited."
2. The word "Royal" must not be used without authority.
3. The name must not resemble that of any other company or firm.

The name of the company should always be correctly given in every detail. Especially is this necessary in the case of the common seal, the use of which is the official signature of the company.

§ 44. Use of Name of Defunct Company.

The transferee of assets and good will of a defunct company cannot prevent the mere use of such company's

name by another:—Montreal Litho. Co. v. Sabiston, 6 Q. B. (Que.) 510; affirmed, (1899) A. C. 610.

§ 45. Use of the Word "Limited."

Section 33 of the Dominion Act directs that every company shall keep painted, or affixed, its name with the word "Limited" after the name on the outside of every office, or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible; and shall have its name with the said word after it engraven in legible characters on its seal, and shall have its name with the said word after it mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company.

A penalty of twenty dollars is incurred for every day during which such name is not so kept painted or affixed.

The Ontario Act, section 27 does not require the displaying of the name outside every office, etc., it provides that:—

(2) Wherever the company or any director, manager, officer or employee thereof uses the name of the company, the word "Limited" shall appear as the last word thereof: Provided, that stamping, writing, printing, or otherwise marking on goods, wares and merchandise of the company, or upon packages containing the same shall not be deemed to be within the provisions of this section: Provided, also that where the word "company," "club," "association" or other equivalent word forms part of the said name the word "Limited" may be abbreviated to "Ltd." or "Ld."

It should be noted that under this section the use of the word "Limited," in full, is necessary where the name of the company does not contain certain words, while it may be abbreviated, if these words are used.

Section 29, provides that the name of a company which has not made for three consecutive years its annual return may be given in whole or in part to a new company.

§ 46. Word "Limited" under Quebec Act.

A contrary rule to that of the Dominion and Ontario Acts prevails in the Province of Quebec, where the use of the word "Limited" is not allowed in the name of a company incorporated by letters patent. The reasons given in reports of the Attorney-General's Department are, that the responsibility of shareholders is fixed by the law itself; that its omission avoids confusion between these companies and co-operative companies organized under articles 5,233 of the Revised Statutes, in which latter the law requires the word limited; and that it serves to distinguish companies incorporated under the statutes of Quebec from similar companies incorporated under Federal Statutes, in which latter the word "limited" is always added to the corporate name.

§ 47. The Objects.

In setting out the objects of the company for the purposes of incorporation too much care cannot be used, as a charter will be granted for those purposes, and those only, set forth in the application or petition, and no change in or extension of such objects can be made by the shareholders of the company, however desirous they may be of doing so, except by complying with the same formalities as those by which the charter was obtained. A corporation is a creature of the law, formed and organized for the particular objects specified in its instrument of incorporation, and if it goes beyond those objects all its acts done in excess of them are void, and its directors may be held personally liable.

A company incorporated for definite purposes has no power to pursue objects other than those expressed in its

charter, or such as are reasonably incidental thereto, nor to exercise its powers in the attainment of authorized objects in a manner not authorized by the charter. The assent of every shareholder makes no difference when the act is *ultra vires* (*a*) of the company and not merely of the directors (*b*).

A trading company may validly agree with others in the same trade not to carry on in Canada some particular branch or branches of its business for a fixed period, or for such shorter time as such branch or branches shall be conducted by a company to be formed by the parties to such agreement: McCausland v. Hill, 23 Ont., A. R. 738.

Owing to the delay often caused in amending the statement of the objects of the company set out in applications and petitions for incorporation under the Companies Acts, object clauses, which have been approved by the Departments of the Secretary of State and the Provincial Secretary of Ontario and Quebec, are inserted in this edition. These, it is hoped, will be found useful in avoiding the delay and inconvenience now so often experienced by having to return badly drawn applications for correction (*c*).

§ 48. Head Office.

The several Provincial Acts require that the head office of the company shall be situated within the Province granting incorporation, while the Dominion Act requires that the company shall, at all times, have an office in the city or town in which its chief place of business in Canada is situate.

The head office or chief place of business of the proposed company should be stated in the application or petition. There are several reasons for this. A knowledge of

(*a*) *Ultra vires*, as herein used, is a concise and convenient form by which to indicate the unauthorized action of a corporation. An *intra vires* act, on the contrary, is one which is within the express or implied power either of the board of directors or of a majority of the shareholders in meeting assembled.

(*b*) Charlebois, et al. v. Delap, et al., 26 S.C. Reports, 221

(*c*) See Forms of objects, *post*.

the proposed chief place of business of the company is to some extent necessary, in order to decide upon the expediency of granting the charter, and, if granted, governs the question of jurisdiction and service of legal process. It also notifies the general public as to the headquarters or home of the company.

Provision is made in all the Acts for changing the head office of the company from one place to another, and the directors acting under a resolution of the shareholders to that effect can effectually make such change (*a*).

§ 49. Residence.

A company resides in the place where its principal place of business is situate, and though consisting of foreign members, is subject to the law of the country by which it is created. It may possess property in foreign countries, but it has no legal existence in such countries, unless it is recognized by the proper authorities or by comity; and when so recognized, it holds its property under certain qualifications, in subjection to the law of the country where the property lies, and not to the law of the country where the company resides.

§ 50. Capitalization. (*b*)

Capitalization is a necessary feature of incorporation that cannot be avoided. It has two distinct and very important functions—(1), as a convenient means of apportioning the interests in an incorporated company; (2), as a measure of the value of an enterprise.

By knowing the amount of its capital the public are enabled to determine what credit the company is entitled to, and the extent to which it may be safe to go in dealing with it. The amount of its nominal capital must not, however, be confounded with its real capital, or mistaken for

(*a*) Union Fire Insurance Company v. O'Gara, 4 O. R. 359.
(*b*) See Difference between Capital Stock and Shares of Stock, *post*.

its basis of credit. It only forms such basis when it is all subscribed by responsible persons, or actually paid in, and only then at the beginning of its career. It is not usual for the whole of the sum fixed upon as the capital of a company to be paid up at once by the subscribers or shareholders. The nominal capital, and the number and amount of the shares into which it is to be divided, having been determined upon, and such shares having been subscribed for, an instalment only of the money they represent is usually paid, and the rest of that money is left to be called and paid as occasion may require. Hence, the distinction between *paid-up* and *nominal* capital. The former is the money which the company has, or has had; the latter, except when the shares are issued at a discount in the case of mining companies, consists of the sum to which it is entitled by virtue of the contract entered into by its subscribers and shareholders, including the nominal value of any unissued shares. After a company has been in existence for a length of time a knowledge of the actual condition of its affairs is the only safe guide to its trustworthiness. Losses may have occurred in the course of its operations by which its capital has become seriously impaired, and as the shareholders cannot be looked to, where the capital is all paid up, the actual means in the hands of the the company are all that the public can rely upon.

In fixing the capitalization of an enterprise the incorporators have a wide discretion. They will, however, naturally be governed by the conditions surrounding the venture. That is, if they capitalize at $50,000 presumably they either consider this amount of stock requisite for the purposes of the undertaking, or believe that dividends can be paid upon that amount.

"If the company," says Thring, "intend to conduct a business dependent in a great degree on credit, the nominal capital should be considerably greater than the immediate necessities of the company require, as the balance remaining uncalled, will, if the shares are in the hands of

substantial holders, be a sufficient security for the creditors. On the other hand, if the object of the company be to purchase a park, * * to make gas works, or to do any other work in which the current expenses will be small as compared with the cost of acquiring the property, the capital should be of adequate amount to make the proposed purchases, but need not leave a large reserve, as there will be no difficulty in raising money on the security of the property." And by another authority, it is said that "the amount of the capital stock of a corporation is not *per se* a limitation of the amount of property, real or personal, which it may own, or, by implication, of the amount of its liabilities or outstanding obligations, but is rather regarded as the sum upon which calls may be made upon subscribers, and dividends are to be paid to stockholders. Accordingly, where the capital stock of a building corporation was one million dollars, it was held, that this did not restrict the company from expending in their buildings two million dollars, and from incurring debts on bonds and mortgages for the excess of cost beyond their capital—their power to take and hold real estate, being in other respects unlimited by the terms of their charter" (*a*).

It would be well for applicants for incorporation to remember that under the various Companies Acts, a minimum fee is charged for a certain amount of capital, and incorporation with that amount of capital might as well be asked for, thus, in Ontario an incorporation fee of $100 is levied on a company whose proposed capital is $40,000. Incorporation with a smaller capital costs the same, and if the full amount obtainable for the minimum fee is asked for, expense may be saved later when it becomes necessary to employ a larger amount of capital.

§ 51. Alteration of Capital.

A company may make alterations in its capital in various ways:—

(*a*) Angell and Ames Corporations, Sec. 151.

1. It may increase its capital.

2. It may reduce its capital.

3. It may enforce forfeitures of shares, and, under certain conditions, accept surrenders.

4. It may consolidate its shares into shares of larger amount.

5. It may subdivide its shares.

The steps necessary for these purposes, which are set out in the Acts, must be strictly complied with.

A by-law increasing capital, passed in violation of stipulations of charter, is invalid, and holders of shares issued pursuant thereto and not fully paid up are not liable thereupon: Page v. Austin, 10 S. C. R. 132. But see Re Thunder Hill Mining Co., 4 B. C. R. 61.

Directors, even where constating instrument authorizes an increase, cannot increase capital, where company's works are in good order, debts paid, sufficient funds are on hand, and sole object is to secure to directors control of company's affairs: Perreault v. Milot, 12 Q. L. R. 248.

A company cannot reduce its capital by accepting surrender of stock: Ross v. Dusablon, 10 Q. L. R. 74.

Under the Acts of British Columbia, Nova Scotia (1900), Saskatchewan and Alberta, no sanction is required for an increase, and any sanction necessary to be obtained for a reduction is obtained from the judge of the court. These Acts empower a company to increase and reduce its capital at will, and no conditions precedent are prescribed as to the number of shares to be previously taken or the amount to be paid up thereon. The increase of the capital cannot by any possibility prejudice or affect the rights of creditors, and being therefore a matter of domestic concern, special conditions are considered superfluous. In the case of a reduction, however, these Acts safeguard the rights of creditors by every condition and precaution possible.

Under the Acts of Ontario, the Dominion, Quebec, New Brunswick, and Manitoba, certain limitations are prescribed in regard to the amount which must be subscribed,

and the amount which must be paid up, before an increase will be allowed. For the Forms necessary to increase or decrease the capital, see *post*.

§ 52. Division into Shares.

The division of the capital into shares is, of course, one of the most striking features of a company organization as distinguished from an ordinary par nership.

It is this which enables all the world to contribute to the capital fund; by which its membership may undergo daily alteration without any derangement of its corporate functions, and which gives generally that elasticity to a company which forms one of its chief advantages.

§ 53. Amount of Each Share.

"The amount of each share," says one writer, "is a matter for much consideration, and will differ according to the nature of the company." "If the objects of the company be popular, it may be advisable to make the shares of small amount, with the view of attracting numerous applicants." No limit is now placed as to the amount of each share, by the Canadian Statutes, but under the *Regulations* of the Department of Secretary of State, Ottawa, it is provided that the amount of each share must not be less than one hundred dollars; in cases where the capital stock is one hundred thousand dollars, or less, the shares may be fifty dollars and upwards. In cases where the capital stock is less than fifty thousand dollars the shares may be twenty-five dollars and upwards, and in Ontario, by Order-in-Council, (dated 31st May, 1899), it is directed that the share capital of any mining company shall not be divided into shares of a par value of less than twenty-five cents. The reason for this limitation is largely due to the fact that under the Ontario Companies Act, under which mining companies are now incorporated, pro-

vision is made for the sale of its stock by a mining company at any figure it pleases, with no personal liability included, if wished. Where, therefore, a given mining company may sell its stock for any sum it pleases, it seems that no good purpose would be served by reducing the par value of its shares to less than twenty-five cents.

Where an application was made under the Ontario Companies Act for supplementary letters patent confirming a by-law providing for an increase of the capital stock of a company, and it was proposed to make the new shares of a different value from the old shares, the application was refused on the ground that "it is so clearly contrary to the policy of the Ontario Companies Act that one share of a company incorporated under it should be of the par value of $10, while another is of the par value of $4, that the Government would not be justified in issuing letters patent confirming a by-law which contemplates this. It is quite clear that had it been proposed to create by the original charter shares of ordinary stock of different amounts, such a charter would not have been granted, and the principle which would have prevented this must be held to apply to supplementary letters patent."

§ 54. Shares in Decimal Currency.

Shares must be in decimal currency. An application for the incorporation of a mining company under the Ontario Companies Act with shares of the value of one shilling was, having regard to the fact that the lawful money of Canada is the decimal currency of dollars and cents, refused.

§ 55. Commencement of Business.

A charter having been obtained and other preliminary matters settled, it is competent to the company to commence business forthwith, unless it be a company offering shares for public subscription in Ontario, in which case

the conditions set out in chapter IV have to be complied with. Under the English system it is not unusual for the shareholders to stipulate, in order to protect themselves, that the business of the company shall not be entered upon until a certain number of shares have been subscribed. It was, indeed, at one time discussed whether or not a company could commence business until the whole of the shares had been subscribed, but it has been settled that apart from express statutory provision, there is no restriction of this kind.

Under the Dominion and Quebec Acts, it is provided that the company shall not commence its operations, or incur any liability before ten per centum of its authorized capital has been subscribed and paid for, and every director who expressly or impliedly authorizes such operations being so commenced, or liabilities being so incurred shall be jointly and severally liable with the company for the payment of such liabilities.

It is not, as a rule, considered necessary to stipulate beyond this, that any particular proportion of the stock shall be taken up before entering upon the objects of the company, the persons who have subscribed and paid for the first ten per cent. being themselves most interested and best capable of judging of the propriety of the step. The Ontario Act does not contain a similar clause.

It is no defence to an action for calls to say that all the shares have not been subscribed. Nor will a court in such case interfere to prevent business from being commenced. And under the Acts the intention doubtless is, that the company may commence its transactions as soon after the issue of the letters patent as the statutory requirements alluded to above are complied with, and the directors may deem expedient. And if no business is entered upon within three years under the Dominion and Quebec Acts, or within two years under the Ontario Act, the charter will be held forfeited by nonuser.

§ 56. Number of Shareholders Necessary.

Section 23 of the Ontario Companies Act provides that "if a corporation exercises its corporate powers when the number of its shareholders or members is less than five, for a period of six months after the number has been so reduced, every person who is a shareholder or member of the corporation during the time that it so exercised its corporate powers after such period of six months, and is cognizant of the fact that it is so exercising its corporate powers with less than five shareholders or members, shall be severally liable for the payment of the whole of the debts of the corporation contracted during such time."

Provision is made in the section enabling a shareholder to exonerate himself from this liability.

Having regard to this section, the shareholders must be careful to keep their number up to five. This is not difficult to do, even where the number is small, as a few shares may be transferred to bookkeepers or nominees of the principal shareholders. All that is required is, that there should be five names on the register.

The British Columbia Act contains a similar provision.

§ 57. Duration of Company.

There is no limitation to the existence of an ordinary business company under the Canadian Companies Acts.

Part XIII of the Ontario Act, however, provides that the existence of companies operating municipal franchises and public utilities may be limited to a term of years to be fixed by the letters patent.

The existence of a company begins on the date of the letters patent.

CHAPTER VI.

DIRECTORS.

§ 58. Introductory.

One of the peculiarities of companies, as distinguished from partnerships, is that the management of a company's business is entrusted to a few chosen individuals, and that the shareholders are deprived of that right of personal interference which is enjoyed by members of ordinary firms. The members of companies form two bodies, whose interests are or should be the same, but whose powers and functions are different; the one body consists of the directors, in whom the general powers of management are vested; and the other body consists of the shareholders, to whom the directors are accountable, and by whom they are generally appointed. Each of these bodies has its own sphere of action, and its own rights and duties.

It is to be observed that the directors of a company are all those persons who are constituted directors by a company's act, charter, or other constating instrument, and not only such of them as choose to act.

§ 59. Provisional Directors.

Until the first general meeting of the company, the persons named in the letters patent or charter, act as provisional directors, whose business it is to manage the affairs of the company, and to call a general meeting of its members, for the election of directors and the further organization of the company as soon as conveniently can be, with due regard to the delays and other formalities precedent to such meeting. The Ontario Act directs that such first meeting must be held within two months of the date of the letters patent.

At this first general meeting, the shareholders will proceed with the organization of the company, and the enactment of by-laws for its regulation and government (*b*).

§ 60. Number of Board.

The number of directors required varies in the different Provinces, but is generally fixed by the charter, and certain formalities are prescribed for either the increase or decrease of the number. A small board of directors is almost universally recommended in preference to a numerous one, as a large number weakens the sense of individual responsibility. Five is ample for all purposes. The mistake of having large boards for the sake of names—for there can be no other use in them—is the true reason why companies are so rarely enabled to compete successfully with individuals. They want unity of purpose and promptitude in action. And another reason arises from the question of remuneration. The directors are entitled to liberal remuneration for the time and thought they devote to the affairs of the company. But the directors' fees are seldom proportioned to the number of directors. Whether the board be large or small, it is usual to vote the same fee. It is better to appoint a small number of good men to manage the company's business, and by substantial remuneration make it worth their while to devote their best energies to the discharge of their duties.

§ 61. Election of Directors.

That the directors shall be elected by the shareholders is in accordance with one of the fundamental principles of companies, as distinguished from ordinary partnerships. In the latter, every member of the partnership is the agent of the others, and entitled to take part in the affairs of the partnership and to bind the others by his acts, in so far as such acts relate to the business of the partnership.

(*b*) See Form of Minutes for First Meeting, *post*.

Not so the shareholders of a company, who, as shareholders simply, are not entitled to interfere in the management of its affairs, or to bind the others in any way, but they are nevertheless not without a voice in its transactions, and especially in the election of those who are to be agents of all, who are to bind them by their acts, and to whom is intrusted the conduct of the company's affairs.

Section 81 of the Ontario Companies Act, provides that

"(2) Whenever it shall happen that from any cause there is not a quorum of directors in office the requisition mentioned in section 37 of this Act may be served on such directors of the company as are still in office, and such directors, though less in number than three, or a majority of the board, may nevertheless call a meeting under section 38 for the election of directors to fill vacancies in the board, and in default of their doing so the requisitionists or other shareholders may call such meeting as in section 38 provided.

(3) This section shall not apply to a sole director remaining in office. If there be no directors remaining in office a meeting to elect directors may be called without service of any requisition.

(4) So long as a quorum of directors remains in office casual vacancies in the board may be filled by such directors as remain in office."

The following cases respecting the election of directors may be found of interest:

1. At a meeting of the shareholders of a company, the capital stock of which was held by a few, a chairman was elected by a majority of the votes of those present, without regard to the stock held by them. Two of the shareholders, who were also provisional directors, and who were candidates for re-election, were appointed scrutineers in the same manner, and directors were then elected, excluding the plaintiff. The plaintiff was president of the company, and held a large amount of stock, sufficient with that held by those who were favourable to him to have controlled the vote if it had been taken according to shares.

It was the duty of the scrutineers to decide as to what votes were valid, and they also, with the aid of legal advice, interpreted an instrument under which the plaintiff had advanced a large sum of money to start the company, and which provided for the future disposition of the shares of the company, held by the plaintiff as a security for his advances, and allowed certain persons to vote as being *cestuis que trustent* of a portion of such shares:—Held, that the duty of the scrutineers was so plainly in conflict with their interest as candidates for the directorate that they were disqualified from so acting, and the election was set aside, and a new election ordered, with costs to be paid by the defendants (*a*).

2. An election of officers obtained by a trick or artifice cannot be considered a *bona fide* election; but when shares have been actually purchased and paid for, the fact of their being purchased with a view to influence the election is no objection (*b*).

An illegal election of directors must be moved against with reasonable promptitude: eight months' delay held too great: In *re* Moore & Port Bruce Harbor Co., 14 U. C. Q. B. 365.

§ 62. Failure to Elect Directors.

The want of the proper directors by reason of failure to elect, or by death, does not cause dissolution, though the exercise of the powers of the corporation may be thereby suspended.

§ 63. Term of Office of

The term for which directors are elected is usually one year. This is in practice by far the most ordinary, if indeed, it be not the universal period or term of office in this country. Under the acts, directors are empowered to make

(*a*) Dickson v. McMurray, 28 Chy. 533.
(*b*) Toronto B. & M. Co. v. Blake, 2 Ontario Reports, 175.

by-laws respecting their term of office, subject, however, to confirmation by the shareholders.

§ 64. Acceptance of Office.

An acceptance of the office by one who is elected director is necessary to constitute him a director. Some direct and positive act of acceptance is necessary.

Whether a person once a director has or has not ceased to be so depends [except in the case of his death] upon the by-laws of the company. A director who becomes bankrupt, lunatic, etc., or ceases to attend to his duties, does not thereby necessarily vacate his office.

§ 65. Executive Committee.

The Ontario Companies Act, Section 82, provides that the shareholders of a company, incorporated thereunder, having more than six directors may by resolution (*a*) authorize the directors to delegate any of their powers to an executive committee consisting of not less than three, to be elected by the directors from their number. After the passing of the resolution this delegation will be effected by resolution passed at a meeting of the board as "That Messrs & be a committee with power on behalf of the company to, etc.," *or* "That there be a standing committee of the directors to be called the Finance Committee, consisting of Messrs. , etc.

How much power should be thus delegated must be determined by the conditions and nature of the company's business. In a small company such a committee is unnecessary.

§ 66. Quorum.

The various Companies Acts of Canada provide, as a minimum number, that the affairs of the company shall be

(*a*) See Form, *post*.

managed by a board of not less than three directors. The number necessary to constitute a quorum is, by the Ontario Act, fixed at three, and provision is made for filling vacancies.

§ 67. Qualification.

The rule is that a person to act as director in a company, shall be the *bona fide* owner of a certain number of shares, as a guarantee of his interest in its affairs.

But where a person accepts the office of director, and has shares allotted to him in order to his qualification, which he accepts, he cannot afterwards repudiate his liability thereon. Questions like this have arisen from time to time in different forms, but principally as to the liability of the person as a contributory on shares allotted to him for the express purpose of qualification. The rule deducible from all the cases appears to be, that if a person is not qualified according to the by-laws of the company, *at the time of his election*, the whole transaction will be null, although a sufficient number of shares be afterwards allotted to him, in order to qualify him for the position. Nor will the rule be satisfied by a transfer to him of nominally paid-up shares. But if a person accept an allotment of shares, and consent that his name be placed among the number of directors, he cannot escape liability with respect to such shares.

Section 87, s.s. (*c*) of the Ontario Companies Act provides for the qualification of directors.

Under it provision may now be made for other than a stock qualification—such for instance that directors must be residents of this Province, etc., etc.

§ 68. Disqualification.

The Canadian Acts make no provision for the disqualification of directors while holding office, though it may be presumed, and section 83 of the Ontario Act provides, that

in the event of their ceasing to own and hold the requisite number of shares, they would be considered disqualified, and no longer entitled to sit and act as directors. But a mortgage of his shares by a director would not necessarily amount to a disqualification. And, it appears, that by the laws of the Provinces of Ontario and Quebec, the rule would be the same with regard to a pledge or transfer of such shares as collateral security.

In Phelps v. Lyle (*a*), it was held, that a director does not necessarily vacate his seat by becoming bankrupt, unless so stipulated by the articles [or, by the by-laws] of the company.

Nor does a prohibition in the statute against a director voting "as a director in respect of any matter in which he is personally interested" prevent him from voting as a shareholder at a general meeting in respect of such matter.

Unless the letters patent stipulate as to the amount of time a director shall devote to the company, there is no way of compelling him to attend to his duties, and a company cannot prevent one of its own directors from becoming a director of a rival institution.

§ 69. Retirement.

Another point akin to this is the retirement of a director during the pendency of the period for which he was elected.

Has a director the right to retire at will during the pendency of such period? The cases give no definite or decisive answer to this. A consideration of the authorities and cases leads to the conclusion that each case depends upon the circumstances connected with it. That is to say, if a director wished to retire from his office during the term thereof, and there was no objection to it on the part of his co-directors, his resignation would doubtless be accepted.

On the other hand, if a director wished to retire merely to escape from the responsibilities of the position at a time

(*a*) 10 Adolphus and Ellis Reports, 113.

when the company was suffering from adverse circumstances, or from difficulty or embarrassment of any kind, or if upon any other ground the company could show valid reason why he should not be allowed to retire, there is no doubt that they would be sustained in their objection by the courts..

In the United States, however, it has been held that a director has the right to renounce the office at will, even by oral notice, without the assent of the company; nor is this right cut off by a statutory provision to the effect that directors shall continue in office until the next annual shareholders' meeting, or until their successors are appointed.

When a director resigns his office and his resignation is accepted by the board, his responsibility for further acts of the board is at an end (*a*).

§ 70. Power to Remove.

Power to remove directors is often expressly conferred on the shareholders. It has been decided (*b*) that a company, whose directors are appointed for a definite period, has no inherent power to remove them before the expiration of that period. If, therefore, a director is appointed for a definite period, he cannot be removed before that period has expired unless there is some special provision to that effect.

The shareholders of a company cannot usually exercise any control over the management of its affairs, except at meetings duly convened; for the directors of a company are the servants, not of the individual shareholders, but of the company; and where the management of the directors is complained of, an aggrieved shareholder should seek redress through the company, and induce it to call the directors to an account.

(*a*) See Forms of Resignation, *post*.

(*b*) Imperial Hydropathic Hotel Co. v. Hampson, 23 Chancery Div. 1.

Where the shareholders confirmed a by-law made by the directors fixing their term of office at one year, the shareholders were bound by it, and could not themselves pass another one to alter it; they must wait until the next annual general meeting of the company and put in a new set of directors who would pass a new by-law (*a*).

§ 71. Power to Fill Vacancies.

Vacancies occurring in the board of directors may, unless the by-laws otherwise direct, be filled for the unexpired remainder of the term, by the board, from among the qualified shareholders of the company. It would appear that the power of the board to fill vacancies under the statute is only exerciseable in the interval between the vacancy arising, and the date for the next election, (*b*) after that the vacancy must be filled by the shareholders. This power of filling vacancies in the board can only be exercised by a quorum, and where the majority of the existing board resign, the vacancies cannot be filled by the action of the remaining minority, unless such minority constitute a quorum. See also section 81 of the Ontario Companies Act.

§ 72. Preference Shareholders to Select.

Under the Ontario Companies Act, section 75, the by-law creating preference shares may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as may be considered expedient (*c*).

§ 73. Remuneration.

Directors, in the absence of agreement or by-law, cannot, from the nature of their position alone, lay claim to

(*a*) Stephenson v. Vokes, 27 Ontario Reports, 691.
(*b*) Kiely v. Kiely, 3 Ont. A. R., p. 443.
(*c*) See Special Clause for insertion in Charter, *post*.

any remuneration, however arduous may have been their duties. They occupy the position, not of servants, but of managers and trustees. Directors have no power to vote themselves fees or salaries for their services beyond what the by-laws of the company may provide.

Where a director renders services as secretary under a resolution of appointment, which does not specify his remuneration, he may recover the reasonable value of such services, and also of services rendered to the company at the request of the president and directors, as land commissioner and as attorney.

In Fellows v. The Albert Mining Company in New Brunswick, the directors of a company passed a resolution allowing their president a salary of twelve hundred dollars for the year current, and ordered that a certificate of indebtedness under the corporate seal should be issued to him in said sum, upon which the president caused the corporate seal to be attached to the certificate. There was no resolution of the stockholders voting the president remuneration for his services, nor was there any provision, either in the Act of Incorporation or the by-laws of the company, for such remuneration.

Held, on an action brought on this certificate, that the president was not by law entitled to receive pay for his services, that the board of directors had no right to pass the resolution referred to, that the act of affixing the corporate seal to the certificate was of no legal force, and it was open to the company to resist payment in a court of law (*a*).

And in Waddell v. The Ontario Canning Co. *et al.*, (*b*), where, in a company consisting of seven shareholders, the plaintiffs, four of the shareholders holding twenty-five per cent. of the stock, claimed that there had been mismanagement of the company's funds in the payment out of large sums to the president and secretary, for salaries or ser-

(*a*) Steven's Digest, 340.

(*b*) 18 Ontario Reports, 41.

vices without any legal authority therefor, and in the failure to declare any dividends though the company had made large profits, and that no satisfactory investigation or statement of the company's affairs could be obtained though frequently applied for, and that it was impossible to ascertain the company's true financial standing. Under these circumstances an investigation of the company's affairs was directed. At a meeting of four of the directors, constituting the majority, held after proceedings taken by the minority to disallow the illegal payments made to the president and secretary, and without proper notice to the minority of such meeting or its object, a resolution was passed ratifying the payments made to the secretary; and at an adjourned meeting, of which also the minority received no notice, by-laws were passed ratifying the payments made to the president and secretary: Held, that the resolution and by-laws were invalid, and could not be confirmed by the shareholders, and an injunction was granted restraining the company from acting thereunder, or from holding a meeting of shareholders to ratify and confirm same.

Where an act of incorporation provides that no by-law for the payment of the president or any director, shall be valid or acted upon until the same has been confirmed at a general meeting of the shareholders, this applies only to payment for the services of a director *as a director*, and for the services of the president as *presiding officer of the board* (*a*).

The managing director is a working member of the company, not a mere servant, and can only receive remuneration so far as there is express provision made therefor (*b*).

The remuneration of directors for their trouble as such, even when authorized by the shareholders, can only be

(*a*) Ontario Express and Transportation Co., The Directors' Case, 25 Ontario Reports, 587.

(*b*) Livingston's Case, 16 Ont. A. R., 397; 14 Ont. R., 211.

made out of assets properly divisible among the shareholders themselves, and not out of capital (*a*).

That the remuneration of the directors is contemplated is clear, as the Acts of the various legislatures make the remuneration of the directors one of the matters for which the directors themselves may provide subject to confirmation by the shareholders at a general meeting,—until which time, no by-law providing for the "payment of the president or any director shall be valid or acted upon."

And in *re* London Granite Co. (*b*), it was held, that there is no presumption that their fees are to be paid out of the profits only, and that where no profits were made they could remunerate themselves out of the capital

But though directors are not entitled to recover remuneration where it has not been provided for, they are entitled to indemnity for losses and expenses incurred in discharge of their duties. And in Lambert v. Northern Railway of Buenos, Ayres Co. (*c*), it was held that a promise by directors to give their services gratuitously did not prevent them from recovering the salaries allotted to them under the previous contract with the company, as defined by the Articles of Association.

Under these circumstances, it is usual and expedient to settle these matters at the first general meeting in order to avoid difficulty thereafter.

In large companies it is considered advisable to pay a fee for attendance, usually from five to ten dollars, in order to secure the presence of the directors at the meetings. Where the directors are personally interested in the business, as is usually the case in small companies, payment for attendance may not be necessary. Sometimes the remuneration is fixed at so much per annum. Sometimes in addition to, or instead of the above, the directors are given a commission on profits, *e.g.*, ten per cent. of the surplus

(*a*) *Re* Publishers' Syndicate, 5 O. L. R., 392; 2 C. L. R., 133, (C.A.)

(*b*) Harvey Lewis' Case, 26 Law Times, New Series, 673.

(*c*) 8 Weekly Reporter, 180.

profits of each year remaining after paying a six per cent. dividend. When the remuneration is by a percentage of profits, it does not include a share of the profit made on the sale of the whole business of the company.

Directors cannot make presents to themselves, or to one of their body out of the funds of the company.

§ 74. Powers.

As a company acts entirely by its directors, as all the operations of the company, whether decided upon by the managing board or authorized by special resolution of the shareholders, are set in motion by the directors and officers of the company, no very distinct line can be drawn between the powers of the directors and the powers of the company itself. Though not exactly identical they are so merged in each other as to make a discussion of the one necessarily; a discussion of the other. In a word, whatever the company can do the directors can do, subject to confirmation or otherwise, by a general meeting of the shareholders. The company itself cannot act in its own person, for it has no visible personality. So that the only way in which it is possible to speak of the powers of directors as distinguished from those of the company, is in reference to the acts which they may or may not do, or contracts which they may or may not enter into without the previous authorization or subsequent approval of the shareholders. The powers of the company itself are, as we have seen, confined to the particular objects specified in its act or instrument of incorporation. Of the powers of the directors in their relations to the company, some idea may be obtained by considering first, the status of a director and then the powers as set out in the Companies Acts.

§ 75. Status of a Director.

The position of directors of a company is that of agents of the company, and the rules governing the directors, the

company and the general public, in their several relations one with another, are the rules which govern the relation of principal and agent, and those with whom they deal, everywhere, subject to the provisions of the act under which the company was incorporated and of its letters patent. Third parties, as well as members of the company, will be deemed to be acquainted with all the provisions of the instrument incorporating the company, and any act of the directors exceeding their limited authority will be void, unless it is capable of being and be sanctioned by the company. The directors then are the special agents of the company, in so far as they are restricted in their agency to the particular objects of the company, and by the provisions of the letters patent, but they are general agents also in so far as their powers extend incidentally to all matters not specially provided for, and not foreign to the objects of the company.

Under the Ontario Act the directors of a corporation may make by-laws subject to confirmation by the shareholders:—

(*a*) For borrowing money;

(*b*) For issuing bonds, debentures, or other securities.

And the directors of companies with share capital may make by-laws:—

(1) For creating and issuing any part of the capital as preference shares;

(2) For creating and issuing debenture stock;

(3) For the conversion of preference shares into common shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class.

(*a*) For the allotment of shares; the making of calls thereon; the payment thereof; the issue and registration of certificates of shares; the forfeiture of shares for non-payment; the disposal of forfeited stock and of the proceeds thereof; the transfer of shares.

(*b*) The declaration and payment of dividends;

(*c*) The term of service, manner of selection, and the qualification of the directors;

(*d*) The time at which, and place where the meetings of the company shall be held; the calling of meetings of the company; the requirements as to proxies; and the procedure in all things at such meetings;

(*e*) The imposition and recovery of all penalties, and forfeitures admitting of regulation by by-law, and

(*f*) The conduct in all other particulars of the affairs of the company.

§ 76. Acts of *de facto* Directors Valid.

With respects to third parties, who act *bona fide* and without notice, defects or irregularities in the appointment or election of a director, do not invalidate acts done by him *bona fide* in that capacity. If it were otherwise, the affairs of a company would be always subject to be thrown into confusion, if, indeed, it would be possible for a company to carry on business, owing to the lack of confidence which such a state of things would naturally engender.

§ 77. Acts Binding upon Shareholders.

The directors of a company are for all purposes of dealing with others, the agents of the company itself, and when convened as a board they are the primary possessors of all the powers possessed by the company except as otherwise provided. What they do as the representatives of the company within the limits of their authority, the company itself is deemed to do. It follows from this that the shareholders of a company have no right to control or interfere with the management of the business and the concerns of the company by the directors. The authority of the board of directors is derived from the unanimous agreement of the shareholders expressed in their Charter or Memorandum of Association, and hence these powers which it is intended shall belong to the directors exclusively

cannot be impaired by the shareholders. It is well settled therefore, that the board of directors of a company cannot be controlled in the exercise of the discretionary powers conferred upon them: the courts will not interfere at the suit of a shareholder to redress an alleged injury suffered by the company through some act of the directors, performed in good faith and within the scope of their powers. All questions of expediency and economy, within the limits of their powers, must be left to the free exercise of their judgment; remedy cannot be had by application to the courts.

Where, by by-law, borrowing functions are vested in directors, their exercise cannot be controlled by resolution of shareholders: Cann v. Eakin, 23 N. S. R. 475.

Where there is power to borrow, a shareholder cannot prevent a loan being taken on any terms not illegal: Farrel v. Caribou Gold Mining Co., 30 N. S. R. 199.

Directors may, without special statutory authority, or formal assent of all shareholders, make a general assignment for benefit of creditors of company: Hovey v. Whiting, 14 S. C. R. 515.

When the constating instrument of a company vests in directors' powers to pass by-laws for certain purposes, shareholders cannot at a special meeting repeal or alter a by-law validly enacted by such directors and duly confirmed. Directors cannot by by-law vary an allotment of stock made by shareholders at a general meeting: Stephenson v. Vokes, 27 Ont. R. 691.

A board of directors cannot delegate to its officers, or to third parties, its statutory powers to allot stock or make calls.

Where it appeared (*a*) that a mining company had not assets sufficient to develop its lands, and that more than ninety-nine per cent. of its shareholders opposed attempting to do so, the directors had, under R. S. O. 1897, c. 191,

(*a*) Ritchie v. Vermillion Mining Co., 1 O. L. R., 654.

s. 25 (*g*), power to sell all the lands of the company as a part of their duty and authority to manage its affairs, after honestly coming to the conclusion that a sale was in the interests of the company, and an injunction to restrain the sale was refused.

§ 78. Right to See Accounts, Etc.

The directors of a company have no power, by any resolution of their own, to exclude one or more of their number from access to the company's books. This has been decided in suits against directors who, in answers to interrogations as to the contents of the books, have sworn ignorance of those contents and inability to ascertain them in consequence of orders given by the other directors to the officers having charge of the books, not to allow them to be seen. This answer is insufficient, for the directors interrogated must, if necessary, enforce their right to examine the books, and time will be afforded them for that purpose.

§ 79. Contracts with Company.

In the case of Beatty v. North Western Transportation Company *et al.*, in the Ontario Court of Appeal, J. H. B., one of the defendants, a director of the defendant company, personally owned a vessel, "The United Empire," valued by him at $150,000, and was possessed of the majority of the shares of the company, some of which he had assigned to others of the defendants in such numbers as qualified them for the position of directors of the company, the duties of which they discharged. Upon a proposed sale and purchase by the company of the vessel "The United Empire," the board of directors [including J. H. B.] at their board meeting adopted a resolution approving of the purchase by the company of such vessel; and subsequently at a general meeting of the shareholders, including J. H. B., and those to whom he had transferred portions of the stock, a like resolution was passed, the plaintiff alone dissenting:

Held, that although the purchase or the resolution of the directors alone might have been avoided, the resolution of the shareholders validated the transaction, and that there is not any principle of equity to prevent J. H. B. in such a case from exercising his rights as a shareholder as fully as other members of the company (*a*).

Since the above judgment was affirmed the Ontario Act has been amended as follows:—

89. No director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser or otherwise, and any director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and in case he discloses the nature of his interest, and refrains from voting he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; provided, however, that no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares or being a director in any other company with which a contract or arrangement is made or contemplated; provided, also, that this section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity.

In the absence of agreement there is clearly no duty or obligation on the part of directors to pledge their own credit for the benefit of the company (*b*).

(*a*) 11 App. Rep. 205, and which judgment was affirmed by the Privy Council, 12 App. Cas., 589.

(*b*) Christopher v. Noxon, 4 Ontario Reports, 672.

Where certain shares were allotted to one of the directors of a company at par, in consideration of which he offered to supply funds to meet a pressing demand upon the company, and he voted on these shares at a general meeting of the shareholders, and no opposition was at the time made to his so doing:—Held, that the shareholders must be considered to have ratified the transfer, and could not afterwards object to it as improper (*a*).

It was alleged that he thus acquired such stock in order to obtain control of the company:—Semble, that this would not be improper, if no improper means were used by him; but that had he made a profit thereby the company might perhaps have claimed it (*b*).

An allotment of shares to a director, if a questionable act, may be ratified by the company, and for this purpose, as for all other acts within the power of the corporation, the approval of a majority of shareholders is sufficient (*c*).

A director of a company, having a judgment and execution of his own against the property of the company, acting in good faith, purchased the same at a sale by mortgagees, under a power of sale for $8,400, and sold it in the following year for $23,000:—Held, in winding-up proceedings, that he could not purchase for his own benefit, but held the land as trustee for the company and was accountable for any profit received on a re-sale, and by reason of his refusing to pay over or account for such profits, and in fact by his appearing as a bidder at the sale and so damping the bidding, he was guilty of a breach of trust within R. S. C. c. 129, s. 83 (*d*).

§ 80. Liabilities of Directors.

The several Canadian Acts relating to companies contain clauses making the directors liable to various penalties; for

(*a*) Christopher v. Noxon, 4 Ontario Reports, 672.
(*b*) *Ib.*
(*c*) *Ib.*
(*d*) *Re* Iron Clay Brick Manufacturing Co., Turner Case, 10 O. R., 113.

declaring dividends improperly; for making loans to shareholders; for wages; for transfer of shares to insufficient persons and some of them for failure to make returns to the Government. All in addition to the liabilities of directors for false statements in prospectuses, advertisements, etc., and for misfeasance in office.

Directors are personally liable for false and fraudulent statements: Parker v. McQuesten, 32 U. C. Q. B. 273; Rhodes v. Starnes, S. C. 22 L. C. J. 113.

A president or director of a trading company charged with knowingly publishing a fraudulent statement may be tried either in the Province from which or to which he despatched such statement: Queen v. Gillespie, I. Con. Cr. Cas. 551.

Directors are responsible for faults and misconduct of their employees, unless not preventible by exercise of reasonable diligence: McDonald v. Rankin, M. L. R. 7 S. c. 44.

Directors are not, without individual fault personal to themselves, responsible for contracts or torts of company: Therien v. Brodie, S. C. 4 Que. 23.

Directors and officers are not personally liable in an action based on an implied warranty of authority, or on misrepresentation, where they purchase on credit for an incorporated association forbidden by its charter so to buy: Struthers v. Mackenzie, 28 Ont. R. 381.

Under the Ontario Companies Act, s. 94; the Quebec Joint Stock Companies' Act, Article 4720; the Quebec Mining Companies Act, s. 9, and the Manitoba Joint Stock Companies Act, s. 33, directors are jointly and severally liable to the labourers, servants and apprentices of the company for all debts not exceeding one year's wages due for services performed for the company while they are such directors respectively.

A person employed as foreman of works, who hires and dismisses men, makes out pay rolls, receives and pays out money for wages and does no manual labour, and in addi-

tion to receiving pay for his own services at the rate of five dollars per day, payable fortnightly, is paid for the use of machinery belonging to him and of horses hired by him, is not a labourer, servant or apprentice within the meaning of section 68 of the Joint Stock Companies' Letters Patent Act, R. S. O. Cap. 157, and cannot recover against the directors personally. Welch v. Ellis, 22 A. R. Ont. 255.

The section mentioned in this judgment is identical with section 94 of the Ontario Companies Act.

Under the Dominion Act, R.S.C. 1906, Cap. 79, Sec. 85; the North-West Territories Ordinance, c. 20; s. 54, directors are jointly and severally liable to the clerks, labourers, servants and apprentices of the company, for all debts not exceeding six months' wages due them.

The statutes of British Columbia, New Brunswick, Nova Scotia and Prince Edward Island do not contain similar clauses.

As shareholders, the directors are also liable under the Ontario Act for the debts of the company if they carry on business with less than five shareholders.

§ 81. General Remarks.

Can a man holding a plurality of responsible offices conscientiously discharge the proper duties devolving upon him from each position of trust, or does he nominally pretend to do so? This question has often been asked by shareholders, and, doubtless, many others have often reflected upon the important matter, dismissing their conclusions with a shudder and a hope.

It is not uncommon to find one man, conducting a large and legitimate business of his own, connected as a director with two, three and more public companies where large financial interests demand careful watching and management in every detail.

With the promoters of large financial and commercial companies the questions of ability and moral responsibility

are not as a rule discussed so far as regards the directorate. Far more important is it considered that they shall place the company under the shadow of great names. Men of influence, standing and fortune are secured, often irrespective of age and ability. In England the acquisition of one or two titles is usually a desideratum in floating a new concern. The Earl of This and the Marquis of That permit the use of their names, and become the chief guinea-pigs in the cage of directors. Of course very few of this class of directors ever pretend to look into the business—they are content to meet once a week or so, chat over a small luncheon, pocket a trifling fee, and overlook the books entirely. They are the much-abused figure-heads. There is the same class of useless directors in certain Canadian companies, handling and managing large financial affairs.

The Province of Manitoba has dealt with this matter in Chapter 14, 5-6 Edward VII, which enacts as follows:—

"No person shall accept an allotment or receive a transfer of any shares in the stock of any company or corporation incorporated under this Act, or under any statute of this Province, or accept or receive any other benefit or advantage from any such company or corporation, or from any person connected with it, in consideration of allowing the use of his name as a director, trustee or member of the board of management of any such company or corporation, under a penalty of not less than one hundred dollars and not more than two thousand dollars, to be recovered on summary conviction before a police magistrate or two justices of the peace.

No person guilty of any violation of sub-section (1) hereof shall be entitled to retain or hold any shares or stock, or other benefit or advantage, allotted or transferred to or received by him for any such consideration as aforesaid."

A man may be successful and clever in a business to which he has been applying himself for years; but it does not follow that he will be equally useful or fortunate in helping to conduct another of which he knows nothing.

There is another danger in men holding offices in several companies formed for financial business. It is possible by collusion for directors to accommodate one another or the institutions they direct, and a loophole for fraud is left open, which should not be forgotten in these days of commercial jugglery.

Shareholders should, therefore, discountenance such an anomaly if they wish their savings to descend to their offspring, as the greed for prominence, more particularly when pay is attached to it, beclouds too frequently the sense of honor which ought to influence the conduct of men holding trust positions, and as to whom the illustrious Burke once declared that "*Those who execute public pecuniary trust ought of all men to be the most strictly held to their duty.*"

CHAPTER VII.

OFFICERS, THEIR DUTIES AND POWERS.

§ 82. General.

Where the company is not large or important, two officials are often all that is needed—a president and a treasurer, who may also act as secretary. In larger companies, Vice-presidents, Assistants to the Treasurer and Secretary, a General Manager, Solicitor and other officers are provided. It is necessary that the President and Vice-president as presiding officers of the board, be members of that body. It is not necessary that the Secretary, Treasurer, or other officers be directors, or even shareholders.

§ 83. President.

The president is the chief executive officer of the company and he may, without any special authority from the board of directors, perform all acts of an ordinary nature which by usage or necessity are incident to his office and may, when authorized so to do, bind the company by contracts, and also in matters arising in the usual course of its business, or by exercising the powers which usage and custom and the necessities and conveniences of business require in the executive officer of the company. He has no more control over the corporate property and funds than any other director (*a*), nor in the absence of special authority, has he any more power to bind the company than any other director. Almin v. Law, 26 N. S. R. 340.

The president of a company is, as the name implies, the presiding officer of its board of directors and of its shareholders when assembled in general meeting. He is elected by the board of directors.

(*a*) Stokes v. New Jersey Pottery Co., 46 N. J. L., 240.

Where he is vested with the general care, oversight and management of the company's concerns, and is paid a salary for his services, he is bound to render, in return for the confidence thus reposed in him, and the compensation thus paid to him, good business diligence in the discharge of the duties thus assumed. He is answerable to the company for the want of the reasonable or ordinary care bestowed by a good business man in the oversight of a similar business under similar circumstances.

A woman may be elected president of a company, indeed a woman may be elected to any office in a company. Several companies, the whole of whose shareholders are women, have been incorporated under the Canadian Companies' Acts.

§ 84. Powers of President.

In a recent case it was stated that "the president of a company, by virtue of his office merely, has very little authority to act for the company; his powers depend upon the nature of the company's business and the authority given him by the board of directors. The board may invest him with authority to act as the chief executive officer of the company; this may be done by resolution, or by acquiescence in the course of dealing and manner of transacting the business of the company. When a contract is made in the name of a company by the president, in the usual course of business, which the directors have the power to authorize him to make, or to ratify after it is made, the presumption is that the contract is binding on the company, until it is shown that the same was not authorized or ratified. One dealing with the president of a company, in the usual course of business, and within the powers which the president has been accustomed to exercise without objection from the directors, has the right to assume that the president has been invested with those powers."

When the president also acts as the general manager of the company, judicial decisions have ascribed to him power

to do any act in the ordinary transaction of its business in behalf of the company so as to bind it.

§ 85. Remuneration of President.

The salary of the president may be fixed by a by-law of the board of directors, which must be approved by the shareholders. This should be done without the concurrence of his own vote, and where the salary has been so fixed and he accepts the office, he cannot thereafter, increase the salary thus fixed, without the further approval of the shareholders. See also remuneration of directors, etc. Chapter Six.

Where the president and vice-president of a company drew for several years, without proper authority, but with the acquiescence of their co-directors, elected by, and, closely connected with the majority of the shareholders, large sums, ostensibly as salaries as general manager and managing director, respectively, the propriety of the payments could be inquired into at the instance of dissatisfied shareholders, although the majority were prepared to ratify them. Earle v. Burland, 27 Ont. App. 540.

§ 86. Vice-President.

The vice-president has the power of presiding at meetings of the board of directors, in the absence of the president. This is about the sum total of his powers unless where he has been specially authorized to act on the company's behalf.

§ 87. Secretary.

The duties of this officer vary with the size and nature of the company, and the terms of the arrangement made with him. In the ordinary course he is present at all meetings of the company, and of the directors, and makes proper minutes of proceedings thereat; he issues, under the di-

rection of the board, all necessary notices to shareholders and others, and conducts all correspondence in regard to calls, transfers, forfeitures, etc.

The functions of a secretary are clerical and ministerial only; that is to say, he is the agent through whom the clerical work of the company is done, and who carries out the orders given to him by the directors without exercising an independent discretion. He should inform himself as to all ordinary corporate law and procedure, as such information is more necessary for him than for any other of the company's officers. In addition to a volume dealing with company management and organization he should have a copy of the Act or Acts under which his company is incorporated, together with any amendments that may, from time to time, be made thereto. In practice it frequently happens that a great deal is left to the discretion of the secretary; but, however, that may be, the directors are the persons on whom the real responsibility rests, and the acts of a secretary done within the scope of his authority are the acts of the company or the directors.

It has been held that the secretary of an incorporated company is an officer of the company, and is not merely an officer of the managers or directors by whom he is appointed. It has also been held that he is not a "servant" nor an "employee," within the meaning of a statute creating a preference in favour of the wages of servants and employees.

The secretary is the proper custodian of the corporate seal, and the keeper of the records of the company. He is therefore the proper person to prove its books as a witness. He is also the agent through whom the company ordinarily communicates to the public, knowledge of its acts, and hence his official statements of such acts when accepted and acted upon by third parties in good faith are binding upon the company.

The secretary has no inherent power to bind the company, though of course the company may become subse-

quently bound by ratification. He may in the ordinary course of business of the company indorse its negotiable paper. Evidence that an indorsement of a note held by a company was made by the secretary or treasurer of the company, with the knowledge and consent of the directors, is evidence from which a jury may infer such officer's authority to indorse.

A secretary cannot bind his company by signing without authority a deed of composition and discharge (*a*):

The duty of examining the instruments of proxy that may be sent in, and registering transfers of shares devolves on the secretary, and he is bound to see that such transfers are properly made. Applications for inspection of the corporate books and records should be made to him.

The minutes of a corporation need not be entered up in the handwriting of the secretary; it is sufficient if they are entered under his direction and approved by him.

There is no requirement that the secretary be a shareholder of the company.

§ 88. Remuneration of Secretary.

The secretary cannot consider himself legally appointed until his appointment has been made by the company itself after incorporation. While an express agreement formally drawn up and made between the company of the one part, and the secretary of the other part is at all times desirable, yet it is not necessary in order that such an officer may recover a reasonable compensation for his services that there should have been such an agreement. The secretary being an *officer* of the company he has no lien upon its assets for his compensation, nor is he entitled to a preference over other creditors.

§ 89. Surrender of Records by Secretary.

The secretary is absolutely bound to surrender the books, papers, and other official records of the company,

(*a*) Bolt & Iron Co. v. Gougeon, S. C. 7 L. N. 40.

upon the expiration of his term of office, and it is not a valid reason for his retention of them that his accounts have not been adjusted.

§ 90. Treasurer.

The treasurer is the custodian of the funds of the company, charged with the duty of preserving, disposing and accounting for them in accordance with the orders of his official superiors. To secure the faithful performance of these duties, he is generally required to execute a bond. The bond of a regular guarantee company will be found the most satisfactory. It is his duty to keep the moneys of the company distinct from his own, and to deposit them to the company's credit, and not in his own individual name. He should be able and ready at all times to pay over any balance he owes to the company, and to pay it upon demand. He is not liable in damages for loss happening through his mere errors of judgment. Unless authority is conferred upon him by the charter or by-laws, he has no power to assume the payment of debts without conferring with the directors. He has no right to pay himself a claim he holds against the company unless the payment has been authorized by the company. Where the acts of the treasurer of a company are performed at the office of the company, are of a public character and long continued, it is reasonable to presume that they are in conformity with the instructions of the directors, and an indorsement made in pursuance of such implied authority passes a valid title to the indorsee.

Where the company is a small one the treasurer is frequently the bookkeeper, while in an important enterprise he would supervise the office staff.

§ 91. Managing Director.

In many companies where the president is unable to give sufficient time to the direct supervision of its affairs, a

managing director is appointed. As the name indicates he is one of the directors, representing the board, and delegated to take active charge of the business of the company. His position is one of much greater dignity than that of a general manager, although his duties may be similar to those of that official.

The managing director is a working member of the company, not a mere servant, and can only receive remuneration so far as there is express provision made therefor: Livingstone's Case, 16 Ont. A. R. 397; 14 Ont. R. 211.

§ 92. General Manager.

The general manager takes charge of the business of the company under the direction of the president or managing director. He should be a man skilled in the business carried on by the company and able to direct its practical working and manage its employees.

He has power to do whatever is usually done in the business management of such concerns; and a person dealing with the company through its general manager is justified in acting on the assumption that he possesses such powers, unless notice to the contrary be given.

Although the manager may be a director he is an employee of the board of directors. He holds his office like any other agent or servant, subject to the terms of the particular contract under which he is employed, and subject to the pleasure of the directors, unless a stated term is fixed in his contract.

The manager of a company can bind it by all contracts within the apparent scope of his authority: Thompson v. Brantford Electric, 25 Ont. A. R. 340; Millar v. Cochran H. G. M. Co., 29 N. S. R. 304.

A railway company was held bound by the act of its manager, who employed a solicitor at an annual salary, the directors having accepted his services: Albert Ry. v. Peck, 26 N. B. R. 191.

§ 93. Solicitor.

The solicitor advises the company in all matters where his advice is asked, and in large companies he frequently attends board meetings, and is present to advise the directors at general meetings. It must be remembered, however, that the solicitor has no authority, and is only an adviser, whose advice may be accepted or rejected.

In questions as to increasing or reducing the capital, issuing new shares or debentures, forfeiting shares, passing resolutions for winding up, or undertaking any scheme for amalgamation with other companies, it is most desirable that advice should be had before even the preliminary steps are undertaken, as mistakes may easily be made, which almost always involve considerable unnecessary expense, and which sometimes cannot afterwards be rectified.

When a person is appointed solicitor to a company, he naturally acts for the company in most of its affairs; but the company is at liberty to employ any other person or firm for any business unless there is an agreement that it will exclusively employ a specified person or firm.

§ 94. Removal of Officers and Agents.

Unless an officer has a contract with the company, fixing the term of his employment, he can be dismissed by the directors with whatever notice he would be entitled to if employed by a private person.

A company should remove an officer or agent, where there is a contract for a fixed term, only where he violates his contract, or is incompetent. It can, however, at any time revoke the authority of an agent, rendering itself liable for breach of contract.

A statement in the Articles of Association that a particular man is or shall be the secretary, manager, or other officer is not a contract with him, and each officer should protect himself by seeing that his appointment is duly

made by a resolution of the board of directors, or by an agreement executed by the company after its incorporation.

Generally the directors may remove their own appointees at will.

A contract for the employment and remuneration of ordinary and necessary officers need not be under seal: Caston's Case, 10 Ont. P. R. 339; Ellis v. Midland R. W. Co., 7 Ont. A. R 464.

For appointment of permanent and principal officers contracts should be under corporate seal: Armstrong v. Portage, Etc., Ry. Co., 1 Man. R. 344.

Where power of dismissal is reserved to directors, it must be strictly pursued and at a regular meeting of the board: McEdwards v. Ogilvie, 4 Man. R. 1.

A company is liable for the nonfeasance of its officers within the scope of their duties: Lamarre v. Woods, 13 S. C. (Que.), 466; McMurrich v. Bond Head, 9 U. C. Q. B. 333.

Directors may dismiss without notice a manager who is insolent and insubordinate: Dick v. Canada Jute Co., S. C. 30 L. C. J. 185.

§ 95. Resignation of Officers.

A resignation may take place by an express agreement between the company and the officer, or by his acceptance of another office in the company incompatible with the one he holds. The resignation is not complete until it is accepted by the company by an entry in its books, or by treating the office as vacant.

§ 96. Advances Made by Officers.

It is not unlawful for an officer of a company to withdraw from its funds, when the state of such funds will permit of it, enough money to repay himself for advances made to the company.

§ 97. Company Bound by Acts of Officers.

Proof that a person has dealt with an agent of a company in good faith within the scope of his apparent authority and relied upon this apparent authority, will render the company liable for the act whether the agent exceeded his authority or not; and in order to establish a defence, it must be shown not only that the act of the agent was unauthorized, but also that the party dealing with the agent had notice thereof, or that he did not rely upon the apparent powers conferred upon the agent by the company.

§ 98. Liability of Officers.

The directors or officers of a company who make false statements of material facts, misrepresentations as to solvency and the like, the natural tendency of which is to deceive the public, are liable for the damages sustained by one who relies on such statements and is misled and suffers damages in consequence.

Directors or officers of companies have by statute in many of the Provinces been made liable to penalties, or for the debts of the company, where they fail to make a report of the condition of the company; where they make false reports of such condition; where they pay a dividend out of capital; where they make loans to shareholders; where they allow the number of shareholders to fall below five, and under some Acts (*a*) for the wages, not exceeding one year, due for services performed for the company by labourers, servants and apprentices.

(*a*) See list of these Acts under heading "Various Liabilities of Directors," Chapter VI.

CHAPTER VIII.

MEETINGS.

§ 99. Introductory.

The shareholders of a company constitute the origin, existence and continuance of the company itself. They elect its directors, control through the election of directors its general policy, and may terminate its existence at their pleasure. These vital powers of the shareholders can be exercised by them only in corporate meetings, duly convened and properly organized for the transaction of business. Accordingly, the method of calling together a corporate meeting, the time and place of that meeting, the notice to be given, and the various incidents relative to a convening of the shareholders and the proper conduct of their meetings, are of great importance. They constitute the subject of this chapter.

As already stated, shareholders can hold elections and transact the other business which they as a body are qualified to transact only at a corporate meeting duly called and convened. Consequently, all votes taken elsewhere than at such a meeting, and all separate consents, either oral or in writing, whereby the shareholders assume to bind the company, are invalid and void.

It must be observed, however, that the new Ontario Act, Section 138, provides "that any by-law by this Act required to be sanctioned by a two-thirds vote of the shareholders at a general meeting specially called for considering the same may in lieu thereof be validly sanctioned by the consent in writing of all the shareholders."

§ 100. Notice.

The business which the shareholders in meeting assembled have the power to transact is not extensive, but it is of great importance.

When, therefore, no sufficient notice is prescribed by charter, or statute, or by-law, each shareholder is entitled to an express personal notice of every corporate meeting. No usage can operate to excuse a failure to give such a notice.

The right to receive notice is for the shareholder's benefit, and may be waived by him. If all the members are present at a meeting and assent to the holding of it, no one can object that no notice was given. Such assent should appear in writing on the record, signed by all (1).

(*a*) *What the notice to contain.* Notice should specify date, time of day, place and business proposed to be transacted at the meeting. No special form is necessary if these essential particulars be contained.

Regularly the notice ought to state the place of meeting, and this is indispensable if it is proposed to meet at an unusual place. The exact hour should be specified. If there is some standing rule or established custom known to all the shareholders which fixes time and place, it may not be necessary, but it is still advisable to specify these.

(*b*) *How notice to be given.* In the first place directions prescribed by the statute creating the company, and by its charter and by-laws must be followed. If they are silent, there should be a printed or written notice signed by some person authorized to call a meeting, delivered to each person entitled thereto.

The Ontario and Dominion Acts provide that, "A notice to be served by the company upon a shareholder may be served either personally, or by sending it through the post, in a registered letter, addressed to the shareholder at his place of abode as it last appeared on the books of the company. A notice or other document served by post by the company on a shareholder shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that

(1) See Form of Waiver, *post*.

such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time reqisite for its delivery in the ordinary course of post."

It has been held that verbal notice, where full information of the proposed meeting is given, is sufficient, but this is dangerous.

The fact that a shareholder is away from home will not excuse failure to give notice. In such a case the notice should be sent to the shareholder's residence by mail, or left with some one of the shareholder's family, or at his house, or last place of abode, if the family be absent. It is no objection to the legality of a meeting that some of the shareholders were incapable of receiving notice by reason of physical or mental infirmity.

As to length of notice, the statute, charter or by-laws should determine. If they are silent, notice must be given a reasonable time before the meeting, and if parties reside at a distance, sufficient time must be allowed that they may attend if they desire to do so. If the notice is sent by registered mail, it will be presumed to have reached the person for whom it was intended.

A copy of the notice sent, with date of sending endorsed thereon, should be preserved by the secretary as evidence, if needed, that proper notice of the meeting was given. Copies of newspapers, if notice was published, should also be kept.

(c) *Notice in case of deceased shareholder.* Where the governing statute or charter is silent as to the mode of giving notice of a call when the shareholder is deceased, and the fact of his death is not known to the company, a notice sent by mail to him at his registered address wil be sufficient to bind his executors.

In the English case of Allen v. Gold Reefs of West Africa, Limited, 1899, 2 Chancery 40, it was held that apart from special provisions in their articles of association, a company having notice of the death of a member cannot

bind his estate by posting to him at his registered address: —(1) A notice preliminary to forfeiting his shares for non-payment of calls due at his death, or, (2) a notice of an extraordinary general meeting to be held for the purpose of altering the articles in such manner as to impose a fresh liability on his shares.

§ 101. Statutory Meeting.

The Ontario Companies Act, sec. 34, provides that the provisional directors of a company not offering shares for public subscription, shall call a general meeting of the company to be held at a convenient place within two months from the date of the letters patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking. For full details of this meeting, see sec. 111 of that Act.

§ 102. Ordinary and Special.

The general meetings of a company may be divided into two kinds, viz.: ordinary and special. The former are convened at regular and stated periods, as established by the letters patent or by-laws of the company as annually or semi-annually; the latter, those which are convened at any other time for the transaction of special business not foreseen or provided for at ordinary general meetings.

§ 103. Where Meetings Held.

By the common law of England it appears to have been taken for granted that the general meetings of a company would always be held within the jurisdiction from which its charter emanated, as no absolute rule appears to have been laid down with regard to it. Even the Imperial Companies' Acts are silent on the subject, saying merely that

"subsequent general meetings [*i.e.*, meeting subsequent to the first at which such arrangements could be made] shall be held at such time and place as may be prescribed by the company." In this country, however, companies exist the greater part of whose stock is held in the United States, for instance, by reason whereof, it is considered desirable to hold general meetings in that country.

In the United States particularly it can be readily imagined that companies exist everywhere, the bulk of whose stock is held in another State, or other States, from that in which the company had its birth.

Hence, we are not at all surprised to find that the question has been raised as to the legality of a general meeting held outside the jurisdiction in which the company was created, and to discover that it has been laid down, "That all votes and proceedings of persons professing to act in the capacity of corporations, when assembled beyond the bounds of the state granting the charter of the corporation, are wholly void" (*a*). And the Code of California goes much further than this, and provides that, "The meetings of stockholders and board of directors of a corporation must be held at its office or principal place of business." But though this is the more regular and desirable mode, it is not pretended that by the general law of corporations, general meetings of the members *must* be held at its chief office or place of business unless so provided by its by-laws or charter. And hence we find it stated by an authority already cited (*b*) that, "Where according to the by-laws and usages of a society, their meetings for the transaction of business are opened by a presiding officer, who holds his office for a fixed term, and no meeting is considered duly organized unless opened by him, and such officer is prevented by the violence of members of the association from discharging his duty at the accustomed place of meeting, he and such of the society as think proper to accompany him,

(*a*) Angell & Ames Corporations, sec. 498.
(*b*) Angell & Ames Corporations, sec. 497.

may retire to some convenient place adjacent and there open the meeting, and their acts and doings will be obligatory upon the society," etc. And in McDaniels v. The Mfg. Co.; (*a*), "Where the by-laws of a corporation required the meetings of the corporation to be held at the counting-room of the corporation, and it appeared from the records that a meeting was held at the dwelling house of the general agent and clerk, without stating that it was at the counting-room of the corporation, it was held, that the court would presume the counting-room was, for the time being, at that place."

The majority of the Canadian Acts contain sections prescribing that the general meeting of shareholders shall be held within the limits of the jurisdiction from which the charter emanated leaving it to the by-laws of the company itself to prescribe the exact place at which they shall be held (*b*).

In Ontario, however, all meetings of the shareholders and directors shall be held at the place of the head office of the company, save and except when the company is authorized by the Special Act, letters patent or supplementary letters patent, to hold meetings of shareholders or directors out of Ontario.

§ 104. Quorum.

The Canadian Acts, except that of Ontario, empower the directors to make by-laws, subject to confirmation by the shareholders, fixing the quorum, which shall be ascertained as follows:—

"If the shareholders at the time of the meeting do not exceed ten in number, the quorum shall be three; if they exceed ten there shall be added to the above quorum one for every four additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty."

(*a*) 22 Vt. 274.

(*b*) See Revised Statutes Canada, Revised Statutes Quebec,

The sections relating to a quorum have been omitted from the new Ontario Act. They were thought to be unnecessary. If all shareholders have notice, as is provided, the business of the company should go on. Provisions for a quorum more often lead to obstruction than good business.

§ 105. Voting.

The rules governing the deliberations of the meeting are the same as those governing the proceedings of deliberative assemblies generally, except with respect to the voting, for which there are special rules in all Companies Acts. That rule usually is that each share represented shall carry a vote. This is a very simple rule, but one involving a little trouble in determining beforehand to how many votes each member present is entitled.

The votes of the "two-thirds in value of the shareholders" who may vote for a by-law authorizing the borrowing of money, etc., on the property of the company are, where there has been no default after a call, to be computed upon the face value of the number of shares held, and not upon the amount paid upon such shares (*a*).

The freedom of every shareholder to vote as he thinks best for his own interests is unrestricted, and in the absence of anything to the contrary in the charter or by-laws, of the company, he may vote upon a question in which he is personally interested. So that where the question was whether or not the company should adopt a bill which had been filed to impeach the title of some of the shareholders, it was held that the shareholders in question were entitled to vote.

§ 106. Who May Vote.

The question who is entitled to vote upon a particular share of stock, is, as a general rule, answered by a refer-

(*a*) Purdom v. Ontario Loan and Debenture Co., 22 Ontario Reports, 597.

ence to the transfer book of the company. He who is there registered as the owner of the stock is entitled to vote upon it.

A lunatic or idiot may according to the English Acts, vote by his guardian or trustee. And so with minors. But as between the shareholders and the company, the person entitled to the right of voting is the person legally entitled to the shares, the person whose name is on the register. The company have no right to inquire into the beneficial ownership. And if stock be held jointly by two or more persons, any one of them present at a meeting may, in the absence of the other, or others, vote thereon; but if more than one joint stockholder be present or be represented by proxy, they must vote together on the stock jointly held.

Where stock is jointly held and the owners cannot agree as to the vote to be cast, the vote on such stock may be rejected.

Again, a person is by all the Companies Acts, entitled to vote on shares held by him in trust, and *semble*, even where he is trustee for the company itself, if his name appears on the register as the holder of such shares in trust. And the chairman also, it would appear, may vote on his shares as any other member, though he has the casting vote in case of a tie, besides.

The rule giving him the casting vote in case of a tie, has been adopted because as presiding officer he is the representative of the entire corporation, *to act for it when it cannot*: and in him is vested the full power to express its will by the casting of the deciding vote.

Where the power of one corporation to be a shareholder in another is conceded, either by statute law, in express terms, as under certain conditions, in sec. 90, Ontario Companies Act, and sec. 44, Dominion Companies Act, or by judicial construction, it would seem to follow that the right to vote in respect of the shares would exist as a mere incident of their ownership.

§ 107. Voting by Proxy.

A shareholder though not present, may vote by proxy, according to the universal practice of companies though no such right exists at common law. The object of this privilege is clearly to allow those who are unable to be present at a general meeting, either from sickness, distance, or any other cause, to exercise, through or by means of others, the right which their shares give them of influencing the affairs of an institution in which their means or fortunes are involved.

A proxy is any person representing an absent shareholder and duly authorized in writing, to act for him at a meeting of the company. The instrument given by the absent shareholder to the person he authorizes to act for him is also called a proxy.

Under the Ontario and Quebec Acts there is no requirement as to the holder of a proxy being himself a shareholder, but the Dominion Act, section 88, requires that the holder of a proxy be a shareholder.

A proxy given for a particular meeting holds good for any adjournment of that meeting though it is usual to specify in the proxy that this is the case.

A proxy may be given for all or any number of the shares owned by an individual, each proxy covering part of his holding.

A proxy may be revoked (*a*) either by letter to that effect; or, (*b*) by granting a proxy to another person; or, (*c*) by the policyholder appearing at the meeting and voting in person, which he can always do.

A corporation may give a proxy under its common seal and it should be attested by a witness.

Where the owner of stock dies, a proxy to vote thereon can only be given by his executors. It cannot be given by the will; nor can a provision in the will that the executors shall give a proxy to a certain person entitle such person to vote the stock, if the executors refuse to give the proxy,

for on the death of the owner of stock his ownership ceases, and the executors become the owners.

An agreement between stockholders not to give a proxy is contrary to public policy and therefore void.

Directors cannot give proxies authorizing others to either vote or act for them at directors' meetings.

In many large companies it is the practice when sending out notices of shareholders' meetings to include blank proxy forms with the request that if the shareholder is unable to be present, he fill out the proxy in favor of one of the officers of the company, usually the president, and return it in order that his shares may be represented at the meeting. Sometimes the reason for sending out these proxies is to prevent stampeding of the annual meeting, which would seriously interfere with stability and continuity of good management.

See form of notice and proxy, *post*.

§ 108. The Majority of Votes Cast Shall Elect.

It is the well-settled rule in companies having a capital stock divided into shares that a majority of the votes cast at any election shall elect. And this majority, moreover, need not be an actual numerical majority of all the votes which all the shareholders have, but only the majority of the votes cast.

§ 109. Preambles, Resolutions and Motions.

A Preamble is a statement introductory to and explanatory of what follows specifically by formal resolution.

A Resolution is a statement, a formal expression, or determination, proposed to a corporate body for approval and adoption by formal vote.

To present a matter to a meeting of the shareholders, or directors of a company, it is always best to *formally* write it out with a *preamble*, and to follow this by a resolu-

tion stating the remedy or conclusion. *Then move the adoption of the resolution*, and, if seconded, the matter is ready for presentation by the chair to the meeting; and, whether adopted or rejected, should become a matter of record on the minutes. A person presenting a resolution should always endorse the same on the back, so the secretary may be informed as to who presents the same, and enabled in writing up the minutes to make the record show who presented, and who seconded the motion.

All preambles simply introduce the proposition by a plain and forceful statement of facts, beginning as follows:—

"*Whereas*," etc., and ending with "*Therefore, be it resolved*"; and, after stating the main conclusion, say, "*And be it further resolved*"; and should the matter submitted then not be finally disposed of, a third resolution may be appended by saying, "*And again be it further resolved*," and so on to the end.

Motions. Where so much formality is not necessary, or the matter is not of sufficient importance to warrant its being submitted in the form of a resolution, it may be presented by a simple motion. Motions are generally made at the moment action is required, and in consequence, are not usually submitted in writing. The form would be as follows: "Upon motion duly seconded and unanimously carried the Secretary-Treasurer was authorized to pay the rent for the past quarter."

§ 110. Procedure at Meeting of Provisional Directors.

Meeting of the Provisional Directors of the Hamilton Stove Company, Limited, held at the office of Thomas Taylor, in the City of Hamilton on Thursday, the fifth day of April, 1907.

Present, William J. Thomas, Thomas Taylor, and T. Bright Taylor.

The chairman, Mr. W. J. Thomas, announced that all preliminary conditions and legal formalities had been complied with, and the company was duly incorporated under the Ontario Companies Act with a capital of two hundred thousand dollars, divided into four thousand shares of fifty dollars each.

The letters patent incorporating the company were submitted and read at the meeting, and were approved and adopted as the charter of the company.

The chairman announced that he had obtained sample designs of seal and stock certificate, and had caused to be prepared a code of by-laws for submission to the shareholders.

The only remaining duty of the provisional directors was the calling of a general meeting of the shareholders. He therefore moved, seconded by Mr. Thomas Taylor, that a notice be sent to each shareholder by registered letter, calling a general meeting of the company for Thursday, the twelfth day of April, 1907, at the hour of eleven o'clock a.m., at the office of Thomas Taylor, 100 King Street East, Hamilton, for the purpose of organizing the company for the commencement of business.

NOTE. If possible, it is the more convenient practice that no shares of stock be allotted until after the first or organization shareholders' meeting has been held, so that the only shareholders present at such organization meeting will be those named in the letters patent. The smaller the number the more easily they can get together.

The meeting then adjourned.

§ 111. First Shareholders' Meeting.

The Ontario Companies Act directs that the provisional directors of a company not offering shares for public subscription, shall call a general meeting of the company to be held at a convenient place within two months from the date of the letters patent for the purpose of electing

directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat. If the said meeting is not called by the provisional directors, any three or more shareholders of the company may call the meeting. Similar provisions exist in nearly all the Companies Acts.

The First Shareholders' Meeting at the appointed time and place is organized in manner as follows: Some leading shareholder will say:—

1. "*The meeting will please come to order*! I move that Mr. Thomas act as chairman. (If not promptly seconded, say:) Is the motion seconded?

2. "(Now state,) It is moved and seconded that Mr. Thomas act as chairman; are you ready for the question? (Waiting an instant,) All in favor of the motion will say 'Aye.' (After the ayes respond,) Those opposed, 'No.'

3. "The 'ayes' have it! Mr. Thomas is elected, and will please take the chair and state the object of the meeting.

4. "(Or,) The 'nos' have it; the motion is lost, and nominations for chairman are in order." When the above (2 and 3) are repeated.

5. Should it appear before the organization that factions are present, then, instead of (1) use: "Nominations are in order for chairman; whom will you have?"

6. The secretary is elected in the same manner and takes his place and makes minutes of the proceedings in the rough, which he will write into the minute book, in ink, at some future time.

7. After the chairman and the secretary have taken their places and assumed their duties, the chairman will say: "The list of subscribers to the capital stock of this

company is in the secretary's hands. The secretary will read the same." The secretary accordingly reads, stating the number of shares of stock subscribed for and each shareholder present in person, or by proxy, will answer to his or her name as called by saying "present," *or* "present by proxy:" if by proxy, passing the proxy to the secretary to be entered of record on the minutes of the meeting.

8. The secretary will announce the total number of shareholders present in person, or by proxy.

9. The chairman will then declare the number of shareholders present, and, if a quorum is necessary, that a quorum is present and that the meeting is competent to proceed.

10. That the letters patent is in the hands of the secretary, and may be inspected by the shareholders. After waiting a moment, he will say: "The secretary will read the letters patent of incorporation."

On motion of Mr. , seconded by Mr. , the letters patent was approved of and adopted as the charter of the company.

11. The provisional directors then reported that three hundred shares of the capital stock had been subscribed for upon which ten per cent. had been paid in and submitted a list of the subscribers. They further presented a statement of preliminary expenses amounting to four hundred and fifty dollars.

12. A motion to elect by ballot the number of directors required, is now in order. The chairman will put the motion, and if favourable will say: "'Carried,' or, if unfavourable, will say, 'Lost;' what is your pleasure?"

If this motion is "carried" the chairman will then use his prerogative of appointing one or more scrutineers (*a*) to receive and count the ballots (*b*) previously prepared by

(*a*) Candidates should not be scrutineers:—Dickson v. McMurray, 28 Grant, 533.

(*b*) See Form of Ballot, *post*.

the secretary, cast for directors; or, if the meeting is small and unanimous, the chairman will say: "The secretary will act as scrutineer and will receive and count the votes cast."

13. Nominations of directors are now in order. After the same are nominated the election takes place, the scrutineers, or acting scrutineers, count the ballots or votes cast, and report the result to the chairman.

14. The chairman announces that the following persons have been chosen as directors, naming each one and declares such persons to be the duly elected board of directors of this company, to serve for the term for which they are elected and until their successors are duly elected.

15. The chairman will now say: "Any shareholder having any business concerning the company will now present it," when any matters concerning the object or purpose of the company can be brought up, considered and disposed of.

16. It is better for this shareholders' meeting to take a recess for a limited time and allow the directors to meet and formally organize and elect the officers of the company before the shareholders' meeting is formally adjourned, for the reason that the new board of directors may ask the shareholders for instruction about matters that should originate in a shareholders' meeting and for formal approval of by-laws, etc.

17. After recess the meeting resumed and the secretary reported that at a meeting of the board of directors held on the.....day of .....A.D..... Mr. .....was elected President; Mr. ..... Vice-president; Mr. .....Secretary, and Mr. .....Treasurer of the company for the ensuing year.

18. The secretary presented a by-law made by the directors, providing for the payment of the President and Directors of the company, for the approval of the shareholders. This was, on motion, unanimously approved of.

19. He also presented a code of by-laws for the regulation and government of the company, which, having been read, explained and discussed were unanimously approved of (*a*).

20. A resolution authorizing the directors to carry into effect the Preliminary Agreement as originally signed, with any amendments or recommendations the shareholders may desire, is now adopted as follows:—

On motion of Mr....., seconded by Mr....., the Resolution of the directors taking over the Agreement and Business therein mentioned was approved, ratified and confirmed.

On motion of Mr....., seconded by Mr....., the by-law allotting.....shares of the stock of the company as a consideration for the transfer to the company of the properties, businesses and undertakings of..... was approved, ratified and confirmed.

21. The chairman and the secretary should sign the minutes of this meeting, which should state, among other things, time, place, shareholders present, personally or by proxy, and distinctly everything done or ordered to be done.

22. The meeting then adjourned.

§ 112. Procedure at First Directors' Meeting.

First Directors' Meeting to elect the officers of the company, transact such other business as may be necessary and adopt a code of by-laws for the government of the company's business.

1. Immediately following or during the intermission of the first meeting of shareholders, the directors elected at said shareholders' meeting were called to order—as des-

(*a*) While the Directors have power to make by-laws for the government of the company, it is expedient to have the by-laws approved at this first meeting, as the Acts require certain of them to be approved by the shareholders, *e.g.*, those for payment of president or director, appointment of auditors, etc., etc.

cribed in number 1 to 6 inclusive under heading "First Shareholders' Meeting"—and a formal organization effected.

2. The chairman instructed the secretary to read the list of directors, those present answering to their names as read.

3. There being a quorum present the minutes of the last meeting of the provisional directors were read and approved of.

4. The chairman then declared that a motion to organize the board, by electing the permanent officers "*viva voce*, (*a*)" was in order. Such motion being made and put, the chairman declared it "carried."

5. Nominations for president were in order. A motion to elect as president, Mr. A.—he having been nominated—upon being put to vote, the chairman declared Mr. A. to have received a majority of the votes of the directors, and he was therefore elected to the office of president of the company for the ensuing year, and until his successor was elected and installed. Each of the other officers may be formally elected in the same way, or may be named by the directors (*b*).

6. The salary of the President being on motion considered, each director, (except the president) voting *viva voce*, the chairman declared it fixed at a stated amount per annum. The salary of each other officer may be fixed in the same manner, (the officer not voting on his own salary) as well as the payments, if any, to directors. The secretary was instructed to prepare a by-law fixing the salaries at the amounts agreed upon, for submission to the shareholders.

7. The resolution respecting the seal is considered, and on motion is formally adopted and an impression of the seal made upon the minute record (in a space left blank)

(*a*) By word of mouth; orally.

(*b*) See section 84, Ontario Companies Act.

where this resolution is recorded. If the seal be not prepared beforehand, the impression should be made on its receipt.

8. The resolution respecting the scrip certificate and the certificate of stock is considered, and on motion is formally adopted, and one of each certificate cancelled, and showing the date of such cancellation, with the signature of the president, both written in red ink across the face thereof, is declared the form and design of the certificates to be issued to the shareholders of the company. The cancelled certificates should be attached to the minute book at the page where this resolution is recorded. Each different form or design of stock certificate should be treated in the same way.

9. A committee on by-laws should now be appointed by the chair, to consider and approve of the code of by-laws already prepared for the government of the affairs of the company, and report on the same to the board of directors at the earliest moment. (A set of by-laws will be found *post*, which may be adapted to the needs of the company.)

10. Among other business to be considered by the board of directors, is the location of the principal office, location of branch offices, time and place of regular meetings, treasurer's and other officers' bonds, appointees, etc.

11. The following resolution providing for the making of a call upon the shares of stock, and fixing a time for the payment of the same to the treasurer of the company, should, on motion, be adopted.

That a call of ten per cent. upon the subscribed capital of the company payable to Mr. ....., the Treasurer of the company, at the company's office.....Street, etc., on the.....day of .....190 , be and the same is hereby made.

12. The issue of Instalment Scrip in exchange for payment of calls, and Stock Certificates for property purchased, should now be ordered by formal resolution in accordance with the Memorandum of Agreement and Stock Book.

13. On motion of Mr. ....., seconded by Mr. ....., the Agreement, dated ....., between ....., was placed before the meeting, and it was resolved that the said agreement, which has now been read at this meeting, in so far as the same provides for the purchase by this company of the properties, business, and undertakings of....., be and the same is hereby adopted, assumed and taken over by the company.

On motion of Mr....., seconded by Mr....., the following by-law with reference to the acquisition and adoption by the company of the agreement of.....made by the promoters of the company, and by the owners of the properties, business and undertakings of.....was enacted.

By-law No.....

Whereas by an agreement (here insert date and parties to the agreement referred to) it was among other things agreed that a company should be formed under the "..... .....Companies Act" for the purpose of acquiring (*here describe the business*).

And whereas the vendors named in the said agreement have agreed to sell to this company all their property, plant, assets, business undertakings and franchises for the consideration of.....dollars, to be paid by the issue to trustees of.....shares of the capital stock of this company.

And whereas the said.....have duly executed conveyances of all the said properties, plants, assets, business, undertakings and franchises upon consideration of the allotment and issue of stock of this company as in the said agreement set forth.

And whereas.....shares of the stock of this company have been subscribed for by the said parties, which subscription includes the shares subscribed for by the subscribers respectively to the original Memorandum

of Agreement and Stock Book, and they have requested the allotment of the said.....shares to them in the amounts of their subscriptions thereof as follows: (Here set out shares and names).

Now therefore, be it enacted that the acquisition of the said Agreement of.....and of the property, plant, assets, business, undertakings and franchises of the said .....be, and the same is hereby approved, and the President and Secretary are hereby authorized to do all acts necessary for the carrying out of the said agreement and taking over of the said properties. And that the issue of.....shares of the stock of this company fully paid up and non-assessable is hereby directed to the persons, and in the amounts named in the preamble herein and the said shares are hereby allotted to the said respective persons in the several amounts mentioned.

14. The following resolution selecting a bank in which the funds of the company shall be deposited, and providing for a method of endorsement of cheques and drafts, and the manner by which the signature of the company shall appear on instruments used by it, should on motion be adopted. This resolution is usually later on embodied in the by-laws, and a copy of the by-law, or an extract therefrom should be furnished the bank officials together with the signatures of the officers designated to sign cheques, etc., etc.

Resolved, That the Treasurer be and hereby is authorized and instructed to open an account for the company with the Home Bank, Toronto, and to deposit therein all funds of the company coming into his custody, such account to be in the name of the company, and funds deposited therein to be withdrawn only by cheque signed by the Treasurer and countersigned by the President.

15. The Secretary should be formally authorized to procure the necessary books, papers and supplies for his office. A motion to this effect should be made and passed.

16. All other business necessary should be considered by the directors at this meeting, after which a motion to

adjourn until the next regular meeting, unless sooner called together by the president, is in order.

§ 113. Procedure at Annual or General Meetings.

(*a*) *Preliminaries.* In preparation for the annual meeting the transfer book should be closed a sufficient time before the meeting to give the secretary time to prepare his list of shareholders entitled to vote at the meeting. The closing of this book is nothing more than the refusal of the secretary, or transfer officer, to transfer any certificate presented to him for that purpose during the time mentioned. In large companies notice of closing and reopening the transfer book is usually given in the notice of the annual meeting. The Ontario Act, section 51, provides that the transfer book may be closed for two weeks before the payment of a dividend.

An alphabetical list of shareholders should be prepared shewing the number of votes each shareholder may cast. (See Form under (*h*). This list should be open to the inspection of any shareholder at the meeting, and its accuracy proved, if necessary, by a reference to the stock ledger and transfer book.

All books, stationery, blanks or material that may be required should be provided by the secretary in advance, so as to facilitate as much as possible the business of the meeting. A paper containing the order of business, and the several items to be dealt with therein, should also be prepared by the secretary in advance and handed to the President before the meeting opens. Where the secretary knows that certain matters are coming up for consideration, he can often facilitate business by preparing the necessary resolutions or motions beforehand.

(*b*) *Chairman.* The Ontario Companies Act directs that the President of the company shall preside as chairman at every general meeting of the company. It further provides, that if there is no president, or if at any meeting he

is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman.

At the time appointed for the meeting, the President should at once take the chair. If he is not present, the shareholders after the lapse of the proper interval, should elect a chairman. This will be effected by passing a resolution, duly proposed and seconded, "That Mr.————be appointed chairman of this meeting." Some leading shareholder will propose this.

(c) *Quorum.* The chairman, having taken the chair, will ascertain that a proper quorum is present. This depends on the by-laws. Sometimes a specified number forms a quorum, and sometimes a specified number holding a certain amount of the capital. Very commonly the quorum for an ordinary meeting is different from that of a general meeting. In order to ascertain that a quorum is present it may be necessary to refer to the register of shareholders and stock ledger, and accordingly they should be at hand for reference.

Usually, however, the alphabetical list of shareholders prepared by the secretary is used for the purpose, and he calls the names therefrom. If the shareholder is present he responds to the call and is noted on the list. If not present, but represented by proxy, the person representing him responds as his proxy and is so noted on the list. If the list of shareholders be a very long one, while the number present is small, the secretary instead of calling every name, may call upon each person present for a statement of the shares owned or represented by him. The shares so reported would be noted on the list and any not reported would be marked not represented.

The important point to be determined by the roll call is not the number of persons present at the meeting, but the number of shares represented. One or two men might by ownership, and holding the necessary number of proxies, represent the entire body of the shareholders at a meeing,

and such meeting if properly conducted would be quite legal.

The secretary should add the different columns of his list after the roll call is completed and report the result thus. Present in person 264 shares, represented by proxy, 310 shares; total represented, 574 shares; not represented, 146 shares. Total shares issued 720.

If there is not a quorum present within the time fixed by the by-laws, the meeting must be dissolved or adjourned, according as may be provided by the by-laws.

(*d*) *Reading and Signing of Minutes.* If, however, it appears that a proper quorum is present, the chairman will announce the fact, and will then call on the secretary to read the notice convening the meeting. This having been done, the secretary, according to the practice of some companies, will be required to read the minutes (*a*) of the last general meeting, and of any special meeting during the year; and the chairman will then say, "Gentlemen, with your approval, I propose to sign these minutes as correctly entered." Upon this, debate may arise, but no discussion of the policy of the proceedings recorded in the minutes so read should be permitted; the only question should be whether they are a *correct record* of what passed, and the chairman should confine the discussion to this point. The minutes, if found correct, or when corrected, will be signed by the chairman in the lower right hand corner with his name and official designation. The object of signing is to make them evidence, admissible in a court of law, and is a record for the company, and to shew ratification, etc.

Minutes of a directors' meeting are never read at a shareholders' meeting, except for purposes of information, and then only by special motion or request.

(*e*) *Reports.* The next step will be for the chairman to refer to the report and financial statement. Annual

(*a*) See proper mode of entering minutes, *post*.

reports to shareholders are nearly always general in their character, the more detailed reports being usually presented to the directors and officers only. The President's report is intended to give a general view of the transactions of the company and its condition, together with any matters of importance that occurred during the year.

The Treasurer's report usually contains a statement of the resources and liabilities of the company at the end of the business year, together with the loss and gain account for the preceding year. Circumstances will govern the amount of detail given in this report, and the treasurer will use his discretion in this regard, as it is sometimes unwise to furnish detailed statements to shareholders.

After these documents are read the chairman may make a speech in relation thereto, concluding with a motion, "That the report and statement be adopted." This having been seconded, the chairman will put the question to the meeting as follows. The question is, "That the report and statement be received and adopted." This is the stage for discussion, and shareholders will probably rise and speak in support of or in opposition to the motion. This is the time to commend, find fault, or make suggestions as to the conduct of the affairs of the company during the past year. The chairman should name those who rise to address the meeting.

If any report were incomplete, erroneous or objectionable, a motion might be made to return it for correction or possibly reject it altogether.

When the discussion has ended, the chairman will rise and reply to any criticisms which have been made, and to any relevant questions that have been asked, and will in conclusion finally put the question thus: "The question is, that the report be adopted. Those who are in favor of the motion signify the same by an uplifted hand—30, and the contrary—10, I declare this motion carried" (or "negatived").

(*f*) *Show of Hands.* The by-laws very commonly provide that every motion shall be decided in the first instance by a show of hands, and where this is the case a show of hands must be taken; but if there is no such provision, the chairman may, if he thinks fit, take the sense of the meeting by calling on those in favor of the motion to say "Aye," and on those who are against the motion to say "No." If there is no sound of "No" he will declare the motion carried; otherwise he will call for a show of hands, and declare the result accordingly.

Upon a show of hands the chairman will look to the number of hands only, and will not take into account the votes which the owner of each represents in person or as proxy. Though it is not uncommon to declare the number of hands in favor of, or against a motion the chairman is not bound to make such declaration.

The chairman having declared the result, a poll may be demanded.

(*g*) *Poll.* If a poll is demanded, the Ontario Companies Act provides "that it shall be taken in such manner as the by-laws prescribe, and in default thereof, then as the chairman may direct. In the case of an equality of votes, at any general meeting, the chairman shall be entitled to a second or casting vote."

Generally speaking it is more convenient to take the poll at once, but if there is a question of much importance to be decided, it is desirable to fix a future day and hour, and to give all the shareholders notice that their votes will be taken at a specified place and time.

If the company has many shareholders it is not unusual to appoint a scrutineer or two to take the poll, and in some companies the by-laws expressly require such appointment. In a small company the poll is often taken by the chairman.

(*h*) *List of shareholders.* In taking the poll it is usual to cause a list of shareholders to be made out from the register, thus:—

NAMES OF SHARE-HOLDERS.	NUMBER OF SHARES.	NUMBER OF VOTES.	OBSERVATIONS.	VOTES GIVEN.	
				FOR	AGAINST

The list of shareholders, as on date of the annual meeting, may be described as the Trial Balance of the Stock-Ledger, and the total thereof will, or should, if correct, agree with the capital subscribed. The following precautions should be observed in preparing this list. The stock-ledger should be compared with the record of original shares issued; then with the record of calls, to see that none of the shareholders are in arrear in respect of calls, and then all transfers made should be compared and checked.

(*i*) *Open Voting.* At the time appointed for taking the poll, the shareholders who vote personally will come up to the voting table and write their names on sheets of paper headed "For" or "Against" the motion, as the case may be. A member voting as proxy for another will write down his own name, and also that of the person whose proxy he is, *e.g.*, "John Smith, by W. Jones, his proxy." However, sometimes it is arranged that a member signing his own name shall be deemed to vote for himself and for all those whose proxy he is.

The votes having been taken, the chairman or scrutineers, will enter them in the list of votes, in the column "For" and "Against" as the case may be. If, on reference to the books or otherwise, a vote tendered is, for any reason, found to be invalid, *e.g.*, because the voter is in arrears for calls, or the proxy is not produced, the chairman or scrutineers will reject the same and put a note in the column of observations stating the reason for rejection.

The poll having been closed, the numbers will be added up and the result ascertained.

(*j*) *Ballot.* If the poll is to be by ballot it is usual to prepare ballot papers beforehand (*a*). These, after being initialed on the back by the chairman or scrutineer, are handed to the shareholders, the ballots being so arranged that each shareholder shall have one vote for every share of stock owned by him. After the shareholder has marked his ballot it is returned to the chairman or scrutineers, and the poll having been closed, the ballots for or against will be counted and the result ascertained.

The chairman will then state the result to the meeting, and declare that the motion has been carried or negatived, as the case may be.

(*k*) *Appointment of Auditors.* The next order of business is the appointment of the auditors. These appointments are made by the shareholders and not by the directors.

(*l*) *Election of Directors.* Sometimes when there is a small meeting practically unanimous about the election of the directors (perhaps wishing to re-elect the former board,) a motion is made and carried that the president be authorized to deposit the ballot electing them. Where this is not the case, the procedure laid down under the heading "First Shareholders' Meeting" and numbered 12 13 and 14, should be observed.

(*m*) *Conduct of Chairman.* The chairman should be courteous and retain his self-control. He should not consider enquiries made by shareholders as personally offensive or detrimental to his dignity. Shareholders who invest their money in the company have a legitimate right to enquire how the directors are using that money. To

(*a*) The following form may be used:

The.....Company, Limited.

I, the undersigned, being the holder of.....shares in the capital of the above named company, record my.....votes (for or against) the resolution submitted this.....day of.....19 .

NOTE. The shareholder voting must fill in the word "for" or "against."

attempt to browbeat a man because his interest in the company is comparatively small, is cowardly and mean. The man may have invested *all he had*, and to find fault and be unduly captious because an individual seeks information as to his whole available capital, is unwise, injudicious and improper. If, however, the chairman perceives that the time of the meeting is being wasted by a cantankerous shareholder, and that the meeting wants to vote, he may move, or get some one else to move, "That the question be now put," and if this is decided in the affirmative, will act accordingly. A meeting is not bound to hear a member, nor is the chairman bound to find him a hearing.

While the chairman may adjourn with the consent of the meeting, he may, in his discretion, refuse to adjourn the meeting. If the chairman improperly purports to adjourn the meeting and leaves the chair, the meeting may elect another chairman.

The chairman of a meeting occupies a position of great power and influence, and should be most careful in his conduct and language. He should bear in mind that if the majority of the shareholders are with him, a minority will not be able to upset the proceedings merely because some slight irregularities have occurred at the meeting.

The shareholders also owe it to themselves to conduct their business without personal rancour or anger. The duty of everyone to his neighbor should be observed, and while *opinions* may be ridiculed the man himself should not be.

Where there is any possibility of dispute, friction or difference of opinion amongst the shareholders every formality should be carefully observed so that no complaint may arise. Usually, however, considerable laxity and absence of formality is common in small companies where all interested concur.

(*n*) *Speeches, Defamation.* A speech by a shareholder at a meeting defamatory of the directors, but on a matter affecting the interests of the shareholders, is privileged;

but the privilege is gone if the public or the press are present at the meeting at the express invitation of the shareholder publishing the defamatory matter. A report to the public press of the proceedings of a general meeting if containing libellous matter,is not privileged.

(*o*) *Minutes.* The secretary should, of course, keep a minute of the meeting. For particulars of the contents of minute books see *post.*

(*p*) *Votes of Thanks.* When the business is concluded, it is usual for a vote of thanks to be passed to the directors and officers of the company, and under all circumstances thanks should be given to the chairman for his conduct in the chair. For example:—

"That the thanks of this meeting be presented to the directors for their very successful management of the company's business during the past year."

"That the thanks of this meeting be presented to Mr. ———, the manager; to Mr. ———, the secretary, and to the other officers of the company, for their efficient services."

"That the cordial thanks of this meeting be presented to the chairman for his able and courteous conduct in the chair."

The meeting is then formally adjourned.

§ 114. Special Meeting.

At a special meeting the notice calling the meeting having been read, the particular business for which it was called would be taken up at once. The chairman, or some one asked to do so by him, should state generally the object of the meeting, and make such explanations of the nature of the business to be transacted as might be necessary. After discussion, some one would present a resolution covering the matter, and move its adoption. If it is seconded it is then before the meeting for further discussion if necessary. Generally speaking, however, those

present have already made up their minds in the matter, and unless opposition develops, little discussion takes place.

§ 115. Adjourned Meetings.

An adjourned meeting is but a continuation of the meeting which had been adjourned; and when that meeting was regularly called and convened, and duly adjourned, the shareholders may, at the adjourned meeting, consider and determine any corporate business that might lawfully have been transacted at the original meeting. But where there is an absence of good faith, and an adjourned meeting is held in such a way as to prevent certain of the shareholders from knowing of it, the proceedings are invalid. Where the original meeting was duly called and convened, the shareholders are not entitled to any other notice of the adjourned meeting than that which is implied in the adjournment. It is, however, the better practice for the Secretary to send out notice of the time and place of such adjourned meeting, as otherwise it might in some instances be overlooked and forgotten.

§ 116. Directors' Meetings.

There has been some controversy and doubt as to the necessity of giving notice of directors' meetings. Many cases apply to directors' meetings the same rules that apply to shareholders' meetings. Other cases hold that less formality and strictness is required in calling a directors' meeting. Probably the former rule is safer, although the latter rule will ultimately prevail.

There has also been a question whether directors could vote and act as a board without coming together. Many attempts have been made to sustain a vote of the directors which they had separately and singly agreed to. The law, however, is now clear that such separate assent is void. Directors are elected to meet and confer, and to act after

an opportunity for an interchange of ideas. They cannot vote or act in any other manner.

Sec. 81 of the Ontario Companies Act, now provides that no business of a company shall be transacted by its directors unless at a meeting of directors at which a quorum shall be present.

Directors, of course, cannot act or vote by proxy (1).

Where there is little business for the board to transact, or where an executive committee has been appointed, frequent meetings of the board are unnecessary. Sometimes all the directors are working together in the business of the company, and matters as they arise are settled by informal talks, thus rendering meetings necessary only when formal action is required. Under these circumstances there is no valid objection to the infrequency of directors' meetings.

The by-laws generally provide that the directors may meet for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit.

The quorum is usually fixed with reference to the number of directors, *e.g.*, if there are five directors, three is the usual quorum.

The object of fixing a quorum is to avoid the necessity of requiring all the directors to concur in the transaction of business. In some by-laws the word quorum is not used, but it is provided that no business shall be transacted unless a certain number of directors are present. In substance it comes to the same thing.

A majority of the whole board of directors constitute a quorum, subject to the by-laws of the company. When the meeting is properly called and a majority attend, that majority may proceed to transact business. If a majority are present, a majority of that majority bind the board and company, although they are a minority of the whole board.

Toronto Brewing and Malting Company v. Blake (*a*).

(1) McLaren v. Fisken, 28 Grant Chancery, (Can.), 352, 1881. Craig Medicine Co. v. Merchants Bank, 59 Hun. N. Y. 561.

(*a*) 2 Ontario Reports 175, p. 263.

The R. S. O. (1877), c. 150, requires that companies incorporated thereunder shall not have less than three directors, who shall not be appointed directors unless they are shareholders, and it was provided by the by-laws of the plaintiff's company that a director should not only be qualified when elected, but that he should continue to be so. The plaintiff's company was managed by three directors, and one of them disposed of his stock: Held, that he thereupon ceased to be a director, and the directorate then became incomplete and incompetent to manage the affairs of the company. *Semble*, also, even assuming that a quorum (2) of the directors could manage the business, yet, where neither the statute nor the by-laws gave the President a casting vote, resolutions passed by such a vote, at a meeting attended only by the President and one other director were invalid.

Regulations. The regulations of the directors differ considerably. The following are of a very simple character:—

1. A board meeting shall be held every day at o'clock Such meetings shall be called ordinary board meetings. Other meetings shall be called special.

2. Every meeting shall be held at the head office of the company.

3. An ordinary meeting shall be competent to transact the following business, namely: To, etc. All other business shall be transacted at a special meeting.

4. Any director may, and upon the requisition of any director the secretary shall, convene a special meeting; not less than hours notice shall be given thereof to each director. Every such notice shall be given as follows, etc. The notice must state the time fixed for the meeting.

5. The quorum of an ordinary meeting shall be two directors, and of a special meeting three directors.

6. No cheque for more than $ shall be signed at a meeting unless directors be present.

7. The company's seal shall not be affixed to any document, except in pursuance of a resolution of the board, and the sealing shall be attested by the president, and countersigned by the secretary.

8. A meeting at which not less than directors are present, may suspend or modify these regulations.

The regulations will be adopted by passing a resolution, "That the following regulations as to board meetings, etc.,

be adopted," and the resolution and regulations will be recorded in the minute-book of the directors' proceedings.

Chairman. The Ontario Act provides for the election of the president from amongst the directors, and he will act as chairman. In his absence, the directors present at any meeting will elect one of their number to the chair.

At a meeting of the directors, commonly called a board meeting, the secretary will be called on to read the minutes of the last meeting, and if found correct, the chairman will sign the same. No discussion should be permitted as to the policy of the proceedings recorded. If a director objects thereto he can, *after* the minutes have been signed, move a resolution impeaching such policy; sometimes, however, the directors' regulations require a special notice or quorum for such a resolution.

The chairman will then call attention to the business to be transacted. Generally a memorandum paper (*a*) (previously prepared by the secretary) is produced.

The chairman will refer successively to the different items of business and they will be dealt with as the meeting thinks fit. If any difference of opinion exists, the chairman will put the question to the vote, and the decision of the majority will bind the meeting unless the regulations otherwise provide. The regulations generally give the chairman a casting vote, in case of an equality of votes. In some companies the decisions of the meeting as to the several items of business are expressed in appropriate resolutions, duly proposed, seconded, and passed. In others, a less formal procedure is adopted, and after a discussion of each item, the chairman gives directions to the secretary or manager in relation thereto, with the assent, expressed or implied, of the other directors who are present. In any case the proceedings are recorded by the secretary in the minute book of the directors' proceedings, and when matters are reported by officers without formal

(*a*) See Form, *post*, under heading "Agenda."

written reports, the Secretary should give a synopsis of the verbal report as near as may be in the minutes.

Unfinished Business. The duty of presenting unfinished business left over from preceding meetings, devolves upon the Secretary, and should be carefully attended to.

New Business. New business may be brought before the board by the President, or any of the directors, with such explanations or statements as they may think necessary.

Adjournment. Where the business of the meeting is unfinished at the time of adjournment, and it is of importance, such meeting should be adjourned to the next day on which the members can be present. If this adjournment is over some days, it is advisable for the Secretary to send an informal notice to the members. If any members were absent it would be advisable to give them also notice of the adjourned meeting.

The following order of business may be followed: —

(1) A quorum being present, the President shall call the Board to order.
(2) The minutes of the last meeting shall be read and approved, if there be no amendments.
(3) Reports of officers of the company.
(4) Reports of committees.
(5) Unfinished business.
(6) Miscellaneous business.
(7) New business.

CHAPTER IX.

BY-LAWS.

§ 117. Nature of By-Laws.

A by-law is a permanent rule of action, in accordance with which the corporate affairs are to be conducted.

A company has power to make by-laws within the terms of its instrument of incorporation, and of the Act under which it was formed, for its regulation and government; and, as every shareholder is a member of the company, he must be held to be conversant with all its rules and by-laws, or at least to have had notice thereof, and to be bound by them. According to Blackstone, one of the important features of a corporation is the power to make by-laws.

A resolution differs from a by-law in that a resolution applies to a single act of the corporation, while a by-law is a permanent and continuing rule, which is to be applied on all future occasions.

It is sometimes difficult to draw the distinction between by-laws and mere regulations for conducting the company's business. By-laws may be said to control the action of the company itself, while regulations, on the other hand, are intended to control the conduct of those dealing with the company or of its employees. By-laws are usually formally adopted by the company or the board of directors and set out in writing, while regulations may or may not be in writing, and are oftentimes proclaimed on their own authority by the company's officers.

§ 118. General Principles.

By-laws must not be contrary to the law of the land. They must be in accordance with the provisions of the

charter or the Articles of Association of the company. They must be reasonable and consistent with the spirit and terms of the corporate charter.

A by-law operating unequally, or prejudicially to a class of shareholders, is invalid: N. W. Electric Co. v. Walsh, 29 S. C. R. 33, for instance, a by-law allowing certain shareholders priority in the payment of dividends could not be enforced. The majority has not power to favor itself or oppress the minority by unjust and unfair regulations.

§ 119. Subject of By-Laws.

The principal subjects of corporate legislation by means of by-laws are the definition and regulation of:—

1. The time, place, and manner of calling and conducting the meetings.

2. The number of shareholders or members constituting a quorum, unless this be provided for by the governing statute.

3. The requirements as to proxies.

4. The time of the annual election of directors and the mode and manner of giving notice thereof.

5. The qualification of directors.

6. The compensation and duties of officers.

7. The manner of election and the tenure of office of all officers other than the directors.

8. Regulating the transfer of shares.

9. The formation of reserves and the limitation of dividends.

Other by-laws may be required as special occasions arise, such as for issuing bonds, mortgaging property, varying authorized capital, or the number of directors, change of head office, etc., etc.

§ 120. Effect of By-Laws.

By-laws adopted by the shareholders of the company in general meeting assembled, are binding on the directors in the same way that the charter and the statutes are. By-laws made by the directors themselves are binding until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time only cease to have force. As the officers of a company are supposed to be familiar with its by-laws, such by-laws are binding on them, even though such officers are not shareholders of the company.

Shareholders of a company are, of course, bound by its by-laws. and it is not necessary to show that they have actual knowledge of them. The fact that they are connected with the company implies such knowledge, and as every shareholder of a company has a legal right to inspect the corporate records it will be held that ignorance of the by-laws is wilful ignorance, since opportunities of obtaining information in regard to them are always open to him.

It may be stated as a general proposition that a company's by-laws are for the government of its shareholders, officers and employees, and that they do not bind strangers without notice.

§ 121. Sanction of.

A recent amendment to the Ontario Companies Act provides that any by-law by this Act required to be sanctioned by a two-thirds vote of the shareholders at a general meeting specially called for considering the same may in lieu thereof be validly sanctioned by the consent in writing of all the shareholders.

§ 122. Necessity of.

As in most, if not all, of the Provinces certain matters such as the calling of corporate meetings, the duties of

the officers of the company, etc., are intended to be regulated by by-laws, the neglect to adopt such by-laws is attended with serious inconvenience and oftentimes with loss. This being the case, it should be the first duty of the directors of a newly organized company to secure the passing of a suitable code of by-laws for its government.

§ 123. Making of By-Laws.

A set of by-laws, previously prepared, is usually adopted by the shareholders at their first meeting, and other by-laws added from time to time as the need of them becomes apparent. These by-laws should be carefully drawn and formally adopted. It is desirable that by-laws should have a preamble in addition to the enacting clause—as given in the Table of by-laws herein (*a*).

§ 124. Record of By-Laws.

When the by-laws have been adopted, they should be recorded accurately in the book wherein is recorded the letters patent to the company. The certificate of the secretary authenticating the by-laws should immediately follow the entry.

§ 125. Non-Observance of By-Laws.

The business of the company should be carried on according to the Act under which it is incorporated, and the terms of its charter and by-laws. Irregularities may lead, in some cases, to personal liability of the offending officer or director. While these officers may not be held responsible for loss resulting from an error of judgment they should take care not to do anything illegal or beyond the company's powers, as they are expected to know the law and the provisions of the company's charter and by-laws.

(*a*) *Post*.

CHAPTER X.

CORPORATION BOOKS, INSPECTION OF, ETC.

§ 126. Books to be Kept.

As a matter of course and necessity, every enterprise of any importance, whether individual or associate, must include books in which a record of its proceedings and of its affairs are kept. But particularly so in connection with companies, in which the means of a lesser or greater number of persons taking no active part in the management of its affairs, and who are dependent upon such books for a knowledge of its affairs, are involved; and also where the liability of the shareholders individually towards the creditors of the company is generally limited to the amount unpaid on their shares.

The books of a company furnish evidence as to what persons are entitled to the rights and privileges of shareholders, and as to whom creditors may look for payment when the company becomes insolvent, the creditors being presumed to have relied on the books.

These causes together render the keeping of books by companies a matter of so much importance that the legislatures have not only made it compulsory to keep certain books, but have described in detail what such books shall contain and exhibit, and imposed penalties for neglect of such provisions. And the importance of such provisions is so obvious that they are now found in almost every companies Act.

These books are:—

(*a*) *Record of Letters Patent, etc.* A blank book in which a copy of the letters patent and of any supplementary letters patent, must be written, and if the company is incorporated by special Act, the chapter and year

of such Act. If under the Dominion Act a copy of the preliminary Memorandum of Agreement must also be entered.

(*b*) *Register of Shareholders.* The register of shareholders giving particulars of all persons who are, or have been, shareholders. A properly kept index to the stock ledger giving the occupation and addresses of the shareholders will, if thought desirable, answer the purpose.

(*c*) *Register of Directors.* Gives names and addresses of the directors with dates of election and retirement.

(*d*) *Register of Transfers.* The register of transfers, as its name implies, gives particulars of the changes which take place in the ownership of shares.

What is known as the transfer book of the company,—which sets forth in detail the contract between the transferor and transferee duly executed by them, or by their respective attorneys constituted for the purpose—is the commonly accepted form of register. There is of course no transfer, unless or until such contract is executed by both parties thereto. From this book transfers are posted into the stock ledger, but the transfers do not in any way affect the general books.

The Acts do not prescribe any particular system of keeping these books, but only require that they shall contain the particulars above noted.

If the number of shareholders is small, these four books may be bound under one cover; but if large, it is better that they be in separate books. Sample pages of these books will be found among the forms given in this book.

(*e*) *Stock Ledger.* In the stock ledger is shown the aggregate number of shares held by each shareholder, with all other particulars. If a shareholder holds both common and preferred stock, an account should be opened in the stock ledger with him for each stock separately.

This book is auxiliary to the general ledger, and the entries in it are derived in the first place from the instal-

ment lists, and after, from the transfer book, which serves as journal to this ledger, as it shews the names of the parties to be charged, and those to be credited for the shares sold or transferred.

This book is kept by the Secretary, and should not be confused with the book usually kept by the Treasurer, which contains the payments made by each shareholder on his shares (*a*).

(*f*) *Books of Account.* Every company must adopt such forms of accounts as suit its particular business. They should embrace such books as will enable the management to know exactly what is being done in every department, and in every detail, and at what cost. Only by accurate statistical knowledge can modern business be successfully carried on.

It need hardly be said that under any system the usual cash book, journal and ledger are indispensable.

The directors should have proper books of account kept, containing full and true statements of the company's financial transactions; of the assets of the company; of the sums of money received and expended by the company, and the matters in respect of which such receipt or expenditure takes place, and, of the credits and liabilities of the company; and also a book or books containing minutes of all the proceedings and votes of the company, or of the board of directors, respectively, and the by-laws of the company, duly authenticated, and such minutes shall be verified by the signature of the president, or other presiding officer of the company.

As a good and simple system of accounts is extremely desirable, it will in any case of doubt be expedient to take the advice of a professional accountant as to what other books are requisite, and as to the mode of keeping them. A well-devised system, showing at all times, with the least labor, and greatest accuracy, the true condition of the business, is of paramount importance. Such a system

(*a*) See Form, with explanations, *post*.

enables those most interested to follow the minutest fluctuations of the business and promptly apply a remedy when necessity arises.

(*g*) *Cash Book.* The cash book is a detailed record of all cash transactions. Upon the left hand or debit side, is recorded all *cash received*; and on the right hand or credit side, all *cash paid out*,—the difference in the sums total of the two sides showing, at any time, the exact amount of cash on hand. This book should always be used as a book of original entry; and posting done directly therefrom to the ledger, as it is wholly unnecessary work and a waste of time to transfer the entries to a journal before posting. There is no business in which the books cannot be correctly kept by posting directly from the cash book to the ledger.

The cash book is the cash account,—consequently the cash account is debited or credited by simply entering an amount on the debit or credit side of the cash book. So when cash is *debited*, all the accounts on that side of the book must be *credited;* and when cash is *credited*, all accounts on that side of the book must be *debited*.

It is most advisable that money received be banked regularly, and that payments apart from petty cash expenditure, be made by cheque. In some cases, however, it may be necessary to expend at once in various ways part of the money received, without banking it. To meet such cases a cash book is recommended with two columns on each side, one being headed "Miscellaneous," and the other "Bank."

(*h*) *The Journal.* As the most important and difficult part of bookkeeping is in making the journal entries, it may be well to give here a little explanation regarding the journal. Briefly, the use of this book is to serve, where no cash transaction takes place, for debiting or crediting any particular account, or making transfers from one account to another, and indicating the reason for so doing. As examples, may be mentioned the necessary entries on opening a set of books, closing entries at date of making up

accounts, and such miscellaneous entries as cannot conveniently be passed through any other book for posting in the ledger. When transactions are correctly journalized, mistakes should not occur in the ledger, if care be taken, as posting is merely mechanical work. The usual form of journal is provided on each page with Dr. and Cr. columns, and every entry must be complete in itself, having precisely the same amount to debit as to credit.

By way of illustration we will suppose that a company has been incorporated with the object of acquiring and carrying on an established business, the capital of the company being $100,000, divided into 5,000 cumulative preference shares of $10 each, and 5,000 common shares of $10 each, the whole amount being called up. The price payable for the business being $75,000, in cash and fully paid shares, the entries would be made as follows:—

Purchase of business, Dr	$75,000	
To the vendor	.....	$75,000
Being the consideration to be paid by the company for the business, premises, plant, machinery, etc., mentioned in an agreement dated , and made between A., B., and C,, D., which agreement has this day been adopted by the company, to be paid as follows:—		
2,500 fully paid five per cent. cumulative preference shares, of $10 each	25,000	
2,500 fully paid common shares, of $10 each	25,000	
Cash	25,000	
	$75,000	
Sundry Shareholders, Dr	$25,000	
To Preference Share Capital	.....	25,000
Being total amount payable by the allottees of the 2,500 five per cent. cumulative preference shares, (viz. $10 per share), in accordance with the terms of the prospectus.		
Sundry Shareholders, Dr	25,000	
To Common Share Capital	.....	25,000
Being total amount payable by the allottees of the 2,500 common shares, (viz. $10 per share), in accordance with the terms of the prospectus.		

The Vendor, Dr	$25,000	
To Preference Share Capital	.....	$25,000
For 2,500 fully paid five per cent. cumulative preference shares of $10 each, issued to him as part consideration, etc. (See Resolution of the Board this day.)		
The Vendor, Dr	25,000	
To Common Share Capital	.....	25,000
For 2,500 fully paid common shares of $10 each, issued to him as part consideration, etc. (See Resolution of the Board this day.)		

When the above amounts are posted to the ledger the balances would be as follows: —

	Dr.	Cr.
Purchase of Business	$75,000	
The Vendor	.....	$25,000
Sundry Shareholders	50,000	
Preference Share Capital	.....	50,000
Ordinary Share Capital	.....	50,000

The $25,000 payable to the vendor in cash would pass through the cash book to the debit of his account in the ledger. Similarly, sundry shareholders would be credited with the various amounts paid as shown by the cash book, and these two accounts would be closed.

Sundries, Dr.		
Good-will	$10,000	
Freehold and leasehold premises, at valuation.	30,000	
Plant and Machinery	20,000	
Stock, taken over at	15,000	
To purchase of business		$75,000

making up the total purchase price.

§ 127. Minutes and Mode of Entering.

Every company should cause minutes of resolutions and proceedings at all its meetings, and at meetings of its directors and managers, to be entered in books provided for the purpose, and such minutes, if signed by the chairman of the meeting, or of the next succeeding meeting, are admissible as evidence in all legal proceedings. The usual course is for the secretary to take, in a book kept for that purpose, notes of the proceedings of each meeting,

whether a general or board meeting, and afterwards to make a clear record of them in the minute book, and to read the entries at the next general or board meeting, as the case may be. The chairman then puts them to the vote and signs them if approved; or, if any amendment is required, that is first made, and initialed by him, and the minutes are then signed by the chairman in the lower right hand corner with his name and official designation.

It is generally advisable to have separate minute books for shareholders' and directors' meetings. The former may fairly be open to the inspection of shareholders, but the directors' minute book, containing as it does a record of the private affairs of the company, should not be accessible to any but the directors and the secretary.

The following will give some idea of the mode in which minutes are entered:—

The Fourth Ordinary Meeting of the Company (Limited), held the th of (at the head office of the company) at o'clock.

Mr. in the chair.

There were also present:

A. B., holding 50 shares.

C. D., holding 25 shares.

E. F., holding 10 shares, by his proxy, J. D., etc., etc.

The notice convening the meeting was read by the Secretary.

The minutes of the general meeting of the company, held the th ultimo, were read by the Secretary and signed by the Chairman.

It was resolved unanimously that the report of the directors be taken as read.

Upon the motion of the Chairman, seconded by Mr. , it was resolved, after discussion, (or as the case may be).

Upon, etc., it was resolved that a dividend, etc.

Upon the motion, etc., it was resolved that Mr. be and he is hereby elected a director in the place of Mr. .

Upon, etc., (vote of thanks).

A. B.,
Chairman.

If an amendment be moved, the minutes will run thus:—

It was moved by the chairman, and seconded by Mr. , That, etc.

An amendment was thereupon moved by Mr. and seconded by Mr. , (Here set it out; *e.g.*),

"That the report be received, but not adopted, and that a committee of five shareholders be appointed, with power to add to their number, to inquire into the formation and past management of the company, and with power to call for books and documents, and to obtain such legal and professional assistance as may be necessary, such committee to report to a meeting to be called for day, the th of ."

The amendment was put to the meeting and negatived. The original question was then put to the meeting, and declared by the Chairman to be carried.

Every resolution should be in writing, and marked by the chairman or secretary, with the result of the vote, and be initialed by him. These resolutions should be carefully filed and preserved for future reference.

The Secretary should write up the minutes in permanent form from his notes, made at the time, as soon after the meeting as possible, and while the details are fresh in his mind. A verbatim report is neither necessary or desirable. A concise record of what is done, not of what is said, is the object to be aimed at.

Events as remembered by the person making the entries in the books may be primary evidence, in the way of explanation, but the subject matter as originally recorded is the evidence of the fact, and care should therefore be taken that all original entries are carefully and correctly set forth.

Erasures, scratches, and alterations weaken the evidence contained in books of record.

§ 128. Contents of Minutes.

The minutes should state, among other things, time, place, shareholders present, personally, or by proxy, whether the meeting was regular or special, and distinctly everything done and ordered to be done. It is not customary or necessary to take down the remarks or opinions expressed by the members. When this is done it is for the purpose of giving the reader a better view of existing circumstances.

§ 129. Amendment of Minutes.

If the minutes as read be objected to, and the objection is on some immaterial or obvious point, such as a mistake in the date, or in the name of some one present, the chairman would simply direct the secretary to make the necessary correction. If the error be more serious, its correction may be directed by a formal motion, or, if those present are willing, by the order of the chairman. The correction should be made by drawing a red line through the part ordered stricken out, and in no case should an erasure be made. The correction should also appear in red ink. Then the minutes will show both the error and the correction.

§ 130. Minute Book.

The minute book is usually a blank book of convenient size, ruled for writing, and generally with a red line setting off the left hand margin. A book containing a couple of hundred pages of good paper, substantially bound, in size about 8½ by 13 inches, will be found most convenient for the ordinary company. It is recommended that every minute book be provided with an index, and a marginal line on the left hand side of each page. The secretary can then write a *precis* in the margin, and enter same in the index for facilitating reference.

It would be well for the secretary to provide a scrap book for "Printed Matter" into which could be pasted and kept for reference copies of all printed papers issued by the company from the prospectus onward.

§ 131. Inspection of Books.

As a general rule, the right to inspect a company's account books is granted very sparingly. The danger of serious injury to a company that would undoubtedly arise from a publication of the details of its trading is one important reason why auditors are appointed, whose duty it

is to examine the accounts on behalf of the general body of shareholders, and to the auditors, of course, everything must be disclosed.

The various Companies Acts, however, generally provide for the inspection of certain books specified therein, viz.: the record of letters patent, etc., and the registers of shareholders, directors and transfers, by shareholders and creditors of the company, and their personal representatives or agents at the head office, and every such shareholder, creditor, agent or representative, may make extracts therefrom.

The company may itself decide the hours during which those entitled to do so may inspect these books, and take extracts therefrom, provided they be not limited to less than two hours per day.

The books of account of the company, and the minute book of the board of directors and the company, are not required to be kept open for inspection, nor are they made *prima facie* evidence as the other books are by the Acts.

In some cases it would be extremely undesirable to allow a shareholder whose interests may be opposed to those of the company to examine all the books.

In the United States the same general rule holds good, viz., that a stockholder is entitled, during the usual hours of business, not only to inspect certain books, but to take extracts therefrom; nor can the directors by resolution exclude one of the shareholders from such inspection, although they believe him to be hostile to the interests of the institution.

"But with respect to a mere stranger unconnected in interest, such books are to be considered as the books of a private individual, and no inspection can be compelled." And in Williams against College, etc., Road Co. (*a*) it was said that a demand for an opportunity to inspect the stock book must be accompanied by a notice that the person mak-

(*a*) 45 Ind. 170 Su. Ct. 1873.

ing the demand is entitled to an inspection, in order to warrant him in suing for a refusal.

Inspection of company's books is a right of shareholders enforceable by mandamus, and it has been held that the corporation was compellable by mandamus to allow an inspection by the stockholder's agent as well as by himself (*b*).

These demands of shareholders for an inspection of the books often take place prior to a corporate election, and no more aggravated species of outrage exists than the refusal of those in possession of the corporate books to disclose to the shareholders the records of the company.

Where a shareholder obtains an order of inspection, he is bound, in making the inspection, to conduct himself in a peaceable, decorous and gentlemanly manner and not to make public or communicate to strangers the contents of the documents which may have been produced to him.

Directors cannot exclude one of their own number from access to the company's books.

§ 132. Where Books are to be Kept.

Section 114 of the Ontario Companies Act, directs that the books of account and the corporation records shall be kept at the head office of the company. Similar provisions are contained in the Dominion and Quebec Acts. The Ontario Act provides, however, that upon necessity therefor being shewn and adequate assurance being given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary, the Lieutenant-Governor in Council may relieve any company permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as may be fit.

(*b*) Hibbard v. Barsalou, I. L. C. L. J. 98. State v. Bienville Oil Works, 28 La. Ann., 204.

§ 133. Financial Statement to be Made.

The Ontario Companies Act, section 36, directs that at each annual meeting, the directors shall lay before the company, a balance sheet made up to a date not more than three months before such annual meeting, a statement of income and expenditure for the financial period ending upon the date of such balance sheet; the report of the auditor or auditors; such further information respecing the company's financial position as the letters patent, or the bylaws of the company may require; and, on resolution affirmed by shareholders holding at least five per centum of the capital of the company, shall furnish a copy thereof to every shareholder personally present at such meeting and demanding the same.

§ 134. Annual Returns.

Under many Canadian Companies Acts, an annual return or statement of its affairs is required to be made to the Government. In some Provinces this statement is required, not only from the companies incorporated under its own laws, but also from all extra-provincial corporations licensed to do business therein. These reports are usually made by the President and Secretary on blank forms supplied for the purpose by the Departments issuing the letters patent or license. The date they are due should be noted by the secretary, and they should be promptly fyled in order to avoid the penalties prescribed by the Act.

CHAPTER XI.

AUDIT, AUDITORS AND THEIR DUTIES.

§ 135. Introductory.

In companies having a large number of shareholders it would be impossible for each shareholder to personally examine the accounts and books of the company, and satisfy himself that they were correct. Agents or representatives are, therefore, either appointed or elected annually, to ascertain that the moneys have been accounted for, that the expenditures were warranted, that the unexpended portion of the funds is invested as stated in the accounts, and that these accounts are correct, and that the statement of assets and liabilities indicates the true position of the company. This agent or representative of the shareholders is called the auditor, and in a treatise for companies it is not inappropriate to point out the duties and responsibilities of those who have to investigate the books and affairs of a company before the statements prepared by the officers are presented to the shareholders for their approval.

§ 136. Value of an Audit.

The value of a thorough and systematic audit of the accounts and books of a company has not hitherto been adequately appreciated. The investing public are now, however, paying more attention to the importance of periodical audits and examinations by the professional accountant and auditor. The resulting advantages are increased freedom from fraud, greater security for shareholders and more confidence on the part of the public, in the management of companies through being furnished with evidence of their safety and prosperity from an independent source.

The Ontario Legislature has recognized this by inserting in the new Companies Act, clauses requiring that the accounts of the corporation shall be examined once at least in every year, and the correctness of the balance-sheet ascertained by an auditor or auditors and if an appointment of auditors is not made at an annual meeting, the Provincial Secretary may, on the application of any shareholder, appoint an auditor for the current year, and fix the remuneration (if any) to be paid to him by the corporation for his services. This will cause no hardship, although such an audit should be made by an independent auditor, and in large undertakings this is usually done. In small companies or close corporations the audit may be made by a member or shareholder. Directors or other officers are not eligible as auditors (*a*).

§ 137. Duties of an Auditor.

The duties of an auditor are onerous, responsible, and sometimes disagreeable. He may differ with the directors as to the proper manner of stating certain accounts, or he may be charged by them with interfering with what they may consider their particular duties; but if he is satisfied his suggestions would be beneficial to the company he should endeavour to have them carried out.

The essence of the auditors' duty is, however, that of stating to the shareholders whether the accounts are right or wrong, and, if the latter, in what respect. The accounts may be correctly stated, and yet include transactions outside the powers of the directors or the company. In such cases the facts should be stated. He has no strict right to make suggestions, although suggestions made in the interest of the company will always be considered by a proper board of directors.

Usually, however, he will find the directors prepared to give him every information and facilitate as far as possible the prosecution of his audit.

(*a*) Ontario Act, section 126.

If, however, false accounts have been prepared, the auditor has a very unpleasant and difficult task. Obstacles are thrown in his way, and every means possible adopted to prevent the discovery of the fraud. Under such annoying circumstances the auditor should be firm: he should require satisfactory explanation of every objectionable item, and only after corrections necessary to make the accounts absolutely and entirely accurate are made, should he affix his certificate to them; failing which the facts should be reported to the shareholders.

As before stated an annual audit is required by law in Ontario and some other Provinces; the auditor is charged with a general supervision of the accounts of the company, and it is his principal duty to certify to the shareholders, the financial condition of the company from time to time. To show the importance attached to his position, the following cases are quoted.

In an English case, (*a*) Lopes, L. J., gives the following definition of the duties of an auditor:—

"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend upon the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is a watch dog, not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and to rely upon their representations provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautions and careful. . . . It is not the duty of an auditor to take stock; he is not a stock expert; there are many matters in which he must rely on the honesty and accuracy of others. He does not guarantee the discovery of all fraud."

In another English case, (*b*) the defendant-auditor contended that his only duty was to see that the balance-sheet represented and was a true result of what appeared in the books of the company; that behind the books he could not

(*a*) Kingston Cotton Mill Co. No. 2 (1896), 2 Ch. 288, 289.
(*b*) Leeds Estate B. and I. Co. v. Shepherd, 36 Chan. D. 787.

go, and that when he found in the books that debts were due to the company, all he could or was bound to do, was to ask the directors and manager whether they were good debts. These ideas of the duty of an auditor were very emphatically condemned by the court; and the auditor who propounded them was adjudged to be financially responsible to the creditors of the company for his misinterpretation of the law, and for his consequent neglect to perform the duties he had undertaken; the learned judge stating in his finding: "It appears from his own evidence that the duties of the auditor were not in reality discharged by him." In giving judgment the learned judge thus defined the duties of the auditor of a company:

"It was, in my opinion, the duty of the auditor not to confine himself merely to the task of verifying the arithmetical accuracy of the balance sheet, but to inquire into its substantial accuracy; and to ascertain that it contained the particulars specified in the articles of the association, and consequently a proper income and expenditure account, and was properly drawn up, so as to contain a true and correct representation of the state of the company's affairs."

§ 138. First, How Appointed.

The first auditors may be appointed by the directors before the first meeting of the shareholders, thereafter, the auditors should be appointed by the shareholders, at the general meeting. The reason why the shareholders and not the directors, make these appointments is because the auditors are essentially agents of the shareholders, and their duty is to act as a check upon the directors, and to give an assurance to the shareholders, that the balance sheet and report are a *bona fide* and correct statement of the affairs of the company. They hold office until the next annual meeting unless previously removed by resolution of the shareholders.

A special auditor may, however, be retained by the directors at any time to make such limited or unlimited audit as they may direct on behalf of the board of directors as such. In such an event his duty is discharged by reporting to the directors on whose behalf he was appointed.

The duty of the shareholder's auditor is to the shareholders by whom, or on behalf of whom he is appointed. If appointed by, or on behalf of directors, bond-holders, or creditors, for a special purpose, his duty is discharged by reporting to his immediate principals on the matter referred to him for investigation.

§ 139. Qualifications of.

It is desirable that the auditor should be familiar with the Acts under which the company, of which he is the auditor, is incorporated, and special attention should be given to those sections relating to the books, accounts, and annual statements, and to the appointment and duties of the auditor. Of course, the initial qualification of every auditor is a thorough knowledge of the theory and practice of commercial bookkeeping. So much depends upon the skill and judgment of an auditor in the infinite variety of circumstances with which he will be confronted, and there are so frequently occasions when he may be called upon to demonstrate his views, that a special training for such duties will be found invaluable. In a work of this nature no exhaustive treatment of the subject would be possible, and therefore only general principles are stated. There are, however, standard publications and works of reference easily procurable, which should form a part of the equipment of every auditor.

§ 140. Commencement and Conduct of Audit.

Before entering upon his first audit it would be convenient for him to have a list of all books kept by the company, both financial and of record, and the Ontario Act directs that such a list must be delivered to him, and "that he shall have access to the books and accounts of the company." These words, it is apprehended, mean all the books, not merely the books of account of the company. Hence, they include the minute book and letter books.

At the first audit of the accounts of a company, the share capital should be investigated, and the auditor should ascertain that the shares issued are not in excess of the amount authorized by the charter or the private Act by which the company has been incorporated.

The applications for shares and letters of allotment, should be checked against the amounts shown in the cash book as having been received on capital account, and it should be ascertained that these amounts appear among the liabilities to shareholders in the balance sheet.

Sometimes in small companies the prospectus directs that the payments on application for shares are to be sent to the office of the company instead of to its bank. The auditor should then be particularly careful to ascertain that they have been properly accounted for. The stock ledger, the transfer book, the stubs in the instalment scrip and stock certificate books should be examined. The auditor should also ascertain that all mortgages, or bonds issued of the nature of a mortgage, are duly recorded. Having satisfied himself as regards the share capital, he may then turn his attention to the cash book.

(*a*) *The Cash Book.* The debit or income side should be checked with the most independent source the auditor can find available, for example, the counterfoils of receipt books, collectors' books, the counter cash books, etc., etc. The charges on the credit side of the cash book should be checked with the voucher for their payment.

(*b*) *Vouchers.* The auditor will find it greatly facilitates his work if he makes it a rule not to accept any vouchers or other papers intended for his inspection which are not properly arranged before-hand. It sometimes happens, that on the auditor asking for the vouchers for the cash payments, he is handed a bundle of receipted accounts, and on attempting to check them with the cash book he ascertains that many are missing. Much time is in consequence lost in looking for these, or in obtaining duplicates, while if

the vouchers were previously arranged, missing ones would be found, or fresh ones obtained before the commencement of the audit.

A voucher to be acceptable to an auditor should not only be an acknowledgment of money paid, but there should be the proper authority for the payment, and evidence that the expenditure was on behalf of the company's affairs. Under the by-laws of the company, the names of the officers authorized to pass accounts may be ascertained. Of course certain payments must be at the discretion of the cashier, manager, etc., as for instance freight charges, duties, etc. A cheque payable to order and endorsed by the payee is evidence of payment to him, or a written receipt is evidence of payment; but neither of these should suffice an auditor unless he has seen the proper record of the authorization. Auditors should place their initials upon all vouchers and papers submitted to them. This will prevent a dishonest man from using them again. In large companies where many hundreds of vouchers have to be checked, a rubber stamp with the word "audited" thereon is often used. The auditor should satisfy himself that the expenditure has been charged against the proper accounts. The balance, as shown in the cash book, should be checked with the balance in the bank pass book.

(*c*) *Reconciliation Statement.* Where these do not agree, a reconciliation statement, which may be entered in the cash book, should be prepared for the auditor. This should commence with the balance as shown in the cash book to which should be added the amounts of the cheques outstanding. From the total thus obtained should be deducted the amount of the cheques and deposits, if any, paid into the bank not given credit for in the pass book. Deposits not thus acknowledged by the bank should be traced and accounted for, and the result should be a balance identical with that shown in the pass book. The auditor should ascertain at the bank if the book shown him be the actual pass book.

(*d*) *Cash in Hand.* Under the heading "Cash in Hand," should be stated the amount of the balance of the petty cash book not accounted for by any expenditure, and which should, therefore, be in possession of the cashier. As the auditor seldom commences his duties before at least several days have elapsed after the date on which the books are closed, he can only check the correctness of this balance by ascertaining that the cashier has in hand the amount unaccounted for by him in the petty cash book at some subsequent date.

It is the custom in many offices to require the cashier to pay into the bank on the day on which the books are closed, the balance of cash in his hands. This not only proves that the cashier has the money, in his possession, but also spares the auditor a somewhat disagreeable duty.

(*e*) *Other Books.* After the cash book has been finished, the day book and journal entries should be compared and verified. Then the ledger entries should be carefully checked with the books from which they are brought.

In regard to the liabilities in respect of purchases, the posting in the ledger should be checked through the subsidiary books, so as to ascertain that the balances representing the accounts unpaid at the date at which the books are closed are all brought to the debit side of the balance sheet.

(*f*) *Bills Receivable.* The list of Bills Receivable should be carefully gone through to find whether they are on hand or have been discounted, and if on hand and overdue, whether or not they have been paid and no credit given. If some of them have been discounted, a list should be prepared, as the company is liable should they not be paid when due.

(*g*) *Accounts Receivable. Bad Debts how written off.* A list of all those indebted to the company at the date the books were closed should be prepared for the auditor and provision should be made for writing off bad and doubtful accounts periodically. This list should be classified under

three heads, viz., good, doubtful and bad, and valued in accordance with their merits. The total estimated loss should be carried to a "Bad Debts Account." This account should be opened by a journal entry with a complete explanation accompanying, so that if the books were taken into court to prove these accounts, they would in this entry show what these credits were.

The names of each debtor should appear in this account in the ledger, and the total should then be closed into Loss and Gain. This plan has the advantage if showing not only the exact amount written off each year for bad debts, but the individual names of the debtors, each of which occupies a separate line in the account. The facility with which the whole list, even if it extends over many years, may be inspected will be found convenient. If any of these accounts are realized upon subsequently, an entry of "Cash debtor to Bad debts," together with the necessary explanations should be made.

The same plan should be followed in dealing with a worthless note, adding after the words "Bills Receivable" in the bad debts account the name of the maker in brackets.

Another plan of dealing with bad debts which has been found to work advantageously, is to open what may be termed a Bad Debts Reserve Account, to the credit of which is placed annually a sum which bears the same ratio to total sales for the current year that the ascertained loss for the previous five or more years bears to total sales for that period. Against this reserve, future losses, as ascertained, may be charged, and the profits for the following year are not burdened with losses upon business transacted in previous years.

(*h*) *Accounts and Bills Payable.* These should be critically examined to see that they have all been credited, and that the company owes only the accounts and bills payable shown by the books. Provision should also be made for all accrued charges and expenses.

(*i*) *Inventories.* The inventories of merchandise, furniture, office fixtures, real estate, plant, etc., etc., should be closely examined to ascertain whether or not the true values appear. The inventories should be compared with those of previous years, and where necessary a certain percentage should be written off for depreciation. An inventory of merchandise should be taken at its cost price with allowance for old stock, and not at its market value, as there can be no profit until the goods are sold.

(*j*) *Depreciation.* Depreciation is the actual loss upon assets through wear and tear, or effluxion of time, or change of fashion. It must not be confounded with "fluctuation in value," which also affects the value of land, stocks, etc. The object of setting aside an amount annually for depreciation is to spread the loss over a series of years, otherwise any one year would have to bear the whole amount.

Unless this depreciation fund is carefully thought out, and its deduction from profits rigidly insisted upon, the shareholders of the corporation, and perhaps the bondholders, may, in the course of years, find that their securities cover a property of little or no business value. If certain sums are not set aside to meet this depreciation, and if because of this, dividends are paid larger than would otherwise be the case, to the extent to which this is carried, the returns received by the shareholders are not dividends but their capital returned to them piecemeal.

Buildings. The depreciation will depend in a measure on the quality of the materials of which the buildings are constructed. An estimate of the time the building will last should be made and a proportionate amount, sufficient to offset it by the end of the period, should be written off each year. Repairs made, from time to time, should be charged to profit and loss account.

Leases. As a lease runs for a definite number of years, a certain amount should be written off annually, so that when the lease expires the asset will have disappeared, by

such credits from the books. This amount may be a fixed proportion of the original cost each year as, for instance, in a ten-year lease, ten per cent. each year; or the account may be written off on the annuity system, wherein the amount is adjusted so as to allow for interest on the investment.

Plant and Machinery. The question of depreciation in machinery, is a most difficult one to treat, as so many causes of depreciation enter into the calculation. Among these may be mentioned—improvements which reduce the value of the machine at present in use; wear and tear, etc., etc. If it be possible to value the plant and machinery each year, and charge the reduction to "Depreciation Account," it is the best way. Where this is done the following deductions may safely be made. As boilers wear out rapidly 10 to 15 per cent. should be written off. On other machinery 5 to 10 per cent. may be deducted from the reducing balances according to the nature of the machinery. All repairs and renewals of parts should be charged to loss and gain.

Office and shop furniture and fittings; deduct say 7 per cent. on the reducing balances.

Horses. No percentage rate of depreciation can be determined upon. The safest plan is to have the horses valued annually and the reduction written off.

§ 141. The Balance Sheet.

The balance sheet is the most important statement laid before the shareholders, as, if properly drawn up, it shows the exact financial position of the company. On one side are placed the liabilities, not only to the creditors, but also to the shareholders themselves, while on the other side are enumerated the assets and the property of the company.

Every balance sheet of the company should be drawn up so as to distinguish at least the following classes of assets and liabilities, namely:—

(*a*) Cash.

(*b*) Debts owing to the company from its customers.

(*c*) Debts owing to the company from its directors or officers.

(*d*) Stock in trade.

(*e*) Expenditures made on account of future business.

(*f*) Land, buildings and plant.

(*g*) Goodwill, franchises, patent and copyrights, trade-marks, leases, contracts and licenses.

(*h*) Debts, owing by the company secured by mortgage or other lien upon the property of the company.

(*i*) Debts owing by the company but not so secured.

(*k*) Amount received for common shares.

(*l*) Amount received for preferred shares.

(*m*) Indirect and contingent liabilities.

Before giving his certificate to the correctness of this statement, the auditor must examine in detail, each item on both sides, and satisfy himself that the liabilities have not been understated, nor the assets over-estimated, or *vice versa*, as, without intending to deceive the shareholders, or to act in any way dishonestly, it is quite possible for the directors and officials of a company to present the balance sheet in a more or a less favorable light than is warranted by the facts.

The auditor should inspect the securities representing the assets, and ascertain that they are in the possession of the company, free and unencumbered by mortgages, or any charges, unless their being so is clearly stated in the audit.

§ 142. Audit Should be Thorough.

A thorough and efficient audit should embrace an examination of all the transactions of a company, and an auditor acting on this principle, would ascertain that all had been duly entered and discharged. A purchase made, a sale effected, or any matter of business transacted, and once entered in one of the subsidiary books, becomes part of a system with which it is so incorporated, that it cannot

be omitted, overlooked or cancelled, without so disarranging the organization that an efficient auditor would at once detect either the carelessness or the fraud.

§ 143. Position of Auditor When Accounts Incorrect.

Where from any cause an auditor cannot certify to the accounts he has audited, and differences have arisen between the directors and himself which he has been unable to remove, his best plan under these circumstances is to address to the shareholders a full report on the accounts, setting forth clearly therein the points at issue between the directors and himself and then sign the accounts as auditor in the usual manner, subject to this report.

§ 144. Suggestions.

An auditor should be able not only to check and verify the accounts placed before him, but also, if he finds the books are kept in a careless manner, or on a bad system, be able to suggest a better method, the adoption of which might not only save expense, but also ensure greater accuracy in recording the transactions of the company.

In his anxiety to do his duty towards the shareholders, the auditor should be careful not to interfere in the management of the company by insisting on the adoption of any changes in the system of bookkeeping, the running of the office, or in any other matter. The principal duty of the auditor is to ascertain that the accounts, as presented to the shareholders, show accurately the state of the company's affairs. This duty is clearly set forth as regards Ontario Companies by section 123 of the Ontario Act, which provides that "the correctness of the balance sheet shall be ascertained by an auditor or auditors," and by performing this duty conscientiously and efficiently, he can best serve the interests of the shareholders whose servant he is.

CHAPTER XII.

DRAFTING CONTRACTS, OFFICIAL SIGNATURES, SEAL.

§ 145. Method of Drafting, etc., Corporate Deed or Contract.

A deed or contract of a company should be drawn so that the name of the company appears in the body of the instrument, and not the name of the officer or agent who signs, seals or acknowledges it. The name of the company should be signed to the instrument, and then should follow the name of the officer or person who makes the signature. The Dominion Act provides that every deed which any person lawfully empowered in that behalf by the company as its attorney, signs or has signed on behalf of the company, and seals, or has sealed with his seal, shall be binding on the company, and shall have the same effect as if it was under the seal of the company.

If the charter of the company or some statute applicable to it, expressly prescribes a certain mode or form for entering into contracts, that mode and form must be followed.

A deed made to a company in its original name which had been changed is good: Grand Junction v. Midland, 7 Ont. A. R. 681.

Corporate instruments made in the name of an officer or agent instead of in the name of the corporation, may be enforced by or against the corporation. This is now the well established rule.

§ 146. Precautions when Making Contracts with a Company.

It is the duty of every one making an important contract with a company, to learn, by an inspection of its charter, or the act under which it was incorporated,

whether or not it has power to enter into the contract contemplated. This rule marks an important difference between partnerships and companies, for a person dealing with a partner in a firm is not presumed to know the contents of the partnership deed. Accordingly, greater caution is necessary in dealing with a company than with a partnership.

Many persons do not take these precautions; they assume that the directors and officers of the company will do everything in proper form, and that no trouble will arise.

Where a person has entered into a contract which proves to be *ultra vires* of the company, it must not be assumed that he will not have any rights against the company, or its directors or agents in relation thereto. Legal advice should be taken and the course recommended followed.

Hints to Creditors. A creditor of a company may enforce payment of a debt, either by bringing an action against the company, or by petitioning for its compulsory winding up.

Where the company is solvent, and the non-payment of the claim is due to a dispute as to its amount or validity, the bringing of an action is the proper course. To bring an action, the claimant will instruct his solicitor to issue a writ against the company, and in many cases the service of the writ leads to a settlement of the claim. If not, the action will be prosecuted and judgment obtained. Upon the judgment, execution can be issued, and the property of the company seized and sold. If, however, the company is in difficulties, cannot meet its obligations, and doubt exists as to its solvency, and a creditor for an undisputed amount cannot obtain payment, the usual course is to petition for the winding up of the company. The decision as to whether the circumstances warrant the adoption of this course, should rest with the solicitor before whom the matter is brought.

§ 147. Official and Corporate Signatures.

An official signature is the signature of a corporation officer followed by the name of his office thus:

WILLIAM MACKENZIE,
President.

Where the document to which this signature is appended shows plainly by its heading or subject matter the name of the company of which the person signing is an official, this signature is sufficient. Where this is not the case the official title should be written out in full thus:

WILLIAM MACKENZIE,
President,
Toronto Railway Company, Limited.

In signing reports, instructions and orders, the president would use his official signature. So would the secretary in signing reports, notices, minutes and ordinary letters.

Where the name of a company is duly affixed and evidenced by the signature of the affixing officer, it is known as the *corporate signature*. In many companies the treasurer signs cheques, drafts, etc., with the corporate signatures thus:

The Toronto Steel Company, Limited,
JAMES HOYLES,
Treasurer.

To facilitate the use of the corporate signature, the officer should be provided with a rubber stamp, bearing the company's name, with a space below for the insertion of the official's name. When the latter is inserted the corporate signature is complete.

Many important instruments such as petitions, etc., etc., require the full corporate name and seal as shewn here:

Corporate Signature, Formal—

The Toronto Railway Company, Limited,
WILLIAM MACKENZIE,
President.

CORPORATE SEAL. } JAMES G. GRACE,
Secretary.

While in still more important documents such as deeds, etc., a testimonium clause is used as follows:—

Testimonium clause, Corporate Signature.

In witness whereof, the Toronto Railway Company, Limited, has caused its corporate name to be hereunto subscribed, and its common seal to be hereunto affixed at the City of Toronto, in the Province of Ontario, this 20th day of May, A.D. 1907.

CORPORATE SEAL. } Toronto Railway Company, Limited,
WILLIAM MACKENZIE,
President.

Witness:
J. SMALL. JAMES G. GRACE,
Secretary.

Cheques should be signed in the manner, and by the officer prescribed in the company's by-laws. The corporate seal is not used, nor is it necessary on corporate cheques. Where two signatures are required by the by-laws they may be written one below the other on the lower right hand side of the cheque.

§ 148. Seal, Origin of.

The use of seals is of great antiquity as we find that King Darius sealed "with his own signet and with the signet of his lords." (Bible, Daniel 6, v. 17). And the Prophet Jeremiah said "and I subscribed the evidence,

and sealed it and took witnesses, and weighed him the money in the balances." Jeremiah, Ch. 32, v. 10.

Private seals were in common use among the Romans, and Blackstone, says, "The method of the Saxons was for such as could write to subscribe their name, and whether they could write or not, to affix the sign of the cross which custom our illiterate vulgar do, for the most part, to this day keep up, by signing their mark when unable to sign their names. And, indeed, this inability to write, and therefore making a cross in its stead, is honestly avowed by Caedwalla, a Saxon king, at the end of one of his charters. In like manner, and for the same unsurmountable reason, the Normans, a brave, but illiterate nation, at their first settlement of France, used the practice of sealing only, without writing their names, which custom continued when learning made its way among them, though the reason for doing so ceased; and hence the charter of Edward the Confessor to Westminster Abbey, himself being brought up in Normandy was witnessed only by his seal, and is generally thought to be the oldest sealed charter of any authenticity in England. At the conquest, the Norman lords brought over into this kingdom their own fashions, and introduced waxen seals only, instead of the English method of writing their names and signing with the sign of the cross. * * * This neglect of signing, and resting only upon the authenticity of seals, remained very long among us; for it was held, in all our books, that sealing alone was sufficient to authenticate a deed; and so the common form of attesting deeds, *sealed and delivered*, continues to this day."

A right to have, use, alter or change a common seal is said to be incident to all companies. The use of the common or corporate seal by corporate bodies is supposed to have originated like private seals, from the general inability of persons to write and like the private seal, it has continued in use, although the original reason for its use has ceased to exist.

§ 149. Necessity of Seal.

The old idea of the necessity of evidencing every appointment of a servant or agent, or every contract into which a company enters by instrument under seal, has long been departed from, and the departure is recognized and ratified by law (*a*) in all cases where the inconvenience of so doing amounts to a practical necessity. Indeed, so far from requiring every such appointment, authority, or contract to be under seal at the present day, the rule is, that in a large number of cases such appointments are made without any writing at all. This does not apply, however, to municipal corporations.

§ 150. Form and Use of Seal.

The courts will hold any device or form to be the corporate seal if there was an intent to bind the corporation and a seal of some kind was used.

It is no longer necessary that the impression of a corporate seal shall be made upon wax or other adhesive substance—an impression upon the paper itself being held sufficient. A seal printed upon a contract of a corporation before execution has been held to render the contract valid, particularly where it was so imprinted by direction of the officers of the corporation with a view to its signing and delivery. It is not necessary that express authority, or authority under seal, be given to an officer or agent to affix the corporate seal to an instrument; such powers may be inferred from the general powers of the officer or agent, the usual course of business and similar circumstances.

The mere affixing of the corporate seal is of itself sufficient execution of a contract or deed, when properly affixed by a person duly authorized, and no signature at all need be made or used, but such signature is always advisable.

If an instrument or contract appears to be signed by the proper officer, and the corporate seal appears to be affixed,

(*a*) See Sec. 32, Dominion Act, Art. 4746, Quebec Act.

the courts will presume that the seal is the corporate seal, and was affixed by proper authority, when proof is given that the officer signed and sealed the instrument; but this presumption may be overthrown by proof that the seal was affixed without proper authority. The company, by ratification and otherwise, may easily cure a defect as to the sealing. A defect in the acknowledgment or attestation is overlooked by the courts if there is sufficient to indicate the intent to acknowledge. A person taking from a company an *intra vires* contract under its seal is not bound to see that the proper formalities of execution have been observed: Sheppard v. Bonanza Co., 25 Ont. R. 305.

The use of a seal as the corporate seal, with the knowledge and tacit assent of the directors, is a sufficient adoption: McRae v. Corbett, 6 Man. R. 426.

CHAPTER XIII.

STOCK, SHARES, CALLS, ETC.

§ 151. Introductory and Definitions.

Authorized Capital, means the amount of stock that a company is authorized to issue under its charter.

Subscribed Capital, means the amount of stock that persons have agreed to take and pay for, as shown on the stock list.

Paid up Capital, means the total amount paid upon the stock subscribed for.

Surplus, Reserve, Rest. These terms are synonymous and are generally used to designate the amount which the assets of a company are in excess of its liabilities and the capital paid in by the shareholders. This difference is usually undivided profits. Example—

Hamilton Stove Company.

Total assets		$110,000
Total liabilities (to the public)	$5,000	
Capital stock (liability to the shareholders for paid up capital)	$100,000	
Surplus	5,000	
		110,000

In this case the assets are sufficient not only to pay the debts due the public and the amount subscribed by the shareholders, but also to leave a surplus of $5,000.

Reserve Fund, is a portion of the profits of a company, set aside for the purpose of creating a fund to meet losses or unforeseen emergencies, etc., etc.

A Share of Stock, may be defined as a right which its owner has in the management, profits and ultimate assets of the company. It is said that "the right which a share-

holder in a company has, by reason of his ownership of shares, is a right to meet at shareholders' meetings, to require that the corporate property shall not be diverted from the original purpose, to participate according to the amount of his stock in the surplus profits of the company on a division, and ultimately on its dissolution, in the assets remaining after payment of debts."

A Bond is a written acknowledgment of debt under seal, and is generally made for fixed amounts, such as $100, $500, $1,000; it is payable at the end of a fixed term, and has attached to it a number of coupons which specify the amount of interest due each year, half-year or quarter. These are detached and presented for payment when the interest is due. The bonds are generally secured by a mortgage or pledge of a certain portion or all of the assets of the company, the mortgage being made to trustees and containing provisions for the collection of the debt and protection of the bondholders in case default is made by the corporation in the payment of the bond, or of the interest thereon. Bonds are payable to bearer, but provision is generally made for registration, whereby the negotiability of the bond may be restricted at the wish of the holder thereof. The coupons may be detached from the bond and sold like a promissory note. They are negotiable, and a *bona fide* purchaser of them is protected. Demand of payment of a coupon need not be made at maturity.

As bonds are not a liability until they are sold, they should have no account in the books of the company until an actual sale takes place.

Few business companies will have occasion to issue bonds; but if such a course is desirable, a special meeting should be called, and the proceedings should be carefully taken, and a record of them as far as possible inserted in the mortgage.

Debenture. A debenture has been broadly defined as any instrument issued by a company which creates or acknowledges a debt. They are in the form of a note or bond.

issued generally in a series, reciting on their face that they are secured by bonds, mortgages, or other securities deposited with trustees. They are in effect bonds or notes secured by a pledge of bonds or other securities as collateral (*a*).

Unless expressly restricted, any company having the power to borrow money, or otherwise create a debt, has the implied power to issue its bonds and debentures therefor.

As money raised by debentures is not part of the capital of the company, but a loan to, and a debt due from the company, debenture holders are in the position of secured creditors of the corporation, and not in the position of shareholders, and they assume no liability to other creditors.

Underwriting. A contract of underwriting is an agreement by persons that in the event of the public not taking up the whole of the shares, or the number mentioned in the agreement, the underwriter will, for a commission to be agreed upon, take such shares as the public has not applied for. This agreement may be accompanied by an application for the shares, or, if not, the number of shares taken by the public will be found and the underwriter will make a formal application for the balance.

§ 152. Kinds of Stock.

The share capital of a company may be either common or preferred.

Common Shares or Stock is stock which entitles the owners of it to a *pro rata* division of profits, if any there be; one shareholder or class of shareholders having no advantage, priority or preference over any other shareholder or class of shareholders in the division.

Preferred Shares or Stock is stock which entitles its owners to dividends out of the net profits before, or in preference to the holders of the common stock. Common

(*a*) Am. & Eng. Ency. of Law

stock entitles the owner to a *pro rata* share of dividends equally with all other holders of the stock except preferred shareholders; while preferred stock entitles the owner to a priority in dividends (*a*).

Deferred Stock or *bonds* is stock or bonds, the payment of dividends or *interest* upon which is expressly postponed until some other class of shareholders are paid a dividend, or until some certain obligation or liability of the corporation is satisfied.

Watered or Fictitious Stock, is stock which is issued as fully paid up, when, in fact, the whole amount of the par value thereof has not been paid in. If an amount less than the whole face value of the stock has been paid, and the stock has been issued as full paid, then the stock is watered to the extent of the deficit. Watered stock is, accordingly, stock, which purports to represent, but does not represent, in good faith, money paid into the treasury of the company, or money's worth actually contributed to the working capital of the concern. The issue of such stock may be lawful, but it is generally in fraud of the rights of some interested party, as *e.g.* creditors of the company, certain shareholders or classes of shareholders, or the public.

Over-issued or Spurious Stock, is stock issued in excess of the full amount of capital stock authorized by the charter of the company. Such stock is void even though issued in good faith.

Treasury Stock. Although this term is not used in any of the Canadian Acts, its use has become common in many of the States of the Union.

Sometimes a company is organized, the whole of its capital is subscribed and paid for, and the proceeds invested in machinery, plant, etc., thus leaving the company without funds to carry on its operations. This state of affairs is often remedied by the shareholders donating a proportionate number of their shares to the company, to be sold

(*a*) See Special Provisions as to Preference Shares, for insertion in Letters Patent, *post*.

to provide working capital. The stock thus donated is called Treasury Stock. Again, a company is formed, wherein the corporators transfer certain property, a patent, or a plant which forms the basis of the company. In consideration of the transfer, they allot paid up shares to themselves, and then donate a certain amount of this full-paid stock to the company, thus creating treasury stock to produce funds for operating expenses.

This stock is then an asset of the company, and may be sold by the board, as any other property would be sold. If it has been paid in full it retains that character, and may be sold below par, without involving the purchaser in any possible liability on that account. In this respect it differs from stock issued in the first place for less than par, which may later involve its purchaser in further liability should the company become insolvent.

When shares are thus donated to the company, the certificates representing them should be assigned to the treasurer of the company. They are then cancelled, and when this treasury stock is sold, new certificates are issued to the purchasers. Until that time these shares are represented by a credit in the stock ledger.

While the company holds treasury stock, it is inert and can neither be voted upon or participate in dividends.

Treasury stock is a term sometimes improperly used to denote the unissued shares of the capital stock of a company.

Guaranteed stock is stock of one corporation, the payment of dividends on which has been guaranteed by another corporation. This is an arrangement common among railroad companies.

Full paid stock is stock the par value of which has been fully paid into the company in cash, or which has been issued at its par value in payment for property, without fraud and in good faith.

§ 153. Unissued Shares.

A company on incorporation is empowered to issue shares to the full amount of its authorized capital. Thereupon shares may be issued at the discretion of the directors, or as required by the company's operations. The unissued shares cannot in any way be regarded as an asset of the company. They represent nothing more than the right to admit new shareholders into the company upon payment of the price of the shares. Unissued shares or stock is not treasury stock, and until it is issued represents nothing. It is no more an asset of the company than an unissued promissory note is an asset of an individual.

§ 154. Difference between Capital Stock and Shares of Stock.

The difference between capital stock and shares of stock has been set forth very clearly by Mr. Justice Finch in the case of People v. Coleman, 126 New York, 433, in the following language: —

"The *capital stock* of a company is one thing: that of the shareholders is another and a different thing. That of the company is simply its *capital* existing in money or property or both: while that of the shareholders is representative, not merely of that existing and tangible *capital*, but also of surplus, of dividend-earning power, of franchise and the good-will of an established and prosperous business. The *capital stock* of the company is owned and held by the company in its corporate character, the capital stock of the shareholders they own and hold in different proportions as individuals. The one belongs to the company: the other, to the corporators. The franchise of the company, which may be deemed its business opportunity and capacity, is the property of the company, but constitutes no part or element of its capital stock; while the same franchise does enter into and form part, and a very essential part, of the shareholders' *capital stock*.

While the nominal or par value of the *capital stock*, and of the share stock are the same, the actual value is often widely different. The capital stock of the company may be wholly in cash or in property, or both, which may be counted and valued. It may have in addition a surplus, consisting of some accumulated and reserved fund, or of undivided profits, or both; but that surplus is no part of the company's *capital stock*, and therefore it is not itself capital stock. The capital cannot be divided and distributed: the surplus may be. But that surplus does enter into and form part of the share stock, for that represents and absorbs into its own value surplus as well as capital and the franchise in addition. So that the property of every company may consist of three separate and distinct things, which are its capital stock, its surplus, and its franchise; but these three things, several in the ownership of the company, are united in the ownership of the shareholders. The share stock covers, embraces, represents, all three in their totality, for it is a business photograph of all the corporate possessions and possibilities. A company also may have no surplus, but, on the contrary, a deficiency which works an impairment of its *capital stock*. Its actual value is thus less than its nominal or par value, while yet the share stock, strengthened by hope of the future, and the support of earnings, may be worth its par or even more. And thus the two things, the company *capital stock* and the shareholders' *capital stock* are essentially, and in every material respect different. They differ in their character, in their elements, in their ownership and in their values."

§ 155. Methods of Issuing Stock or Shares.

There are in general three methods of issuing stock. It may be issued, first, by means of subscriptions, payable in cash, the subscription being made in writing, or by acts equivalent thereto. Second, the issue may be by means of subscriptions, payable in labor, property, or both. Third, the issue may be by a stock dividend.

First Method. Issue by money subscription. An issue of stock by means of a subscription, payable in cash, is the most honest and safe method of issuing stock. In the absence of any agreement to the contrary, an ordinary subscription for stock is deemed a cash subscription, and payment in money may be enforced. The subscription contract is generally made by a writing duly signed by the subscriber.

Second Method. Issue for property, services, labor or construction work. The issue of stock for services, labor, property, construction work, or any valuable consideration other than money, has given rise to much controversy and litigation. In England a long line of decisions, under the Companies Acts, has established the principle that stock need not necessarily be paid for in cash, but that it may be paid for in money's worth.

That is to say, the payment for shares may be made by the present transfer of property from the shareholder to the company (*a*), or the consideration may be a debt due from the company to the shareholder.

If the consideration be a debt from the company to the subscriber, it will make no difference at what time the debt was contracted; but the only question is, whether there is,

(*a*) Jones v. Miller, 24 Ont. R. 268; in *re* Hess Mfg. Co., 23 S. C. R. 644.

The Quebec Companies Act is unique in its strict provisions relating to the watering of stock and other forms of fictitious capitalization. Section 4722 provides that the capital shall consist of that portion of the amount authorized by the charter, which shall have been *bona fide* subscribed for and allotted and shall be paid in cash. While the statute says the shares must be paid in cash, it has been held in a Quebec case, by the Privy Council, affirming the decisions of the Courts below, that where there is no fraud and the transaction is in good faith, the consideration being fair, anything which is in law equivalent to a payment or which would be in law sufficient evidence to support a plea of payment, is a payment in cash within the meaning of this section. So where property was sold to a company, and a portion of the price paid in cash, and the balance credited to the vendors as fifty per cent. paid up on stock held by them, this was held a cash payment within the meaning of said Art. 4722. Larocque v. Beauchemin, 1897. A. C. 358.

at the time when the shares are to be paid for, a valid debt due from the company to the subscriber and immediately payable, so that the demands can be set off against each other.

If there be a contract of such a nature that on action brought by the company, it could not be set aside, a payment for shares in kind according to that contract is legal.

On these principles a subscriber who was a shareholder in a former company which transferred property to the company; a subscriber, who, according to an agreement in the articles, took paid-up shares as the purchase money for a business which he had sold to the company; subscribers, who, being partners, formed themselves into a company and sold their property, in fact, to themselves; a subscriber who received credit for services (*b*), have been held to have discharged the payments on their shares.

Subscriptions payable in property are not subject to calls, and a demand for the property must be made by the company. Upon failure of the subscriber to furnish the property, or upon insolvency of the company, such subscriptions become payable in cash. A payment of part of the subscription in cash does not waive the right of the subscriber to pay the balance in property. The stock may be issued to a contractor before his work in payment therefor has been completed. All the provisions of the law must be strictly complied with.

Third Method of Issue. By stock dividend. It is allowable when an amount of cash or property equal to the amount of the par value of the stock so divided is added permanently to the capital stock of the corporation. A stock dividend can be made only when the whole of the capital stock has not been issued, or when it may be increased. The company itself can never increase the capital stock beyond the amount limited by its charter. If an increase is desired, application must be made to the authority from which its charter is derived.

(*b*) Caston's Case 12. S. C. R., 644.

The Ontario Companies Act, section 92, now provides for the payment of stock dividends.

§ 156. Methods of Issuing Watered or Fictitious Stock.

There are three ways in which watered stock may be and is issued.

First: By discount in cash. Second: By taking property at an overvaluation. Third: By means of an invalid stock dividend.

An issue of paid up stock for cash, upon payment of only part of the par value of the stock, is not often made, inasmuch as the real nature of the transaction is readily discovered and easily remedied.

A second method of issuing stock as paid up when it is not actually paid up, is by its issue for property taken at an overvaluation. This method is the most frequently employed, the most difficult to prove, and the least easy to remedy.

The third method of issuing fictitiously paid-up stock is by a wrongful use of the power to issue stock dividends. It seems to be generally conceded that if the capital stock and the actual property of the company is not permanently increased to the extent of the par value of the stock distributed as a dividend, then that the issue of stock by such dividend is irregular, and under certain conditions fraudulent.

(*a*) *Opinions as to Watered Stock.* There are various opinions as to the character of stock issued as paid up, when, in fact, it has not been paid for. The customary expression is that such an issue is a fraud upon the law and the shareholders; or that it is against public policy; or is a fraud on subsequent purchasers of the stock so issued. Other cases, and cases of high authority, hold that an issue of stock as full-paid up under an agreement that the full par value shall not be paid, is not necessarily a fraudulent

transaction, but that under an Act such as the Ontario Companies Act, the person taking the stock is liable on it for the full amount both to the company and its creditors, notwithstanding the agreement that it is to be considered fully paid up.

(*b*) *Is fictitious paid-up stock void?* Is stock void when fictitiously issued as paid up? It is settled that it is not; and it may be stated, as a well-established rule, that stock issued as paid up, when it has not been fully and fairly paid up, is not absolutely void, unless it is declared to be void by constitutional or statutory provisions, but may involve the parties concerned in serious liabilities.

(*c*) *Expressly forbidden by certain Acts.* The Quebec and Prince Edward Island Acts expressly forbid the practice, commonly known as the watering of stock, and provide "that all stock so issued shall be null and void." The Quebec Act further recites that "Every form and manner of fictitious capitalization of stock in any Joint Stock Company, or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such company, and not represented by an amount in cash paid into the treasury of the company, which has been expended for the promotion of the objects of the company, is prohibited and all such stock shall be null and void."

(*d*) *Shareholders may complain of issue of.* Shareholders, being such when an issue of paid-up stock is improperly made, and not assenting to or acquiescing in it, may bring suit in a court of equity to annul and set aside the whole transaction. The dissenting shareholders' rights and remedies herein, in their scope and details, are similar to the rights and remedies of shareholders in other cases of *ultra vires* acts or fraud to the injury of the company.

Directors who issue shares at a discount are liable to the company, and if the shares have passed from the allottee to *bona fide* purchasers who are entitled to hold them as fully paid, their liability will be the amount of the discount. The fact that the directors acted *bona fide*

will not protect them, but if they acted *mala fide* the measure of damage may be larger (*a*).

An illustration of a common method of issuing watered stock is as follows:—

A manufacturing business has been carried on by A., B., C., and D., each partner being entitled to a quarter of the capital. They decide to convert their business into a company, and having ascertained, by a valuation, that the assets are worth $90,000, and the debts and liabilities amount to $20,000, so that the net value of the business is $70,000, composed of buildings and plant $60,000, cash, etc., $10,000, they organize a company with a capital stock of $100,000. The amount of property actually put in being but $70,000, the balance, or $30,000, represents a nominal or fictitious value with nothing to offset it. On the books of the new company the following entries would be made:—

Buildings and plant	$60,000	
Cash, etc	10,000	
Franchise	30,000	
To the vendors, A., B., C. and D.		$100,000

Consideration paid by company for business, etc.

Sundry shareholders A., B., C., and D. } Dr	$100,000	
To capital stock		$100,000

Amount issued to them as consideration for transfer of business.

Each shareholder's account in the ledger having thus been credited for his share, viz., $25,000, and debited for the shares issued to him, and capital stock having been credited the transaction is complete. The difference between the actual value of the property turned in by each partner, viz., $17,500 and the $25,000 in paid-up stock allotted him, or $7,500, is usually regarded as his share of the good-will of the business, or as a payment by way of bonus to each partner.

(*a*) Hirsche v. Sims, 1894, A. C. 654.

The Franchise Account will be carried upon the books as an asset, and if, upon a dissolution or from any other cause, the shareholders pay up this difference, cash will be debited and Franchise credited for the amount.

§ 157. Paid up Shares.

Where no consideration passes to the company, and the shares allotted purport to be paid-up shares, there is nothing to set off, and therefore there being no contract registered, the allottee will be held liable on them. Thus, in a certain case (*a*), two persons, signed the memorandum of association for one share each at the request of the promoter, and on the understanding that they should not be called upon to pay anything in respect of them; and when they were asked to pay calls, they requested the directors to cancel the shares, and the directors did so. The directors had power under the articles to cancel shares on non-payment of calls. Several years afterwards, the company being ordered to be wound up, the parties and their executors (one of them being dead) were placed on the list of contributories by the liquidator, and on a contestation, the action of the liquidator was maintained.

And in the United States it has been held that the officers of a corporation are chargeable with fraud if they receive, in payment of stock, property at a valution known to be in excess of its real value and in consideration thereof issue paid-up certificates of stock. But if the shares are transferred, and the transferee knows nothing of the circumstances, the certificate of the company that they are paid-up shares will carry him free. Thus, under a contract not registered, shares in the company were allotted to the person with whom the company made the contract, and were duly regisfered by the company as such. The shares were subsequently transferred for value as fully paid-up shares to a person who had no notice of any irregularity in their issue. On the winding up of the company,

(*a*) Esparto Trading Co., 28 W. R. 146.

held, that the company was estopped from denying that the shares were fully paid up, and that the official liquidator could not have the transferee put upon the list of contributories as a holder of shares not fully paid up.

And in McCracken v. McIntyre, decided in the Supreme Court of Canada (*a*), the result was the same. In that case certain shares in a company incorporated by letters patent issued under 27 & 28 Vict. c. 23, were allotted, by a resolution passed at a special general meeting of the shareholders, to themselves in proportion to the number of shares held by them at that time, at forty per cent. discount, deducted from their nominal value, and scrip issued for them as fully paid up. G., under this arrangement, was allotted nine shares which were subsequently assigned to the appellant for value as fully paid up. Appellant enquired of the secretary of the company, who informed him that they were fully paid-up shares, and he accepted them in good faith as such, and about a year afterwards became a director in the company. The shares appeared as fully paid up on the certificates of transfer, whilst on each counterfoil in the share book the amount mentioned, was, — shares, "2—$300, $600." The Supreme Court expressed the opinion that the allotment was "beyond all question *ultra vires* of the company, illegal and void, as being in effect a reduction of capital," and held, reversing the judgment of the Court of Appeal for Ontario, that a person purchasing shares in good faith, without notice, from an original shareholder as shares fully paid up, is not liable to an execution creditor of the company, whose execution has been returned *nulla bona* for the amount unpaid on the shares. But in Crickmen's case (*b*), held that if the transferee take the shares with notice of the facts, he is liable; but if he take them for value in the ordinary course of business, the burden of proving that he had notice will be on the person urging it against him.

(*a*) 1 Supreme Court of Canada. 479.
(*b*) L. R. 10 Ch. 614.

§ 158. Sale of Shares at a Discount or Premium or without Personal Liability.

The Ontario Companies Act, 7 Edward VII, cap. 34, and the Quebec Mining Companies Act, 63 Vict. cap. 33, provide that the letters patent incorporating a mining company may, if the petition of the applicants so require, contain a provision that no liability in excess of the amount actually paid, or agreed to be paid, to the company for shares therein shall attach to any holder of such shares, provided, however, that no such share shall be issued at a discount, unless expressly authorized by a by-law of the company confirmed by a majority of the shareholders thereof, fixing and declaring the rate of discount, and any other, if any, terms and conditions of issue.

These Acts also provide for notice being given to parties dealing with such shares, that they are issued under the provisions of said Acts, by requiring the words "No personal liability" to be written or printed in red ink on the company's charter, prospectus, stock-certificates, bonds, advertisements, etc., etc.

These Acts further provide for the issue of shares of the capital stock of the company, at such rate of premium or discount, and upon such terms and conditions as may be deemed advantageous and proper.

The Acts of British Columbia, cap. 44, R. S., B. C., 1897, North West Territories, cap. 20, sec. 63, 1901, provide that a mining company may issue shares without personal liability.

While the Dominion (*a*), Ontario (*b*), and Quebec (*c*), Companies Acts contemplate the payment in full of all shares subscribed for or held thereunder, except as noted above, the payment of a commission to subscribers is authorized, under certain conditions, by the Ontario Companies

(*a*) 2 Edward VII., Cap. 15, Sec. 31.
(*b*) 7 Edward VII., Cap. 34.
(*c*) R. S. Q., Article 4722.

Act, 7 Edward VII, Cap. 34, sec. 96, and the Nova Scotia Act, 3 Edward VII, Cap. 18, while an amendment to the Manitoba Joint Stock Companies Act by Cap. 63, 4 Edward VII, provides that every company heretofore or hereafter incorporated by letters patent, under the said Act, may from time to time, dispose of shares and stock, at such times, to such persons and on such terms and conditions, and at such premium or discount, or in such manner as the directors think advantageous to the company, after having received the sanction of two-thirds in value of the shareholders at a special or general meeting, and in New Brunswick and Prince Edward Island a by-law may be passed authorizing the sale of stock at a discount.

§ 159. Entries when Shares are sold at a Premium or Discount.

As already stated, it is advisable to always treat the shares in the company's books at their par value. When shares are sold by the company above or below par there is an apparent gain or loss.

In dealing with these premiums or discounts it will be advantageous if an account be kept in the general ledger, under the title "Capital stock premium and discount account" or "Premiums and discounts on capital stock" and, if there are many entries by having special columns in the cash book for "capital stock" and "premiums." In some cases it may be necessary to have a special form of stock ledger, which will record the premiums paid on the stock as well as the payments on the stock itself.

The "Capital stock premium" account would be closed into profit and loss account at the close of each year, but not as part of the profits of the operation of the business. The net profit of the business is brought down, and under that should be added the profit or loss on the disposal of the capital stock.

Where a company, through a trustee buys its shares from a shareholder wishing to be relieved, or from any other cause the same course should be pursued, viz., the stock bought at $110, entered in stock ledger at par, and the ten per cent. charged to Capital stock premium account, reversing this, when stock is sold at same price, or at a profit.

§ 160. Price of Shares.

Par or nominal value of shares is the sum named in the stock certificate. When shares sell for more than the original or par value, they are said to be above par, or at a premium; when for less, they are below par, or at a discount.

Whether a company's shares are being sold at par, that is the full face value, at a premium, or at a discount, they are *always* at par in the company's books, and on the par value the dividend is paid. The first issue of shares at the inception of a company will usually be at par except possibly in the case of a mining company authorized by its charter to issue its stock at a discount. Subsequent issues may be offered at a premium if the old stock is above par in the market. After the stock authorized by the charter has been taken by subscribers, a company's shares are no longer within its own control. It has none to sell, and their real value will be the investing public's estimation of them, based upon the efficiency of the company's management, its past earnings, and an estimate of its powers in that direction in the future. If you desire to buy stock in a company whose shares have been all taken up, you must find some holder willing to sell, either by your own seeking or the employment of a stock broker. What you pay for your shares is a private bargain between yourself and the holder, with which the company cannot interfere. If the company whose shares you buy is a large and important concern, like a loan company, a railway company, or a bank, the stock will be quoted on the stock exchange, and

you will be guided in your purchase by the latest quotations (*a*).

§ 161. Preference Shares.

The various companies Acts noted below (*b*) give companies power to issue preference shares, and when this is intended it is usual to insert in the letters patent a special clause or clauses (*c*) defining the rights attached to such shares. The object of so defining these rights is to fortify the position of the holders of such shares, for rights once unconditionally attached to these shares by the letters patent cannot be altered or infringed unless by the authority that granted the letters patent. See remarks prefacing special clauses for preference stock in Forms and Precedents, and also see further remarks under heading Cumulative Dividend.

The following case arose under cap. 150, R. S. O. 1877.

The defendants, a company incorporated under the Ontario Joint Stock Companies Letters Patent Act, R. S. O. (1877), c. 150, as amended by 41 Vict. c. 8, s. 16, with a capital stock of $300,000, in shares of $1,000 each, acting under section 17*a* of the Act, which authorized the issue of any part of the capital stock as preference shares, passed a by-law in 1877 for the issue of $75,000 as such preference shares, which were to have preference and priority as respects dividends and otherwise as therein declared, namely: 1 "The company guarantees eight per cent. yearly to the extent of the preference stock, up to the year 1880, and over that amount (eight per cent.) the net dividends will be divided among all the shareholders *pro rata*." 2. "Should the holders of preference stock so desire, the company binds itself to take the stock back during the

(*a*) Johnson's Company Book-keeping.

(*b*) Dominion Act, Cap. 79, R. S. C. 1906 Ontario Act, 7 Edward VII., Cap. 34; Quebec Act, 61 Vic. c. 36; British Columbia Act, 61 Vict. c. 44; Manitoba Act, 60 Vict. c. 3.

(*c*) For examples of Special Clauses, see *post*.

year 1880, at par, with interest at eight per cent. per annum, on receiving six months' notice in writing, etc." The plaintiff subscribed for and was allotted five shares, amounting to $5,000, which he paid up; but, contending that the by-law was *ultra vires* by reason of the above conditions, and the issue of shares therefore void, brought an action to recover back the money paid therefor: Held, that the first condition of the by-law was not *ultra vires*, as its proper construction was, not that the interest was to be paid at all events, and so possibly out of capital, but only if there were profits out of which it could be paid; but that the second condition was *ultra vires* for that the Act neither expressly nor impliedly authorized the company to accept a surrender or cancel the shares, repaying the amount thereof: Held, however, that the plaintiff could not recover, for, notwithstanding one or both of the conditions were invalid, the shares themselves were valid, there being authority to issue preference shares, and the plaintiff having subscribed for preference shares, and having got them, he became a shareholder of the company (*a*).

Under the Ontario Companies Act, provision is now made for the purchase and cancellation of preference stock by the company.

§ 162. Bonus of Common Stock to a Subscriber for Preference Stock or Bonds.

The practice has recently arisen of giving to subscribers for preference stock or bonds, certain shares of common stock as a bonus.

Where the subscriber is an original subscriber both for the preference stock or bonds, and at the same time subscribes for the common stock, and such common stock has at the time of his subscription not been issued, but is standing as unissued stock on the books of the company, then the probability would be that in the event of a winding up

(*a*) Long v. Guelph Lumber Co., 31 C. P. 129.

of the company, he as the holder of such common stock, would be made a contributor and liable to pay for it in full.

When the issue of common stock as a bonus is contemplated, the common stock should be first allotted and issued fully paid up to one of the promoters, and should actually be paid for by him in full, either in cash, or by the transfer of property. Of course, where it is paid for in cash there is no power on the part of the company to sell it for less than full value. If paid for in property the transaction cannot be questioned unless sufficient grounds for setting it aside for fraud be shewn. When the promoter has thus acquired the common stock fully paid, he may dispose of it as he wishes, and give it as a bonus to the subscribers for preference stock or bonds.

§ 163. Calls.

(*a*) *Meaning of Term.* The term "call" is used indifferently to denote a demand made upon the shareholders for a contribution, or the amount or sum of money demanded.

(*b*) *What are.* But though used to denote both the demand and the money demanded, it is used exclusively with reference to the liability of a shareholder on his shares. All moneys, however, paid in on account of shares are not necessarily calls.

The liability of a shareholder to contribute to the assets of a company until his shares are fully paid up is a debt which is always due, and subject to be called when and how the directors may determine. But, though this is the case, it is usual to make by-laws to regulate the length of notice to be given, the time which shall elapse between two successive calls, the amount of each call, etc.

A call, however, may be illegal, as being made for a purpose not warranted by the constitution of the company, that is to say, for something not within the objects of the company, as, for instance, to purchase stock in other companies where the power to invest in the stock of other com-

panies is denied by the Act under which it is formed, or by its letters patent. And if it be shown that the call has been made for an illegal purpose, such call cannot be enforced. A call is not irregular because prospective, that is to say, because made before the money was actually required, but when it was apparent that it would be required about the time called for.

Calls cannot be made until company is organized: Halifax Carette Co. v. Moir, 28 N. S. R. 45.

Where calls are required to be made at certain intervals several cannot be made at one meeting, though made payable at proper intervals: Moore v. McLaren, 11 U. C. C. P. 534.

The first of such calls is, however, valid: Union F. I. Co. v. O'Gara, 4 Ont. R. 359.

A by-law for a call is unnecessary; it may be made by resolution: Union F. I. Co. v. O'Gara, 4 Ont. R. 359; Rascony v. Cotton Mfg. Co., M. L. R. 2, S. C. 381.

The resolution must fix the day and place for payment: Halifax Carette Co. v. Moir, 28 N. S. R. 45.

(c) *How made.* A call is made by the directors passing a resolution "That a call of $ per share, payable to Mr. , the Treasurer of the company, at the company's office, street, etc., on the day of 190 , be and the same is hereby made." The by-laws of the company should prescribe whether such resolution can be passed at an ordinary meeting of the directors, or whether a meeting should be called for the purpose. This resolution should be duly entered in the minutes of the meeting. Directors cannot delegate statutory power to make calls (*a*).

(*d*) *Calling is generally necessary.* As a general rule, a call must be made in order to render a subscription or any part thereof due and payable to the company. A contract of subscription, unlike other contracts to pay money, is a promise to pay; but, by implication of law, the payment

(*a*) Hovenden's Case, 10 Ont. P. R. 434.

is to be only at such times, and in such part payments, as may be designated by the corporate authorities in a formal declaration known as a "call." In other words, the subscription is a debt payable at a future time. The time when it shall be paid is indefinite until fixed by a call.

(*e*) *When a call is unnecessary.* If, however, a subscription contains a promise to pay upon a certain day, no call is necessary; but the subscriber is bound to pay, at all events, upon the day named.

(*f*) *Notice of Call.* The length of notice required to be given of a call is generally provided for by the by-laws of the company, but the call itself dates from the passing of the resolution, and not from the time the notice is given or received. And if a certain time must elapse between two successive calls, that time must be reckoned exclusive of the day on which the resolutions were passed.

Notice may fix place of payment omitted in resolution: Union F. I. Co. v. O'Gara, 4 Ont. R. 359.

A variation in notice from the resolution, as to date of payment, invalidates the call: London Gas Co. v. Campbell, 14 U. C. Q. B. 143; Provincial v. Worts, 9 Ont. A. R. 56; 31 C. P. 523.

Where a certain length of notice, *e.g.*, 30 days, is prescribed, this time is computed from date of mailing notice: Union F. I. v. Fitzsimmons, 32 U. C. C. P. 602; Union F. I. v. O'Gara, 4 Ont. R. 359. But see National v. Egleson, 29 Gr. 406, where "not less than 30 days' notice" being required, mailing on June 27th notice of a call payable on July 27th, was held insufficient.

Where a governing statute requires a time to be set for payment of calls, and no time was limited in the letters patent, or in the by-laws making the call; such call was held to be illegal and an attempted forfeiture of stock ineffectual (*a*).

The Ontario Act provides that a notice or other document served by post by the corporation on a shareholder

(*a*) Armstrong v. Merchant's Mantle Mfg. Co., 32 O. L. R. (1900), p. 387.

shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

(*g*) *Interest on arrears.* But though a call is deemed to have been made on the day the resolution was passed it is not so for the computation of interest on arrears, which runs at the legal rate, for the time being, usually six per cent. per annum, from the day appointed for payment.

If a call is not paid, the directors will probably instruct the secretary to write a letter to the defaulting member, stating that interest will be claimed on the shares if the call is not paid by a certain date.

(*h*) *Calls must be impartial and uniform.* A call cannot be made so as to affect a part only of the shareholders. It must be made on all alike, or it will be void. The courts will not allow the directors of a company so to proceed as to require some stockholders to pay calls, and not to require others to do the same. Any such attempt will be promptly set aside and rectified.

(*i*) *When no call has been made.* Under ordinary circumstances there is no liability to pay for shares until a call is made, and notice thereof given to the shareholder, and until that time the Statute of Limitations does not begin to run against the company. Therefore persons named in the charter issued in 1880 as shareholders were in 1891 held liable to pay the amount of their shares, no formal call having in the meantime been made. Haggert Bros. Mfg. Co., Peaker and Runions' Case, 19 A. R. 582.

(*j*) *Single Call.* When not contrary to statute, charter, by-laws or terms of subscription, all unpaid stock may be called up at once (*a*).

(*a*) Lake Sup. Nav. Co. v. Morrison, 22 U. C. C., p. 217.

(*k*) *Payment of Calls by Note.* It has been held that a company may take a promissory note from a stockholder, for an amount due by him on a call on his stock, if there be nothing in the act of incorporation to prohibit it (*a*).

(*l*) *Call to prevent transfer or to increase saleable effects.* Where a company is in difficulties it may be proper to make a call to prevent transfers of shares (*b*), no share being transferable until all previous calls thereon are fully paid in (*c*).

§ 164. Liability of Shareholders on Stock.

In British Columbia, Nova Scotia, and the North West Territories, the liability of the members of a company formed under the Companies Act, may be limited either to the amount, if any, unpaid on the shares respectively held by them, or their liability may be limited to such amount as they undertake to contribute to the assets of the company in the event of its being wound up, or their liability may be unlimited (*d*).

While the new Ontario Companies Act provides for the incorporation of companies with, or without share capital, the principle of liability "limited by shares" has, except in the case of mining companies, been adopted purely and simply by all the Canadian Acts, and this is the only form of company which can be created under these Acts. And the reason is probably this. It is by far the simplest form, the best known, and the most readily understood. And where no alternative is presented, no doubt, can exist as to the extent to which the shareholders in any company formed under it are liable. If the shares of any holder are fully paid up he bears no liability whatever in respect

(*a*) St. Stephen's Branch Ry. v. Black, 2 Han (New Brunswick), 139.

(*b*) Gilbert's Case, L. R. 5 Ch. 599.

(*c*) Dominion Act, sec. 66; Ontario Act, sec. 54; Quebec Act, Art. 4729.

(*d*) R. S. B. C., cap. 44, secs. 10, 11, 12 and 13. Nova Scotia, cap. 128, R. S. N. S.; North West Territories, cap. 20, 1901.

thereof for the affairs of the company. Neither the directors nor all the other shareholders combined, in corporate meeting assembled or otherwise, can compel a dissenting shareholder, whose stock is fully paid up, to pay any more money into the company, or subject him to further liability on his stock. He is, as far at least as the outside world is concerned, as though he were a perfect stranger to it. A shareholder to-day and interested, it may be to the extent of thousands of dollars, in its prosperity, entitled to take part in its meetings and influence its affairs, to-morrow he may have severed all connection with it, and care not one straw whether it succeeds or fails. And while the shares remain in his hands his only liability in respect of them is, that he may lose some portion of what he may have paid for them, a portion generally determined by the affairs of the company and the "condition of the market."

This liability to loss, however, is always set off by a corresponding chance of gain, of the balance of which the holder (or some one for him) may judge and may govern himself accordingly. His liability, in short, is that of the holder of any other merchantable commodity, which may fall or rise in value according to the market, and no other.

But with the holder of unpaid shares the case is somewhat different. He is still liable in respect of them to the amount which has not been paid in, and is, as will be seen hereafter, subject to an action at law for such amount, either at the suit of the company or its creditors. And this liability, to pay, is always enforceable, subject only to the formality on the part of the company to make calls for the whole or a part of that which remains due. The creditors of the company also may require payment of the balance due at any time on evidence that the amount of the claim cannot be realized from the assets of the company, or might, under the Acts providing for such a case, cause proceedings to be taken with a view of winding up the company, when all amounts unpaid on stock may be called in by the liquidator, receiver or assignee.

After the issue of letters patent, incorporating a certain company and naming certain persons as shareholders, these persons stated to certain of the directors of the company that they would not accept their stock, and would have nothing more to do with the company, but no proceedings were taken by them to relieve themselves from liability, and no proceedings were taken against them until the company was wound up in 1891. Held, distinguishing Nicol's Case, 29 Ch. D. 421, that as these persons had not a mere inchoate right to receive shares, but were actually shareholders and members of the company by virtue of the charter, mere statements of this kind, and the lapse of time, and the failure of the directors to enforce payment of the shares, did not relieve them from their liability as shareholders (*a*).

§ 165. How Liability May be Incurred.

Liability on shares may be incurred in several ways:

1. By subscribing to the Memorandum or Agreement, prior to the incorporation of the company.

2. After incorporation, by agreeing with the company to take shares.

3. By taking a transfer of shares.

4. By becoming the personal representative of a deceased shareholder.

5. Possibly by allowing his name to be on the register of shareholders or otherwise holding himself out, or allowing himself to be held out as a shareholder.

§ 166. How Liability Repudiated.

And this liability may be repudiated on the ground

Of conditions not agreed to, attached to the allotment.

Of misrepresentation, concealment or fraud on the part of the company or its agents, by which the person sought to be held was induced to undertake the liability,

(*a*) In *re* Haggert Bros. Manufacturing Co., Peaker and Runions' Case, 19 A. R. 582.

provided always that the proper proceedings are promptly taken.

A contract to take stock, induced by surprise, fraud and misrepresentation, will be set aside: Glen Brick Co. v. Shackwell, 2 R. L. 625.

Shareholders, induced to subscribe by misrepresentation, by acting as shareholders after knowledge of such misrepresentation, lose the right to demand recision of their contract to take shares: Petrie v. Guelph Lumber Co., 11 S. C. R. 450; 11 Ont. A. R. 336.

Where a condition (not collateral), on which shares are taken is broken, the shareholder is freed from liability: Turner's Case, 7 Ont. R. 448; Rodgers v. Laurin, Q. B. 13, L. C. J. 175.

An alteration in stock subscription, without assent of subscriber, relieves him from liability: Stadacona Ins. Co. v. Hodgson, 2 P. E. I. R. 480; Cote v. Stadacona, 6 S. C. R. 193.

But it may be laid down as a rule that no shareholder can escape liability or repudiate his membership by reason of irregularities on the part of the directors or dissatisfaction with their management of the company. His proper course in such case is to sell out to the best advantage he can; and this even though the company may have done acts amounting to, or rather which would authorize a forfeiture of its charter, if proceedings were taken to have such forfeiture pronounced.

§ 167. Shares Registered Without Knowledge of Alleged Owner.

A person cannot be compelled to be a shareholder, and to assume liability as such, without his consent. If stock is registered in his name, without his knowledge or consent, express or implied, he cannot be held liable. Where, however, this has been done, he may become liable by acquiescence after the facts have come to his knowledge, for consent in such a case will be implied.

Fraudulent entry of a subscriber's name in letters patent, totally invalidates incorporation under the Quebec Code (*a*).

§ 168. Liability of an Agent as Transferor or Transferee.

Sometimes a subscription for stock is made by one person as the agent of another, and the stock is entered on the corporate books in the name of the agent. In such a case it is the rule that corporate creditors may hold either the principal or the agent responsible on the stock. But an agent who is compelled to assume and pay charges on the stock may recover from his principal the amount so paid. Where a transfer is made, not to the principal himself, but to an agent, the latter is but a nominal holder, and is subject to the rules applicable to such. The transferee of an authorized agent, when suit is brought by corporate creditors to enforce a demand against the stock, cannot set up that the agent had no power to transfer the stock to him. If he has received the certificates and appears as a shareholder on the books of the company, he is, as between himself and creditors of the company, a shareholder.

§ 169. Liability, How Terminated.

The liability of a shareholder may be terminated and discharged.

By payment in full.

By surrender, where provided for by the charter or by-laws of the company. But where such power is not specially provided for in some manner, it does not appear to exist. "In the absence of special authority of this kind," says Healy, "there is no inherent power in directors to accept a surrender of shares; nor is the acceptance of the surrender a matter lying between the majority and the minority."

(*a*) Bank Hochelaga v. Garth, M. L. R. 2 S. C. 201; S. C. sub nom. Bank Hochelaga v. Murray, 15 A. C. 414; see R. S. O. (1897), cap. 191, sec. 99.

It is elementary law that a shareholder cannot, without statutory authority, surrender his shares, and thus get rid of his liability (*a*). Where power exists to surrender stock, a transfer by ordinary assignment to the president, intended to operate as a surrender to the company, was held sufficient (*b*).

The right or power of a company to accept a surrender of its own shares involves the power to deal in them. And as such power, if it exist at all, can exist only for the benefit of the company, any acceptance of a surrender of shares not wholly paid up would simply be a matter of bargain as for a transfer between two individuls. Assuming such power to exist, the company could say to the shareholder, "You have paid so much on your shares, and at the present market value they are worth so much; we will accept your shares for the balance due on them; [*or* up or down, as the case may be], and guarantee you against any further liability in respect of them." That this is simply dealing in its own shares is therefore evident, and may be still further inferred from this, that to accept a surrender of shares and retain them in their hands would be reducing the capital of the company, which it has no power to do (*c*), except in the manner provided for in the Act. They would therefore have to be re-issued to other parties on such terms as they could, which would amount, as before stated, to a mere trading in its own shares.

Without an express power in the letters patent or charter of the company a holder of unpaid shares can not be relieved of liability by the company.

The liability of the holder may be terminated also by a *bona fide* sale and transfer of his property in the shares to another, provided, as has been pointed out, that such other is accepted by the company, and an entry of the transaction made in the books of the company before a winding up is commenced. But as long as a person's name appears

(*a*) Common v. McArthur (1898), 29 S. C. R. 245.
(*b*) Kirk and Marling's Case, 24 Ont. R. 340.
(*c*) Ross v. Dusablon, 10 Q. L. R. 74.

upon the books of the company as a shareholder, the presumption is that he is owner of the stock, and in an action to enforce payment of a call, the burden of proof is upon him to show that he is not a shareholder.

Directors may, with the holder's assent, appropriate partial payments made on a number of shares to one or more of them so as to make such one or more shares fully paid up. The company was held estopped from disputing such appropriation as against a third party who had taken an assignment of such paid up shares for value; and creditors, not being prejudiced, had no ground of complaint: Neelon v. Thorold, 22 S. C. R. 390.

§ 170. The Various Remedies for Non-Payment of Shares.

When a subscriber fails or refuses to pay for the shares of stock for which he has subscribed, the company generally has several methods of enforcing the contract.

First, there is the common-law action to collect the subscription as a debt. This remedy always exists. Second, the company may sue on the subscription, obtain judgment, and then proceed to sell the stock under an execution levied to collect the judgment. Third, the company may bring an action at law for breach of contract, the measure of damages being the difference between the value of the stock at the price which the subscriber was to pay, and the market value at the date of the refusal to pay. A fourth and very important remedy is that of forfeiture. It is effected in one of two ways: the forfeiture may be by a strict foreclosure of the shareholder's stock, that is, the taking of his stock by the company itself; or it may be by a public sale of the stock for non-payment of the subscription. The remedy by public sale of stock is by statutory authority only.

§ 171. Forfeiture of Shares.

Generally what is called a forfeiture of shares takes the form of a sale of them to a third party after due notice.

In some cases, however, a direct forfeiture takes place by the mere act of the directors in passing a resolution to that effect. If, at a sale, there be no bidder the corporation may become the purchaser. Where this occurs the shares merge in the general property of the corporation, and may be disposed of as the company may, ordain.

The powers given the directors as to forfeiture of shares for non-payment of calls is intended to be exercised only when the circumstances of the shareholders render it expedient in the interests of the company and cannot be employed for the benefit of the shareholder (*a*).

The power to forfeit shares, by which no change is effected in the liability of the holder, must be regarded as totally distinct from that of accepting the surrender of shares and relieving the holder from any further liability, and must be strictly pursued.

Under the Dominion Act, sec. 62, a holder of shares continues liable after forfeiture to the creditors of the company for the full amount unpaid less any sums which are subsequently obtained by the company in respect of the stock.

The effect of sec. 56 of the Ontario Act is to forfeit the shares, sever the connection of the shareholder with the company and at the same time continue his liability to the company or any creditor.

§ 172. Notice in Case of Forfeiture.

A notice (*b*) to the delinquent subscriber that his shares will be forfeited at a day named, is generally requisite to effect a forfeiture. The subscriber is entitled to full knowledge of the fact that, unless he pays up within a specified time, he will lose his stock. The requirements of the statute or charter, with respect to the contents of the notice, and the length of time which is to elapse between the notice and the forfeiture, must all be strictly complied

(*a*) Common v. McArthur, 29 Can. S. C. R. 239.
(*b*) See Form, *post*.

with. It is accordingly held that the notice must state correctly the amount due, for non-payment of which the stock is to be forfeited (*a*). The time, also, within which payment is to be made must be accurately stated, and also the place where the sale is to be made. The mode of giving notice of a contemplated forfeiture of stock is generally specified in the statute authorizing the forfeiture.

§ 173. Tender by Shareholder, Before Forfeiture.

Where the amount due on a subscription, for non-payment of which a forfeiture is about to take place, is tendered to the proper officer of the company at any time before the sale actually takes place, the forfeiture is not valid. This rule is based on justice, and, while protecting the company and the public, it relieves the shareholder from the hardship of a harsh and summary remedy.

§ 174. Power of a Company to Acquire and Hold its Own Stock.

The Canadian Acts provide for the forfeiture by the company of shares for non-payment of calls. These shares then become the property of the company, and may be disposed of as, by by-law or otherwise, the company may ordain.

It has been held in the United States that companies may purchase, hold and sell shares of their own stock, provided there is no charter or statutory prohibition, and provided further, that they act in good faith and without intent to injure or injury to the creditors.

In the case of Currier v. State Co., 56 N. H. 268, the court said, "I am not prepared to say that under the laws of this state a solvent company may not, in good faith, and for the purpose of securing payment of a debt against a shareholder, which might not otherwise be collected without risk, delay, and expense, receive its own stock in pay-

(*a*) Robertson v. Hochelaga Bank, S. C. 4 L. N. 314.

ment therefor at its fair value, and hold the same as property; in which case it would not become extinguished, and might be re-issued to the purchaser thereof."

Where a company can and does hold shares of its own stock in the name of a trustee, the trustee can, if his name appears on the register as the holder of such shares in trust, vote on such shares (*a*). The general rule is that a company cannot deal in shares of its own capital stock.

§ 175. Improper Cancellation of Stock.

In Fuches v. Hamilton Tribune Printing and Publishing Co. (*b*)

One C. subscribed for 160 shares in the H. company, the subscription list being headed: "We subscribe for and agree to take the number of shares of the capital stock of the H. company set opposite our signatures, and to pay on account thereof 50 per cent. to the secretary-treasurer of the company in quarterly payments of 12½ per cent. each, of the amounts subscribed for by us respectively, the first of such payments to be made on February 1st, 1882." C. was at the first shareholders' meeting elected a director, and remained so until the final winding up of the company. One of the by-laws of the company provided for the calling of the second 50 per cent. of the stock subscribed at any time after November 1st, 1882, on thirty days' notice. In August, 1883, the president of the company arranged with C. that he should sign for eighty shares on the terms of a new stock-book which had been opened, and that C.'s original stock was to be treated as cancelled.

C. accordingly signed the new book. This arrangement with C. was never communicated to the shareholders of the company. In January, 1884, a winding-up order was made, and C. was subsequently declared a contributory to

(*a*) Ontario Companies Act, sec. 67.
(*b*) Copp's Case, 10 O. R. 497.

the amount of 160 shares. C. now appealed, claiming to be a contributory only to the amount of 80 shares, on the ground that the arrangement of August, 1883, was a valid compromise, entered into with him because he subscribed originally on the understanding, (1st) that the company was not to go into operation before all stock was subscribed for; (2nd) that only 50 per cent. of his subscription would have to be paid: Held, that whether directors have inherent power to compromise with shareholders or not, there was nothing to support the compromise here set up. As to (1st) C.'s actions as director were totally at variance with this contention; and as to (2nd) the subscription was unconditional, and though expressly providing for payment of 50 per cent. it was not inconsistent with the balance being paid when required. Moreover, the by-laws at the adoption of which C. was present, recognized the right to call up the whole stock, and C. appeared to have made no dissent.

§ 176. Definitions of Pledge, Mortgage and Lien.

A pledge may be defined to be a delivery of personal property as a security for some debt or engagement. A mortgage of personalty, on the other hand, is a sale with the condition attached, that, if the mortgagor performs some act, the sale shall be void. In a pledge, the title remains in the pledgor, and the pledgee has a special property in the thing pledged. In a mortgage, the title passes to the mortgagee, subject to being revested in the mortgagor upon payment of the debt. In pledges, the thing pledged must be delivered to the pledgee. In mortgages, generally, the possesion of the thing mortgaged remains with the mortgagor.

A pledge differs also from a lien. A pledge, by implication, gives the pledgee a power to sell on due notice, in case the debt is not paid on maturity, while a lien gives merely the power of detention until the debt is paid.

§ 177. How a Pledge of Stock is Made.

A pledge of stock is generally made by a delivery of the certificates of stock indorsed in blank to the pledgee, and a memorandum in writing to the effect that the stock is held in pledge is generally signed and given to the pledgor, and a copy thereof attached to the certificates of stock (*a*).

(*a*) See Form of Pledge, *post*.

CHAPTER XIV.

CERTIFICATES OF SHARES AND SHARE WARRANTS.

§ 178. Certificate of Shares.

A certificate of shares is from one point of view a mere muniment of title, like a title deed. It is not the share itself, but evidence of the ownership of the share; that is to say, it is a written acknowledgment by the corporation of the interest of the shareholder in the corporate property and franchise; it operates to transfer nothing from the corporation to the shareholder, but merely affords to the latter evidence of his rights. It should be clearly apprehended that the certificate is not the share, but merely written evidence of the ownership of the share. Accordingly, it follows that shares have no "ear-marks"—that one share cannot be distinguished from another share—but that it is only the certificates which are distinguishable one from the other by their numbers and in other ways. The certificate, therefore, has value in itself only as evidence, and, apart from the shares which it represents, it is utterly worthless. And even as evidence it is not in every case essential; it is merely a convenient voucher, which the shareholder should be entitled to receive if he asks for it. One element of its value to the shareholder is that it is *prima facie* evidence of his title.

The right of every shareholder to demand and receive from the company a certificate is generally conceded (*a*). When certificates are executed by a part only of the officers required by law to sign them, they may be void. But a certificate issued to an officer of the company who is a share-

(*a*) Ontario Companies Act, sec. 46.

holder, although the certificate is signed by that officer, is valid. It is not, however, essential to the existence of the corporation that certificates of stock shall be issued. Without a certificate the shareholder has a complete power to transfer his stock, to receive dividends, and to vote, and he is individually liable as a shareholder.

A certificate of stock may be the subject of a legacy, a contract of sale, a pledge, or a gift.

Stock or share certificates are usually bound together in the same way that bank cheques are, but in a more substantial manner, and numbered consecutively. Where the company is a small one, fifty to one hundred certificates will be found sufficient, while in larger companies books containing 500 certificates each, are usually ordered, and as many as may be thought necessary. If both common and preferred shares are to be issued it is necessary to provide both kinds of certificate. The consecutive numbering of preference shares should be entirely different from that of the common shares.

The stock certificate book is kept by the secretary, whose duty it is to prepare the certificates and affix the corporate seal. The certificates are signed by the secretary and president. They should never be issued until the shares they represent have been paid for in full.

§ 179. Share Warrant.

A share warrant is a certificate stating that the bearer is entitled to a specified number of shares in the company. Provision is now made for the issue of share warrants under section 57 of the Ontario Companies Act. See also notes to the section.

§ 180. Surrender of the Outstanding Certificate on Transfer.

If a company permits a registry of a transfer of shares, and issues new certificates to the transferor without requiring a surrender of the old certificate, it assumes a dan-

gerous position, and one which it is not obliged to assume. If the certificate which is not delivered up is in the hands of a *bona fide* purchaser for value without notice, he may hold the company liable for allowing a registry of transfer to another without requiring a delivery of the certificate. It is negligence and a breach of duty on the part of the company to allow a registry without a surrender of the old certificate. It generally refuses to do so, as is its duty, and is sustained by the law in its refusal. There are occasions, however, where the law compels the company to register the transfer without a surrender of the old certificate. When so compelled, the company cannot be held liable by the purchaser of the outstanding certificate, but he must seek his remedy against others. Such compulsory registry, excusing the company, may exist in cases of alleged loss of the old certificate, a decree of a court compelling the registry, and, under the latter, an attachment or execution against the stock.

§ 181: Alleged Loss of the Old Certificate.

In case of the loss of a stock certificate, the owner should immediately send a written notice to that effect to the secretary of the company specifying the certificate number and number of shares.

A company is not obliged to issue a new certificate of stock to the owner of an old one, which he alleges he has lost, unless such person gives to the company a sufficient bond of indemnity to protect it against liability in case it turns out that the old certificate was not lost, but was sold and passed into *bona fide* hands (*a*).

(*a*) Ontario Companies Act, sec. 47. See Forms of Notice of Loss and Bond of Indemnity, *post*.

CHAPTER XV.

TRANSFER OF SHARES.

§ 182. Right of Transfer of Shares.

The right of transferring ones share and membership, or any portion thereof, to another, at will, is of the essence of an incorporated company as distinguished from an ordinary partnership. But this "freedom of transfer" being open to abuse has, for the protection of the public and the avoidance of fraud, invariably been placed under special restrictions, either by law or by the regulations of the company, or both. The Ontario Act directs that shares shall be transferable in such manner only, and subject to such restrictions as by the Act, letters patent or by-laws, may be prescribed. The words "in such manner," may be presumed to refer to the form of transfer and a form of some kind or other is recommended to be signed by the parties, particularly by the purchaser.

The registered owner of shares in a company gave to her brokers, for the purpose of selling the shares, the certificate of ownership upon the face of which the shares were stated to be transferable on the books of the company in person, or by attorney upon surrender of the certificate, and upon which was indorsed a transfer and power of attorney, signed by her, and having a blank left for the name of the transferee. The brokers improperly deposited the certificate as security for advances to them with a bank, which received it in the ordinary course of business without any notice of the owner's rights. There was evidence at the trial that, according to the usages of the stock exchanges of Ontario and Quebec, such a share certificate so endorsed passes from hand to hand and is recognized as entitling the holder to deal with the shares as owner, and

pass the property in them by delivery, or to fill in the blank with his own name, and have the shares so registered on the books of the company. Held, that the bank was entitled to hold the shares as against the owner (*a*).

This question has since been dealt with by section 64 of the Dominion Companies Act, 1906, which provides that the transfer of shares in a company whose stock is listed and dealt with on any recognized stock exchange by means of scrip commonly in use, endorsed in blank, and transferable by delivery, such endorsation and delivery shall, excepting for the purpose of voting at meetings constitute a valid transfer.

§ 183. Director's Right to Transfer.

The right to transfer shares being incident to every shareholder, a director can exercise such right in respect of his own shares, as well as any other member, provided he retains sufficient for qualification purposes. His exercise of this right will not be affected by his knowledge of the fact that a call upon the shares is imminent (*b*).

§ 184. Unnecessary Delay in Confirming Transfer.

A transfer to which no objection is or can be made on the part of the company, ought to be confirmed by the directors at the first meeting at which in the ordinary course of business, it can be done.

§ 185. Transferor should Compel Registry.

The vendor ought to compel the purchaser to register the transfer, and if he neglects to do so he must suffer for his own default, and his name being on the register at the date of winding up must remain there (*c*).

In Ontario and Quebec mandamus will lie at the instance of the transferee of shares to compel the company

(*a*) 30 Ontario Reports, 256.
(*b*) *Re* Cawley 42 Ch. Div. 209.
(*c*) Head's Case, White's Case, 3 Equity 84.

to make the transfer on its books. The transferee has also an action at law for damages for undue refusal to transfer his shares (*a*). Except as between assignor and assignee, registration is necessary to acquire valid title to stock transferred (*b*).

A certificate of stock in a company, incorporated under R. S. O. c. 157, contained the words "Transferable only on the books of the company in person or by attorney on the surrender of this certificate." The holder of this certificate assigned it for value and indorsed the assignment thereon. The transferee gave no notice of such assignment to the company, and did not apply to be registered as a shareholder until after the original holder had executed another transfer of the shares covered by the certificate to an innocent purchaser, who was registered by the company as the holder of the shares. Held, that under the provisions of section 52 of the Act, a complete legal title to the shares could not be acquired without a transfer on the books; and that the company was not bound to insist on the production of the certificate by the second transferee before registering the assignment to him, and were not estopped from denying the original transferee's right to the shares (*c*).

§ 186. Restrictions as to Transfer of Shares.

Where it is desired to preserve as far as possible the private character, so to speak, of a company, it is not uncommon to insert in the charter a clause prohibiting a shareholder, or his executors or administrators, from transferring to any outsider, unless and until the shares have first been offered to the continuing shareholders either at par or at a fair value, to be fixed by the parties, or ascertained by arbitration or otherwise, or it might contain a

(a) McMurrich v. Bond Head Harbour Co. 9 U. C. Q. B. 333.
(*b*) Smith v. Walkerville, M. Iron Co., 23 Ont. A. R. 95; Morton v. Cowan, 25 Ont. R. 529.
(*c*) Smith v. Walkerville Malleable Iron Co., 23 Ont. A. R. 95.

provision empowering the company to pass a by-law or by-laws prohibiting the sale and transfer of any of the shares without the consent of the directors (*a*).

§ 187. Precautions Respecting Transfer of Shares, Etc.

In considering a question of transfer, it is in all cases important to notice whether the contract refers to paid-up shares (on which no liability remains), or to shares respecting which the holder is still liable in whole or in part. For, while the transfer of paid up shares is comparatively unfettered, it is not only the right, but the duty, of the directors to refuse registration of a transfer of unpaid shares, where the proposed transferee is a person of no apparent means, and the transfer is presumably made for the purpose of avoiding liability. For this purpose then every application to register a transfer of shares should be brought before a regular meeting of the Board of Directors, and granted or refused by the majority in the ordinary manner, on evidence of the fitness of the person proposed as transferee to be substituted in the place of the holder for the shares mentioned.

It is possible that the majority, or whoever they are, who undertake the responsibility of consenting to the transfer, may be deceived by the parties asking for the registration; and, with the best intention in the world, may order the registration of a transfer to a totally irresponsible person. What would be the result in such a case? The practice of the courts would have to be looked to for an answer. The result of the decisions is, that where the consent of the directors has been obtained by misrepresentation, and the facts were such, that had they known them they would have refused the transfer, the transfer will be set aside and the transferor still held liable.

In re the European Arbitration (a leading case), it was held that if the transferor, without having made any misrepresentation, knew in fact that his proposed transferee was

(*a*) See Special Provision and By-law, *post*.

not a proper and solvent person, then the transfer would be set aside and the transferor rendered liable (*a*). In this case Lord Westbury said very forcibly:—"I do not care a rush whether the directors inquired or not, or whether there was misrepresentation or not: but if I find the man who desires to dispose of his shares in favor of A. B. knows very well in his mind at that time that A. B. was an insolvent man, or a dishonest man, or an improper man, to introduce into the partnership, I shall hold that the personal knowledge on the part of the individual disposing of his shares forbade him to do what he desired to do, and that his persisting in doing it, relying on the ignorance of the directors, and concealing what he knew, was a fraud upon the directors." The above, it must be observed, refers to a case where the directors had power to control the transfer.

The company may refuse to register as transferees, infants or persons of unsound mind. The reason for this rule is that such persons would not be obliged at law to respond to the obligations of a shareholder, and consequently are not entitled to its privileges.

§ 188. Transferor Must Have Paid Calls.

Under the Dominion Act, every transfer of shares, while calls thereon remain unpaid, is absolutely without effect. The effect of this rule must be to avoid a good deal of doubt and difficulty as to the validity of such a transfer, and also to avoid temptation on the part of the directors to register transfers in order to avoid payment of calls which have been made. The Ontario Act holds the directors responsible if they allow the transfer of shares whereof the whole amount has not been paid in.

§ 189. Registry of Transfer.

(*a*) *How Made.* A registry of transfer is made by surrendering an old certificate of stock to the company, mak-

(*a*) Buckley, 3rd ed., pp. 20-26; and Healey, p. 54.

ing an entry of the transfer on the corporate register, and taking from the company a new certificate issued in the name of the transferee. The entry is generally made by a corporate officer, but he may insist on its being made by the person applying for transfer. The object of obtaining the registry is to secure a right to vote, to receive dividends, and various other incidental shareholders' rights; also to cut off corporate liens and the rights of third parties who may attach or claim the stock. If there is a reasonable legal doubt as to the right of the applicant to obtain registry, the company may refuse it, and thus obtain the protection of being compelled to make it by legal proceedings. If two parties claim the stock, each denying the right of the other, the company may interplead, provided there is a reasonable legal doubt as to who is entitled to the stock. If the company improperly refuses to register a transfer when requested, the applicant may have his remedy in damages.

The instruments of transfer should be numbered in consecutive order, and a record of their number and date made in the Register of Shareholders against the names of the transferors. They should be retained by the company as evidence of the transaction, and of the transferee having undertaken to be bound by the by-laws of the company.

It frequently happens that a transfer of shares takes place by way of gift, as for instance, from a husband to his wife, or from a father to his children, without any money actually passing. In such cases a formal instrument of transfer must be executed by the parties before the transaction can be registered, a "nominal consideration" [one dollar is the usual amount] is generally inserted in the instrument.

In cases of transmission of shares from a deceased shareholder certain formalities have to be observed before any alteration can be made in the register. In the first place, the probate of the will or the letters of administration should be produced to the company, and the secretary should endorse the fact of their production upon those

documents. He should also make an entry in the register of the death of the shareholder, and of the name and address of the acting executor or administrator. In due course the shares will be either transferred to the legatees or next of kin, or converted into money. In either case the executor or administrator will sign as transferor, but, of course, the transferee will act on his own behalf.

(*b*) *Issuing Stock Certificates.* The first or original certificates should be issued in numerical order. These original certificates make up the subscribed capital stock of the company or any legally authorized increase of the same. On the issue of these certificates it is well *before filling* out the blanks, to consult with each shareholder and make a memorandum of the number of certificates wanted and the number of shares wanted in each certificate. Then issue the certificates accordingly, *filling out the necessary blanks on the stub of the certificate*, and write "Original Subscription" on the stub so that in after years this memorandum may indicate this fact.

Where the owner of shares sells only a portion of the shares represented by a certificate, he takes or sends his certificate to the secretary and requests him to make out two or more new certificates, one for himself for the number of shares he retains, and the others in the name of the person or persons to whom he sells. The secretary would then cancel the old certificate, and issue the new ones as directed.

In issuing certificates in place of surrendered certificates, it should always be kept in view that the one or more certificates issued must evenly balance the number of shares covered by the certificate surrendered. Register each certificate as issued. Leave no blanks between the names and make no back entries. All entries should follow consecutively. When the proper entries have been made, the surrendered certificate is cancelled by writing across the face of the certificate the word "cancelled," with the date of cancellation, which must be the same as the date of the

transfer on the company's books. The cancelled certificate should then be pasted on its original stub or filed away for future reference, but never destroyed.

(*c*) *The Transfer Record.* It is necessary for the company to have a book, in the form given in the Table of Forms (*a*), in which transfers of stock can be made, and in which the owner of the stock or his attorney duly appointed and authorized by him, must previously sign the proper form personally, or by attorney, before the shareholder can be released from his obligations to the company. From this book transfers are posted into the stock ledger, but the transfers do not in any way affect the general books. While in some companies the stock certificate book is used as a transfer book, it does not give the compact, convenient record that a properly kept transfer book does, and for this reason such a plan is not desirable.

(*d*) *Procedure for Transfer.* The steps to be taken in the cancellation and transfer of stock are as follows:—

1. The party desiring to transfer stock must present the certificate representing the stock to be transferred.

2. If presented by the original holder he must sign the transfer in the transfer record. Be positive that the person who presents it for transfer, and who claims to be the shareholder named therein is the *bona fide* owner. The fact that he may have possession of a certificate does not warrant the transfer officer in making a transfer without identification of the holder.

3. If the certificate is *not* presented by the original owner then the power of attorney on the back of the certificate must be signed by the said original owner in the presence of a witness. Usually the blanks in the power of attorney are not filled up, so that when it is finally presented for transfer, the name of the last holder of the certificate, or the name of one of the officers of the company, can be filled in as the attorney for the original holder. The

(*a*) Post.

attorney so appointed and presenting the certificate, must then sign the transfer in the Transfer Record. This signature should be in the following form:—

JOHN SMITH (Seal),
By his attorney, Henry Jones.

4. The corporate officer should then write across the face of the original certificate in large letters the words "cancelled" and the date, thus—

CANCELLED—29th JUNE, 1907.

and fyle it away, either by pasting it on its original stub or otherwise.

5. The new certificate, to be issued in lieu of the cancelled one, may now be prepared and issued.

6. The necessary entries should at once be made in the proper books, and upon this being done the transaction is complete. Be particular to have the party to whom the new certificate is issued, sign the formal receipt for the same, thereby securing to the company acknowledgment by the new shareholder of his new relation.

In some corporations where there are many transfers of stock, the board of directors authorize the charging of a small fee varying from ten to fifty cents for each certificate issued.

§ 190. Suggestions as to Transfer.

It is not a good plan to insert the shareholder's place of residence in the body of the certificates—certificates live long; residences are often changed.

In signing transfers, write your name exactly as it appears on the face of the certificate without abbreviation or enlargement.

In transferring to individuals, give the full Christian name. In transferring to corporations, give the complete legal title.

In transferring to a woman, give the title "Miss" or "Mrs." If she is a married woman, give her own Chris-

tian name, (not that of her husband) with "Mrs." prefixed.

At the time a woman is married she should transfer all stock to herself under her new name, signing as follows: Mrs. ———, formerly "Miss" ——— or "Mrs." ———.

Avoid using diminutives, and omit prefixes and suffixes, such as "Rev." "M.D.," etc.

Signatures on transfers, when unknown to the corporate officers, must be verified in some way satisfactory to them. Such signatures may be guaranteed by some well-known bankers or acknowledged before a notary public or justice of the peace.

Certificates issued to a minor or insane person should bear the guardian's name, thus: John Smith (Minor) or (Incompetent), under the guardianship of Thomas Smith. Such certificates are transferable only by the guardian, who must exhibit a certificate of appointment from the court.

Trustees, administrators, executors, guardians, and attorneys should not transfer to themselves individually.

General powers of attorney can be recognized by corporation officers only when the intent of the maker and the genuineness of his signature are beyond doubt, and when the power is recent.

Stockholders should give prompt notification of any change of address.

Where the corporation keeps a stock certificate book, but no transfer book, a transfer on the back of a certificate, which is then cancelled and pasted back in the certificate book, and a new certificate issued to the transferee, is a sufficient transfer to constitute the transferee a stockholder.

The large companies generally appoint special transfer agents and registrars, whose duties are the supervision and registering of the issue and transfer of shares. This work

is usually done by a trust company whose registrar keeps a record of all stock issued and countersigns each certificate as evidence that it is rightfully issued and duly recorded. Such appointment of a competent transfer agent prevents the possibility of any over-issue or other irregularity in the issue of stock, inspires confidence among the stockholders, and relieves the officers of the company of a heavy responsibility.

CHAPTER XVI.

DIVIDENDS.

§ 191. By-laws or Regulations Respecting Dividends.

The right of a shareholder to dividends is, under all Canadian Acts, governed by the by-laws or regulations of the company, that is to say, the right to, rate and time of payment, with all other questions incident thereto, are matters entirely within the company's control. The Acts impose a heavy liability upon directors who pay dividends out of that which belongs to the creditors, *i.e.*, out of capital.

§ 192. Nature of Dividend.

The word "dividend" really means and refers to that which is to be divided among the shareholders, and that only which properly belongs to and can be divided among the shareholders, is the fund created by the net profits of the company. It is for this and this only they have invested in its shares, and if, contrary to their expectations, there are no profits for a time, then they must wait until there are; or if there is no reasonable expectation of their being any, then the company should be wound up, and after the creditors have all been paid, the shareholders may divide the surplus assets among themselves. But, having induced and obtained credit on the strength of the capital fund which they have contributed, it would be manifestly unjust to allow them to withdraw such capital or any part thereof, either by the name of dividends or any other name, when they see that their expectations are not likely to be realized.

As long as the company is earning sufficient to pay a satisfactory dividend, there is no temptation to draw upon

the capital for that purpose; but as soon as it falls below that, the interest of all, but especially of the large shareholders, creates a strong temptation to pay *bogus profits* out of capital in order to maintain the credit of the company and the price of its shares. And it is this temptation, clearly, which has caused the Legislatures to remove the question out of the domain of company regulation, and, by one short provision, make every payment of dividends out of anything but the actual profits of the company illegal, involving serious liabilities on all concerned. The capital should be kept intact in the interest both of the creditors and shareholders of the company, and the net profits only are all that the shareholders can claim until the company is wound up.

§ 193. Kinds of Dividends.

A company may make four kinds of dividends, viz., a dividend payable in cash, in bonds or scrip, in property or stock.

In a scrip dividend, certificates giving the holders certain rights specified in the certificate itself are issued. A dividend of this character is usually declared when the company has profits not in the shape of money but in other forms of property, and the company wishes to anticipate the time when the property may be turned into cash.

A property dividend occurs where a company sells its property to another company, taking in payment therefor the stocks or bonds of the purchasing company, and then distributes them among its shareholders.

A stock dividend, as the name imports, is a dividend of the stock of the company. Such a dividend is lawful when an amount of money or property equivalent in value to the full par value of the stock distributed as a dividend has been accumulated and is permanently added to the capital stock of the company. Companies frequently make a dividend of this character when improvements of the corporate property or extension of the business have been made out

of the profits earned. It is also made when the corporate plant has increased in value, and it seems better to issue new stock to represent the excess of value than to sell the increase and declare a cash dividend. These dividends are frequently made, and provisions respecting them have been inserted in several charters issued under the Ontario Companies Act. Section 92 of that Act provides for their declaration.

§ 194. Cumulative or Non-cumulative Dividends.

A preferred dividend may be made cumulative or non-cumulative. If the latter, in case the profits do not justify the payment of its dividend in any year, in part or in whole, the unpaid balance fails, and is lost absolutely to the preferred stock. If the stock is cumulative, however, its regular preferred dividends and any arrearages must be paid in any subsequent year when profits exist, before dividends are paid on the common stock. It may thus be seen that a cumulative preferred stock is much the better for the investor.

Where the power has been expressly conferred by the charter (*a*) or by statute, and it is proposed to issue preference shares, it should be determined whether a dividend payable to them is to be cumulative, or is to be non-cumulative. If the dividend is to be cumulative the word "Cumulative" should for the sake of clearness in the definition of rights be inserted in the stock book and certificates of such stock when issued, thus: "a fixed cumulative preferential dividend, etc."

If the dividend is to be non-cumulative, the clause should say that "the preference shares are to confer the right to receive out of the profits of each year a preferential dividend for such year" at the specified rate per cent.; or the clause may declare that the profits of each year available for dividend are to be applied first to the payment of a dividend for such year on the preference

(*a*) See "Special Provisions" as to Preference Shares, *post*.

shares at a specified rate, and that the surplus shall be applicable to dividend on the other shares. All that is required is that it should appear that the preferential dividend for each year is to come only out of the profits of that particular year. Dividends even on preference shares can be paid only out of profits actually earned.

Preference shares are sometimes given the right to participate in surplus profits also.

§ 195. Bonus.

"Bonus may be described as whatever comes from a fund accumulated during several preceding years for any purpose, and ultimately found unnecessary for the ordinary payments, or grown so large as not to be capable of being dealt with in the usual way; if that be paid to the shareholders in addition to the dividend, I should say that was a bonus." Kindersley, V. C. in Hollis and Allan (1896), 14 W. R. 989.

§ 196. Preference as to Capital on Winding up.

Although the right of a preference shareholder is usually confined to a preferential dividend, preferential rights as to capital may be and often are attached to preference shares. Where this is desired, it should be stated that the preference shareholders are to be entitled not only to a preferential dividend, but to priority as regards capital in the winding up. Then the capital paid up on the preference shares in accordance with the clause must, in a winding up, be paid off out of the surplus assets before the ordinary shareholder can get anything.

Preferred shareholders are entitled to share equally with the common shareholders in the distribution of stock by a stock dividend.

§ 197. Discretion of Directors as to Declaring Dividends.

In general it is for the directors, and not the shareholders, to determine whether or not a dividend is to be

declared. When, therefore, the directors have exercised this discretion and declared or refused to declare a dividend, there will be no interference by the courts with their decision, unless they are guilty of a wilful abuse of their discretionary powers, or of bad faith, or of a neglect of duty. Accordingly, the directors may, in the fair exercise of their discretion, invest profits to extend and develop the business, or for the payment of probable future indebtedness, though it is not yet due. The free exercise of their discretion cannot be interfered with by the contracts of promoters or original incorporators as to the disposition of corporate profits. The general rule is that in the absence of fraud the courts will not interfere at all.

The following important decision of the Privy Council re-affirms this doctrine. The Court of Appeal for Ontario held that an ordinary trading company can, without special authority, set apart a reserve fund, but the majority of the shareholders cannot, against the wishes of the minority, accumulate out of the profits a reserve fund which is far larger than is required to provide for all liabilities of, and vicissitudes in the business. Where such a fund had been accumulated and portions of it had from time to time been invested by the directors elected by the majority, in unauthorized and hazardous investments, the court, at the instance of the minority, ordered a reasonable proportion to be set aside as a reserve fund, and the balance to be distributed among the shareholders as undrawn profits: Earle v. Burland, 27 Ont. App. 540.

This case was appealed to the Privy Council, which decided that the company is not bound to divide all its profits on each occasion amongst its shareholders. It can legally reserve any portion thereof at its own discretion and a court has no jurisdiction to regulate it. Whether the undivided portion is retained to credit of profit and loss, or carried to credit of a reserve, it may lawfully, in the absence of any express power, be invested on such securities as the directors may select, subject to the control of a general meeting, but not restricted to such investments

as trustees are authorized to make: Burland v. Earle (1902), A. C. 83.

Directors, declaring fictitious or unlawful dividends, are personally liable, except as to shareholders who knew and approved, or who failed to attend a meeting duly called at which they might have learned of the same: Banque d'Epargne v. Geddes, M. L. R. 6 S. C. 243.

A company, constituted under the Quebec J. S. Co. Act, can only pay dividends out of actual profits, the capital being intact: Angus v. Pope, 6 Q. B. (Que.) 45.

A company cannot pay *guaranteed* dividends when no profits have been earned.

§ 198. Suggestions as to Paying Dividends.

The proper and legitimate way of arriving at a statement of profits is, says Buckley (*a*), to take the facts as they stand, and, after forming an estimate of the assets as they actually exist, to draw a balance so as to ascertain the result in the shape of profit or loss. If this be done fairly and honestly, without any fraudulent intention or purpose of deceiving any one, it does not render the dividend fraudulent that there was not cash in hand to pay it, or that the company were even obliged to borrow money for that purpose, and the fact that an exaggerated value was put upon assets which were then in jeopardy, and were subsequently lost, does not render the balance sheet delusive and fraudulent.

A case known as Stemfers, which appears to be a leading one on the question of dividends, was that of a company formed for blockade running, where the articles provided that no dividends should be payable except out of the profits arising from the business of the company, etc., and it was decided that a dividend paid on a balance sheet in which the ships engaged in the trade and other risks were *bona fide* estimated at the full nominal value, must be con-

(*a*) Buckley on the Companies' Acts, p. 414.

sidered to have been paid out of profits, although the company had actually to borrow money to pay it (*a*).

Where the dividends on the preference shares depend on the profits of each year, the question as to what expenses should be treated as payable out of income becomes of great importance. Amounts necessary for renewing or replacing wasting property ought to be spread over a series of years, and not all charged to revenue account in one year; but they should not fall on capital. An excessive quantity of stores should not be purchased out of revenue in one year; but it does not follow that any excess of stores at the end of the year over stock at the beginning of the year should be treated as profit and divided. The business must be carried on fairly, with regard to the interests of all parties, and not manipulated for the benefit of any one class.

The holders of preference shares cannot prevent the company setting aside profits earned in any year to make good losses in previous years if good faith is observed. Their right to dividend is, in the absence of express bargain to the contrary, subject to the directors' right to carry sums to reserve.

The following rules are suggested for the guidance of directors:—

(*a*) Every company should, as far as possible, provide for unexpected losses by creating a reserve fund.

(*b*) Provision should be made out of profits for replacing depreciating or wasting property, such provision being measured by the length of time during which the property may reasonably be expected to last; and in like manner sums should be set aside to allow for debts proving bad.

(*c*) Accidents such as ordinarily occur should be made the subject of insurance, the premiums being paid out of profits.

(*a*) L. R. 4 Ch. 475.

(*d*) If a loss occurs and the provision made in previous years is not sufficient to make good the amount, it is not safe to pay dividends until the loss is made good, although there is strong ground for arguing that the loss might be spread over several years, the company paying a reduced dividend meanwhile.

§ 199. Resolution Declaring a Dividend and Entries Upon.

A form of resolution declaring a dividend will be found in the Forms herein, *post*.

The proper entries upon declaring a dividend are as follows: —

When the fully paid up capital stock of the company is $50,000, a net gain of $9,000 has been made and a dividend of ten per cent. has been decided upon, the Loss and Gain account should be closed into Surplus Account and an entry.

Surplus $5,000
To Dividend No. 1, year 1907.....$5,000

made. As before stated, a dividend as soon as declared is a positive liability to the shareholders, hence this entry. Dividend account No. 1, 1907, should then be opened and remain open until its whole amount be paid to the shareholders. This transaction leaves a balance to the credit of surplus account of $4,000 which may be allowed to stand as a reserve fund.

Where the shareholders are numerous a separate account may be opened with each dividend declared, and it should be known by its number and year.

§ 200. To Whom the Company is to Pay the Dividend.

The question to whom a dividend shall be paid after it has been regularly declared is one which sometimes involves the company in considerable difficulty. It is not always easy to decide which one of two or more claimants is entitled to the dividend.

The general rule is that the company may pay the dividend to the person in whose name the stock stands registered upon the corporate stock book, and the Ontario Act directs that this shall be done. It may do so without enquiring whether he has transferred the stock, and without requiring the production of the certificate. Moreover, it is a well-settled rule that the company is protected in paying dividends to a recorded shareholder, although he may have transferred his shares. But after notice of a transfer the company may pay the dividend to the transferee, although no registry has been made.

The right to dividends does not, however, depend upon the issue of the certificate, and the owner of shares may claim his dividends though no certificate has ever been issued by the company.

The heirs of a shareholder must, in order to entitle themselves to dividends, procure a transfer of their ancestor's shares into their own names on the corporate books. Moreover, the company is protected if it pay dividends to the administrator without notice of a transfer by him.

Dividends on stock held by a married woman must be paid according to the law of the domicile of the company, and not according to the law of the domicile of the married woman.

A husband by collecting dividends on his wife's shares does not thereby reduce the stock to possession.

The Ontario Act, sec. 51, directs that the directors, upon the passing of a by-law authorizing the payment of a dividend upon shares of the company, may direct that no entry of transfers shall be made in books of the company for a period of two weeks immediately preceding the payment of such dividend and payment thereof shall be made to the shareholders of record on the date of closing said books.

§ 201. To Whom the Dividend Belongs.

As between the vendor and vendee of shares of stock, it is a settled rule that the vendee is entitled to all the dividends on the stock which are declared after the sale of the stock. Even though the transfer has not been recorded, the transferee has a right to the dividends as against the transferor. The law, moreover, refuses to investigate the question when the dividend was earned. In contemplation of law the net profits are earned at the instant the dividend is declared. But, of course, any agreement between vendor and vendee, modifying or changing this rule, will be upheld. It is a proper subject for a contract, and a valid contract may be made in reference to it. When a dividend is made payable on a day subsequent to the day on which it is formally declared, it belongs to the stockholder who owns the shares on the day the dividend is declared, and not to the owner at the time it is payable. A dividend declared but payable at a future day may be assigned apart from the stock itself. A transfer of stock passes all dividends declared subsequently to the transfer, although the dividend was earned before the transfer was made.

A legatee of shares takes the stock as it was at the time of the testator's death. All dividends declared previous to that event go to the administrator. Where stock is bought deliverable at the seller's option, the dividends declared between the day of the purchase and the delivery belong to the purchaser. So also an offer to sell shares, which is subsequently accepted, entitles the purchaser to dividends received by the owner while the offer was open. But a contract to sell on demand entitles the vendor to dividends declared before the demand is made.

§ 202. Dividends Must be Equal and Without Preference.

Dividends among shareholders of the same class must be always equal and without preference. If the company has issued preferred stock, the holders thereof constitute a

class by themselves, and shareholders of that class will be entitled, as a class, to dividends in preference to holders of the common stock. But as between shareholders of the same class there can be no discrimination, and profits set aside for dividends must be evenly divided among the shareholders according to the amount of stock held by each shareholder. There can be no discrimination in the payment of dividends between the large and small shareholders of a company. After paying a dividend to a part of the shareholders the company cannot refuse to pay the rest upon the ground that by so doing the capital stock will be impaired, or that all the surplus earnings have been either paid out as dividends or invested in permanent improvements.

§ 203. Dividends Cannot be Enforced Until Declared.

The declaration of dividends is part of the internal management of the company, which is governed in its ultimate arrangement by the will of a majority of the shareholders. And, therefore, it has been said that "till a dividend is declared, a shareholder has no legal title, nor even an equitable right thereto, which can be enforced by suit."

§ 204. Dividend—Without Formal Declaration.

A division of profits without the formality of declaring a dividend is equivalent to a dividend. A division of the profits is a dividend even though not called such, and not considered such by the directors and shareholders.

§ 205. Dividend a Debt Due Absolutely to the Shareholders.

When a dividend out of the earnings of the company has been regularly declared and is due, the right to it becomes immediately the individual property of the shareholder.

§ 206. Right of Company to Apply Dividends to Payment of Debts Due it by Shareholder.

It is well settled that if, at the time a dividend becomes payable, the shareholder owes the company any debt, the dividend due to that shareholder may be applied in liquidation of the indebtedness; and if the company is sued for the dividend it may set up the debt by way of set-off or counter-claim. This, however, amounts to a corporate lien on the stock as far as dividends are concerned; and it is doubtful whether it could be upheld where the registered shareholder has sold and transferred his certificate of stock before the dividend is declared.

§ 207. Rights of Corporate Creditors.

Where dividends are illegally paid from the capital, or, what amounts to the same thing, when there has been a fraudulent distribution of corporate property before the payment of debts, a court of equity will, at the instance of defrauded corporate creditors, follow the fund into the hands of the shareholders and require its application to the payment of those debts.

In all such cases the directors or other officials who are parties to the payment of dividends out of capital, will be held liable to repay the amounts so improperly paid with interest.

CHAPTER XVII.

THE SHAREHOLDER'S RELATION TOWARDS THE COMPANY, AND OTHER SHAREHOLDERS, AND HIS LIABILITY ON UNPAID SUBSCRIPTIONS.

§ 208. Relation of Shareholders Towards Company.

A company may contract with its shareholders to the same extent, and in the same manner that it may with any other persons.

A shareholder, as a creditor of the company, may obtain security for his debt in exclusion of other creditors.

A shareholder has no legal title to the property or profits of the company until a dividend is declared, or a division made on the dissolution of the corporation.

He may sue the company or be sued by it. Moreover, he has a direct interest in the company, and at times may take the part of the company in prosecuting or defending its suits.

A resolution passed at a shareholders' meeting purporting to restrict ordinary rights of shareholders is not binding on those not present: Smith v. Bank of N. S., 8 S. C. R. 558.

§ 209. Expulsion of Shareholders.

The law forbids the directors or shareholders of a company having a capital stock from depriving a shareholder of his rights as such shareholder. He certainly cannot be deprived of his right to dividends equally with other shareholders. He cannot be deprived of his right to vote. And it is clear that his various rights as a shareholder cannot be taken from him by any or all of the other shareholders. In this respect a company having a capital stock is clearly different from a company formed for religious, social,

charitable and other similar purposes. The former is for purposes of gain, and the property which is represented by stock cannot be taken from a shareholder by expelling him from the company.

In one or two recent Ontario charters, however, a provision (*a*) was inserted, "providing that no shareholder of the company shall without the consent in writing of all the shareholders for the time being of the company, be interested as a shareholder, partner, director, manager, lender, employee or otherwise in any concern carrying on any business in competition with the company; and if it shall be proved to the satisfaction of the directors of the company that any shareholder has committed a breach of this clause, they may serve him with notice in writing, requiring him to retire from or otherwise determine his interest in such concern, and stating that in the event of non-compliance with such requisition within twenty-eight days, his shares will be liable to be transferred." Provision was also made for paying a fair price for such shares on the terms and conditions set out in the charter.

§ 210. Unpaid Subscriptions a Trust Fund for the Benefit of Creditors.

The capital or capital stock of a company is the aggregate of the par value of all the shares into which the capital is divided upon the incorporation; it is the fund or resource with which the company is enabled to act and transacts its business, and upon the faith of which persons give credit to the company and become corporate creditors. The public, in dealing with a company has the right to assume that its actual capital, in money or money's worth, is equal to the capital stock which it purports to have, unless it has been impaired by business losses. The public has a right also to assume that the capital stock has been or will be fully paid up, if it be necessary in order to meet corporate liabilities. Accordingly, the courts go very far

(*a*) See *post*.

to protect corporate creditors, and in the United States it is a well-settled doctrine that capital stock, and especially unpaid subscriptions to the capital stock, constitute a trust fund for the benefit of the creditors of the company.

There are three methods by which shareholders seek to avoid their liability to corporate creditors; first, by a cancellation or withdrawal from the contract; second, by a release from their obligation to pay the full par value of the stock; third, by a transfer of the stock. In each of these cases, however, a court of equity does its utmost to protect the corporate creditors, and a rigid scrutiny will be made in the interest of creditors into every transaction of such a nature, though the directors are not trustees for the creditors of the company.

§ 211. Unpaid Subscriptions Reached only after Judgment Against the Company and Execution Returned Unsatisfied.

The unpaid balances of subscription are not the primary or regular fund for the payment of corporate debts. Credit is given to the company, not to the shareholders; and it is the natural order of business that the creditors of the company are to be paid by the company from funds in the corporate treasury. Ordinarily, corporate creditors have no knowledge or concern about the subscription list, and unpaid or partially paid subscriptions are a matter entirely between the company and the subscribers. So long as the company meets its obligations in the ordinary course of business, corporate creditors have no need to concern themselves about unpaid subscriptions to the stock. But when the company is in default and embarrassed, or for any reason fails to pay its debts, then its creditors have rights with reference to such unpaid subscriptions. They then have the right to know whether all the subscriptions for stock have been fully paid in, and, if not, they have the right to compel such payment.

It accordingly becomes important to know at what point, in their efforts to collect what is due them corporate

creditors may cease to pursue the company and proceed directly against its delinquent members. The well-established rule upon this point is that a corporate creditor's suit to enforce payment of unpaid subscriptions can be properly brought only after a judgment at law has been obtained against the company and an execution returned unsatisfied. This rule is of such importance, that, by statute, a creditor's right to proceed against a stockholder on his unpaid subscription is allowed only after the remedy against the company itself has been exhausted. By this is meant that judgment shall have been duly recovered against the company, and execution issued and regularly returned unsatisfied. Nothing short of that exhausts the remedy against the company.

This rule is founded in reason and a wise public policy relative to the transaction of business, since the corporate funds are the corporate creditor's primary resource, even where the liability of the individual shareholder is declared to be primary, like that of an original contractor or partner. When a company is ordered to be wound up, all proceedings by creditors may be stayed.

Although an incorporated company has ceased to do business and to elect directors for carrying it on, the creditors do not cease thereby to have the right to execute their judgments against the company (*a*).

A company cannot discharge shareholders from liability for unpaid stock so as to affect rights of creditors: Dancose v. Richards (Q. B. Que. 5 Sept., '76), I. Con. Dig. Que. p. 347.

§ 212. Shareholders' Relation Towards Each Other.

The shareholders, as shareholders merely and not as directors or officers, do not occupy any fiduciary relation either towards the company or towards each other. They may deal with the company and with each other as perfect strangers. An important judgment says "The holders

(*a*) Hughes v. Lalonde, C. R. 1889, 18 Revue Legale, 205.

of a majority of the shares may not use their power to obtain advantages at the expense of the minority; and when that is done equity will interfere to restrain the wrongful acts. All must be permitted to share equally in the benefits; and the law requires, both from the officers of the company and the majority of shareholders, the utmost good faith in the management and control of the corporate business and property. But between themselves the shareholders owe no duty to each other. In the purchase and control of his stock or any of the corporate obligations, each shareholder acts for himself, and he is in no sense a trustee for the others."

§ 213. Purchase of Stock from an Infant.

A purchase of stock from an infant may be a dangerous transaction. When he comes of age he may elect to disaffirm, and may hold the transferee liable for the stock. Where, however, the infant has previously purchased the stock which he sells there is less danger in accepting the transfer. This previous purchase and his sale of the stock are technically voidable acts; but after the stock has passed from his control the law considers the purchaser from the infant as the legal shareholder.

§ 214. Liability on Abandonment of Corporate Enterprise.

Where the shareholders of a company have voluntarily abandoned the enterprise or have decided that its further carrying on is impossible, it is the duty of the company to call in whatever capital may be necessary to settle its affairs, and each shareholder will be liable to contribute his proportion of the unpaid capital.

§ 215. Transfer of Assets Not Amalgamation.

A transfer of the assets of one joint stock company to another does not merge the companies into one: Maple Leaf Rubber Co. v. Brodie, 18 Que. S. C. 352.

§ 216. Liability where Stock has been Sold at a Discount.

The sale of stock in a company at a less rate than the price fixed in the charter, is, unless allowed by the Act under which the company is created, a fraud upon the law and the shareholders, and where by arrangement between the company and the shareholders, the stock is issued as fully paid up, without, in fact, having been paid for to the full amount of its par value, equity will set aside this fictitious arrangement for its payment, and hold the shareholders liable for the amount not actually paid, in favor of creditors who can fairly be presumed to have given credit to the company in reliance upon its apparent and professed capital having been fully paid in; but no such trust will be enforced against the shareholders in favor of creditors who have dealt with the company with full knowledge of the arrangement by which the stock was to be fictitiously issued as paid up.

§ 217. Debenture Holders—Creditors not Shareholders.

Persons who lend money to a company and take its debentures therefor, or who buy its debentures, are creditors of the company and not shareholders, and they assume no liability to other creditors.

CHAPTER XVIII.

FRAUDS OF DIRECTORS, PROMOTERS, ETC.

§ 218. Shareholders' Wrongs.

Shareholders' wrongs, arising from a breach of trust by directors, a majority of the shareholders or third persons, are divisible into three classes. They are, first, fraudulent acts; second, *ultra vires* acts; third, negligence of corporate directors.

There is another class of grievance—that of internal dissensions in the company and dissatisfaction with its policy and acts. These, however, relate to matters *intra vires* of the directors or majority of the shareholders. The law gives no remedy for such dissensions, since the shareholder has the corporate elections as a remedy, and since the majority are to rule so long as they do so without fraud and within the powers of the company.

If that majority are incapable or unscrupulous there is not much safety for the small shareholder or much force in corporation law to ensure his rights.

§ 219. Director or Officer Interested in Construction Company and Secret Gifts to.

Under the Ontario Act no director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser or otherwise, and any director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and in case he dis-

closes the nature of his interest, and refrains from voting, he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; provided, however, that no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares or being a director in any other company with which a contract or arrangement is made or contemplated; provided, also, that this section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity.

§ 220. Secret Commissions.

The following statement of the law laid down by Bowen, L.J., in The Boston Deep Sea Fishing Co. v. Ansell (1888, 39 Ch. D. 339) should be borne in mind. It applies to directors, managing directors, secretaries, managers, solicitors, and all other officers and servants of a company, but is very frequently forgotten:—

"There can be no question that an agent employed by a principal or master to do business with another, who, unknown to that principal or master, takes from that other person a profit arising out of the business which he is employed to transact, is doing a wrongful act, inconsistent with his duty towards his master, and the continuance of confidence between them. He does the wrongful act whether such profit be given to him in return for services which he actually performs for the third party, or whether it be given to him for his supposed influence, or whether it be given to him on any other ground at all. If it is a profit which arises out of the transaction, it belongs to his master, and the agent or servant has no right to take it, or keep it, or bargain for it, or to receive it without bargain, unless his master knows it."

In the case in question it was accordingly held that a company could dismiss without notice a manager who had

secretly accepted a commission from shipbuilders executing work for the company.

And it is also a well-established principle of law that a director commits a breach of trust in accepting a secret gift or secret pay from a person who is contracting or has contracted with the company, and that the company may compel the director to turn over to it all the money or property so received by him. So, also, where a director receives a commission from one who obtains a benefit from the company through the director's influence, the latter may be compelled to pay over the commission to the company.

Directors are trustees, and cannot retain any profit made on purchase of company property: Turner's Case, 19 Ont. R. 113.

§ 221. Frauds by Promoters on the Company.

A promoter is a person who brings about the incorporation and organization of a company. He brings together the persons who become interested in the enterprise, aids in procuring subscriptions and sets in motion the machinery which leads to the formation of the company itself.

A promoter is considered in law as occupying a fiduciary relation towards the company (*a*). He is an agent of the company, and is subject to the disabilities of such. There are two classes of cases in which he may be guilty of a breach of his duties to the company.

First, where he sells property to the company. If he purchased the property before he began promoting the company he may sell to the company at an advance without disclosing his profit. But if he purchased after he began promoting and then sold to the company, the sale is valid only when he informs the directors that the property belongs to him, and when, also, the directors are competent, independent, and impartial judges as to whether the purchase ought or ought not to be made.

(*a*) In *re* Hess Mfg. Co., 23 S. C. R. 644.

If the promoter conceals the fact that he is selling his own property to the company, the latter may rescind the sale; or, if the promoter was such at the time he purchased the property, the company may recover from the promoter the profit made by him. If the promoter owns the property at the time of forming the company and sells it to the company at an advance over its cost to him, and then induces persons to subscribe by stating that he made no profit thereby, he is liable in equity to account to them for the injury they have sustained.

Second, a promoter may commit a breach of trust by accepting a commission or bonus from a person who sells property to the company. The company may compel him to turn it into the corporate treasury, or the company may rescind its purchase of the property. The law is rigid in its protection of the company and shareholders.

If the commission or bribe paid to the promoter consisted of shares of stock, then the company may recover from him the amount received by him upon a sale of the shares and all dividends previously received, together with interest; or, if he still holds the shares, the company may recover the highest price which the shares of the company have touched in the interval between the gift and the action, together with interest. The subscribers for stock may sue the directors for fraudulent representations if they knew that the promoter was secretly receiving large illegal profits.

Promoters may acquire, as paid up, shares taken in consideration of property transferred to the company, the bargain being fair. Spargo's Case (L. R. 8 Ch. Appeal, 407) approved. Larocque v. Beauchemin, 9 S. C. (Que.) 73; (1897) A. C. 358.

§ 222. Frauds by Promoters on the Shareholder.

To secure men of ability and financial standing to serve on the directorate, the promise is often made them that the shares necessary to qualify them for the office shall be

paid for by others; that their duties shall be merely nominal; that they shall have no liability, and in some cases that they shall be paid for so serving. These arrangements are all fraudulent, and, as an eminent writer has said, "It is obvious that a more gross misrepresentation can hardly be made, than holding out to the world that responsible persons who have nothing to do with the company are directors of it." Such misrepresentations give any one deceived by them ample grounds for rescinding a contract to take shares.

§ 223. Relations between the Directors and Company.

A director cannot, directly or indirectly, derive any personal profit or advantage by reason of his position that is not enjoyed in common by all the shareholders. By assuming the office he undertakes to give his best judgment, in the interests of the company, in all matters in which he acts for it, untrammelled by any hostile interest in himself or others. There is an inherent obligation on his part that he will in no manner use his position to advance his own interest as an individual as distinguished from that of the company. And all secret profits derived by him in any dealings in regard to the corporate enterprise must be accounted for to the company even though the transaction in which they were made also advantaged the company of which he was a director.

§ 224. Purchases by Directors from the Company. Sale to the Company.

One of the most frequent frauds perpetrated upon a company and its stockholders is where one or more of the directors purchase property from the company directly or indirectly or participate in the profits of such a purchase.

It has been held that a director's purchase of property from the company is voidable at the option of the company, even though the director paid as much as or more than the property is worth.

Similar rules prevail in regard to a director's purchase of corporate property at a foreclosure sale thereof. He cannot be a purchaser, either directly or indirectly, at the foreclosure sale. This is the rule whether the foreclosure is instituted by those interested in the corporation or by third parties. If the director purchases at such a foreclosure sale he holds the property as trustee for the benefit of the corporation and the stockholders. Upon being repaid the price he gave therefor, he must make over the property to the corporation.

A sale of company's assets, found to be for benefit of directors and purchaser, at the expense of shareholders, will be set aside: Daniel v. Gold Hill Mining Co., 6 B. C. R. 495.

A director cannot purchase corporate property sold under execution, nor purchase, either in his own name or the name of another, corporate property sold for the payment of taxes. The corporation may reclaim the property upon payment to the director of the amount he paid therefor. A similar rule applies where a director allows or brings about a forfeiture of a lease which the company holds as lessee, and then takes a new lease of the same property in his own name.

Directors may purchase shares from other members, and in such a case are not bound to disclose pending negotiations which if successful will enhance the value of the shares.

The president of a company cannot, unless with the consent of all the shareholders, make a profit by selling to the company a property which he knows the company requires, and which he buys, with that knowledge, for the express purpose of selling to it. Earle v. Burland, 27 Ont. App. 540.

§ 225. Loans by Directors to the Company.

There is no question that a company, while solvent, may borrow money from a director, and may give a mortgage

to secure its payment. The giving of the mortgage is viewed with suspicion; but it is legal when it is perfectly free from actual fraud. But where the company is insolvent an entirely different question arises. There has been difference of opinion in the courts, but the weight of authority clearly and wisely holds that an insolvent company cannot pay a debt due to a director in preference to debts due others, either by turning over property to him or by giving him a mortgage on corporate assets.

§ 226. Frauds by Majority of Shareholders upon the Minority.

In addition to frauds arising by the illegal purchase of the corporate property by a majority of the shareholders there may arise other fraudulent acts by the majority. The law requires of them the utmost good faith in their control and management of the company as regards the minority. Thus, where the majority are interested in another company, and the two companies have contracts between them, it is fraudulent for that majority to manage the affairs of the first company for the benefit of the second. A court of equity will intervene and protect the minority upon an application by the latter.

§ 227. Directors must use Ordinary Care and Diligence.

The directors of a company are not guarantors that no mistakes will be made in the management of the corporate business, nor do they insure the company against loss by the frauds or embezzlement of subordinate officers and agents. They are required to exercise reasonable care and sound business judgment, but nothing further than this. They frequently serve without pay, and usually by reason of their own interest in the stock of the company are directly interested in its welfare. But, though this is the case, they must use ordinary diligence in ascertaining the condition of things, and ordinary intelligence in their action as directors. They must exercise the same diligence and care

that men of ordinary prudence and skill would exercise in the management of a similar business for themselves.

The directors are not bound to examine the books of the company, nor to investigate the mode of living of their employees. But they are required to attend the directors' meetings with reasonable regularity; to have statements of the business made to them; to object to the transaction of important business without the knowledge and consent of the board of directors; to examine with reasonable care the reports and matters of business brought before them; and not to shut their eyes to obvious objections to the business transactions and general condition of the company, or to the character and well-known reputation of the employees. Moreover, when a director has knowledge that an unauthorized act is being done he cannot escape liability, however innocent he may be, unless he prevents that act by his protest, or takes action to remedy the wrong.

§ 228. Excessive Increases of Salary.

The spoliation of the company by excessive increases of salary, made to induce shareholders to sell stock will be enjoined.

§ 229. Subscribers' Remedies for Fraud.

Upon discovering that his subscription had been induced by fraud a subscriber may rescind the subscription by an immediate notice to the officers of the company, or when sued upon the subscription, he may set up the fraud as a defence, provided he does so before the commencement of winding-up proceedings. He may also bring an action against the parties who induced him to subscribe and recover damages; he may sue for the money paid out by him; or he may fyle a bill in equity to set aside the subscription and to recover the payment made thereon. As soon as he becomes aware of the fraud he must act promptly.

Promoters inducing subscription of stock by misrepresentation are liable in damages: Weatherbe v. Whitney, 30 N. S. R. 49.

But to sustain an action of deceit against promoters, their misrepresentation must be proved to have been fraudulent: Petrie v. Guelph Lumber Co., 11 S. C. R. 450.

§ 230. Fraudulent Transfer of Shares.

A transfer of shares in a failing company made by the transferor with the purpose of escaping his liability as a shareholder to a person who, from any cause, is incapable of responding in respect of such liability, is void as to creditors of the company and as to other shareholders, although as between the transferor and the transferee, the transfer may have been out and out.

§ 231. Liability of Estate of Deceased Shareholder.

The estate of a deceased shareholder is liable for what is unpaid in respect of his shares and for his contributory share of the losses of the company, the same as for any other of his debts.

§ 232. Right of Shareholder to Set off Debt.

In any action by a company against one of its shareholders, while the company is a going concern, the shareholder has the same right to set off any debt, which may be due to him from the company, which he would have if sued by a natural person. If the company becomes insolvent, however, he will not be permitted to buy up judgments or other claims against it and set them off against his liability for unpaid stock. He may on the other hand, if he be not a director, buy such claims at a discount and prove them up as a creditor for their full value.

CHAPTER XIX.

POWERS OF COMPANIES.

233. Powers of Companies in General. (*a*)

A company may do all acts that are reasonably necessary to accomplish its objects, and the rule as to what acts are necessary was stated in a United States court in Bridgeport v. Housatonic Ry. Co., 15 Conn. 475, as follows: "In this country all companies, whether public or private, derive their powers from legislative grant, and can do no act for which authority is not expressly given or may not be reasonably inferred. But if we were to say they could do nothing for which a warrant could not be found in the language of their charters, we should deny to them, in some cases, the power of self preservation, as well as many of the means necessary to effect the essential objects of their incorporation. And, therefore, it has long been an established principle in the law of companies that they may exercise all the powers within the fair intent and purpose of their creation which are reasonably proper to give effect to powers expressly granted. In doing this they must have a choice of means adapted to ends, and are not to be confined to any one mode of operation."

Companies are creatures of the legislature, having no other powers than such as are given them by their charters, and such as are incidental or necessary to carry into effect the purposes for which they were established.

(*a*) In connection with this Chapter it would be well to read the statement made with reference to the insertion in the application for letters patent, and in the charter, of special and general provisions governing the company. This will be found *post* under the heading "Special Provisions." Also see notes to section 17 of The Ontario Companies Act.

A company incorporated for definite purposes has no power to pursue objects other than those expressed in its charter, or such as are reasonably incidental thereto, nor to exercise their powers in the attainment of authorized objects in a manner not authorized by the charter. The assent of every shareholder makes no difference. Charlebois v. Delap, 26 S. C. R. 221.

The House of Lords has decided that a company incorporated under the Imperial Acts cannot purchase, acquire, or otherwise deal in its own shares. Trevor v. Whitworth, 12 Appeal Cases 409.

The power of granting certificates or diplomas is never conferred on companies by letters patent under The Ontario Companies Act, it having been laid down many years ago by the Attorney-General of that day that such powers may be properly conferred only by the Legislature. The question arose on an application to the Department for the incorporation of the Chartered Accountants of Ontario. The applicants asked for power to examine candidates and grant diplomas. This was denied, but at the next Session of the Legislature incorporation was secured by an Act.

§ 234. Power to Make Contracts.

A company has no power to enter into any contract that is not expressly or impliedly authorized by its charter. But any contract that is reasonably necessary or proper for carrying out the powers expressly conferred is impliedly authorized.

§ 235. Ultra Vires Contract—Assent of Shareholders.

If the company is a company only for a limited purpose and a contract is not within its authority, the assent of all the shareholders to such a contract, though it may make them all personally liable to perform such contract, will not bind them in their corporate capacity or render liable their corporate funds.

The majority of the courts hold that the contracts of a company which are objectionable only because they are *ultra vires* of the directors, are not so far illegal that no action can be maintained upon them, and that the plea of *ultra vires* should not prevail, whether interposed for or against the company, when it would be inequitable and unjust to allow it, as where the party seeking to enforce the contract has performed his part, and the contract is one that may be ratified by the shareholders.

§ 236. Contracts of Suretyship and Guaranty.

A company has no power to enter into a contract of suretyship or guaranty, or otherwise to lend its credit to another, unless the power is expressly conferred by its charter, or unless such a contract is reasonably necessary or is usual in the conduct of its business. Ordinarily the act of becoming surety or guarantor for the contract or debt of another person or company is not within the implied powers of a company.

§ 237. Doing Business Without the Sovereignty in which it is Incorporated.

The right of a company to do business in a foreign jurisdiction, cannot be regarded as inherent, but bestowed. This right by which a company created in one sovereignty can do business and make contracts in the full enjoyment of its powers in another state, is based upon the comity between states, but when contrary to public policy or prejudicial to the interests of the state, the comity ceases to be obligatory. Indeed, the permission or license to exercise such right is always a voluntary act of the sovereign power.

The comity by which a corporation is permitted to do business in a state other than that by which it was created, does not change its nature as a foreign corporation, or give it any powers which are not given by its charter. Wherever a corporation goes for business, it carries its charter,

as that is the law of its existence, and the charter is the same abroad that it is at home. Whatever disabilities are placed upon a corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere.

The right to carry on business in a foreign state must not be confounded with the power to enter into contracts and incur obligations simply beyond the jurisdiction in which it was created.

This latter is not precisely the same as the other, though embracing the same two points, viz.: 1. Is it within the scope of the powers with which it was invested by its charter to so contract; 2. If so, can it (*i.e.*, has it the right by the law of that country to) enforce such contracts; or, in other words, can it sue and be sued in a foreign country. The first part would be controlled by the general contracting powers of the company. As stated by Brice: "The company must, no doubt, show that the laws of its creation gave it authority to make such contracts." And, if it possesses such authority, it can enforce them, subject, of course to the laws of the country in which it seeks to enforce them.

§ 238. Power of an Ontario Company to do Business Outside the Province.

The restrictions contained in the Ontario Joint Stock Companies Letters Patent Act, and in the form of license employed thereunder, were omitted from the Ontario Companies Act, 1897, R. S. O. cap. 191, when the latter Act was substituted for the former, the object being to remove any doubt that might otherwise have existed as to a company incorporated in Ontario being able to carry on business in any part of the world, if, of course, it complied with local conditions. Under the present Ontario Act, therefore, companies intending to do business in the Yukon District, and in various parts of the American continent and Europe have been incorporated, and charters for the

purpose have been taken without exception or question, even though they themselves in no sense purported to give to the companies express power to carry on their business beyond the boundaries of Ontario. Under such charters there are to-day companies working in Central America, Brazil, Spain, and various of the States of the adjoining Republic. Indeed, it is a question whether express permission is necessary. For instance, in examining into an application from an Extra Provincial Company for a license to do business in Ontario, the Department charged with that duty only concerns itself to know whether the company has a general right to extend its powers to Ontario, and the Department is satisfied if there appears to be no direct or indirect prohibition.

§ 239. Territorial Limitations.

Where a company obtains a Dominion charter authorizing it to carry on its business throughout the Dominion, the mere fact that it confines its operations to one province and to local provincial objects, will not affect its status as a corporation or render its incorporation illegal (*a*). Similarly, a company incorporated by a Provincial Legislature has, for the purposes of its business, the same corporate rights and powers within the jurisdiction creating it, as a company incorporated by the Dominion, and may transact its business outside the province wherever by comity or otherwise its contracts are recognized. Clarke v. Union Fire Ins. Co., 10 Ont. P. R. 313, affirmed on appeal, 6 O. R. 223.

§ 240. Power of Foreign Company to Hold Land in Ontario.

Where the power of a corporation to take and hold property must be derived from its charter, it can acquire property only in accordance with the law of the situs of the property. Foreign companies can only hold land in

(*a*) Colonial Building Ass'n. v. Atty.-Gen. (Que.) 9 A. C. 157.

Ontario by the medium of trustees, or by either taking out a license to hold such land, or becoming incorporated under the laws of the Province.

The Niagara Heights Land Co., incorporated under the provisions of "The Business Corporation Laws" of the State of New York, being under the impression that it was possessed of power to hold land in Ontario without special license or other express authority, purchased and took a conveyance of certain parcels or tracts of land, in the village of Fort Erie, Ontario. The effect of this conveyance of said lands, was to create a forfeiture thereof to the Crown. By the exercise of the clemency of the Crown, the land was subsequently transferred to a trustee for the company. Several similar cases have since arisen, and were treated in a like manner.

The Crown only can take advantage of such a forfeiture which cannot be set up by a private individual, except by way of objection to title upon any proposed transfer or conveyance of such lands by the foreign corporation which has acquired them.

§ 241. Power of a Company to Borrow Money and Issue Bonds and Debentures.

Besides raising capital by means of shares, companies very frequently either at the time of their incorporation or subsequently, raise money by borrowing. This may be done in various ways, by an ordinary unsecured loan, by making and discounting bills or promissory notes, by a mortgage on the property of the company, or by the issue of debentures. In all these cases it is necessary to see, first, whether the company has power to borrow; secondly, whether the directors have authority to exercise the company's borrowing powers without a resolution of the company; thirdly, whether there is any limit on the amount which may be borrowed, and, if so, whether that limit is reached; and fourthly, whether the company or the directors have power to secure the repayment of the money bor-

rowed by a mortgage or charge on all or any part of the assets of the company. For the answers to all these questions the letters patent and governing statute must be carefully consulted.

Under the New Brunswick Act, companies may borrow money on the authority of special by-laws passed for that purpose, provided, however, that the amount to be borrowed shall not at any time exceed seventy-five per cent. of the actual paid up stock.

Under the Acts of the Dominion or of the other Provinces no such limitation exists, but, in all, the by-law authorizing the loan must be formally confirmed by a certain proportion of the shareholders before being acted on. A general by-law for this purpose will be found in the Table of Forms, and also a resolution of the directors empowering the proper officer to so borrow money.

Power to issue bonds or debentures is frequently expressly conferred upon companies, but it is not necessary. Unless expressly restricted any company empowered to borrow money or create a debt has the implied power to issue its bonds or debentures therefor.

Debentures may, in the absence of restriction, charge not only property in existence, at the time of issue, but also property to be afterwards acquired, including book accounts, and other debts to accrue afterwards.

§ 242. May Wind up its Business.

When an ordinary business company is organized, it assumes no obligation to the public to carry on its business, whether the undertaking proves profitable or not. It may, therefore, with the consent of all the shareholders and in the absence of all restrictions in its charter or prejudice to the rights of creditors, transfer all of its property to another company or person even though the effect may be to render it incapable of further carrying on its business, and it may take stock in the other company, such stock to be distributed amongst its shareholders, provided all the shareholders consent.

Although this be done, however, the franchise conferred upon the shareholders is not extinguished by such transfer or cessation of business. The company has an existence quite distinct from what it may possess, or from the people who are its shareholders or directors. It continues to be a corporation in the eyes of the law, with power to sue and be sued.

The Ontario Companies Act contains clauses providing for the formal dissolution of the company, and the surrender of its charter under such circumstances.

§ 243. Voluntary Liquidation.

Voluntary liquidation does not necessarily mean that a corporation is insolvent, and in many instances it is resorted to for the purpose of reconstruction only. The liquidation, in the latter cases, is really by the stockholders, there being no question of creditors being paid in full. An officer of the corporation is often appointed liquidator, and the corporation becomes merged into a new one, it being, in some cases, unnecessary that the company's operations should be suspended.

§ 244. Charter Selling.

Where, under the Ontario Companies Act, it was proposed to change the name of a company, vary its objects from sugar refining to mining, and change the value of its shares from ten dollars to twenty-five cents, the applicants were informed that such an application would be refused, as, if permitted, it would give rise to charter hawking, which would be objectionable.

§ 245. Suits by Companies.

Suits by companies must be instituted by proper authority, usually by the authority of a majority of the board of directors. The suit must be brought in the corporate name, and not in the name of the officers or shareholders.

The provisions in the charter, if any, as to the manner of suing must be observed. A company and its shareholders are separate and distinct persons in the eye of the law, and, therefore, each may sue and be sued by the other.

§ 246. Defamation—Libel.

An action will lie at the suit of an incorporated trading company to recover damages for a libel calculated to injure its reputation in the way of business.

South Hetton Coal Co. v. North Eastern News Association (1894), 1 Q. B. 133, followed in Journal Printing Co. v. McLean, 23 Ont. A. R. 324.

A company may also be held liable for libel that is, in law, may be guilty of malice.

§ 247. Liability for Torts. (*a*)

A company is liable for the torts of its servants and agents committed in the course of their employment, to the same extent as a natural person would be.

(*a*) Tort is the legal term for any wrong or injury to person or property.

CHAPTER XX.

FORFEITURE OF CHARTER.

§ 248. For Non-user or Misuse.

The franchise of a corporation and its right to corporate existence may be forfeited by the State on the grounds of wilful non-user or abuse and misuser of such franchise.

The Ontario Act provides that if a company incorporated by letters patent does not go into actual operation within two years after incorporation, or for two consecutive years does not use its corporate powers, such powers, except so far as is necessary for winding up the company, shall be forfeited, and its name, in whole or in part, may be granted to another company.

It further provides that the charter of a company incorporated by letters patent, may, at any time, be declared to be forfeited, and may be revoked and made void by an order of the Lieutenant-Governor on sufficient cause being shown to the Lieutenant-Governor in that behalf.

Under the latter provision the charter of the Bertie Pastime Club was revoked (*a*) on the ground that it had been sought for the purpose of operating what is known as a "pool room," and the charter of the Toronto Junction Recreation Club was revoked on the ground that the said club was carried on for other than lawful purposes (*b*).

Failure to comply with a charter provision that certain proportions of capital shall be subscribed and paid up within a limited period is ground for declaring a forfeiture of charter. Dom. Salvage Co. v. Att. Gen., 21 S. C. R. 72.

(*a*) *Vide* Order in Council, 15th February, 1904.
(*b*) *Vide* Order in Council, 14th, July, 1904.

CHAPTER XXI.

FOREIGN OR EXTRA PROVINCIAL CORPORATIONS.

§ 249. Definition.

A foreign corporation is a corporation created by or under the laws of another state or country. It can exercise none of the privileges or functions conferred by its charter outside of the sovereignty by which it was created, except by the comity and consent of the state wherein it wishes to extend its operations, and that state may impose such terms as it chooses as a condition of allowing it to do its business, and it is well settled that a state may impose a tax or license fee upon a foreign corporation, as a condition of allowing it to do business within its limits.

§ 250. Provincial Acts Respecting.

The several Provinces of the Dominion have now passed Acts (*a*), requiring corporations created otherwise than by, or under the authority of their own Legislatures, called in some of them, foreign companies, and in others, extra-provincial companies, and seeking to do business within the Province, to take out licenses authorizing them so to do. Some of these Acts expressly exempt companies incorporated under a Dominion Act from their requirements while others discriminate, in fees and otherwise, in favor of Dominion companies. Quebec also discriminates in favor of a Province that does not tax Quebec companies. In

(*a*) Manitoba, Cap. 28, Revised Statutes, 1902 and amendments; British Columbia, Cap. 44, 1897, and amendments; Ontario, Cap. 24, 1900; New Brunswick, Cap. 25, 1903, and amendments; Nova Scotia, Cap. 24, 1903-4; Quebec, Cap. 34, 1904; Prince Edward Island, Cap. 6, 1900; Yukon Territory, Cap. 59, 1902; Saskatchewan and Alberta, Cap. 14, 1903.

some Provinces extra-provincial companies are required to give their express consent to be sued and to appoint a resident agent or attorney for service of process, and to receive all lawful notices, before doing business.

As these extra-provincial corporations Acts are subject to constant change, it would be well for those interested in the law of any particular Province to write to the Provincial Secretary thereof, for the latest amendments and tariff of fees, before taking further steps to secure a license. The forms necessary to obtain a license in Ontario are given hereafter, and they will be found useful as precedents, with necessary alterations, in the other Provinces.

§ 251. "Doing Business" in the Province.

Questions as to what constitutes "doing or carrying on business" in the Province within the meaning of the statutes governing foreign corporations, have been frequently asked. Where a foreign corporation continuously does any substantial part of its business in the Province, however little, it is within the statute. It certainly does business in the Province if it has an office and sells goods there. And where the provision was against "doing any business in this Province" without complying with the specified conditions, a single act of its ordinary business brings it within the statute.

The question whether these statutes apply to sales by travelling salesmen has arisen, and it has been provided by the Acts that taking orders for or buying or selling goods, wares and merchandise by travellers, or by correspondence, if the corporation has no resident agent or representative, and no office or place of business in the Province shall not be deemed a carrying on of business within the meaning of the Act. In some of the Provinces, however, special Acts dealing with commercial travellers have been passed.

The prosecution or defence of an action is not doing business in the state, within the meaning of such acts.

Wherever a foreign corporation has, within the domestic jurisdiction, the power to enter into a given contract it has the same right of action to enforce the performance of that contract, or recover damages for its breach, which is afforded by the laws of such state to domestic persons or corporations.

§ 252. Actions against Foreign Corporations.

Foreign corporations may be sued through their agents in any Province into which they migrate, and wherein they do business and are served by an authorized agent.

CHAPTER XXII.

GOOD-WILL.

§ 253. Definition of—

Good-will is defined as being "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity or reputation for skill or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices, and is nothing but the chance of being able to keep the business which has been established; the sale of a mere chance which vests in the purchaser nothing but the possibility that a preference that has usually been extended may continue" (*a*).

Another writer defines good-will as follows: "every large concern has an asset on its books known as 'good-will.' This asset is over and above the value of the stock and machinery and bills receivable. It is intangible, there is nothing to show for it; but it is a most valuable something and highly prized, and it is nothing more nor less than the value in dollars and cents of the cumulative effect of the advertising of that establishment."

§ 254. Good-will is Property.

Though, perhaps, somewhat uncertain in its nature, good-will is a property, and whether it is to be treated as real or personal property depends upon the facts of the particular case, and especially on the nature of the property (if any) to which it is attached.

(*a*) A. & E. Ency. of Law.

Where a governing statute provides that no stock shall be issued for less than its par value, and except for money, labor done, or property actually received for the use and lawful purposes of the company, it has been held that the good-will of a business is property for which stock of the company may be lawfully issued.

CHAPTER XXIII.

CORPORATE CHEQUES.

§ 255. Definition.

A cheque is a bill of exchange drawn on a bank payable on demand.

§ 256. Usage by Companies, etc.

The practice of making payment by cheque is daily growing—the giving of a cheque instead of cash. It has the following advantages:—1. Saves time in counting. 2. Saves any risk in miscounting. 3. Saves from liability of loss of money by theft or robbery. 4. When a cheque is returned to drawer after it is paid, it is the best voucher or receipt or evidence of payment one can have. Millions of dollars change hands daily in the cities without the cash being handled and without risk.

Many companies lay down the rule that every payment be made by cheque. They deposit all their receipts of Cash, Cheques, Bank Drafts, Post-Office Orders, etc., daily, in the name of the company. A much closer watch can be put on the cashier or confidential clerk when no payments are made except by the bank. The officers of the company always have the cancelled cheque as a receipt for their payment.

(*a*) *Negotiability.* Cheques like bills of exchange, are subject to the same laws and conditions of indorsement and transfer as bills of exchange. Banks usually have their blank forms printed payable to *bearer*, as they wish to avoid the responsibility of paying to the wrong payee. Most business men change the word bearer to order, before signing. It is not safe to do business with cheques payable to bearer, as should one be dropped or mislaid it is negotiable as a bank note, and may pass into the hands of an innocent

holder for value, and be paid by the bank and be lost to the proper holder.

(*b*) *Presentment within Reasonable Time.* When a cheque is given in payment of a debt, it is not intended by the drawer that the payee keep it six months or a year before collecting it. It should be presented within a reasonable time. In determining reasonable time, regard must be had to the custom at the place, and to special circumstances of the case.

The English rule, followed in Canada, is:—

1. If the person who receives a cheque and the bank on whom it is drawn are in the same place, the cheque must, in the absence of special circumstances, be presented for payment on the day after it is received.

2. If the person who receives a cheque and the banker on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it.

3. In computing time, non-business days must be excluded, and when a cheque is crossed any delay caused by presenting the cheque pursuant to the crossing is excused.

(*c*) *Certified Cheque.* Is a cheque to which the cashier of a bank certifies in writing as to the genuineness of the signature of the drawer, and that he has funds on deposit sufficient to meet it, the bank reserving the amount certified, and regarding it as having been already paid, and therefore unavailable for other use. Certified cheques are charged to the drawer's account simultaneously with their certification

CHAPTER XXIV.

EMPLOYES SHARING PROFITS.

§ 257. Advantages of.

The practice of giving employes of companies a share of the profits, is one that does not yet prevail to any great extent in Canada.

In Great Britain where the sharing of profits with employes is a common occurrence, it has been found, at any rate in some cases, that giving such an interest conduces to the success of the business, and tends to prevent strikes and discontent. The following paragraphs from Palmer's Manual of Company Law shew how this is accomplished.

§ 258. Various Plans for.

1. Let the company determine that at the end of each year a percentage of the profits shall be divided amongst its employes in accordance with some particular scheme. The distribution may be in proportion to the wages drawn by the employes, or they may be divided into classes, and some classes given a larger proportion than others.

2. Creates a series of employes' shares with special rights and conditions, *e.g.*, a right to a certain percentage of the profits of each year, or of the profits after paying a fixed dividend, and either with or without the right of voting. Generally speaking, it is not considered desirable to give employes a right of voting, and the objection to this plan is that an employe who leaves the concern retains his shares. At any rate, there is considerable difficulty in providing for their being taken away from him.

3. Another plan which is commonly adopted in private companies, is for the principal shareholders to place some of their paid-up shares in trust, and then issue to selected employes participation certificates, each giving a right to

dividend on the corresponding share or shares, the right to be personal and to be subject to various conditions, amongst others that if the employe ceases to be employed the certificate must be returned. This plan has been adopted with considerable success in several cases.

4. Another plan which has been worked with singular success in more than one case is as follows:—Make regulations as to bonus accounts, under which an account will be opened with selected employes, the amount in each case to be fixed, and the account to be kept on the footing that the amount is to be regarded as a loan by the company to the employe at the rate of 5 per cent. per annum, and a reloan by each employe to the company at a rate equal to the annual profits, and so that all the profit credited is to go in reduction of the loan and interest. This constitutes a sort of savings fund for the employe, and when it amounts to the sum fixed he is at liberty to draw it out. In the meantime, it is considered in the nature of a gratuity, and accordingly if he strikes or acts wrongly he will not obtain the benefit of the account.

CHAPTER XXV.

TAXATION OF COMPANIES—SECURITY BONDS.

§ 259. Taxation of Companies.

Municipalities do not assess the capital stock of incorporated companies, but their plant, real estate and goods are liable to assessment, and in some of the Provinces a business license is also required.

In the Provinces where a "business assessment" is levied on mercantile, manufacturing or other business firms, it does not include the real estate occupied.

A person liable to assessment in respect to the business is not liable to assessment for income or dividend derived from such business.

Although shares in a company are not assessable, the dividends from such shares are assessable in the municipality in which the head office or chief place of business is situate.

Shareholders are liable to an income tax on dividends derived from their stock in a company having its chief place of business within that municipality, if such dividends amount to more than the income the statutes of such province exempt from taxation.

§ 260. Bonds Required from Managers, Cashiers, Treasurers, Etc., Etc.

There has grown up in recent years in business practices in our cities a custom which has the force of law, that illustrates the value of character in young men seeking employment in important positions. It is estimated that about 25 per cent. of those holding what are called office positions, such as managers, cashiers and bookkeepers, are obliged to give bonds for the safe handling of moneys entrusted to their care, and the various companies Acts pro-

vide that the directors may make by-laws regulating the amount of these bonds. In former days it was the custom for persons obliged to give such bonds to secure as bondsmen personal friends, but the custom has become almost obsolete and bonds are now signed by companies making that a business, and charging a specific rate per thousand for the security they give. Such guarantee companies fully investigate the reputations of persons applying for their signature, and an applicant must have a good record in order to secure the bond, without which the desired position cannot be obtained.

There is another side to the question of security furnished by a guarantee company which appeals to employers. If any shortage or defalcation occurs the guarantee company usually undertakes the duty of collecting the amount from the delinquent and unless the amount be very large saves the employer not only from the loss but from the disagreeable duty of pursuing the individual and collecting the debt.

Some banks and other financial institutions have themselves established a fund guaranteeing the fidelity, etc., of their employees. This fund is created and maintained by deductions made from the employees' salary, and supplemented by occasional contributions by the directorate from the profits of the institution.

PART II.

STATUTORY PROVISIONS OF THE DOMINION OF CANADA AND OF THE PROVINCES THEREOF,

RELATING TO

JOINT STOCK COMPANIES; TOGETHER WITH INSTRUCTIONS FOR PROCURING LETTERS PATENT THEREUNDER.

ONTARIO LEGISLATION.

Recent Changes.

By the new Companies Act, Chapter 34, 7 Edward VII, assented to 20th April, 1907, the various Acts in force in Ontario, relating to domestic companies were consolidated, amended or repealed.

A table of the several Acts repealed thereby will be found as Schedule E to the Act.

General Remarks.

The Provincial Secretary's Department is designated by section 132 as the Department through which the issue of letters patent, supplementary letters patent and licenses under the Act shall take place. Parties having business to transact with that Department will save time and trouble by paying attention to the following directions.

All communications on official business should be addressed to

The Honourable
The Provincial Secretary.
Toronto.

and the postage must be prepaid. Letters marked O. H. M. S. are usually sent to the Dead Letter Office.

The forwarding of any paper should always be accompanied by a letter, each letter should be confined to one subject, the post office address and date should be given, and the signature distinctly written.

It is particularly recommended that reference should be made to the law, where accessible, before writing on any subject to the Department, in order to avoid unnecessary explanations and useless loss of time and labour.

Blank forms of Petition, Memorandum of Agreement, and affidavits, for use in the *incorporation* of Companies

only, may be obtained upon application to the Provincial Secretary's Department, Parliament Buildings, Toronto, Canada.

It must be remembered that the better papers are executed, the sooner the work is dispatched at the office. Petitions and documents prepared upon paper of a size larger than foolscap will be returned, as they cannot be conveniently fyled away in the Departmental fyle cases.

The Ontario Companies Act, section 132, declares that no steps shall be taken in the Department towards the issue of any letters patent or supplementary letters patent *until all fees* therefor have been duly paid. Cash remittances must be made by registered letter, or they are at the risk of the sender. Post office orders, accepted bank cheques and drafts must be drawn payable *to the order* of the Provincial Treasurer, Toronto, Ontario. Cheques not "marked" are liable to be returned.

The following rules are published for the guidance of advertisers in *The Ontario Gazette*:

Parties sending advertisements to be inserted in *The Ontario Gazette* must observe the following rules:

1st. Address, *The Ontario Gazette*, Toronto.

2nd. The *Gazette* is published every Saturday and all advertisements must reach the office before Friday noon, and none will be received later, for the week's issue.

3rd. Write advertisements plainly and state number of times to be inserted.

4th. No advertisements will be inserted unless accompanied by amount of fees. All cheques must be payable at par in Toronto.

5th. Subscription price of *The Ontario Gazette* is $4.00 per annum, invariably in advance, and at expiration of time paid for, it will be stopped without notice.

RATES OF ADVERTISING.

(*a*) Meeting of Companies or Change of Name, one insertion	$2 00
Each additional insertion	50
(*b*) Applications for Letters Patent, four insertions.....	10 00

6th. One copy of the *Gazette* will be sent each week the advertisement appears, and will be included in bill of charges. Extra copies, 10 cents each.

L. K. CAMERON,
King's Printer.

Office of King's Printer.
Toronto, January, 1907.

CHAPTER XXXIV.

7 Edw. VII., 1907.

An Act respecting Joint Stock and other Companies.

Assented to 20th April, 1907.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Companies Act.* R.S.O. 1897, c. 191, s. 1. Short title.

2.—(*a*) the word "corporation" in this Act includes all companies, whether with or without capital, and whether the capital thereof is divided into shares or not.

(*b*) The word "company" in this Act means only a company having a capital divided into shares.

PART I.

INCORPORATION, RE-INCORPORATION, AMALGAMATION.

3. The Lieutenant-Governor may, by Letters Patent grant a charter to any number of persons, not less than five, of the age of twenty-one years, who petition therefor, constituting such persons and any others who have or may thereafter become subscribers to the memorandum of agreement hereinafter referred to, a body corporate and politic with or without capital divided into shares, for any of the Corporations formed for certain purposes may be incorporated by letters patent.

NOTE.—Where important changes have been made by this Act, notes have been appended to the various sections showing the reasons therefor and the extent of the change. References are also made to many decided cases, and they are added to the sections to which they refer.

purposes to which the authority of the Legislature of Ontario extends, except the construction or working of railways for public use within Ontario, the business of insurance, and of loan corporations within the meaning of *The Loan Corporations Act*. R.S.O. 1897, c. 191, s. 9, *amended*.

This section changes the mode of issue of letters patent. Under the former Act an Order in Council was required. Here only an order of the Lieutenant-Governor, on recommendation of the Provincial Secretary.

The words "within Ontario" are retained in this section, because they appear to have been added by special amendment. The Act may not directly authorize any act without the Province, and the construction of railways for public use within the Province is covered by the *Railway Act*. This section authorizes a company to construct and operate railways for its own use on lands owned or controlled by the company.

The power hereby given is entirely discretionary. Although all the requirements of the law have been complied with, the charter may be refused. There is no absolute right to claim the grant of letters patent.

An application for the incorporation of a company under the name of "Ontario Free Thought Printing and Publishing Company" was refused.

It was pointed out to the applicants "that the expression 'Free Thought' is one used technically to signify unbelief in Christianity. The natural inference from the name is that the intended company's newspaper the 'Freethought Journal' has for its object the propagation of what is otherwise known as infidel opinions, hostile to Christianity, which is part of the law of the land. * * * * The Legislature not having hitherto sanctioned the incorporation of any Company or Society, known or considered to be in opposition to Christianity, no such company can be incorporated by His Honour the Lieutenant-Governor under the Letters Patent Act."

When the charter is granted it is on the express condition that it may be revoked by the Lieutenant-Governor in Council on sufficient grounds being shown, such as fraud, continued mismanagement, engaging in improper objects or works, and generally such conduct as may be deemed injurious to the public interest. All charters are subject to revocation, and until recently it was the practice to insert in the letters patent, a clause expressing this fact. See page 255 for instances of forfeiture.

Patterson v. Turner, 3 O. L. R. 373; Rielle v. Reid, 28 O. R. 497 26 A. R. 54.

The British North America Act provides that the Legislature of Ontario may exclusively make laws in relation to matters coming within the following classes of subjects:

Sec. 92, subsec. 10. Local works and undertakings other than such as are of the following classes:

(*a*) Lines of steam or other ships, Railways, Canals, Telegraphs and other works and undertakings connecting the Provinces or extending beyond the limits of the Province;

(*b*) Lines of steamships between the Province and any British or foreign country;

(*c*) Such works as although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of two or more of the Provinces.

Sub-sec. 11. The incorporation of companies with provincial objects.

Sub-sec. 16. Generally all matters of a merely local or private nature in the Province.

4.—(1) The applicants for incorporation of a company with capital divided into shares, may petition the Lieutenant-Governor, through the Provincial Secretary, for the grant of Letters Patent. The petition of the applicants shall show: Petition for incorporation.

This section relates only to companies with share capital.

No conditions as to any of the applicants or future shareholders or directors being residents of the Province of Ontario are imposed by this or any other section of the Act. Letters patent are issued to applicants living all over the world.

While there must be at least five petitioners for the letters patent, it is undesirable that the number of applicants be large, as this causes difficulty in the preparation of the papers.

For a complete statement of the procedure for incorporation, see page 44. chapter V. *Ante*.

There must be a formal petition duly executed.

There must be a Memorandum of Agreement and Stock Book duly executed, *in duplicate*, with, at least, two signatures on the page or sheet containing the undertaking. Stock books made up of two sheets of paper, the one setting forth the undertaking by itself, and the other carrying all the signatures by themselves will not be accepted.

Special conditions regarding preference stock or otherwise, if any, intended to have a bearing upon the stock of the company, or the manner in which it, or any portion of it, shall or may, be subscribed for, as, for instance, where it is desired to limit the number of shares held by any one shareholder, must be inserted in the Petition and in the Memorandum of Agreement and Stock Book as material parts thereof.

(*a*) The proposed corporate name of the company; Name.

Name. The name should be as short as possible consistent with expressing generally the nature of the company. It should, if possible, indicate its object.

It must not contain the words "Loan," "Mortgage," "Trust," "Trusts," "Investment" or "Guarantee." Evidence must also be fyled showing that the corporate name of the company is not on any public ground objectionable, and that it is not that of any known company incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is carried on, or so nearly resembling the same as to deceive,

by the affidavit of one of the applicants, a resident of this Province, or by a resident attorney or agent. From the nature of the subject such affidavit cannot be positive, and should be expressed to be made to the best of the knowledge of the declarent.

It should be noted that under section 27 the use of the word "Limited," in full, is necessary where the name of the company does not contain certain words, while it may be abbreviated if these words are used.

For the use of the word "Royal" in the name of a company the permission of the Imperial Authorities is requisite.

The rule in England in regard to this subject is very strict, and permission to use the word is confined to institutions devoted to national, charitable, or scientific subjects. Its use in the names of companies has been refused by the Secretary of State at Ottawa and the Provincial Secretary, Toronto. Under the English Trade Marks' Act of 1905, clause 68, any person, who, without proper Royal authority uses in connection with any trade, business, calling or profession, the Royal arms or any similar device, emblem or title, may be restrained by injunction, or interdict from continuing so to use the same.

Where applicants for incorporation under the Ontario Companies Act, were desirous of adopting a name then in use by another company similarly incorporated, incorporation was refused, it being held that even the formal consent of the existing company would not be sufficient in the premises. The only means by which the inchoate company could prepare the way for incorporation under a name such as that already in use, would be by securing from the older company a surrender of its charter, or at any rate a change of name, under circumstances which would not conflict with the interests of the public; that is, that creditors and others interested in the existing company would not be deceived.

Where, however, a company incorporated under other laws, and doing business outside of Ontario, consents to the use of its name by a proposed Ontario company, incorporation may be had, as for instance, Armour's Limited, a company incorporated under the law of the State of New Jersey, authorized the use of its name by a company organized to do a similar business in Ontario.

Object.

(*b*) The objects for which the company is to be incorporated:

Object. This may be any object within the legislative authority of the Legislature of Ontario except the construction and working of railways for public use in Ontario, the business of insurance and the business of loan and other companies under the Loan Companies Act. The definition of the powers sought should be clear and concise. It is now contrary to the policy of the government to grant a company power to carry on more than one business under one charter; it is therefore the practice of the Department so to limit them, unless a special case is shown for allowing a plurality of objects connected with one another.

Land Companies Powers. Having regard to the existence of The Ontario Companies Act and The Loan Corporations Act, and to the necessity for arriving at some distinct understanding as to

what powers shall be given under these Acts respectively, it has been decided that any land company seeking incorporation shall be asked to take its powers in the following language:—

"To purchase, lease, take in exchange or otherwise acquire lands or interests therein together with any buildings or structures that may be on the said lands or any of them, and to sell, lease exchange, mortgage or otherwise dispose of the whole or any portion of the lands and all or any of the buildings or structures that are now or may hereafter be erected thereon, and to take or hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to otherwise improve, alter and manage the said lands and buildings; provided, however, except as to taking and holding mortgages as aforesaid, nothing herein contained shall be deemed to empower the company to make loans whether for building purposes or not upon lands not the property of the company, or upon land which though once the property of the company has by any deed, conveyance, transfer or alienation become the property of another."

If a mining company is to be a No-Personal Liability Company, the applicants must add the necessary words to that effect to the prayer of their petition bringing it under Part XI.

(*c*) The place within Ontario where the head office of the company is to be situated; Head office.

Head Office. This may, or may not, be at the same place as that at, or from, which the operations of the company are to be carried on, thus, a company carrying on its operations in the District of Algoma may have its *chief place of business* (*i.e.*, head office) in the City of Toronto.

The provisions of subsection (*c*) do not now refer to the place where the books of account are to be kept, and special provisions in this respect are set out in section 114. This is rendered more necessary on account of the section which enables a company to hold its meetings out of the Province.

(*d*) The amount of the capital of the company, the number of shares and the amount of each share; Capital. Shares.

(*e*) The name in full, the place of residence and the calling of each of the applicants. Names of applicants.

In giving the calling of the applicants do not use the descriptive word "Clerk," as that description is one reserved for clerks in Holy Orders.

(*f*) The names of the applicants, not less than three, who are to be the provisional directors of the company. Directors.

Former subsection (*g*) is slightly changed in subsection (*f*). There was a difference of opinion in interpreting the former act whether the number of directors should be the same as the number of provisional directors. It is arbitrary and to avoid confusion the number is made the same by section 79. While provision is made under section 86 for changing the number of directors, it will save this trouble and expense if the desired number of the regular board is stated in the petition.

The directors must be shareholders, owning stock absolutely in their own right. The Provisional Directors are the committee who manage the company's affairs up to the time of the first general meeting of the shareholders, when a Board of Directors is elected.

Signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by statutory declaration, or by affidavit by persons who are not petitioners, or directly interested in the formation of the company.

Signatures by attorney must be made under a specific, not general, power, duly executed.

In case it is desired to hold meetings without the Province, add the following:—

That your petitioners require that the letters patent authorize the said company to hold all or any meetings of directors or shareholders, either within or without the Province of Ontario.

The petition should bear a date even with, or subsequent to, the latest date found in the company's stock book.

The papers of application for letters patent may be executed beyond the Province of Ontario. Blank Forms of Petition, Memorandum of Agreement, and affidavits *only*, may be obtained on application to the Provincial Secretary's Department, Toronto.

Form of petition.

(2) The petition may be in the form or to the effect set out in Schedule "A" to this Act, and shall be accompanied by a memorandum of agreement, executed in duplicate in the form or to the effect set out in Schedule "B" to this Act.

Memo. of agreement.

Petitioners to be *bona fide* holders of shares.

(3) Each petitioner shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement.

Each of the persons, five or more, who sign the petition for incorporation must state the number of shares he agrees to take in the first instance, but he may subsequently increase his holding to any extent.

Females may subscribe as well as males. An unmarried woman should describe herself as "Spinster" or by her occupation if she has one such as "Milliner" or "Cashier;" a married woman as "Married Woman."

Re Collingwood Dry Dock Co. 20 Ont. 107; *re* Whitehead, 1900, 1 Ch. 814.

Petition may pray for insertion of special clauses.

(4) The petition may ask to have embodied in the letters patent any provision which, under this Act might be embodied in any by-law of the company when incorporated. R.S.O., c. 191, s. 10, *amended*.

For examples of such provisions see Forms 296 to 340, *post*.

Petition for incorporation without share capital.

5.—(1) The applicants for the incorporation of a corporation not having share capital may petition the Lieutenant-Governor through the Provincial Secretary for the

Grant of Letters Patent. The petition of the applicants shall show:

(*a*) The proposed corporate name of the corporation;

(*b*) The objects for which the corporation is to be incorporated;

(*c*) The place within Ontario where its objects are to be carried out;

(*d*) The name in full, the place of residence and the calling of each of the applicants;

Form of petition.

(2) The petition may be in the form or to the effect set out in Schedule "C" to this Act.

Memorandum of agreement.

(3) The petition shall be accompanied by a memorandum of agreement signed by the petitioners setting out such regulations as may be deemed expedient—(1) for the selection of members, trustees, directors and officers; (2) for the holding of meetings of members, trustees and directors; (3) for the establishment of branches; (4) for the payment of directors, trustees, officers and employees; (5) for the control and management of the affairs of the corporation. The memorandum shall be expressed in separate paragraphs numbered consecutively, and may be in the form or to the effect set out in Schedule "D" to this Act, and the petitioners may adopt all or any of its provisions or substitute others in lieu thereof.

This section is new. It provides for the incorporation of companies and associations which were formerly incorporated under *The Act respecting Benevolent, Provident and other Societies*, and it is submitted that companies formerly incorporated under *The Act respecting Cheese and Butter Manufacturing Associations and Companies* and *The Act respecting Co-operative Associations* may be more readily incorporated under this section. Many of the sections of this Act relate to companies without share capital as well as those with shares—for instance, Part II. relating to names of companies; Part V, relating to debentures, Part IX, relating to books, inspection and auditors. The memorandum of agreement in each particular case should supplement the parts of the Act mentioned in respect of meetings, directors and their duties, etc. It is intended that incorporation under this section should be at a reduced fee, and that forms of the memorandum should be prepared by the Provincial Secretary's Department for distribution to persons proposing to incorporate Butter and Cheese Companies and Co-operative Associations. This section will facilitate the in-

corporation of many charitable, scientific and other companies which formerly required a special Act of the Legislature.

Change of name or terms of application.

6. The Lieutenant-Governor on any application for Letters Patent or Supplementary Letters Patent may give a different name to the corporation than that proposed and may vary the objects or other provisions or terms. *New.*

This section is based upon section 14 of the former Act, and extends its scope to applications for Supplementary Letters Patent and other changes than those formerly provided for, which in the practice of the Department are considered advisable.

Creation of capital of corporation without share capital.

7. Any corporation without share capital heretofore or hereafter incorporated upon the consent in writing of all the members of such corporation, may by by-law provide for the creation of a capital divided into shares and may provide for the allotment and payment of such shares and fix and prescribe the rights and privileges of the shareholders therein; Provided, however, that no such by-law shall be valid until confirmed by letters patent. *New.*

This section is new and its object is apparent. Heretofore many companies without gain for their object were incorporated on an undertaking that any profit would be utilized to further the objects of the company. In many cases it was found necessary to obtain supplementary letters patent to relieve the company of this undertaking and enable it to distribute profits to its members. Both transactions appear anomalous, and may more logically be performed under the provisions of section 5 and this section.

Amalgamation of corporations.

8.—(1) Any two or more corporations incorporated under the laws of this Province, and having the same or similar objects within the scope of this Act, may, in the manner herein provided, amalgamate, and may enter into all contracts and agreements necessary to such amalgamation.

Joint agreement between directors proposing to amalgamate, etc.

(2) The corporations proposing to amalgamate as aforesaid, may enter into a joint agreement (1) for the amalgamation, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names, callings, and places of residence of the first directors thereof, and how and when the subsequent directors shall be elected, with such other details as may

(1) See Form No. 218.

be necessary to perfect the amalgamation and the subsequent management and working thereof, and in cases of companies having capital divided into shares the number of shares of the capital, the amount of par value of each share, and the manner of converting the share capital of each of the said corporations into that of the new corporation.

To be submitted to shareholders or members of each corporation.

(3) The agreement shall be submitted to the shareholders or members of each of the said corporations at a general meeting thereof, called for the purpose of taking the same into consideration.

(4) At such meetings of the shareholders or members the agreement shall be considered, and if two-thirds of the votes of all the shareholders or members of each of such corporations are for the adoption of the agreement, then that fact shall be certified upon the agreement by the secretary of each of such corporations under the corporate seal thereof; thereupon the several corporations by their joint petition (1) may, through the Provincial Secretary, apply to the Lieutenant-Governor for Letters Patent confirming the said agreement, and on and from the date of the said Letters Patent the said corporations shall be deemed and taken to be amalgamated and to form one corporation by the name in the Letters Patent provided, and the corporation so incorporated, shall possess all the properties, real, personal and mixed, rights, privileges and franchises and be subject to all the liabilities, contracts, disabilities and duties of each of the corporations so amalgamated. R.S.O., c. 191, s. 103, ss. 1, 2, 3, 4.

Re-incorporation of corporation.

9. Any corporation incorporated for purposes or objects within the scope of this Act, whether under a special or general Act, and being at the time of its application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor may grant

(1) See Form No. 219.

Letters Patent incorporating the shareholders or members of the said corporation as a corporation under this Act. R.S.O., c. 191, s. 104—1, *in part*.

Extension of powers on re-incorporation.

10. Where an existing corporation applies for the issue of Letters Patent under the provisions of the preceding section, the Lieutenant-Governor may, by Letters Patent, extend the powers of the corporation to such other objects as the applicant desires, name the first directors of the new corporation, and give to the new corporation the name of the old corporation or any other name. R.S.O., c. 191, s. 105.

Rights of creditors preserved.

11. All rights of creditors against the property, rights and assets of a corporation amalgamated or re-incorporated under the provisions of this Act, and all liens upon the property, rights and assets of such corporation, shall be unimpaired by such amalgamation, or re-incorporation, and all debts, contracts, liabilities and duties of such corporations shall thenceforth attach to the amalgamated or re-incorporated corporation and may be enforced against it to the same extent as if the said debts, contracts, liabilities and duties had been incurred or contracted by it. R.S.O., c. 191, s. 103, ss. 6.

No action to abate.

12. No action or proceeding shall abate or be affected by such amalgamation or re-incorporation, but for all the purposes of such action or proceeding, such corporation may be deemed still to exist, or the new corporation may be substituted in such action or proceeding in the place thereof. R.S.O., c. 191, s. 103, ss. 7.

Supplementary letters patent for certain purposes.

13. Any corporation may from time to time pass by-laws by a vote of not less than two-thirds in value of those shareholders or members present in person or by proxy at a general meeting of the corporation duly called for considering the subject of such by-laws authorizing an application by petition (1) to the Lieutenant-Governor, to direct

(1) Form 236, *post*.

the issue of Supplementary Letters Patent to the corporation, embracing any or all of the following matters:

(*a*) Increasing or decreasing the capital; provided, however, that the capital of a company shall not be increased until ninety per centum thereof has been subscribed and ten per centum paid thereon, and further provided, that on a reduction of the capital of a company the liability of shareholders to persons who at the time of such reduction are creditors of the company shall remain as though the reduction had not been made. Varying capital stock.

(*b*) Redividing the capital of the company into shares of smaller or larger amount; Re-dividing shares.

(*c*) Extending the powers of the corporation to any objects which the corporation may desire; Extending powers.

This does not empower companies to obtain supplementary letters patent for objects totally different from those set out in the original charter. There must be some degree of similarity in the new objects as compared with the former. For instance, a company known as The London Creamery Company could not by supplementary letters and under the same name acquire the right to do a mining business.

(*d*) Limiting or increasing the amount which the corporation may borrow upon debentures or otherwise; Limiting borrowing power.

(*e*) Varying any provision contained in the special Act or Letters Patent incorporating the corporation; Amending charter.

(*f*) Making provision for any other matter or thing in respect of which provision might have been made had the corporation been incorporated under this Act. R.S.O., c. 191, s. 17-21, 102, 106. Making other provisions.

It is here endeavored to include in one section all amendments of letters patent by supplementary letters patent. In the former Act, sections 17-21 inclusive, and sections 102 and 106, provided for such changes. It is not intended that there should be any change in these sections. The section makes it clear that a vote of two-thirds of the shareholders present at a meeting called for that purpose may confirm the by-law. All such changes are made by by-law.

ALTERATION OF CAPITAL STOCK.

1. Each application must be by a formal petition, signed by the executive officers of the company and passed under its common seal.

2. The petition must set forth the corporate name, the date of incorporation, the nominal capital of the company, and other material facts, and show that the company is not in arrear in making its annual returns.

(*a*) If it be in respect of a reduction of capital, the petition must show that the reduced amount is sufficient for the due carrying out of the undertaking of the company and advisable, and the *bona fide* character of the decrease of capital thereby provided for;

(*b*) If it be in respect of a re-division of the existing shares, the petition must explain the reason why such re-division is, in the opinion of the company, necessary and desirable, and

(*c*) If it be in respect of the increase of the capital of the company, the petition must make it clear, (1) That at least ninety per centum of the capital stock of the company has been subscribed and ten per centum thereon paid in; (2) That the by-law has been lawfully passed by the directors and sanctioned by a vote of not less than two-thirds in value of those shareholders present at a general meeting of the company *duly called* for considering the by-law; (3) That the capital of the company is insufficient for the purposes of the company, and (4) That the proposed increase is considered by the company to be requisite for the due carrying out of its undertaking.

3. The par value of new stock must be the same as that of the old stock, unless the old shares are being expressly and at the same time redivided.

4. The facts in the petition contained must be verified by affidavit to be made by the President and Secretary of the Company.

5. The signatures to the petition and the impression of the seal must be verified by affidavit.

6. With the petition, the company must produce the original by-law, duly completed, and must, by affidavit, establish to the satisfaction of the Provincial Secretary the due passage and sanction of the by-law and the *bona fide* character of the increase or decrease thereby provided for.

7. With the original by-law must be transmitted a copy thereof duly certified as such under the seal of the company.

The by-law merely increases the nominal amount of the capital—*i.e.*, it creates the shares; but, of course, the subscribed capital is not increased unless somebody takes and pays for the new shares.

FORMS TO INCREASE THE CAPITAL STOCK.

By-law providing for increase	Form No. 229
Affidavit verifying same and proving sanctioning thereof	" 230
By-laws of company regulating calling of general meetings	" 231
Affidavit verifying same	" 232
Affidavit proving due calling, under the by-laws, of general meeting	" 233
Petition for Supplementary Letters Patent	" 236
Affidavit verifying signatures to petition	" 237
Affidavit respecting *bona fide* character of increase	" 238

In case the by-laws do not provide for calling meetings, add the following:—

Notice in local newspaper calling general meeting	Form No. 234
Notice in *Ontario Gazette* calling general meeting	" 234
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed and verifying notice in local paper and *Ontario Gazette*	" 235

Directors have no power to pass a by-law directing the repeal of a by-law, passed at the annual general meeting of the company, prescribing the manner in which, upon the increase of the capital of a company, the new shares should be allotted and providing for the allotment of the shares by themselves (*a*).

TO DECREASE THE CAPITAL STOCK, OR RE-DIVIDE THE SHARES.

By-law for reducing	Form No. 239

The other forms required are the same as those necessary for increasing the capital, and those given for that purpose may be adapted.

Preliminary conditions to be established.

14. Before Letters Patent or Supplementary Letters Patent are issued the applicants shall establish to the satisfaction of the Provincial Secretary the sufficiency of the petition, memorandum of agreement, by-law, resolution and all documents fyled on such application, and shall furnish such evidence of the *bona fide* of any application as he may deem necessary. R.S.O., c. 191, s. 12.

This is old section 12, extended so as to embrace all applications whether for letters patent or supplementary letters patent.

(*a*) Stephenson v. Vokes, 27 Ont. R. 691.

Proofs of matters under this Act.

15.—(1) The Provincial Secretary, or any officer to whom the application may be referred, may for any purpose under this Act, take evidence in writing, under oath or affirmation.

(2) Proof of any matter which may be necessary to be made under this Act, may be made by statutory declaration, affidavit, or deposition before the Provincial Secretary, or officer as aforesaid, or before any other person authorized to take affidavits (1). R.S.O., c. 191, s. 13.

Notice of issuing letters patent.

16. Notice of the granting of Letters Patent or Supplementary Letters Patent, shall be given forthwith by the Provincial Secretary in the *Ontario Gazette*, and the corporation shall be deemed to be existing from the date of the Letters Patent incorporating the same. R.S.O., c. 191, s. 15.

This notice is inserted in the *Gazette* without charge to the applicants.

Powers incident to company.

17. A company having share capital shall possess the following powers as incidental and ancillary to the powers set out in the Letters Patent or Supplementary Letters Patent:—

(*a*) To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;

(1) Fees for affidavits.

The following fees are usually charged for taking affidavits in Ontario:

Notaries are entitled to $1. This includes oath, certificate and seal. If the notary draws the affidavit he can charge also for it. Commissioners are entitled to twenty cents, unless in cases where the statute specially states that they are entitled to twenty-five cents. This charge generally includes the preparing of the affidavit. Justices of the Peace are entitled to twenty-five cents. This includes the drawing up of the affidavit; they are, however, entitled to this amount even if they do not draw the affidavit.

(*b*) To acquire or undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company;

(*c*) To apply for, purchase or otherwise acquire, any patents, licenses, concessions and the like, conferring any exclusive or non-exclusive, or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account the property, rights or information so acquired;

(*d*) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same;

(*e*) To take, or otherwise acquire and hold, shares in any other company having objects altogether or in part similar to those of the company or

carrying on any business capable of being conducted so as directly or indirectly to benefit the company;

(*f*) To enter into any arrangements with any authorities, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, and to obtain from any such authority any rights, privileges and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

(*g*) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employes or ex-employes of the company (or its predecessors in business) or the dependants or connections, of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;

(*h*) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company;

(*i*) To purchase, take on lease or in exchange, hire or otherwise acquire, any personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any machinery, plant, stock-in-trade;

(*j*) To construct, improve, maintain, work, manage, carry out or control any roads, ways, tram-

ways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;

(*k*) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons;

(*l*) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments;

(*m*) To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company;

(*n*) To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;

(*o*) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;

(*p*) To do all or any of the above things as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;

(*q*) To do all such other things as are incidental or conducive to the attainment of the above objects;

Provided, however, that the powers set out in any or all of the foregoing paragraphs may be withheld by the Letters Patent or Supplementary Letters Patent.

The Ontario Companies Acts have differed from the English Acts in this respect, that under the latter Acts it was held that a company could transact only such business as was referred to in the Memorandum of Association, while under the Ontario Acts large incidental and subsidiary powers were expressly given, vid. old section 25. The practice under the English Act was to set out the objects of incorporation most extensively, and Ontario practitioners in most applications considered that the incidental objects of old section 25 were not sufficient and followed English precedents. In many cases all of Palmer's common forms were set out in full. In practice this has become very cumbersome, and it has been thought advisable to set out all these forms in the Act and provide that any or all of them may be excepted.

In considering the objects of incorporation due weight should be given to the following English cases:—Haven Gold Mining Co. 20, C. D. 151; German Date Co. 20, Chy. D. 169. Crown Bank 44, Ch. D. 634; Amalgamated Syndicate, 1897, 2 Ch. 600. Stephens v. Mysore Reef Co., 1902, 1 Ch. 745, and Pedlar v. Road Block Co., 1905, 2 Ch. 427, the result of which is that a company may carry on the businesses referred to in various sections, only when it is carrying on that which is referred to in the first section, which has been considered its main object.

In many cases the applicants may not desire that all the provisions of this section should apply to the proposed company. For instance, (*m*) may be objectionable because the consent of all shareholders may be deemed necessary for the sale of the undertaking. To provide for such cases the letters patent may except any, or all of the provisions of this section.

Incidental powers.

18. Any corporation incorporated under this Act shall have power—

Seal.

(*a*) To alter or change its common seal at pleasure. R.S.O., c. 191, 25 (*a*);

Buildings, etc.

(*b*) To construct, maintain and alter any buildings or works necessary or convenient for the purposes of the corporation. R.S.O., c. 191, 25 (*d*):

Real estate.

(*c*) To acquire by purchase, lease or other title and to hold, use, sell, alienate and convey any real

estate necessary for the carrying on of its undertaking, and the corporation shall, upon its incorporation, become and be invested with all the property and rights, real and personal theretofore held by or for it under any trust created with a view to its incorporation. R.S.O., c. 191, s. 25 (*g*).

Ritchie v. Vermillion Mining Co., 1 O. L. R. 654, 4 O. L. R. 588.

Restrictions to holding real estate.

19. Unless other special statutory enactments apply, no parcel of land or interest therein at any time acquired by the corporation and not required for its actual use and occupation or not held by way of security, or not situate within the limits or within one mile of the limits of any city or town, shall be held by the corporation or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, or after it has ceased to be required for the ordinary purposes of the corporation, but shall be absolutely sold and disposed of, so that the corporation shall no longer retain any interest therein unless by way of security; and any such parcel of land or any interest therein not within the exceptions hereinbefore mentioned, held by the corporation for a longer period than seven years, without being disposed of, shall be forfeited to His Majesty for the use of this Province; provided that the Lieutenant-Governor may extend the said period from time to time not exceeding in the whole twelve years; and further provided that no such forfeiture shall take effect or be enforced until the expiration of at least six calendar months after notice in writing to the corporation of the intention of His Majesty to claim such forfeiture, and during such six months the corporation may dispose of the same; and it shall be the duty of the corporation to give the Lieutenant-Governor, when required, a full and correct statement of all lands at the date of such statement held by or in trust for the corporation. R.S.O., c. 191, s. 25, *in part*.

Where an Ontario company held land for more than seven years which was not required for its actual use and occupation,

and which was not sold in consequence of the inability of the company to make a sale thereof, it became forfeited to the Crown. Upon the company having an opportunity of selling the land it applied for a release of the Crown's interest therein, and upon consideration of the facts of the case, letters patent were issued in 1894, waiving the forfeiture of the land, subject, however, to the condition of its sale within two years.

Certain informalities not to invalidate letters patent, etc.

20. The provisions of this Act relating to matters preliminary to the issue of the Letters Patent or Supplementary Letters Patent shall be deemed to be directory only; and no Letters Patent or Supplementary Letters Patent, notice, order or other proceeding by or on behalf of the Lieutenant-Governor, Provincial Secretary or other Government or Departmental officer under this Act shall be held to be void or voidable on account of any irregularity, or otherwise in respect of any matter preliminary to the issue of the Letters Patent or Supplementary Letters Patent, notice, order or other proceeding or of any alterations in any petition or documents submitted in order to make them comply with this Act or with the departmental practice thereunder. R.S.O., c. 191, s. 96.

Forfeiture of charter for non-user.

21. If a corporation incorporated by Letters Patent does not go into actual operation within two years after incorporation or for two consecutive years does not use its corporate powers, such powers, except so far as is necessary for the winding up of the corporation, shall be forfeited, and its name in whole or in part may be granted to another corporation, and in any action or proceeding where such non-user is alleged, proof of user shall lie upon the corporation, provided, however, that no such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of such forfeiture. R.S.O., c. 191, s. 98.

Revocation of charter.

22. The Letters Patent by which a corporation is incorporated and any Supplementary Letters Patent amending or varying the same, may, at any time, be declared to be forfeited and may be revoked and made void by an Order of the Lieutenant-Governor on sufficient cause being shown in that behalf, and such forfeiture, revocation and making

void may be upon such conditions and subject to such provisions as to the Lieutenant-Governor may seem proper. R.S.O., c. 191, s. 99.

For instances of revocation of letters patent, see page 255.

Company with less than five members.

23. If a corporation exercises its corporate powers when the number of its shareholders or members is less than five, for a period of six months after the number has been so reduced, every person who is a shareholder or member of the corporation during the time that it so exercised its corporate powers after such period of six months and is cognizant of the fact that it is so exercising its corporate powers with less than five shareholders or members, shall be severally liable for the payment of the whole of the debts of the corporation contracted during such time and may be sued for the same without the joinder in the action or suit of the corporation or of any other shareholder or member, but any shareholder or member who has become aware that the corporation is exercising its corporate powers when the number of its shareholders or members is less than five, may serve a protest in writing on the corporation and may by registered letter notify the Provincial Secretary of such protest having been served and of the facts upon which it is based and such shareholder or member may thereby and not otherwise from the date of his said protest and notification exonerate himself from liability, and if after notice from the Provincial Secretary, the corporation refuses or neglects to bring the number of its shareholders or members up to five such refusal or neglect may upon the report of the Provincial Secretary, be regarded by the Lieutenant-Governor as sufficient cause for the revocation of the charter of the corporation. R.S.O., c. 191, s. 100.

See remarks in Chapter V as to this section.

Surrender of charter.

24. The charter of a corporation incorporated by letters patent may be surrendered if the corporation proves to the satisfaction of the Lieutenant-Governor:—

(*a*) That it has no debts existing or other rights in question; or,

(*b*) That it has parted with its property, divided its assets rateably amongst its shareholders or members and has no debts or liabilities; or,

(*c*) That the debts and obligations of the corporation have been duly provided for or protected or that the creditors of the corporation or other persons holding them consent;

(*d*) And that the corporation has given notice of the application for leave to surrender by publishing the same once in the *Ontario Gazette* and once in a newspaper published at or as near as may be to the place where the corporation has its head office, or if it be without share capital where its operations are carried on;

And the Lieutenant-Governor upon a due compliance with the provisions of this section, may accept the charter and direct its cancellation, and may, by his Order, fix a date upon and from which the corporation shall be deemed to be dissolved, and the corporation shall thereby and thereupon become dissolved accordingly. R.S.O., c. 191, s 101.

Charters are surrendered under various circumstances, such as where the company has parted with its assets; where it has been burned out, and the mortgagee has taken possession; or where it has disposed of its assets and the cash is divided amongst its shareholders.

The application must be by a formal petition, see Form 252, signed by the executive officers of the company and passed under the company's seal. The petition should set forth the material facts, such as the incorporation of the company, etc., etc., and should specify clearly the grounds upon which the company feels that it is justified in making the application under the provisions above referred to, and should show that the company has authorized the making of the application. The contents of the petition must be verified by affidavit, see Form 253, to be made by one or more persons conversant with the affairs of the company. A verified statement, see Form 254, of the affairs of the company should also be filed with the petition, as well as documentary evidence that notice of the intention of the company to apply for leave to surrender its charter has, in the form of an advertisement, been

inserted once in the *Ontario Gazette*, see Form 255, and once in a newspaper published at, or as near as may be the place where the corporation has its head office, or if it be without share capital, where its operations are carried on.

The date upon which the dissolution of the company is to take effect should also be specified in the petition.

The charter itself must be transmitted in order that it may ultimately have endorsed upon it the fact that its surrender has been accepted by the Lieutenant-Governor, and that it may be officially cancelled and deposited in the office of the Deputy Provincial Registrar.

End of existence of corporations.

25. The corporate existence of a corporation incorporated otherwise than by Letters Patent may be terminated by order of the Lieutenant-Governor upon petition therefor by such corporation under like circumstances, in like manner and with like effect as a corporation incorporated by Letters Patent may surrender its charter.

Regulations by Lieutenant-Governor-in Council.

26. The Lieutenant-Governor-in-Council may, from time to time, make regulations with respect to the following matters, namely:—

(*a*) The cases in which notice of application for Letters Patent or Supplementary Letters Patent under this Act must be given;

Under the practice of the Department no notice is now required if the applicants are able to swear that no public or private interest will be prejudicially affected by their incorporation.

(*b*) The forms of Letters Patent, Supplementary Letters Patent, notices and other instruments and documents relating to applications and other proceedings under this Act;

(*c*) The form and manner of the giving of any notice required by this Act;

and such regulations shall be published in the *Ontario Gazette*. R.S.O., c. 191, s. 11.

Where notice is required under any section of this Act, the notes thereunder indicate the Departmental requirements as to place and number of insertions of such notices.

PART II.

NAME OF CORPORATION.

Use of word "Limited."

27.—(1) The corporate name of every company with share capital shall have the word "Limited" as the last word thereof.

(2) Wherever the company or any director, manager, officer or employee thereof uses the name of the company, the word "Limited" shall appear as the last word thereof; Provided, that stamping, writing, printing, or otherwise marking on goods, wares and merchandise of the company, or upon packages containing the same shall not be deemed to be within the provisions of this section: Provided also that where the word "company," "club," "association" or other equivalent word forms part of the said name the word "Limited" may be abbreviated to "Ltd." or "Ld."

In old section 23 as amended by 63 Vic. c. 23, s. 3, an enumeration of all places where the name of a company may be used was set out and the word "limited" directed to be there used. In drafting that section the canon of construction "where you particularize you limit" appears to have been overlooked. It appears simpler and more to the point to say that wherever the name is used the word "limited" shall appear, and this section does so.

Penalty.

(3) Every company and every director, manager, officer or other employee making default in complying with the foregoing provisions of this section shall be liable upon summary conviction to a penalty not exceeding ten dollars for each and every offence: Provided, that the offender upon a subsequent conviction for a similar offence committed after such first conviction shall be liable upon summary conviction to a penalty not exceeding one hundred dollars.

Proviso.

Limitation of prosecutions.

(4) The prosecution or proceeding to recover a penalty for an offence against the foregoing provisions of this section shall be commenced within six months after the offence has been committed and not afterwards. 63 Vic. c. 23, s. 3 .

Name to be free from objection.

28. The name of every corporation shall not on any public ground be objectionable and shall not be that of any known corporation or association incorporated or unincorporated, or of any partnership or of any individual or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting corporation, association, partnership, individual or person may consent that its or his name, in whole or in part, be granted to a new corporation incorporated for the purpose of acquiring its or his business or promoting its objects. R.S.O., c. 191, s. 10 (*a*).

This is the second part of old section 10 (*a*) with this change—Under the section referred to, a firm, individual or corporation could consent to its name being used without limitation—under this section such name may be used only by a corporation taking over the undertaking of the individual, firm or company.

Failure to make annual returns.

29. The name of a corporation which has not, for three consecutive years, made the annual summary prescribed by this Act, may be given in whole or in part to a new corporation, unless the defaulting corporation, on notice by the Provincial Secretary by registered letter addressed to the corporation or its president as shown by its last return, proves to the satisfaction of the Lieutenant-Governor that it is still a subsisting corporation; provided, that if at the end of one month from the date of such notice, the Provincial Secretary shall not have received from the corporation or its president response to such notice, the corporation may be deemed to be not a subsisting corporation, and no longer entitled to the sole use of its corporate name; and further provided, that when no annual summary has been fyled by a corporation for three years immediately following its incorporation its name may be given to another corporation without notice and such corporation shall be deemed not to be subsisting. 1 Edw. VII., c. 18, s. 3.

Change of name if objectionable.

30. In case it is made to appear to the satisfaction of the Lieutenant-Governor that any corporation is incor-

porated under a name the same as, or so similar to that of an existing corporation, company, partnership, association, individual, or business as to deceive, the Lieutenant-Governor may by Order, change the name of the corporation. R.S.O., c. 191, s. 24.

Applications to Lieutenant-Governor to change names of companies.

31.—(1) Where a corporation is desirous of changing its name, the Lieutenant-Governor, upon being satisfied that the corporation is in a solvent condition, and that the change desired is not for any improper purpose, and is not otherwise objectionable, may by Order change the name of the corporation. R.S.O., c. 215, s. 1.

In case proposed name is objectionable.

(2) In case the proposed name is considered objectionable, the Lieutenant-Governor may change the name of the corporation to some unobjectionable name. R.S.O., c. 215, s. 3.

The application must be by the formal petition of the executive officers of the company, passed under the company's common seal, addressed to the Lieutenant-Governor setting forth the facts, and stating:

1. That the company is desirous of changing its name from..... to.....

2. That the company is in a solvent condition;

3. That the change desired is not for any improper purpose and is not otherwise objectionable;

4. That the new name is not that of any known company incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive and

5. That the company has authorized the making of the application.

These facts should be verified by affidavit.

Evidence of the solvency of the company must consist of a sworn copy of the last balance sheet or other sufficient statement of the affairs of the company, prepared by some responsible person conversant with its business. The statement should, with reasonable detail, show the nature, character and value of the company's assets, and the character of its liabilities. If more than a month or so has elapsed since the preparation of the statement, the affidavit verifying its contents must, if such be the case, show that the position of the company has not materially changed since the statement was prepared.

The fee to be paid by a company for an Order changing its name is $25.

FORMS FOR CHANGING THE NAME OF A COMPANY.

Resolution authorizing application	Form No.	245
Petition for change of name	"	246
Affidavit verifying same	"	248
Affidavit verifying signatures to petition	"	247
Evidence of company's solvency	"	249
Affidavit verifying Balance Sheet	"	250

Notice of change.

32. Notice of the change of the name of a corporation shall be given by the Provincial Secretary by publication in the *Ontario Gazette*. *New.*

This notice is given without charge to the applicants.

Change not to affect rights or obligations.

33. No such alteration of the name of a corporation shall affect the rights or obligations of the corporation; and all proceedings that might have been continued or commenced by or against the corporation by its former name may be continued or commenced by or against the corporation by its new name.

PART III.

MEETINGS OF COMPANY.

First meeting.

34.—(1) The provisional directors of a company not offering shares for public subscription, shall call a general meeting of the company to be held at a convenient place within two months from the date of the Letters Patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat.

Report at first meeting.

(2) The provisional directors shall report to such meeting the number of shares subscribed or underwritten; the

names of the subscribers or underwriters; the amount paid thereon; all contracts entered into by or on behalf of the company; the amount of the preliminary expenses and a financial statement of the affairs of the company signed by the auditors (if any). *New.*

Shareholders may call.

(3) If the said meeting is not called by the provisional directors as aforesaid; any three or more shareholders of the company may call the meeting. R.S.O., c. 191, s. 16, *amended.*

(1) This is old section 16, subsection 1, changed as follows: The last clause is incorporated in an appropriate place in the section and the words "for the purpose of organizing the company for the commencement of business" are made more definite.

(2) This subsection is new. It will enable the shareholders to see the state of organization, the shares subscribed and the contracts, if any, made by the provisional directors.

A statutory meeting of companies offering shares for public subscription is provided by section 111.

Notice of meeting.

35. In default of other express provisions in such behalf in the special Act the Letters Patent or by-laws of the company, notice of the time and place for holding general meetings of the company, including the annual and special meetings shall be given at least ten days previously thereto by registered letter to each shareholder at his last known address, and by an advertisement in some newspaper published at or as near as may be to the head office and to the chief place of business of the company, if these differ, or in the *Ontario Gazette.* R.S.O., c. 191, s. 50, *amended.*

Allen v. Gold Reefs, 1900, 1 Ch. 656.

Annual meeting.

36.—(1) The annual meeting of the shareholders of the company shall be held at such time and place in each year as the Special Act, Letters Patent, or by-laws of the company may provide, and in default of such provisions in that behalf the annual meeting shall be held at the place named in the Letters Patent as the place of the head office of the company, on the fourth Wednesday in January in every year.

(2) At such meeting the directors shall lay before the company,

(*a*) A balance sheet made up to a date not more than three months before such annual meeting;

(*b*) A statement of income and expenditure for the financial period ending upon the date of such balance sheet;

(*c*) The report of the auditor or auditors;

(*d*) Such further information respecting the company's financial position as the Letters Patent or the by-laws of the company may require;

and, on resolution affirmed by shareholders holding at least five per centum of the capital of the company, shall furnish a copy thereof to every shareholder personally present at such meeting and demanding the same.

(3) The balance sheet [1] shall be drawn up so as to distinguish at least the following classes of assets and liabilities, namely:—

(*a*) Cash;

(*b*) Debts owing to the company from its customers;

(*c*) Debts owing to the company from its directors, officers and shareholders;

(*d*) Stock in trade;

(*e*) Expenditures made on account of future business;

(*f*) Land, buildings and plant;

(*g*) Goodwill, franchises, patents and copyrights, trademarks, leases, contracts and licenses;

(*h*) Debts owing by the company secured by mortgage or other lien upon the property of the company;

(*i*) Debts owing by the company but not secured;

(*k*) Amount received on common shares;

(1) See Form 225, *post*.

(*l*) Amount received on preferred shares;

(*m*) Indirect and contingent liabilties.

(*New.*)

This is old section 51 largely extended. As the Act stood there did not appear to be any section requiring the directors to make a report of the financial state of the company to the shareholders. This section provides for a balance sheet of the company's affairs being produced and on resolution distributed to such of the shareholders as ask for it. The items of this balance sheet are such as will enable a shareholder to intelligently understand the affairs of the company and such as may prevent directors from covering up the accounts so as to mislead shareholders.

Special meetings.

37. The directors may and upon a requisition (2) made in writing by the holders of not less than one-tenth of the subscribed shares of the company shall, convene a special general meeting of the company, to transact the business set out in the notice calling such meeting. R.S.O., c. 191, s. 52, *amended.*

Directors to call meeting.

38. Upon the receipt of such requisition, which shall set out the objects for which such meeting is proposed to be called and shall be left at the head office of the company, the directors shall forthwith proceed to convene a special general meeting. If they do not cause the same to be held within twenty-one days from date upon which the requisition was left at the head office of the company, any shareholders, holding not less than one-tenth in value of the subscribed shares of the company whether they signed the requisition or not, may themselves convene such special general meeting. R.S.O. 1897, c. 191, ss. 53, 54.

Old sections 56 and 57 are omitted. They provided for a quorum. It is questionable whether such is necessary. If all shareholders have notice, as is provided, the business of the company should go on. Provisions for a quorum more often lead to obstruction than good business.

In *re* State of Wyoming Syndicate, 1901, 2 Ch. 431.

Presiding officer.

39. The president of the company shall preside as chairman at every general meeting of the company; if there is

(2) See Form 290.

no president or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman. R.S.O., c. 191, ss. 58, 59.

Chairman to be elected when necessary.

40. The chairman may with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn any meeting from time to time and from place to place. R.S.O., c. 191, s. 60.

Adjournment by consent.

41. At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried and an entry to that effect in the proceedings of the company, shall be *prima facie* evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. R.S.O. c. 191, s. 61.

Procedure as to resolution.

42. If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and in case the by-laws make no provision therefor, then as the chairman may direct. In the case of an equality of votes, at any general meeting, the chairman shall be entitled to a second or casting vote. R.S.O., c. 191, s. 62.

Taking vote when poll is demanded.

43. Subject to the Special Act, Letters Patent or by-laws of the company, at all general meetings of the company every shareholder shall be entitled to as many votes as he holds shares in the company, and may vote by proxy, but no shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the company. R.S.O., c. 191, s. 63, 64, *amended*.

Votes.

Shareholders in arrear not to vote.

This is old sections 63, 64 run together with the addition that the provisions of the section may be qualified by the Special Act, letters patent or by-law. The object of this is to enable the provisions for preferred or deferred shares to be extended to exclude the holders of such shares from any control of the company while their dividends are paid. Under the old Act preferred shares might have any advantage over ordinary shares, but they could not be limited in any respect.

Place of meetings.

44. All meetings of the shareholders and directors shall be held at the place of the head office of the company, save and except when the company is authorized by the Special Acts, Letters Patent or Supplementary Letters Patent, to hold meetings of shareholders or directors out of Ontario.

This section is new in that it provides that meetings of companies must be held at the place of the head office. This appears necessary. It also provides for meetings being held out of the Province.

Application of part.

45. This part of the Act shall apply only to companies having share capital. *New.*

PART IV.

SHARES, CALLS.

Share certificate.

46. Every shareholder shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all. *New.*

There was no provision in the old Act for the issue of share certificates or receipts for calls.

Lost certificate.

47. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity as the directors think fit. *New.*

Shares personal estate.

48. The shares of the company shall be deemed personal estate and shall be transferable on the books of the company, in such manner and subject to such conditions and restrictions as by this Act, the special Act, the Letters Patent or by-laws of the company may be prescribed. R.S.O., c. 191, s. 27.

49. No shareholder of a co-operative cold storage company or association to which aid has been or may hereafter be granted under the provisions of any statute in that behalf, or of a cheese and butter manufacturing company carried on for co-operative purposes, shall hold shares exceeding $1,000.

Directors may refuse transfer of shares in certain cases.

50. The directors may refuse to allow the entry in any such books, of any transfer of shares whereof the whole amount has not been paid in; and whenever entry is made in such book of any transfer of shares not fully paid in, to a person being of apparently not sufficient means, the directors present when such entry is authorized shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such entry, would have been; but if any director present, when such entry is allowed, forthwith enters a written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from such liability. R.S.O., c. 191, s. 28.

Their liability if they allow transfers to persons without means.

Re Imperial Starch Co., 10 O. L. R. 22.
Re Paton and Cramp Steel Co., 9 O. L. R. 3.

51. The directors, upon the passing of a by-law authorizing the payment of a dividend upon shares of the company, may direct that no entry of transfers shall be made in the books of the company for a period of two weeks immediately preceding the payment of such dividend and payment thereof shall be made to the shareholders of record on the date of closing said books. *New.*

Transfer valid only after entry.

52. No transfer of shares unless made by sale under execution, or under the order or judgment of some competent court in that behalf, shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto toward

each other, and as rendering the transferee liable, *ad interim*, jointly and severally with the transferor, to the company and its creditors, until entry thereof has been duly made in the books of the company. R.S.O., c. 191, s. 29.

Muton v. Cowan, 25 Ont., 529; Smith v. Walkerville, 23 A. R. 95.

Re McKain and Canadian Birkbeck Investment Co., 7 O. L. R. 241.

Transferor may be notified.

53.—(1) The directors may, for the purpose of notifying the person or persons registered therein as owners of such shares, refuse to allow the entry in any such books of a transfer of shares.

Owner may lodge caveat.

(2) Such owner may lodge a caveat against the entry of such transfer, and thereupon such transfer shall not be made for a period of forty-eight hours.

Transfer may be entered if no order served.

(3) If within one week from the giving of such notice or the expiration of the said period of forty-eight hours, whichever shall last expire, no order shall have been served upon the company enjoining the entry of such transfer, the company may enter the same.

Company not to be liable if section complied with.

(4) When a transfer is entered after the proceedings heretofore set out the company shall be free from liability in respect of shares so transferred to a person whose rights are purported to be transferred but without prejudice to any claim which the transferor may have against the transferee. *New.*

Restrictions as to transfers.

54. No shares shall be transferable until all previous calls have been fully paid in, or until declared forfeited for non-payment of calls. R.S.O., c. 191, s. 30.

Calling in instalments.

55. The directors of the company may call in and demand from the shareholders thereof, the amount unpaid on shares by them subscribed or held, at such times and places and in such payments or instalments as the Letters Patent or this Act, or the by-laws of the company require

or allow; and interest shall accrue at the legal rate for the time being upon the amount of any unpaid call, from the day appointed for payment of such call. R.S.O., c. 191, s. 32.

Forfeiture of shares.

56. If, after a demand therefor, any call is not paid within the time and in the manner provided by the Special Act or Letters Patent or by-laws the directors by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of, as by by-law or otherwise the company may ordain: provided that such forfeiture shall not relieve any shareholder of any liability to the company or any creditor. R.S.O., c. 191, s. 35, *amended.*

This is old section 35 with slight changes. The word "such" is struck out of the first line. The demand does not appear to have been mentioned in a prior section. The section, as it stood, appeared to imply that express provisions should be made for the demand of payment. It was thought better to leave the demand such as would ordinarily be made in case of a debt due on demand, and provide that the payment is due according to the provisions therefor in by-law, etc.

Sections 57-65, inclusive, following are new and are taken from the *Imperial Companies Act, 1867*. The main object of sections is to enable a company to issue a kind of security which is probably the most important dealt in on the European Exchanges. This kind of security is particularly popular in France with small investors and the French law enables share certificates to be easily dealt with. There is no change from the Imperial Act except where the necessities of our Act demand verbal changes.

Issue of share warrants.

57. A company if authorized so to do by Letters Patent or Supplementary Letters Patent and subject to the provisions thereof, may, with respect to any share which is fully paid up, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares included in such warrant, hereinafter referred to as a share warrant.

Holders of share warrants.

58. A share warrant shall entitle the bearer of such warrant to the shares specified in it and such shares may be transferred by the delivery of the share warrant.

Surrender of share warrants.

59. The bearer of a share warrant shall, subject to the provisions and regulations contained in the Letters Patent or Supplementary Letters Patent, respecting share warrants, be entitled on surrendering such warrant for cancellation, to have his name entered as a shareholder in the register of shareholders, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of shareholders the name of any bearer of a share warrant in respect of the shares specified therein without the share warrant being surrendered and cancelled.

Holders of share warrants not to be deemed shareholders for certain purposes.

60. The bearer of a share warrant may, if the regulations respecting share warrants so provide, be deemed to be a shareholder of the company, either to the full extent or for such purposes as may be prescribed by such regulations; provided, that the bearer of a share warrant shall not be qualified in respect of the shares specified in such warrant for being a director of the company in cases where such a qualification is prescribed by the by-laws of the company.

Entries in register where share warrant issued.

61. On the issue of a share warrant in respect of any share, the company shall strike out of its register of shareholders the name of the shareholder then entered therein as holding such share as if he had ceased to be a shareholder, and shall enter in the register the following particulars:—

(1) The fact of the issue of the warrant;

(2) The statement of the shares included in the warrant, distinguishing each share by its number;

(3) The date of issue of the warrant.

Entries of share warrants.

62. Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are re-

quired by section 113 of this Act, to be entered in the register of shareholders of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a shareholder.

Deposit of share warrants

63. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor.

Holders of share warrants not to sign requisition for meetings.

64. Subject as herein otherwise expressly provided no person shall, as a bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company; or be entitled to receive any notices from the company but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

Lost share warrant.

65. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Trusts.

66. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive,

in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt. R.S.O., c. 191, s. 31.

Trustees, etc., may vote.

67.—(1) Every executor, administrator, guardian or trustee shall represent the shares in his hands, at all meetings of the company and may vote accordingly as a shareholder, and every person who mortgages or hypothecates his shares may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder, unless in the instrument creating the mortgage or hypothecation he shall have expressly empowered the holder of such mortgage or hypothecation to vote thereon in which case only such holder or his proxy may vote in respect of said shares. R.S.O., c. 191, s. 36.

Mortgagor of stock may vote.

This is old section 36 with this change: Under that section the pledgor alone could vote on hypothecated shares. Here it is provided that the document of pledge may empower the pledgee to vote.

Joint holders of stock.

(2) If shares be held jointly by two or more persons, any one of them present at a meeting may, in the absence of the other or others, vote thereon, but if more than one joint shareholder be present or be represented by proxy, they shall vote together on the shares jointly held. R.S.O., cap. 191, s. 36.

Liability of shareholders.

68. Each shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, but not beyond the amount so unpaid on his said shares, shall be the amount

recoverable, with costs, against such shareholder. R.S.O., c. 191, s. 37, ss. 1.

Shaver v. Cotton, 23 A. R. 226.

Set-off.

69. Any shareholder may plead by way of defence in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the company. R.S.O., c. 191, s. 37, ss. 2.

Shareholders not liable beyond unpaid amount.

70. The shareholders shall not, as such, be held responsible for any act, default or liability whatsoever, of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the company, beyond the unpaid amount on their respective shares. R.S.O., c. 191, s. 37, ss. 3.

Re Wiarton Beet Sugar Mfg. Co., 10 O. L. R. 219.

Trustees not personally liable.

71. No person holding shares as executor, administrator, guardian or trustee, shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate or the minor, ward, or person, interested in the trust fund, would be, if living and competent to act and holding such shares. R.S.O., cap. 191, s. 38.

Mortgagees.

72. No person holding shares as collateral security shall, prior to foreclosure, be personally subject to liability as a shareholder, but the person transferring such shares as collateral security shall, until foreclosed, be considered as holding the same, and shall be liable as a shareholder in respect thereof. R.S.O., c. 191, s. 39.

PART V.

PREFERENCE AND DEBENTURE STOCK, DEBENTURES AND MORTGAGES.

This part of the Act is mainly new. In it is recast old section 22 relating to the issue and redemption of preference shares

and section 49 relating to the issue of bonds and debentures. There was no provision in the old Act for the issue of debenture stock or the conversion of preference shares into common shares or debentures. This had to be done by the incorporation of a new company or other devious methods. The provision of section 22 that preference shares might be issued on a unanimous vote or on a three-fourths vote, on confirmation by supplementary letters patent, is changed so that preference shares may be issued on a two-third vote. In any case the by-law must be confirmed by supplementary letters patent under section 13 (*f*).

Section 75 modifies very largely the terms upon which preference shares may be issued. Under old section 22, while preference shares might be given rights beyond common shares, they could not be limited in any respect. It was in fact questioned whether the dividend on preferred shares could be restricted when larger dividends were paid on common shares. Preference shareholders could not be restricted in voting powers, when their dividends were promptly paid. This part provides that preference shares may be limited in any respect provided that the limitation is fully set out in the share certificates.

Borrowing powers. Debentures.

73. The directors of a corporation may make by-laws:—

(*a*) For borrowing money;

(*b*) For issuing bonds, debentures or other securities.

Ponton v. Ontario L. & D. Co., 22 Ont. 597.

Preference shares.

And the directors of companies with share capital may make by-laws:—

(1) For creating and issuing any part of the capital as preference shares.

See instructions for drafting clauses as to preference shares, *post*.

Debenture stock.

(2) For creating and issuing debenture stock.

Conversion of preference shares

(3) For the conversion of preference shares into common shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class. R.S.O., c. 191, s. 49.

Sanction of by-law.

74. No by-law referred to in the last preceding section shall take effect until it has been confirmed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a general meeting of the company, duly called for considering the same, by notice specifying the terms of the by-law to be confirmed or unani-

mously sanctioned in writing by the shareholders of the company. *New.*

Terms of issue of preference shares.

75. A by-law for the creation and issue of preference shares or for the conversion of debentures or debenture stock into preference shares may provide that the holders of such shares shall have such preference as regards dividends and repayment on dissolution or winding-up as may be therein set out; may have the right to select a certain stated proportion of the board of directors, or such other control over the affairs of the company as may be considered expedient; or may limit the right of the holders thereof to specific dividends or control of the affairs of the company or otherwise, not contrary to law or to this Act, and may provide for the purchase or redemption of such shares by the company as therein set out; provided, however, that any term or provision of such by-law, whereby the rights of holders of such shares are limited or restricted, shall be fully set out in the certificate of such shares, and in the event of such limitations and restrictions not being so set out they shall not be deemed to qualify the rights of holders thereof. *New.*

Consent of holders to redemption.

76. Unless preference shares, debenture stock, debentures or bonds are issued subject to redemption or conversion, the same shall not be subject to redemption or conversion without the consent of the holders thereof. *New.*

Supplementary letters patent in certain cases.

77. No such by-law which has the effect of increasing or decreasing the capital of the company or otherwise varying any term or provision of the special Act or Letters Patent of the company shall be valid or acted upon until confirmed by Supplementary Letters Patent. *New.*

Mortgages to secure debentures, etc.

78. The directors may charge, hypothecate, mortgage, or pledge any or all of the real or personal property, rights and powers, undertaking, franchises, including book debts

and unpaid calls of the corporation to secure any bonds, debentures or other securities or any liability of the corporation and a duplicate original of such charge, mortgage or other instrument of hypothecation or pledge made to secure bonds, debentures or other securities, shall be forthwith fyled in the office of the Provincial Secretary as well as registered under the provisions of any other Act in that behalf. *New.*

Bank of Montreal v. Kirkpatrick, 2 O. L. R. 113.

PART VI.

DIRECTORS AND THEIR POWERS, ETC.

Provisional directors.

79. The persons named as provisional directors in the Special Act or in the Letters Patent shall be the directors of the company, until replaced by the same number of others duly elected in their stead, and shall be eligible for election. R.S.O., c. 191, s. 41.

There was some doubt whether under old section 41 the number of directors of a company should be the same as the number of provisional directors, and this is here made clear.

Board of directors.

80. The affairs of the company shall be managed by a board of not less than three directors, who shall be elected by the shareholders in general meeting of the company. R.S.O., c. 191, s. 40.

Business must be transacted by quorum of board.

81.—(1) Except as in this section provided no business of a company shall be transacted by its directors unless at a meeting of directors at which a quorum of the board shall be present. Such quorum shall consist of three directors or a majority of the directors of the company, if such majority numbers more than three.

When there is no quorum of directors—calling meeting.

(2) Whenever it shall happen that from any cause there is not a quorum of directors in office the requisition men-

tioned in section 37 of this Act may be served on such directors of the company as are still in office, and such directors, though less in number than three, or a majority of the board, may nevertheless call a meeting under section 38 for the election of directors to fill vacancies in the board, and in default of their doing so the requisitionists or other shareholders may call such meeting as in section 38 provided.

When not more than one director remains in office.

(3) This section shall not apply to a sole director remaining in office. If there be no directors remaining in office a meeting to elect directors may be called without service of any requisition.

Filling vacancies while there is a quorum.

(4) So long as a quorum of directors remains in office casual vacancies in the board may be filled by such directors as remain in office. *New.*

Executive committee.

82. The shareholders of a company, having more than six directors, may, at a general meeting called for that purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee, consisting of not less than three, to be elected by the directors from their number. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by such by-law or by the directors. 3 Edw. VII., c. 7, s. 35.

Qualifications of directors.

83. No person shall hold office as a director unless he is a shareholder absolutely in his own right, and not in arrear in respect of any call thereon, and where any person, who is a director, ceases to be a *bona fide* holder of shares, he shall thereupon cease to be a director. R.S.O., c. 191, s. 42.

Yearly elections.

84.—(1) The election of directors shall take place at the annual meeting, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election.

Ballot.

(2) Election of directors shall be by ballot, if demanded.

President and officers.

(3) The directors shall, from time to time, elect from among themselves a president of the company, and shall also appoint, and may remove at pleasure, all other officers thereof. R.S.O., c. 191, s. 43.

This is section 43 with a change in subsection 2, so that the election of directors be by ballot, if demanded.

Stephenson v. Vokes, 27 Ont., 691.

Failure to elect directors how remedied.

85. If at any time an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company duly called for that purpose; and the directors shall continue in office until their successors are duly elected. R.S.O., c. 191, s. 44.

Change by by-law of number of directors or of head office in Ontario.

86.—(1) A company may, by by-law, vary the number of its directors, but so that the number shall be not less than three, or may change the company's head office in Ontario.

By-law to be confirmed by shareholders.

(2) No by-law for either of the said purposes shall take effect until confirmed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a meeting of the company duly called for considering the same, or until a copy of the by-law, certified under the seal of the company, has been published once in the *Ontario Gazette*, and in case of the removal of the head office, twice in a newspaper published in each of the places where the head office was fixed and to where it is to be removed or as near thereto as may be. R.S.O., c. 191, s. 45.

Notice.

A copy of the company's by-law, if any, regulating the calling of general meetings and of the notice calling the meetings, duly verified, should be furnished.

Proof that the by-law was properly confirmed and that the meeting was duly called must be given by affidavit. The by-law should be confirmed by the shareholders *before* its publication or forwarding to the Provincial Secretary. A copy of the by-law certified under the company's seal and duly verified must be transmitted to the Provincial Secretary. Proof that the by-law was

published once in *The Ontario Gazette*, and in the case of change of company's head office, twice in a newspaper published in the locality in which the head office was fixed, and in the locality to which the company propose removing its head office should, in the interest of the company, and to avoid future question as to due compliance with the provision of the Act, also be furnished to the Provincial Secretary at the same time. A copy of the notice, cut from the *Gazette*, and from the local newspapers where a notice therein is required, ought to be attached to the papers.

Forms to Increase the Number of Directors.

By-law increasing the number of directors.....Form No. 241
Affidavit verifying by-law, and proving sanctioning of same ..... " 230
Notice publishing by-law in *Ontario Gazette* ..... " 242
Affidavit verifying same ..... " 243
By-laws of company regulating the calling of a general meeting ..... " 231
Affidavit verifying same ..... " 232
Affidavit proving due calling of meeting..... " 233

In case the by-laws do not provide for calling meetings, add the following:—

Notice in local newspaper calling general meeting.....Form No. 234
Notice in *Ontario Gazette* calling general meeting..... " 234
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed and verifying notice in local paper and *Ontario Gazette*... " 235

To Decrease the Number of Directors.

The same forms are necessary as for increasing, and those given above may be adapted.

Forms for Changing the Head Office.

By-law changing .....Form No. 244
Affidavit verifying by-law, and proving sanctioning of same ..... " 230
Notice publishing by-law in *Ontario Gazette* and local newspapers ..... " 242
Affidavit verifying same ..... " 243
By-laws of company regulating the calling of a general meeting ..... " 231
Affidavit verifying same..... " 232
Affidavit proving due calling of meeting..... " 233

In case the by-laws do not provide for calling meetings, add the following:—

Notice in local newspaper calling general meeting.....Form No. 234
Notice in *Ontario Gazette* calling general meeting..... " 234
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed, and verifying notice in local paper and *Ontario Gazette* " 235

By-laws.

87. The directors may, from time to time, make by-laws not contrary to law, or to the Letters Patent of the company, or to this Act, to regulate:—

Share.

(*a*) The allotment of shares; the making of calls thereon; the payment thereof; the issue and registration of certificates of shares; the forfeiture of shares for non-payment; the disposal of forfeited stock and of the proceeds thereof; the transfer of shares;

Hill's Case, 10 O. L. R. 501.

Dividends.

(*b*) The declaration and payment of dividends;

Directors' services, etc.

(*c*) The term of service, manner of selection, and the qualification of the directors;

Meetings.

(*d*) The time at which and place where the meetings of the company shall be held; the calling of meetings of the company; the requirements as to proxies; and the procedure in all things at such meetings;

Fines.

(*e*) The imposition and recovery of all penalties, and forfeitures admitting of regulation by by-law; and,

Conduct of affairs generally.

(*f*) The conduct in all other particulars of the affairs of the company;

Power to repeal, amend, etc.

And may from time to time repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company; and in default of confirmation thereat shall, at and from that time only, cease to have force; and in that case no new by-law to the same or the like effect or re-enactment thereof, shall have any force until confirmed at a general meeting of the company; provided, however, that the company shall have power either at a general meeting called as aforesaid, or at the annual meet-

Confirmation of by-laws.

ing of the company, to repeal, amend, vary or otherwise deal with any by-laws which have been passed by the directors, but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation or other dealing. R.S.O., c. 191, s. 47. By-laws may be varied.

This is old section 47 with the word "shares" substituted for stock, and the subsection (c) extended so that the qualification of the directors may be not be limited to a stock qualification. As this subsection stood there could be no provision that directors should be residents of the Province or British subjects, etc., etc.

88. No by-law for the payment of the president or any director shall be valid or acted upon until the same has been confirmed at a general meeting. 60 V. c. 28, s. 46. Payments to President or directors.

89. No director of any company shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser or otherwise, and any director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and in case he discloses the nature of his interest, and refrains from voting, he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; provided, however, that no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares or being a director in any other company with which a contract or arrangement is made or contemplated; provided, also, that this section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity. 2 Edw. VII., c. 24, s. 1. Directors not to vote on contracts in which they have a personal interest, etc. Proviso.

Not to purchase shares of any other corporations.

90. The company shall not, unless authorized by the special Act, Letters Patent or Supplementary Letters Patent, use any of its funds in the purchase of shares of any other corporation until the directors have been expressly authorized by a by-law passed by them for the purpose and confirmed by a vote of not less than two-thirds in value of those shareholders present in person or by proxy at a general meeting of the company duly called for considering the same. R.S.O., c. 191, s. 82, 1 Edw. VII., c. 18, s. 2.

Liability of directors declaring a dividend when company is insolvent, etc.

91. The directors of the company shall not declare or pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital thereof; but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability. R.S.O., c. 191, s. 83.

How a director may avoid such liability.

Stock dividends.

92. For the amount of any dividend which the directors may lawfully declare payable in money, they may declare a stock dividend and issue therefor shares of the company as fully paid or partly paid, as the case may be, or may credit the amount of such dividend on the shares of the company already issued but not fully paid and the liability of the holders of all shares mentioned in this section shall be reduced by the amount of such dividend. *New.*

No loan by company to shareholders.

93. No loan shall be made by the company to any shareholder, and if such loan is made all directors and other officers of the company making the same and in any wise assenting thereto, shall be jointly and severally liable to the company for the amount thereof, and also to third parties to the extent of such loan with legal interest, for all

debts of the company contracted from the time of the making of the loan to that of the repayment thereof. R.S.O., c. 191, s. 84.

Liability of directors for wages.

94. The directors of the company shall be jointly and severally liable to the labourers, servants, and apprentices thereof for all debts not exceeding one year's wages due for services performed for the company while they are such directors respectively; but no director shall be liable to an action therefor, unless the company has been sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors. R.S.O., c. 191, s. 85.

PART VII.

PROSPECTUS AND DIRECTORS' LIABILITY.

Sections 96 to 100 inclusive of this part are merely a re-enactment of 6 Edward VII. Cap. 27, commonly known as "Hoyle's Bill." The Act was copied almost verbatim from the Imperial Companies Act, 1900, with only such verbal changes as the different mode of incorporation required. It was attempted, however, in that Act to remedy two defects which are apparent in the English Act. That Act applied only to companies incorporated under the English Companies Act, and it was evaded by incorporating companies in the Island of Guernsey and elsewhere. This part of this Act is made applicable not only to companies incorporated under the Ontario Companies Act, but to all companies selling their shares or securities in Ontario.

See Chapter III on Prospectuses, page 11.

"Prospectus," meaning of.

95.—(1) In this Act the word "prospectus" shall mean any prospectus, notice, circular, advertisement or other invitation offering for subscription or purchase any shares debentures or other securities of a company, or published or issued for the purpose of being used to promote or aid

in the subscription or purchase of such shares, debentures or securities, and the word "company" shall mean any company incorporated or proposed to be incorporated.

application of this part.

(2) This part of this Act shall apply to every company whether formed before or after the commencement of this Act which offers for subscription or sale shares, debentures or other securities and to every company whether incorporated under the laws of the Province of Ontario or otherwise, the shares, debentures or other securities of which are dealt in within the Province of Ontario.

Commission.

96.—(1) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorized by the letters patent or supplementary letters patent and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized.

Capital not to be applied in paying commissions except as authorized.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or procuring or agreeing to procure subscriptions whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay. Brokerage may be paid.

Burrows v. Matabele, 1901, W.N. 68; 1901, 2 Ch. 23.
Dexter v. United Gold Casket, 1901, W.N. 157.
Hilder v. Dexter, 1902, A.C. 474.
Keatinge v. Paringa, 1902, W.N. 15.
Booth v. New Afrikander, 1902, W.N. 212; 1903, 1 Ch.

97.—(1) Every company heretofore or hereafter incorporated under any general or special Act, the number of shareholders of which is increased to a number greater by ten than the number of applicants for incorporation or which has its debentures or other securities held by more than ten persons, and every company incorporated otherwise than as above set out which has more than ten shareholders or holders of debentures or other securities within Ontario, shall file a prospectus in the manner hereinafter set out. What companies must file prospectus.

(2) All purchases, subscriptions or other acquisitions of shares, debentures or other securities of any company required in the manner above provided to fyle a prospectus, shall be deemed as against the company or the signatories to the prospectus to be induced by such prospectus, and any term, proviso or condition of such prospectus to the contrary shall be void.

(3) No subscription for stock, debentures or other securities, induced or obtained by verbal representations, shall be binding upon the subscriber, unless prior to his so subscribing he shall have received a copy of the prospectus.

98.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. Date of prospectus.

(2) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director or provisional director of the company, or Prospectus to be signed and filed.

by his agent authorized in writing, and shall be filed with the Provincial Secretary, on or before the date of its publication.

Not to be issued until fyled.

(3) The Provincial Secretary shall not receive or fyle any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed, and every prospectus shall state on the face of it that it has been so filed. *Imp. Act, 1900, 9.*

What to be disclosed in prospectus.

99.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company, shall state:—

Particulars as to incorporators.

(*a*) The names, descriptions and addresses of the original incorporators, and the number of shares subscribed for by them respectively;

Qualification and remuneration of directors.

(*b*) The number of shares, if any, fixed as the qualification of a director, and any provision in the by-laws of the company as to the remuneration of the directors;

Directors.

(*c*) The names, descriptions and addresses of the directors or proposed directors;

Subscription upon which allotment may proceed.

(*d*) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted;

Time of calls.

(*e*) The time or times at which under the by-laws of the company a further call or calls may be made upon shares subscribed for;

Shares and bonds allotted for other than cash consideration.

(*f*) The number and amount of shares issued, or agreed to be issued, as fully or partly paid up other-

wise than in cash, and in the latter case the extent to which they are so paid up, and the number and amount of bonds, debentures or other securities issued or to be issued and allotted to any person;

Vendors of property to company.

(*g*) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus and the amount payable in cash, shares, bonds, debentures or other securities to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;

Brookes v. Hansen, 1906, 2 Ch. 129.

Consideration for purchase.

(*h*) The amount (if any) paid or payable as purchase money in cash, shares or debentures of any such property as aforesaid, specifying the amount payable for good-will;

Commissions.

(*i*) The amount (if any) paid or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or for underwriting or procuring underwriting of any securities issued or to be issued by the company or the rate of any such commission;

Preliminary expenses.

(*j*) The amount or estimated amount of preliminary expenses;

Promoter's remuneration.

(*k*) The amount paid or intended to be paid in cash shares or debentures to any promoter and the consideration for any such payment;

Particulars as to material contracts.

(*l*) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected; provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus;

Names, etc., of auditors.

(*m*) The names and addresses of the auditors (if any) of the company;

Interest of directors in property taken by company.

(*n*) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.

"Vendor," what to include.

(2) For the purposes of this section the word "vendor" shall extend to and include a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company in any case where—

(*a*) The purchase money is not fully paid at the date of publication of the prospectus; or,

(*b*) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) The contract depends for its validity or fulfilment on the result of such issue.

When "vendor" includes "lessor."

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as

if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the rent, and the expression "sub-purchaser" included a sub-lessee.

Application of section.

(4) This section shall not apply to a circular or notice inviting existing shareholders or debenture holders of a company to subscribe for further shares or debentures; but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently; provided that—

(*a*) The requirements as to the original incorporators and the qualification, remuneration, and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date of the first general meeting, and

(*b*) In the case of a prospectus published more than one year after the date of such meeting, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

Waiver of compliance with section to be void.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

When prospectus advertised in newspaper.

(6) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the names of original incorporators and the number of shares subscribed for by them.

Penalty.

100.—(1) Every provisional director, director or other person responsible for the issue and publication of such prospectus shall for every violation of the provisions of the

next preceding three sections be liable on summary conviction to a penalty not exceeding $200 and costs, provided that no provisional director, director or other person shall incur any liability by reason of non-compliance with the said sections.

(*a*) As regards any matter not disclosed, if he was not cognizant thereof; or

(*b*) If the non-compliance arose from an honest mistake of fact on his part;

And provided that in the event of non-compliance with the requirements contained in paragraph (*n*) of subsection (1) of section 99, no director or other person shall incur any liability in respect of such non-compliance unless it is proved that he had knowledge of the matters not disclosed.

Liability under general law not affected.

(2) Nothing in this section or the said preceding three sections shall limit or diminish any liability which any person may incur under the general law apart from this Act.

Capital to be correctly stated in advertisements, etc.

101.—(1) Where any advertisement, letter head, account or document issued or published by any corporation or any officer, agent or employee, of any such corporation, purports to state the capital of the corporation, then the capital actually and in good faith subscribed and no more shall be so stated.

Penalty.

(2) Any such corporation, officer, agent or employee who causes to be inserted an advertisement or who publishes, issues or causes to be published or issued any advertisement, letter-head, account or document which states, as the capital of such corporation any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid, or which contains any false statement as to the incorporation, control, supervision, management or financial standing of such corporation shall be liable, upon summary conviction, to a penalty not exceeding $200 and costs and not less than $50 and costs.

(3) Any one may be prosecutor or complainant under this Act, and one-half of any fine imposed by virtue of this Act, shall, when received, belong to His Majesty for the use of the Province and the other half shall belong to the prosecutor or complainant. R.S.O., c. 217.

Who may prosecute—application of penalty.

102.—(1) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in, or debentures or debenture stock or other security of, a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures or debenture stock or other security on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal and of the reason therefor to be given. Imp. Act, 1906, sec. 3 (1).

Liability for statements in prospectus.

R.S.O. 1897, Cap. 216, adopted with verbal alterations, the provisions of the Imperial Companies Act of 1890. It has been thought advisable, to adhere herein more strictly to the wording of the Imperial Act. The exceptions of untrue statements made by experts, engineers, valuers or others or contained in public documents are struck out, and the directors are made responsible for all statements contained in a prospectus.

Who to be deemed a promoter.

(2) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting solely in a professional capacity for persons engaged in procuring the formation of the company.

Statements in prospectus for raising further capital.

103. Where any company, which has issued shares or debentures or other securities, shall be desirous of obtaining further capital by subscriptions for shares or debentures or other securities, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same.

Indemnity where name of person has been improperly inserted.

104. Where any such prospectus or notice as aforesaid contains the name of a person as a director of a company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus or notice was issued) and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in

respect thereof. 54 V. c. 34, s. 5; 60 V. c. 3, s. 3; c. 28, s. 95 (3). Imp. Act, 1890, 4.

Contribution from co-director.

105. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment. 54 V. c. 34, s. 6; 60 V. c. 3, s. 3; c. 28, s. 95 (4). Imp. Act, 1890, 5.

PART VIII.

COMPANIES OFFERING SHARES FOR PUBLIC SUBSCRIPTION.

This part of the Act is taken, with a few verbal alterations, from the Imperial Act of 1900, and it is aimed at a fruitful source of loss in the launching of joint stock companies.

It frequently happens that greater difficulty than was anticipated is met in selling shares, and the proceeds of sales are used for the purpose of procuring other sales, so that when the shares are disposed of there is not adequate capital to carry out the undertaking of the company. The result is that money subscribed and paid is swallowed up in preliminary expenses and litigation, and the concern is doomed to failure from want of capital, and eventually, after a miserable existence it goes into liquidation in an insolvent condition, to the loss not only of its shareholders, but of its creditors.

The object of this portion of the Act is to stop this practice by insisting upon a fixed minimum subscription which is to be set out in the prospectus, and preventing the company going to allotment or commencing its business until the subscription has been paid. As stated in section 112 it is not intended that this part of the Act shall apply unless share capital is offered to the public. It is, of course, open to the directors to fix the minimum subscription, but the public will be able to judge from the prospectus of the sufficiency of this amount, and to form some estimate of the probable success of the venture.

Restrictions on allotment. Imp. 1904, s. 4.

106.—(1) No allotment shall be made of any share capital by a company offering shares for public subscription, unless the following conditions have been complied with, namely:—

(*a*) The amount (if any) named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or,

(*b*) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of ninety days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and if any such money is not so repaid within one hundred days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the ninety days; provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part; Provided, however, that the Provincial Secretary may from time to time extend the times herein limited.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Finance and Issue Ltd. v. Canadian Produce Corporation, 1904. W.N. 175, 1905, 1 Ch. 37. Mears v. Western Canada Pulp and Paper Co., 1905, 2 Ch. 353.

Effect of irregular allotment. Imp. 1904, s. 5.

107.—(1) An allotment made by a company to an applicant in contravention of the foregoing provisions of this part of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the foregoing provisions of this part of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby; provided that proceedings to recover such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

108.—(1) A company shall not commence any business or exercise any borrowing powers unless:

(*a*) Shares held, subject to the payment of the whole amount thereof in cash, have been allotted to an amount not less in the whole than the minimum subscription; and

Restrictions on commencement of business. Imp. 1900, s. 6.

(*b*) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(*c*) There has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

Certificate that company may commence business.

(2) The Provincial Secretary may, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled; Provided, however, that upon it being shewn that such certificate was made upon any false statement or upon the withholding of any material statement, the Provincial Secretary may cancel and annul such certificate.

Contracts made before company entitled to commence business.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

Simultaneous offer of shares and debentures for subscription

(4) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

Penalty for commencing business before proper time.

(5) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding fifty dollars for every day during which the contravention continues.

In *re* Otto Electrical Manufacturing Co., 1906, W.N. 154.

Monies to be held in trust.

109. All sums received by the company or by any promoter, director, officer or agent thereof shall be held in trust by the company or such promoter, director, officer or agent until the same may be deposited in a chartered bank to the credit of the company and shall there remain in trust until the issue of the aforesaid certificate by the Provincial Secretary. *New*.

110.—(1) Whenever a company makes any allotment of its shares the company shall, within one month thereafter, file with the Provincial Secretary: Return of allotments.

(*a*) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) If default is made in complying with the requirements of this section every director, manager, secretary or other officer of the company who is, knowingly, a party to the default, shall be liable upon summary conviction to a fine not exceeding fifty dollars for every day during which the default continues. *Imp. Act, 1900, 7.* Penalty for default.

111.—(1) Every company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the shareholders of the company, which shall be called the statutory meeting. Statutory meetings.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward to every shareholder of the company a report certified by not less than two directors of the company, stating: Report to be sent to shareholders.

(*a*) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up other-

wise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) The total amount of cash received by the company in respect of such shares, distinguished as aforesaid;

(c) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;

(d) The names, addresses and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and

(e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

Report to be certified by auditors.

(3) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

Report to be fyled with the Provincial Secretary.

(4) The directors shall cause a copy of the report, certified as by this section required, to be filed with the Provincial Secretary forthwith after the sending thereof to the members of the company.

List of shareholders to be produced at meeting.

(5) The directors shall cause a list showing the names, descriptions and addresses of the shareholders of the company, and the number of shares held by them, respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the company during the continuance of the meeting.

Shareholders may discuss business of the company at meeting.

(6) The shareholders of the company present at the meeting shall be at liberty to discuss any matter relating to the

formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given may be passed.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting. Adjournments.

(8) If default is made in filing such report as aforesaid or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Court for the winding up of the company in the manner hereinafter provided in that behalf, and, upon the hearing of the petition, the Court may either direct that the company be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default. Application to Court if default made in holding meeting.

112. This part of this Act shall apply to all companies offering shares for public subscription and shall not apply to a company incorporated before the commencement of this Act. Application of this part

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PART IX.

BOOKS, INSPECTIONS AND AUDITORS.

113. The corporation shall cause the secretary, or some other officer especially charged with that duty, to keep a book or books wherein shall be kept recorded:— Record books to be kept and what to contain.

(*a*) A copy of the Letters Patent incorporating the corporation and of any Supplementary Letters

Patent issued to the corporation and if incorporated by Special Act, a copy of such Act;

(*b*) The names, alphabetically arranged, of all persons who are or have been shareholders or members of the corporation; (1)

(*c*) The post office address and calling of every such person while such shareholder or member;

(*d*) The names, post office addresses and callings of all persons who are or have been directors of the corporation, with the several dates at which each person became or ceased to be such director.

And in cases of companies having share capital—

(*e*) The number of shares held by each shareholder;

(*f*) The amounts paid in, and remaining unpaid, respectively, on the shares of each shareholder;

(*g*) The date and other particulars of all transfers of shares in their order. R.S.O., c. 191, s. 71.

Books to be kept at head office.

114. The books referred to in the preceding section as well as those referred to in section 120 shall be kept at the head office of the company within the Province, whether the company is permitted to hold its meetings out of Ontario or not. Any director, officer or employee of a company who shall remove or assist in removing such books from Ontario or who shall act contrary to the provisions of this section shall be liable on summary conviction to a penalty of $200; Provided, however, that upon necessity therefor being shewn and adequate assurance being given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary, the Lieutenant-Governor in Council may relieve any company permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as may be fit. *New.*

Proviso.

(1) For rulings of these and following books, see Forms 287, 288, 289, *post*.

115. No director, officer or servant of the corporation shall knowingly make or assist to make any untrue entry in any book or books of the company, or shall refuse or neglect to make any proper entry therein; and any person violating wilfully the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby. R.S.O. 1897, cap. 191, s. 72. Penalty for false entries.

116.—(1) If the name of any person is without sufficient cause, entered in or omitted from such book or books of the corporation, or if default is made or unnecessary delay takes place in entering in said books the fact of any person having ceased to be a shareholder or member of the corporation, the person or shareholder or member aggrieved, or any shareholder or member of the corporation, or the corporation itself may apply to a Judge of the High Court of Justice for an order that the book or books be rectified, and the Judge may either refuse such applicatin or he may make an order for the rectification of the said book or books, and may direct the corporation to pay the costs of such motion or application and any damages the party aggrieved may have sustained. The Judge may in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the said books of the corporation whether such question arises between two or more shareholders, or alleged shareholders or members, or between any shareholders or alleged shareholders or members and the corporation, and the Judge may in any such proceeding decide any question which it may be necessary or expedient to decide for the rectification of the said books. Powers of Judge as to entries in, omissions from, and rectification of books. Decision as to title.

(2) The Judge may direct an issue to be tried in which any question of law may be raised. Directing issue to be tried.

Appeal.

(3) An appeal shall lie from the decision of such Judge as if the same had been given in an action.

(4) This section shall not deprive any Court of any jurisdiction it may have. R.S.O., c. 191, s. 73.

(5) The costs of any proceeding under this section shall be in the discretion of the Judge.

Books to be open for inspection.

117. The books referred to in section 113 shall during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders, members and creditors of the corporation and their personal representatives or agents, at the head office or chief place of carrying on its undertaking, and every such shareholder, member, creditor, agent or representative, may make extracts therefrom. R.S.O., c. 191, s. 74.

It will be noted that this section only gives authority to examine the books enumerated in section 113. In some cases it would be extremely undesirable to allow a shareholder, whose interests may be opposed to those of the company, to examine all the books.

Liability for refusal to allow inspection of books.

118. Any director or officer who refuses to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall be liable upon summary conviction to a penalty of $100. R.S.O., c. 191, s. 75.

Books to be *prima facie* evidence.

119. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any action or proceeding against the corporation or against any shareholder or member. R.S.O., c. 191, s. 76.

Books of account to be kept.

120. The directors shall cause proper books of account to be kept containing full and true statements:—

(*a*) Of the financial transactions of the corporation;

(*b*) Of the assets of the corporation;

(*c*) Of the sums of money received and expended by the corporation, and the matters in respect of which such receipt or expenditure takes place; and,

(*d*) Of the credits and liabilities of the corporation; and also a book or books containing minutes of all the proceedings and votes of the corporation, or of the board of directors, respectively, and the by-laws of the corporation, duly authenticated, and such minutes, shall be verified by the signature of the president, or other presiding officer of the corporation. R.S.O., c. 191, s. 77.

False returns, etc.

121. If any person in any return, report, certificate balance-sheet or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular he shall be liable on summary conviction to imprisonment not exceeding three months, with or without hard labour, and to a fine of $100 in lieu of or in addition to such imprisonment as aforesaid. R.S.O., c. 191, s. 97.

The Court may appoint an inspector.

122.– (1) Upon an application by not less than one-fifth in value of the shareholders of a company, or one-fifth in number of the members of a corporation without share capital a Judge of the High Court of Justice may appoint an inspector to investigate the affairs and management of the corporation. Such inspector shall report thereon to the Judge, and the expense of such investigation shall, in the discretion of the Judge, be defrayed by the corporation or by the applicants, or partly by the corporation and partly by the applicants, as he may order, and he may require the applicants to give security to cover the probable cost of the investigation, and he may make rules and prescribe the manner in which and the extent to which the investigation shall be conducted; or the Judge may examine the officers or directors of the company under oath as to matters that shall come in question.

Examination by company.

(2) A corporation may by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the corporation. The inspector so appointed shall have the same powers and perform the same duties as an inspec-

Powers and duties of inspector.

tor appointed by a Judge of the High Court of Justice, and he shall make his report in such manner and to such persons as the corporation by said resolution directs.

Production of books and documents.

Examination on oath.

Penalty for non-production.

(3) It shall be the duty of all officers and agents of the corporation to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the corporation in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the corporation, he shall upon summary conviction be liable to a fine not exceeding $20, in respect of each offence. R.S.O., c. 191, s. 80.

Accounts shall be audited.

123. The accounts of the corporation shall be examined once at least in every year, and the correctness of the balance-sheet shall be ascertained by an auditor or auditors. R.S.O., c. 191, s. 87.

Under the former Act an audit of the books of the company was not obligatory unless the letters patent or by-laws of the company so required. This section makes an annual audit compulsory. This will cause no hardship, although such an audit should be made by an independent auditor, and in large undertakings this is usually done. In small companies or close corporations the audit may be made by a member, shareholder or employee.

First auditors.

124. The first auditors of the corporation may be appointed by the directors before the first meeting of the shareholders or members, and the auditors so appointed shall hold office until the first general meeting. *New.*

Appointment of auditors.

125. Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation; they shall hold office until the next annual meeting unless previously removed by a resolution of the shareholders or members in general meeting. R.S.O., c. 191, s. 88.

Auditors may be shareholders.

126. The said auditors may be shareholders or members of the corporation, but no person shall be eligible as an

auditor who is interested, otherwise than as a shareholder or member, in any transaction of the corporation, and no director or other officer of the corporation shall be eligible during his continuance in office. R.S.O., c. 191, s. 89.

Provincial Secretary may appoint.

127. If an appointment of auditors is not made at an annual meeting, the Provincial Secretary may, on the application of any member or shareholder of the corporation, appoint an auditor of the corporation for the current year, and fix the remuneration (if any) to be paid to him by the corporation for his services. *New.*

This section is new and provides for the appointment of auditors by the Provincial Secretary where the corporation neglects or refuses to do so. There is a similar provision in the English Companies Act whereby under similar circumstances auditors are appointed by the Board of Trade.

Directors may fill vacancies.

128. The directors of a corporation may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act, and any auditor shall be eligible for reappointment. *New.* Imp. Act, 1900, c. 21, ss. 5.

Remuneration of auditors.

129. The remuneration of the auditors of a corporation shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors. *New.* Imp. Act, 1900, s. 22.

Rights and duties of auditors.

130. Every auditor of a corporation shall have the right of access at all times to the books, accounts and vouchers of the corporation, and shall be entitled to require from the directors and officers of the corporation such information and explanation as may be necessary for the performance of his duties, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not their requirements as auditors have been complied with and shall make a report to the shareholders or members on the accounts examined by them, and on every balance sheet laid before the corporation in general meeting dur-

ing their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the corporation's affairs as shown by the books of the corporation; and such report shall be read before the corporation in general meeting.

Newton v. Birmingham Small Arms Co., 1906, W.N. 146.

PART X.

RETURNS AND FEES.

Annual summary of the affairs of the company.

131.—(1) The corporation shall, on or before the first day of February in every year, make out a summary, (*a*) verified as hereinafter required, containing as of the thirty-first day of December preceding, correctly stated, the following particulars:—

Contents of summary.

(*a*) The corporate name of the corporation;

(*b*) The manner in which the corporation is incorporated, whether by special Act, or by Letters Patent, and the date thereof;

(*c*) The name, residence and post office address of the president, secretary, and treasurer of the corporation;

(*d*) The name, residence and post office address of each of the directors of the corporation;

(*e*) The date upon which the last annual meeting of the corporation was held;

(*a*) Due care should be taken in the preparation of these returns. In a case reported in 30 Ontario Reports, 547, a list of shareholders transmitted to the Provincial Secretary contained the name of a person as holding a certain amount of stock, while in the list posted up in the head office of the company the shareholder's name was inadvertently deleted:—

Held, that the lists were not duplicates and that the company was liable to a penalty under the Act.

In case of companies having share capital in addition—

(*f*) The place of the head office, giving street and number when possible;

(*g*) The amount of the capital of the company and the number of shares into which it is divided;

(*h*) The number of shares subscribed for and allotted;

(*i*) The number of shares (if any) issued fully paid as consideration for any transfer of assets, good will or otherwise; if none is so issued, this fact to be stated;

(*j*) The amount of calls made on each share;

(*k*) The total amount of calls received;

(*l*) The total amount of shares forfeited;

(*m*) The total amount of shares issued as preference shares and the rate of dividend thereon;

(*n*) The total amount paid on such shares;

(*o*) The total amount of debentures, debenture stock or bonds authorized, and the rate of interest thereon;

(*p*) The total amount of debenture stock, bonds or debentures issued;

(*q*) The total amount realized from debentures, debenture stock, and bonds;

(*r*) The total number of share warrants issued and the names and addresses of the persons to whom same were issued.

If the company be a mining company

(*s*) The number of shares sold or otherwise disposed of at a discount or premium;

(*t*) The rate at which such shares were sold or disposed of;

(*u*) Whether a sworn copy of the by-laws, if any, providing for the sale of stock at a discount or otherwise, was sent to the Provincial Secretary;

(*x*) The date, or dates, upon which such by-laws, if any, were passed and sanctioned.

List of shareholders

(2) In cases of companies having share capital the summary shall also contain a list of persons who, on the 31st day of December previously, were shareholders of the company; and such list shall state the names alphabetically arranged, and the address and occupation of each such person; the amount of stock held by each; and the amount, if any, unpaid and still due by each such person.

Turner v. Hiawatha Gold Co., 3 Ont. 547.

Posting thereof.

(3) A duplicate of such summary with the affidavit of verification, shall be posted up in a conspicuous position in the head office of the company on or before the 2nd day of February in each year, and shall be available for inspection by any shareholder or creditor of the company: and the company shall keep the same so posted until another summary is posted under the provisions of this Act.

Turner v. Hiawatha Gold Co., 3 Ont. 547.

Verification thereof.

(4) The summary of every corporation shall be verified by the affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time out of this Province or otherwise unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason thereof shall be stated in the substituted affidavit.

Deposit with Provincial Secretary.

(5) The summary, verified as aforesaid, shall, on or before the 8th day of February next after the time hereinbefore fixed for making the summary, be transmitted to the Provincial Secretary.

(6) If a corporation makes default in complying with the provisions of this section, the corporation shall incur a penalty of $20 for every day during which the default continues, and every director, manager or secretary of the corporation, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty, but such penalties shall be recoverable only by action at the suit of or brought by a private person suing on his own behalf with the written consent of the Attorney-General of the Province of Ontario. Penalty for default.

(7) This section shall not apply to any corporation until the 1st day of February next after the 31st day of December of the year in which the corporation was organized, or has gone into actual operation, whichever shall first happen. R.S.O., c. 191, s. 79. When section not to apply.

This is old section 79, changed in order to make the return shew more clearly the position of the company in respect of its dealings with its shares.

(*b*) The date of incorporation added for departmental convenience.

(*i*) Former paragraph (*j*) was as follows:—"The amount of stock issued free from call, etc." This question was indefinite, and the change is made so that the answer should be what it is submitted was intended.

(*m*) to (*r*) are new.

Former subsection (7) is reproduced as subsection (3) changed to provide that the summary should not only be posted in a conspicuous place, but be available for inspection.

Former subsection (8) is reproduced as subsection (6) with the addition that the penalties may be recovered only with the approval of the Attorney-General.

The intention of this section is that all companies, whether for gain or not, should make returns. Corporations and companies without gain for their object are required only to make return of the names and addresses of their officers, which should be available. In cases of companies heretofore incorporated where the returns required by the section are onerous and unnecessary, relief may be given by Order-in-Council.

These returns are of great advantage to the public as in dealing with companies it is often difficult to ascertain who are personally interested, and as they may be inspected at the Provincial Secretary's Department, they enable the public to ascertain, in a very convenient way, who are interested in a concern where the liability of the chief persons behind it is limited.

These returns may be searched personally, or by correspondence, for proper purposes of business which should be disclosed when the application is made. Searches may not be made by business rivals, or by brokers who desire to deal in company shares. The

fee is twenty-five cents for one year with ten cents additional for each succeeding year.

Blank forms of summaries, lists and affidavits are forwarded annually to new companies, and to companies from whom returns were received the previous year, by the Provincial Secretary's Department in ample time for making return. The sheets should be fastened with a clip or pin, not gummed together.

Fees on letters patent, etc., to be fixed by Order in Council.

132.—(1) The Lieutenant-Governor in Council may from time to time, establish, alter and regulate the tariff of fees to be paid to the Provincial Secretary on applications, returns, fylings, and all transactions under this Act; and may prescribe the form of proceedings and record in respect thereof, and all other matters requisite for carrying out the objects of this Act.

Fees may vary in amount.

(2) Such fees may be made to vary in amount, under any rule or rules—as to nature of the corporation, amount of capital and otherwise—that may be deemed expedient.

Restriction.

(3) No step shall be taken in the Department towards the issue of any letters patent or supplementary letters patent, or the fyling of any document under this Act, until all fees therefor and all fees due the Department for any other service have been duly paid. R.S.O., c. 191, s. 95, *amended.*

TARIFF OF FEES.

The following is the tariff of fees at present in force. These fees being fixed by Order-in-Council may be changed from time to time.

Schedule of fees payable for services rendered under the provisions of this Act, as fixed by Orders in Council, dated 25th November, A.D. 1899; 27th December, 1899, and 3rd March, 1905, and also for licenses to Extra Provincial Corporations under 63 Vic. cap. 24.

FOR LETTERS PATENT.

When the proposed capital of the applicant company is $40,000 or less, the fee to be $100.

When it is more than $40,000, but does not exceed $100,000, the fee to be $100 and $1 for every $1,000 or fractional part thereof in excess of $40,000.

When it is over $100,000, but does not exceed $1,000,000, the fee to be $160 and $2.50 for every $10,000 or fractional part thereof in excess of $100,000.

When it is $1,000,000, the fee to be $385 and $2.50 for every $10,000 or fractional part thereof in excess of $1,000,000.

When the charter is for a Cheese or Butter Company, the fee to be $10.

When the charter is for an Educational Institution not carried on for the purpose or object of gain, the fee to be $10.

When the charter is for a Cemetery Company which is not to be carried on for gain, or which shall undertake to distribute in the improvement of its property any gain derived by the company, the fee to be $10.

When the charter is for an Athletic Club composed of amateurs, and has for its object the encouragement and promotion of lawful games and exercises, and such club is not to be carried on for gain, or shall undertake to distribute in the improvement of its property and facilities as such club any gain derived by the club, the fee to be $50.

For Supplementary Letters Patent.

Where the capital of a company is increased, the fee to be according to the above list, but on the increase only.

Where the capital is not increased, the fee to be $100.

For Licenses.

The amount of fee to be charged for a license is now considered and determined in each individual case. The following will give an idea of how such decision is arrived at.

Fees for Licenses to Corporations coming within Classes VII. or VIII., as Described in 63 Vic. Cap. 24. Which see *post*.

If the capital stock of the company does not exceed the sum of one hundred thousand dollars, the fee to be twenty-five dollars.

If the capital stock of the company exceeds the said sum of one hundred thousand dollars, the fee to be fifty dollars.

Fees for Licenses to Corporations coming within Class IX, of 63 Vic. Cap. 34.

The fees payable shall be the same as the fees now payable upon the incorporation of a company by letters patent under The Ontario Companies Act, viz.:—

When the proposed capital of the applicant company is $40,000 or less, the fee to be $100.

When it is more than $40,000, but does not exceed $100,000, the fee to be $100 and $1 for every $1,000 or fractional part thereof in excess of $40,000.

When it is over $100,000, but does not exceed $1,000,000, the fee to be $160 and $2.50 for every $10,000 or fractional part thereof in excess of $100,000.

When it is $1,000,000, the fee to be $385 and $2.50 for every $10,000 or fractional part thereof in excess of $1,000,000.

FOR ORDERS IN COUNCIL, ETC.

For an Order in Council changing the name of a company, $25.

For an Order in Council accepting the surrender of a charter, $20

1. Filing the annual statement required under the Ontario Act, of a company having a capital stock of $50,000 or under	$2.00
2. Filing the annual statement of a company having a capital stock exceeding $50,000, but not exceeding $100,000	3.00
3. Filing the annual statement of a company having a capital stock exceeding $100,000	5.00
4. Filing by-law for sale of mining company's stock at a discount	5.00
5. Filing by-law increasing or decreasing number of directors, or changing company's chief place of business	2.00
6. Filing any other by-law or document	2.00

No cheque will be accepted unless it is marked.

Cash not registered is at the risk of the sender.

Post office orders, postal notes, cheques and drafts should be payable to the order of the Provincial Treasurer.

No compliance with Act to file returns, etc., without payment of fees.

133. No tender or transmission of any return, by-law or other document shall be deemed to be a due compliance with the provisions of this Act unless and until the prescribed fee for receiving and fyling the same has been paid to and has been accepted by the Provincial Secretary.

Evidence of by-laws.

134. A copy of any by-law of the corporation under its seal and purporting to be signed by any officer of the corporation or a certificate, similarly authenticated, to the effect that a person is a shareholder or member of the corporation that a call or calls or dues, assessments or other payments has or have been made are due and have not been paid shall be received as *prima facie* evidence of the by-law or of the statements contained in such certificate in all Courts in Ontario. R.S.O., c. 191, s. 66.

Authentication of summons and notices.

135. Any writ, notice, order or proceeding requiring authentication by the corporation may be signed by any director, manager or other authorized officer of the corporation, and need not be under the seal of the corporation. R.S.O., c. 191, s. 67.

Service of notices.

136. A notice or demand to be served or made by the corporation upon a shareholder or member may be served or made either personally or by post, registered, and addressed to the shareholder or member at his place of abode as it last appeared on the books of the corporation. R.S.O., c. 191, s. 68.

Time of service.

137. A notice or other document served by post by the corporation on a shareholder or member shall be held to be served at the time when the registered letter containing it would be delivered in the ordinary course of post; and to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post. R.S.O., c. 191, s. 69.

Proof of service.

By-laws may be sanctioned by written consent of shareholders.

138. Any by-law by this Act required to be sanctioned by a two-thirds vote of the shareholders at a general meeting specially called for considering the same may in lieu thereof be validly sanctioned by the consent in writing of all the shareholders. *New*.

PART XI.

MINING COMPANIES.

This Part enacts the provisions of *The Ontario Mining Companies Incorporation Act*, with some changes in form, and a few in substance.

The Act referred to was applicable to all mining companies without exception. In many cases applicants desired to put themselves in a position to be unable to avail themselves of the provisions enabling the company to issue shares at a discount. There was some difficulty in this, but it may now be accomplished by not making this part of the Act applicable to the company. The objects of all such companies set out in old section 4, were found not to be what was required in all cases. Oil and gas companies were not specially provided for. It was thought advisable to strike out the section and vary the objects as occasion requires.

The object of this Part as was that of the former Act, is to relieve the shareholder from liability on unpaid shares. This is done in two ways, (1) to issue the shares at a discount, when the shareholder pays all he agrees, and (2) to issue subject to call, and if calls are made the shareholder is not obliged to pay, and the company may sell the shares for the purpose of obtaining payment elsewhere.

Shares in a mining company must not be less than twenty-five cents, see page 63.

Issuing shares at a discount.

139. A mining company heretofore incorporated or hereafter incorporated under this Act and made by the Letters Patent subject to the provisions of this part of the Act, may issue its shares at a discount or at any other rate in the manner hereinafter provided. *New.*

Shareholders not personally liable for calls.

140. No shareholder of such company holding shares issued as herein provided, shall be personally liable for non-payment of any calls made upon his shares beyond the amount agreed to be paid therefor. R.S.O., c. 197, s. 5, ss. 5.

By law authorizing issue of shares at a discount.

141. No shares shall be issued at a discount unless authorized by a by-law of the company confirmed by a majority of the shareholders thereof, at a meeting duly called for considering the same, fixing and declaring the rate and any other term and conditions of issue. R.S.O., c. 197, s. 5, ss. 1.

This is a part of section 5, subsection 1, with the change that the by-law must be confirmed by the shareholders of the company.

By-law must be verified.

142. A copy of such by-law shall, within twenty-four hours after the same was confirmed, be transmitted by post, registered and prepaid, to the Provincial Secretary, or be fyled in the office of the Provincial Secretary within five days, and such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time unable to make the same, by the affidavit of the president or secretary and one of the directors, or two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit. R.S.O., c. 197, s. 5, ss. 1, *in part.*

"No personal liability" to appear on documents issued by company.

143. Every such mining company shall have written or printed, immediately after or under the name of such company, wherever such name may be used by the company or any director, officer, servant or employee thereof, and shall have engraved upon its seal the words "NO PERSONAL LIABILITY"; and upon every share certificate issued by the company, distinctly written or printed in red ink, where such share certificates are issued in respect of shares subject to call, the words "SUBJECT TO CALL"; or if in respect to shares not subject to call, the words "NOT SUBJECT TO CALL," according to the fact. R.S.O., c. 197, s. 5, ss. 2, 3.

Certificates of shares, what to contain.

Sale of shares for non-payment of call.

144. In the event of any call or calls on shares in a company subject to the provisions of this part of this Act remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in a newspaper published at the place where the principal office of the company is situated, or in case no newspaper is published thereat, then in a newspaper published at the nearest place to said office once a week for four successive weeks; and said notice shall contain the numbers of the share certificates in respect of such shares and the number of shares, the amount of the call or calls due and unpaid and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such shareholder by registered letter mailed to his last known address; and if the holder of such shares fails to pay the amount due upon such shares with interest upon the same and cost of advertising before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such calls together with interest and cost of advertising; provided that if the price of the shares so sold exceeds the amount due with interest and costs thereon, the excess

thereof shall be paid to the defaulting shareholder. R.S.O., c. 197, s. 5, ss. 4.

Penalty.

145. A company which acts in contravention of any provision of this part of the Act, and every director, manager, officer or agent thereof, shall be liable on summary conviction to a fine of $200 and costs. R.S.O., c. 197, s. 7.

Liability of directors for wages.

146. Notwithstanding anything contained in this part of this Act, the directors of the company shall be liable as provided by section 94 of this Act. R.S.O., c. 197, s. 8.

PART XII.

TRUST COMPANIES.

Companies to which Act applies.

147.—(1) No company shall be incorporated, or otherwise authorized, by Letters Patent to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor's estate or committee of a lunatic's estate, and no Letters Patent shall be granted to any company heretofore incorporated conferring any such powers upon such company unless such company complies with the provisions of this part of this Act. R.S.O., c. 206, s. 4.

148. At all times at least three-fourths of the shares of a company incorporated under the provisions of this part of this Act, shall be held by persons who are residents of this Province, or by companies incorporated under the laws of this Province. If at any time it is shewn to the satisfaction of the Lieutenant-Governor-in-Council that less than three-fourths of the shares of the company are held otherwise than as aforesaid, the Letters Patent incorporating the company may be forfeited under the provisions of section 22 of this Act. R.S.O., c. 206, s. 4, ss. 2.

The former section provided that residents of the Province should be incorporators and shareholders to the extent of three-fourths of the capital and there was no provision for enforcing the section.

Companies not to act as guardians or committees.

149. No company shall receive authority by letters patent to become or be appointed guardian of the persons of infants or committee of the persons of lunatics. R.S.O., c. 206, s. 5.

Regulations regarding application.

150. The Lieutenant-Governor-in-Council may from time to time make regulations regarding notice of application for incorporation of trust companies, the objects of incorporation and evidence that the general fitness of the applicants for the discharge of the duties appertaining to such trusts as aforesaid is such as to command the confidence of the public, and that the public convenience and advantage will be promoted by granting to the company the powers applied for. *New*.

Liability of trust companies

151. The liability of a trust company to persons interested in an estate held by the company as executor, administrator, trustee, receiver, assignee, guardian or committee as aforesaid, shall be the same as if the estate had been held by any private person in the like capacity, and its powers shall be the same. R.S.O., c. 206, s. 9.

Provincial Secretary may investigate.

152. The Provincial Secretary may, from time to time, appoint a person to investigate the affairs and management of any trust company; and such person shall report thereon and upon the security afforded to those by or for whom the engagements of the company are held; and the expense of such investigations shall be defrayed by the company; and such person may examine the officers or directors of the company under oath for the purposes of such investigation. R.S.O., c. 206, s. 10, *in part*.

This is section 10 (1) and (2) amended so that the right of inspection is in the hands of the Provincial Secretary alone, and not in the hands of the Court.

Trust companies not to issue debentures.

153. No company incorporated under this Act, or chapter 157 of the Revised Statutes of Ontario, 1887, or chapter 206 of the Revised Statutes of Ontario, 1897, or any

other general Act with power to execute the office of executor, administrator, trustee, receiver, assignee, guardian of the estate of a minor, or committee of the estate of a lunatic, shall issue debentures. R.S.O., c. 206, s. 12.

Rev. Stat. c. 191.

PART XIII.

COMPANIES OPERATING MUNICIPAL FRANCHISES AND PUBLIC UTILITIES.

Application of this part of Act.

154. This part of the Act shall apply to all applications for incorporation of companies intended to operate or control any public or municipal franchise, undertaking or utility or which may require for its purposes the erection of any permanent structure in or upon any highway, stream or adjoining navigable waters, and to such companies when incorporated. *New.*

Material to be produced in application.

155. With the application for incorporation the applicants shall produce to the Provincial Secretary:

(*a*) Evidence that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated; that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking;

(*b*) A detailed description of the plant, works and intended operations of the company, and an estimate of their cost;

(*c*) A by-law of every municipality in which the operations of the company are to be carried on authorizing the execution thereof in the manner set out in the detailed description above referred to;

(*d*) If the undertaking is to be carried on in an unorganized district, a report from the Minister of

Lands, Forests and Mines approving of the undertaking.

(*e*) If it is proposed that the company shall acquire any plant, works, land, undertaking, good will, contract or other property or assets, a detailed statement of the nature and value thereof.

Referring application to engineers, etc., for report.

156. The Provincial Secretary may refer the application and all statements, evidence and material fyled thereon to engineers, architects, valuators or other experts for consideration, investigation and report regarding the public necessity for the undertaking of the company, the amount of capital required therefor, the value of any plant, works, lands, undertaking, good will, contract or other property or assets to be acquired by the company and any other matter which may appear to be in the public interest regarding such undertaking. *New.*

Letters Patent to be issued on Order-in-Council.

157. All Letters Patent and Supplementary Letters Patent of companies to which the provisions of this part of this Act are made applicable and of all companies heretofore incorporated for any purpose referred to in section 154, shall be issued on order of the Lieutenant-Governor in Council, and such Letters Patent or Supplementary Letters Patent may be issued in terms and conditions different from those applied for.

Notice of application.

158. Notice of the application shall be published in such manner and shall be given to such persons or corporations as the Provincial Secretary may determine. *New.*

Existence of company.

159. The terms of existence of the company may be limited by the Letters Patent. *New.*

Limitations in charter.

160. The Letters Patent may limit (1) the rate of dividend payable on the shares of the capital stock of the company and on debentures or other securities, and (2) the amount which the company may borrow on debentures, mortgages or other securities. *New.*

Proofs, etc., to be produced on application for Supplementary Letters Patent.

161. Upon any application for Supplementary Letters Patent extending the powers, increasing the capital or otherwise varying any term of the Letters Patent the company shall produce such evidence and statements as are referred to in section 155 hereof and such other evidence and statements as the Provincial Secretary may require, and he may refer the same in the manner and for the purposes set out in section 156. *New.*

Supplmentary Letters Patent, what may be contained in.

162. The Supplementary Letters Patent may fix the conditions upon which any shares, debentures, or other securities of the company, therein provided to be issued, may be allotted, sold or otherwise disposed of, and may vary any term, condition or proviso of the application therefor. *New.*

Rights of municipality preserved.

163. No provision contained herein or in the Letters Patent of the company regarding the issue of debentures or other securities or the making of mortgages to secure the same shall in any way prejudice the right which any municipality may have under the statute in that behalf to take possession of the plant and undertaking of the company. *New.*

Company may make by-law.

164. The company may pass by-laws regarding the control and management of its undertaking; its dealings with the public it is incorporated to serve; the collection of tolls, charges, rates or levies for the public service given by the company; and for the use, protection and care of its property while being used, enjoyed or otherwise subject to public use, and may impose penalties for the infraction thereof; provided, however, that no such by-laws shall have any force or effect or be acted upon until approved by the Lieutenant-Governor-in-Council and published four times in a public newspaper published at the place where the undertaking of the company is carried on, or as near thereto as may be, and in the *Ontario Gazette*. *New.*

165. In addition to the other returns which may be required by this or any other Act, the company shall on or before the 8th day of February in each year make a report to the Provincial Secretary, under oath of the president and secretary, which shall specify: Additional returns.

(*a*) The cost of the work, plant and undertaking of the company; What the report is to contain.

(*b*) The amount of its capital, and the amount paid thereon;

(*c*) The amount received during the year from tolls, levies, rates and charges and all other sources, stating each separately;

(*d*) The amount and rate of dividends paid;

(*e*) The amount expended for repairs; and

(*f*) A detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the current year, together with an estimate of the cost thereof.

166. The books of account of the company shall be at all times open to the inspection and examination of any shareholder. *New*. Every company to keep regular books of account.

167. The Provincial Secretary may appoint a person to inspect and examine such books and every person so appointed may take copies or extracts from the same, and may require and receive from the keeper of such books, and also from the president and each of the directors of the company, and all the other officers and servants thereof, all such information as to such books and the affairs of the company generally, as the person so appointed deems necessary for the full and satisfactory investigation into and report upon the state of the affairs of the company, so as to enable him to ascertain the correctness of statements furnished by the company. *New*. Inspection of books.

Existence of company may be extended by supplementary letters patent.

168. The Lieutenant-Governor in Council may, by Supplementary Letters Patent, extend the term of existence of any company incorporated for a limited period under this Act, for such further period as by Order-in-Council made previous to the expiry of such period he may direct, and the provisions of this Act having regard to the expiration of the term of existence of a company shall thereupon apply to such term as so extended. *New.*

PART XIV.

EXPROPRIATION.

Under the various Companies Acts there were various provisions for the compulsory taking of land and arbitration proceedings consequent thereon; one set of provisions under *The Timber Slides Companies Act*, another under *The Gas and Water Companies Act*, and still another under *The Act respecting Companies for supplying Steam, Heat, Electricity or Natural Gas for Heat, Light or Power*. There did not appear to be any good reason for multiplying the methods of compulsory taking of land and the arbitration proceedings. A system uniform throughout appeared preferable, and this part of the Act is made applicable to such companies as formerly had power of expropriation.

Expropriation.

169. A company incorporated for the purpose of operating any municipal or other public franchise, utility or undertaking and to which this part of this Act is made applicable by the Letters Patent may take, without the consent of the owner thereof, lands and easements therein which may be necessary for the purposes of its undertaking, in like manner as under the provisions of *The Ontario Railway Act* in that behalf lands may be expropriated for the purpose of a railway; Provided, however, that any such right of expropriation may be limited or any section or sections of the said *The Ontario Railway Act* may be excluded. *New.*

170. This part of the Act shall apply to any company heretofore incorporated under any general or special Act for the purposes referred to in section 154. *New.*

PART XV.

WINDING UP COMPANIES.

It would be very difficult to show in detail an accurate comparison of this part of the Act with *The Ontario Winding Up Act*, or *The Dominion Winding Up Act*. The part as it stands is made up of sections drawn from both these Acts, as well as from *The Imperial Companies Act*. The primary idea of this part of the Act is that the winding up proceedings should be purely voluntary under the direction of Inspectors appointed by shareholders or creditors, and without molestation or litigation or proceedings of any nature. The Act is framed to give the liquidator, under such circumstances, ample power to wind up a company, and distribute its assets and investigate its transactions in the most economical manner. If, however, a contributor or a creditor holding a claim of more than $200, is not satisfied with the winding up being conducted in this way, he may apply to the Court for a winding up order, and if he can convince the Court that it is in the interests of all concerned that the winding up order should be granted, it may be so granted.

Many sections of *The Ontario Winding Up Act* appeared to be unnecessary, and are omitted. The machinery for carrying the Act into effect was defective, and it may be fairly said that the Act was inoperative.

It is hoped that this part of the Act as framed will provide an economical and effective means of winding up companies.

Case of death of contributory.

171. If a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representative, heirs and devisees shall be liable in due course of administration to contribute to the assets of the corporation in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly. R.S.O., c. 222, s. 3, ss. 3.

Nature of liability of contributory.

172. The liability of any person to contribute to the assets of a corporation under this Act, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability.

Voluntary winding up.

173. A corporation may be wound up voluntarily under this Act:

1. Where the period, if any, fixed for the duration of the corporation by the Act, charter or instrument of incorporation has expired; or where the event (if any) has occurred, upon the occurrence of which it is provided by the Act or Letters Patent or instrument of incorporation that the corporation is to be dissolved and the corporation in general meeting has passed a resolution requiring the corporation to be wound up;

2. Where the corporation in general meeting called for that purpose has passed a resolution requiring the corporation to be wound up;

3. Where the corporation (though it may be solvent as respects creditors) has passed a resolution in general meeting to the effect that it has been proved to its satisfaction that the corporation cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. R.S.O. 1887, c. 183, s. 4.

Commencement of winding up.

174. A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up. R.S.O. 1887, c. 183, s. 6.

Corporation to cease business.

175. Whenever a corporation is wound up voluntarily, the corporation shall, from the date of the commencement of such winding up, cease to carry on its undertaking, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the corporation, taking place after the commencement of such winding up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its constating instrument or by-laws, continue until the affairs of the corporation are wound up. R.S.O. 1887, c. 222, s. 8, ss. 1.

Notice of resolution to be given.

176. Notice of any resolution passed for winding up a corporation voluntarily shall be given by advertisement in the *Ontario Gazette* and fyled in the office of the Provincial Secretary. *New.*

No suit or action against corporation after winding up.

177. After the commencement of the winding up, no suit, action or other proceeding shall be proceeded with or commenced against the corporation, and no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation. Provided, however, that after a winding up order has been made by the Court as hereinafter provided, such suit action or other proceeding, attachment, sequestration, distress or execution may be proceeded with by leave of the Court and subject to such terms as the Court may impose. And further provided that this section shall not apply to any proceeding taken under *The Winding-up Act* of the Parliament of the Dominion of Canada or other Act respecting Insolvency or Bankruptcy for the time being in force. *New.*

Consequences of winding up.

178. The following consequences shall ensue upon the voluntary winding up of a corporation:

(1) The property of the corporation shall be applied in satisfaction of all its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the by-laws of the corporation, be distributed *pro rata* amongst the members or shareholders according to their rights and interests in the corporation;

Privilege of claims of clerks and employees allowed to a certain extent.

(2) In distributing the assets of the corporation, the salary or wages of all clerks and wage-earners in the employment of the corporatioin due at the date of the commencement of the winding-up or within one month before, not exceeding three months' salary or wages, shall be paid in priority to the claims of the ordinary general creditors, and such persons shall be entitled to

rank as ordinary or general creditors for the residue of their claims. 60 V. c. 36, s. 196.

(3) Liquidators shall be appointed for the purpose of winding up the affairs of the corporation and distributing the property;

(4) The corporation in general meeting shall appoint such person or persons as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him;

(5) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;

(6) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the corporation in general meeting or the liquidators may sanction the continuance of such powers;

(7) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two;

(8) The liquidators shall settle the list of contributories of the corporation and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(9) The liquidators may at any time after the passing of the resolution for winding up the corporation and before they have ascertained the sufficiency of the assets of the corporation, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability to pay all or any

sums they deem necessary to satisfy the debts and liabilities of the corporation, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;

(10) The liquidators shall pay the debts of the corporation and adjust the rights of the contributories, shareholders or members amongst themselves.

Payment of costs and expenses.

179. All costs, charges and expenses properly incurred in the voluntary winding up of a corporation, including the remuneration of the liquidators, shall, after taxation by a taxing officer of the High Court, who is hereby empowered to tax the same, be payable out of the assets of the corporation in priority to all other claims. R.S.O., c. 222, s. 20.

Power of liquidators.

180. The liquidators shall have power to do the following things:

(1) To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the corporation;

(2) To carry on the business of the corporation so far as may be necessary for the beneficial winding up of the same;

(3) To sell the real and personal property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or corporation, or to sell the same in parcels;

Re D. A. Jones Co., 19 A. R. 63.

(4) To do all acts and to execute, in the name and on behalf of the corporation, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the corporation's seal;

(5) To draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the corporation, also to raise upon the security of the assets of the corporation, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the corporation shall have the same effect with respect to the liability of such corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such corporation in the course of carrying on the business thereof;

(6) To take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate and which act cannot be conveniently done in the name of the corporation; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself;

(7) To do and execute all such other things as may be necessary for winding up the affairs of the corporation and distributing its assets.

181. A corporation about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by resolution, delegate to any committee of its members, contributories or creditors, hereinafter referred to as inspectors, the power of appointing liquidators and filling any vacancies in the office of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the said inspectors in pursuance of such delegated power shall have the same effect as if it had been done by the corporation. Inspectors.

Re Canada Woollen Mills Co., 8 O. L. R. 581, 9 O. L. R. 367.

182.—(1) The liquidators shall deposit at interest in some chartered bank to be indicated by the inspectors all sums of money which he may have in his hands, belonging to the corporation, whenever such sums amount to $100. Deposit in bank by liquidators.

(2) Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal; but a separate deposit account shall be kept for the corporation of the moneys belonging to the corporation, in the name of the liquidator as such, and of the inspectors (if any); and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any. Separate deposit account to be kept: withdrawal from account.

(3) At every meeting of the shareholders or members of the corporation the liquidators shall produce a pass-book, showing the amount of deposits made for the corporation, the dates at which the deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be *prima facie* evidence that the pass-book was not produced at the meetings. Liquidators to produce bank pass book at meetings, etc.

(4) The liquidator shall also produce the pass-book whenever so ordered by the Court at the request of the Liquidator to produce bank pass book when ordered.

inspectors or a member of the corporation, and on his refusal to do so, he shall be treated as being in contempt of Court. R.S.O., c. 222, s. 19, ss. 3, 4, 5, 6.

Meetings of corporation during winding up.

183. Where a corporation is being wound up voluntarily, the liquidators may from time to time, during the continuance of such winding up, summon general meetings of the corporation for the purpose of obtaining the sanction of the corporation by resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and shall lay before such meeting an account shewing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year. R.S.O., c. 222, s. 22 (2), (3).

Vacancy in office of liquidator.

184. If any vacancy occurs in the office of liquidators appointed by the corporation, by death, resignation or otherwise, the corporation in general meeting may, subject to any arrangement they may have entered into upon the appointment of inspectors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributary of the corporation, and shall be deemed to have been duly held in manner prescribed by the by-laws of the corporation, or in default thereof in the manner prescribed by this Act for calling general meetings of the shareholders or members of the corporation. R.S.O., c. 222, s. 25 (1), *in part.*

Liquidators may distribute assets after expiration of time fixed.

185. The provisions of section 38 of chapter 129 of The Revised Statutes of Ontario shall apply *mutatis mutandis* to liquidators.

Arrangements may be authorized with creditors.

186. The liquidators may, with the sanction of a resolution of the corporation or the inspectors, make such com-

promise or other arrangement as the liquidators deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the corporation whereby the corporation may be rendered liable. R.S.O., c. 222, s. 11.

Power to compromise with debtors and contributories.

187. The liquidators may, with the sanction of a resolution of the corporation or of the inspectors, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and any contributory or other debtor or person apprehending liability to the corporation and all questions in any way relating to or affecting the assets of the corporation, or the winding up of the corporation, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon; and the liquidators may take any security for the discharge or such debts or liabilities, and give a complete discharge in respect of all or any such calls, debts or liabilities. R.S.O., c. 222, s. 12.

Take security.

Power to accept shares, etc., as a consideration for sale of property to another company.

188.—(1) Where a corporation is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another corporation, the liquidators of the first mentioned corporation, with the sanction of a resolution of the corporation by whom they were appointed conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other corporation, for the purpose of distribution amongst the members of the corporation which is being wound up, or may, in lieu of receiving cash, shares, or other like inter-

ests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation.

Griffiths v. Paget, 5 Ch. D. 894. Colton v. Imperial, 1892, 3 Ch. 454. Tiessen v. Henderson, 1899, 1 Ch. 861. Exp. Fox, 6 Ch. 176.

Sale or arrangement by liquidators binding unless a member objects.

(2) Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the shareholders or members of the corporation which is being wound up, subject to the proviso that if any member of the corporation which is being wound up, who has not voted in favour of the resolution passed by the corporation of which he is a member, expresses his dissent from any such resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the corporation, or the place where its undertaking is carried on, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either (*a*) to abstain from carrying such resolution into effect, or (*b*) to purchase the interest held by such dissentient member, at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the corporation is dissolved, and to be raised by the liquidators in such manner as may be determined by resolution.

Proceedings on objection.

Re Canning Journal,, 1900, 1 Ch. 708.
Payne v. Cork Co., 1900, 1 Ch. 308.
Baring Gould v. Sharpington, 1899, 2 Ch. 80.
Kaye v. Groydon, 1898, 1 Ch. 358.
Re City and County Investment Co., 13 Ch. D. 475.
New Giland v. Peacock, 1894, 1 Q. B. 622.

Special resolution not invalid because prior to resolution to wind up.

(3) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the corporation or for appointing liquidators.

Price payable to dissentient member.

(4) The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dis-

pute shall be settled by arbitration under the provisions of *The Arbitration Act.* R.S.O., c. 222, s. 13, ss. 1, 2, 3, 4, *amended.*

Baring Gould v. Sharpington, 1899, 2 Ch. 80.
De Rosag v. Anglo-Italian Bank, L. R. 4 Q. B. 462.
Morgan's Case, 28 Ch. D. 620.
Re U. S. Direct Cable, 48 L. J. Ch. 665.

Application to Master in Ordinary or Local Master for opinion.

189. The liquidator or liquidators or any creditor affected by the provisions of section 162 of this Act or the inspectors may at any time apply to the Master-in-Ordinary in the County of York or the Local Master in any other county or union of counties for his opinion, advice or direction in any matter arising in the liquidaton, and the said master may give such opinion, advice or direction after hearing such parties as he shall direct to be notified or after such steps as he may prescribe have been taken, and such advice, opinion or direction shall be followed and shall be binding upon all parties in the liquidation subject to an appeal to a Judge of the High Court of Justice in Chambers if leave to appeal is given by such master and the order of such Judge of the High Court of Justice shall be final and binding in the liquidation.

Winding up by Court.

190. A corporation may be wound up by Order of the Court:

1. Where it may be wound up voluntarily;
2. Where proceedings have been taken to wind up voluntarily and it appears to the Court that it is in the interests of contributories and creditors that it should be wound up under the supervision of the Court.
3. Where on the application of a contributory the Court is of the opinion that it is just and equitable that the corporation should be wound up. *New.*

Re Iron Clay Mfg. Co., 19 O. R. 441.
Re Cosmopolitan Life, 15 P. R. 185.
Macdonald v. Noxon Co., 16 O. R. 368.

4. When the Letters Patent or Supplementary Letters Patent have been declared forfeited or revoked or made void under the provisions of sections 22 or 148.

Who may apply.

191. The winding-up order may be made on petition to a Judge or Local Judge of the High Court in Chambers by the liquidator or by any contributor, shareholder, member or when the corporation is being wound up voluntarily by a creditor having a claim of $200 or upwards. *New.*

192. Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding-up shall be deemed to commence at the time of service of notice of motion for the order. *New.*

Powers of Court.

193. The Court may make the order applied for or may dismiss the petition with or without costs; may adjourn the hearing conditionally or unconditionally, or may make any interim or other orders as may be just, and upon the making of the order may, according to the practice and procedure of such court, refer the proceedings for the winding-up and may also delegate any powers of the Court conferred by this Act to a Master or Referee of the Court. R.S.C., 129, 9.

Appointment of liquidator

194. The Court in making the winding-up order may appoint a liquidator or liquidators of the estate and effects of the corporation; but no such liquidator shall be appointed unless a previous notice is given to the creditors, contributories, shareholders, or members in the manner and form prescribed by the Court. Provided, however, that if a liquidator has already been appointed in a voluntary liquidation such notice need not be given. R.S.C., c. 129, 20.

Appointment by Court.

195.—(1) If from any cause there is no liquidator acting either provisionally or otherwise, the Court may on

the application of a member of the corporation, appoint a liquidator or liquidators.

Removal of liquidator.

(2) The Court may also on due cause shewn, remove a liquidator and appoint another liquidator.

The case of no liquidator.

(3) When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator. R.S.O., c. 222, s. 25, ss. 2, 3, 4.

Proceeding in winding up after order.

196. When a winding-up order has been made proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as hereinbefore provided for a voluntary winding up. Provided, however, that the list of contributories shall be settled by the Court except where the same has been settled by the liquidator prior to the winding up order when such list shall be subject to review by the Court and that all proceedings in said winding up shall be subject to the order and discretion of the Court. *New.*

Meetings of members of company may be ordered.

197.—(1) The Court may direct meetings of the shareholders or members of the corporation to be summoned, held and conducted in such manner as the Court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Chairman.

Order for delivery by contributories and others of property, etc.

(2) The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent or officer of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the corporation is *prima facie* entitled.

Inspection of books.

(3) The Court may make such order for the inspection by the creditors and contributories of the corporation of its books and papers as the Court thinks just; and any

books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise. R.S.O., c. 222, s. 23, ss. 5, 6, 10.

Examination of persons before court or liquidator.

198. The Court may, at any time after the commencement of the winding up of the corporation, summon to appear before the Court or liquidator any officer of the corporation, or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or supposed to be indebted to the corporation, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the corporation, and in case of refusal to appear and answer the questions submitted, he may be committed and punished by the Judge as for a contempt.

Power of court to assess damages against delinquent directors, etc.

(2) Where in the course of winding up a corporation under this Act, it appears that any person who has taken part in the formation or promotion of the corporation or any past or present director, manager, official or other liquidator, or any officer of the corporation has misapplied, or retained in his own hands, or become liable or accountable for, moneys of the corporation, or been guilty of any misfeasance or breach of trust in relation to the corporation, the Court may, on the application of a liquidator, or of any contributory of the corporation, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such promoter, director, manager, or other officer, and compel him to repay the moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the Court thinks just, or to contribute such sums of money to the assets of the corporation by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just. R.S.O., c. 222, s. 23, ss. 11, 17.

Re Essex Centre Co., 9 A. R. 125.

Proceedings by contributories, at their own expense and for their own benefit only.

199. If at any time a member of the corporation desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the members of the corporation or of the inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the member of the corporation shall have the right to obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator as the Court may prescribe; and thereupon any benefit derived from such proceedings shall belong exclusively to the member of the corporation instituting the same, for his benefit and that of any other member of the corporation who may have joined him in causing the institution of such proceedings; but if, before such order is granted, the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the corporation, an order shall be made prescribing the time within which he shall do so and in that case the advantage derived from such proceedings shall appertain to the corporation. R.S.O., c. 222, s. 24.

Powers of court to be in addition to other powers.

200. Any powers by this Act conferred on the Court shall be deemed to be in addition to any other power, of instituting proceedings against any contributory, or against any debtor of the corporation, for the recovery of any call or other sum due from such contributory or against any debtor of the corporation, for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly. R.S.O., c. 222, s. 28.

Stay to proceedings.

201. The Court at any time after an order has been made for winding up a corporation may, upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order

staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit. R.S.O., c. 222, s. 33.

Appeals.

202. Any party who is dissatisfied with any order or decision of the Court or of a Master or Referee in any proceeding under this Act, may appeal therefrom to a Judge of the High Court as in the case of a like order made in any action. *New.*

Rules of procedure.

203. The Lieutenant-Governor-in-Council may from time to time make rules of practice and procedure for the due carrying out of the provisions of this part of the Act, and until such rules have been made the practice shall be the same as in cases of administration of estates so far as the same are applicable, or in the Master's Office in cases under the *Winding-Up Act.*

Account of winding up to be made by liquidator to a general meeting.

204.—(1) As soon as the affairs of the corporation are fully wound up, the liquidators shall make up an account shewing the manner in which the winding up has been conducted, and the property of the corporation disposed of; and thereupon they shall call a general meeting of the members or shareholders of the corporation for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called in the manner provided by the by-laws for calling general meetings of the shareholders or members of the corporation.

Return of holding of meeting to be sent to Provincial Secretary.

(2) The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held; which return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing of such return, the corporation shall be deemed to be dissolved. R.S.O., c. 222, s. 40.

Dissolution of company.

Order for dissolution.

205. Whenever the affairs of the corporation have been completely wound up, the Court may make an order that

the corporation be dissolved from the date of such order, and the corporation shall be dissolved accordingly; which order shall be reported by the liquidator to the Provincial Secretary. R.S.O., c. 222, s. 41.

Report to Provincial Secretary.

Re Equitable Savings Association, 4 O. L. R. 479.

206. If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in section 187 (2) or in reporting the order (if any) declaring the corporation dissolved, he shall be liable on summary conviction to a penalty not exceeding $20 for every day during which he is in default. R.S.O., c. 222, s. 42.

Penalty on default in reporting by liquidator or in making return.

207. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the corporation, shall be left for three years in the bank where they are deposited, and if still unclaimed, shall then be paid over by such bank, with interest accrued thereon, to the Treasurer of Ontario, and, if afterwards duly claimed, shall be paid over by the Treasurer to the persons entitled thereto. R.S.O., c. 222, s. 43.

Disposition of unclaimed dividends.

208.—(1) Every liquidator shall, within thirty days after the date of the dissolution of the corporation, deposit in the bank appointed or named as hereinbefore provided for, any other moneys belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be liable on summary conviction to a penalty of not exceeding $10 for every day on which he neglects or delays such payments; and he shall be a debtor to His Majesty for such money and may be compelled as such to account for and pay over the same.

Deposit by liquidator after dissolution of moneys with sworn statement.

Penalty on omission.

(2) The money so deposited shall be left for three years in the bank, and shall be then paid over, with interest, to the Treasurer of the Province, and if afterwards claimed shall be paid over to the person entitled thereto.

Money to remain on deposit for three years.

Disposal of books, etc., after winding up.

(3) Where a corporation has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the corporation and of the liquidators may be disposed of in such a way as the corporation by resolution directs in case of voluntary winding up or the Court in case of winding up under order.

After five years responsibility as to custody of books, etc., to cease.

(4) After the lapse of five years from the date of such dissolution no responsibility shall rest on the corporation or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested therein. R.S.O., c. 222, s. 44.

PART XVI.

APPLICATION OF ACT AND REPEAL.

Powers of existing corporations may be varied.

209. The Lieutenant-Governor-in-Council may by Supplementary Letters Patent upon the application of a corporation, a shareholder, a creditor, a holder of bonds, debentures or other securities or obligation thereof to any person, firm or corporation with whom the company may have dealings, relieve the corporation from any duty, obligation or other disability, or may limit any right, power or other advantage which may have been cast or conferred upon the corporation by the repeal of the general Act under which the said corporation was incorporated and by the enactment of this Act. Notice shall thereupon be given in the *Gazette* by the Provincial Secretary of such Supplementary Letters Patent setting out the manner in which any such duty, obligation or other disability has been relieved or in which such right, power or other advantage has been limited.

Application of Act.

210. This Act, except in so far as it may have been particularly made otherwise applicable, shall apply to the following companies:

(*a*) To every company incorporated under any special or general Act of the Parliament of the late Province of Upper Canada.

(*b*) To every company incorporated under any special or general Act of the Parliament of the late Province of Canada which has its head office and carries on business within the Province of Ontario, and which was incorporated with objects or purposes to which the legislative authority of the Legislature of the Province of Ontario extends; and

(*c*) To every company incorporated under any special or general Act of the Legislature of the Province of Ontario;

Provided, however, that this Act shall not apply to any such company incorporated for the construction and working of a railway, the business of insurance and the business of a loan corporation within the meaning of *The Loan Corporations Act;* and further provided that the Lieutenant-Governor in Council may relieve any company incorporated before the first day of July, 1907, from compliance with any of the provisions of this Act as may be deemed expedient. Proviso.

211. The Acts mentioned in Schedule E to this Act are hereby repealed to the extent specified in the third column of that schedule; provided, that Repeal.

(1) Any Letters Patent, Supplementary Letters Patent, Order-in-Council, certificate, by-law, rule or regulation made or granted with respect to any company, corporation or association within the scope of this Act under any enactment hereby repealed, shall continue in force as if it had been made or granted under this Act. Proviso.

(2) The corporate existence and powers of all companies, associations or other corporations within the scope of this

Act incorporated otherwise than by Letters Patent under any enactment hereby repealed shall continue as if such companies, associations or other corporations had been incorporated under this Act.

(3) The corporate existence, rights and powers of any and all corporations, associations and societies, registered as friendly societies, and incorporated under any Act respecting benevolent, provident and other societies, or any other Act of this Province, and all the rights and privileges of the members thereof and their beneficiaries are (subject to the provisions of *The Ontario Insurance Act* and all amendments thereto) hereby continued notwithstanding the repeal of any Act hereunder and notwithstanding anything in this Act hereinbefore contained.

(4) Saving and excepting those corporations referred to in subsection 3 hereof, any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment of this Act.

(5) Any penalty may be recovered and any offence may be prosecuted under this Act for any matter or thing provided for under the Acts hereby repealed.

Commencement of Act.

212. This Act shall, except as otherwise expressed, come into operation on the first day of July, one thousand nine hundred and seven.

SCHEDULE A.

PETITION.

TO HIS HONOUR .....
.....Etc., Etc., Etc.
Lieutenant-Governor of the Province of Ontario:
THE PETITION OF .....
.....
.....
.....
.....
.....*Humbly Sheweth as follows:—*

1. Your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a charter, under the provisions of *The Ontario Companies' Act*, constituting your petitioners and such others as may become shareholders in the Company thereby created, a body corporate and politic under the name of The ..... Company (Limited), or such other name as shall appear to Your Honour to be proper in the premises.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

3. Your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.

4. Your petitioners are of the full age of twenty-one years.

5. The object for which incorporation as aforesaid is sought by your petitioners is to .....
.....
.....
.....

6. The head office of the Company will be at .....

7. The amount of the capital stock of the Company is to be..... dollars.

8. The said stock is to be divided into ..... shares of ..... dollars each.

9. The said .....
....
are to be provisional directors of the Company.

10. By subscribing therefor in a Memorandum of Agreement, duly executed in duplicate, with a view to the incorporation of the Company, your petitioners have taken the amount of stock set opposite their respective names, as follows:—

Petitioners.	Amount of stock subscribed for.
.....	$.....
.....	$.....
.....	$.....
.....	$.....

YOUR PETITIONERS therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a Charter to your petitioners constituting your petitioners and such others as have or may become subscribers to the Memorandum of Agreement and stock-book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound, will ever pray.

Signatures of witnesses.	Signatures of petitioners.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

*Dated at ..... this ..... day of ..... 18 .

*This date should be even with or subsequent to the latest date found in the company's stock book.

SCHEDULE B.

(*To be executed in duplicate; one duplicate to be deposited in the office of the Provincial Secretary.*)

THE.....COMPANY OF.....(LIMITED.)

MEMORANDUM OF AGREEMENT AND STOCK-BOOK.

WE the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of *The Ontario Companies Act* under the name of THE..... ....COMPANY OF.....(LIMITED), or such other name as the Lieutenant-Governor may give to the Company with a capital of.....dollars, divided into.....shares of .....dollars each.

AND WE DO hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.

In witness whereof we have signed.

Name of subscriber.	Seal.	Amount of sub-scription.	Date and place of subscription.		Residence of subscriber.	Name of witness.
			Date.	Place.		

SCHEDULE C.

PETITION.

TO HIS HONOUR .....
.....Etc., Etc., Etc.

Lieutenant-Governor of the Province of Ontario:

THE PETITION OF .....
.....
.....
.....
.....
.....*Humbly sheweth as follows:—*

1. Your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a charter, under the provisions of *The Ontario Companies' Act*, constituting your petitioners and such others as may become members of the corporation thereby created, a body corporate and politic without share capital under the name of ..... or such other name as shall appear to Your Honour to be proper in the premises.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

3. Your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid.

4. Your petitioners are of the full age of twenty-one years.

5. The object for which incorporation as aforesaid is sought by your petitioners is to .....
.....
.....
.....

6. The said .....
.....
are to be the provisional directors of the Corporation.

7. Your petitioners have subscribed to a memorandum of agreement in duplicate, setting out the purposes and objects of incorporation and provisions for administering the affairs of the Corporation, and have undertaken that the said Corporation shall be carried on without the purpose of gain for its members, and that any profits or other accretions to the Corporation shall be used in promoting its objects.

YOUR PETITIONERS therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a Charter to your petitioners constituting your petitioners and such others as have or may become subscribers to the Memorandum of Agreement of the Corporation thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound, will ever pray.

Signatures of witnesses.	Signatures of petitioners.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Dated at.....this.....day of .....19 .

SCHEDULE D.

Memorandum of Agreement of the Association, made and entered into this day of 1907.

(1) We the undersigned do hereby severally covenant and agree each with the other to become incorporated under the provisions of *The Ontario Companies' Act* as a corporation without share capital for the purposes and objects following:—

(2) The subscribers shall be the first members, and it shall rest with the directors to determine the terms and conditions on which subsequent members shall from time to time be admitted.

(3) The following shall be the first directors of the corporation:—

(4) Any member may transfer his interest in the corporation by instrument in writing, signed both by the transferor and transferee and duly registered with the corporation.

(5) The first general meeting shall be held at such time, not being more than two months after the incorporation of the corporation, and at such place as the directors may determine.

(6) Subsequent general meetings shall be held at such time and place as may be prescribed by the corporation in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the fourth Wednesday in January in every year, at such place as may be determined by the directors.

(7) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene a general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the office of the corporation.

(9) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

(10) Ten days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business shall be given to the members in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the corporation in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(12) The chairman (if any) of the directors shall preside as chairman at every general meeting of the corporation.

If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman at such meeting.

(13) The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(14) At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the minutes of proceedings of the corporation, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

(15) If a poll is demanded, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the corporation in general meeting.

(16) With the consent in writing of all members, a general meeting may be convened on shorter notice than seven days, and in any manner which such members think fit.

(17) The quorum of a general meeting shall be ..... members present in person.

(18) Until otherwise determined by special resolution, every member shall have one vote.

(19) Votes may be given either personally or by proxy. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under its common seal, and shall be attested by one or more witness or witnesses; no person shall be appointed a proxy who is not a member of the corporation.

(20) A resolution signed by all the directors shall be as valid and effectual as if it had been passed at a general meeting of the directors duly called and constituted.

(20) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the corporation in general meeting.

(21) The affairs of the corporation shall be managed by the directors, who may pay all expenses incurred in incorporating the corporation, and may exercise all such powers of the corporation as are not by the foregoing Act, or by these articles, required to be exercised by the corporation in general meeting, subject, nevertheless, to any regulations of this memorandum, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed

by the corporation in general meeting; but no regulation made by the corporation in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made. The continuing directors may act notwithstanding any vacancy in their body.

2. The office of director shall be vacated:—

(*a*) If he holds any other office or place of profit under the corporation;

(*b*) If he is concerned in or participates in the profits of any contract with the corporation;

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a shareholder of any corporation which has entered into contracts with or done any work for the corporation of which he is a director; nevertheless, he shall not vote in respect of such contract of work, and if he does so vote his vote shall not be counted, and in addition thereto, a director shall vacate his office if and when he is requested by the corporation in general meeting to resign.

(23) A retiring director shall be re-eligible.

The corporation at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(24) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(25) The corporation may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation any such increased or reduced number is to go out of office.

(26) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(27) The corporation in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he was appointed would have held the same if he had not been removed.

(28) The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(29) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(30) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of their powers so delegated, conform to any regulations that may be imposed on them by the directors.

(31) A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(32) A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

(33) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they, or any of them, were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director, but it shall not be necessary to give notice of a meeting of the directors to a director who is not within the Province.

In testimony whereof we have hereunto set our hands and affixed our seals.

SCHEDULE E.

Repeal.

Session and Chapter.	Short Title.	Extent of Repeal.
Revised Statutes of Ontario, Cap. 191.	The Ontario Companies Act.	The whole Act.
The Revised Statutes of Ontario, Cap. 194	The Timber Slides Companies Act.	Sec. 2-17, 20-35 and 60, 62, 63, 64.
Revised Statutes of Ontario, Cap. 195.	An Act respecting Joint Stock Companies for the construction of Piers, Wharfs, Dry Docks and Harbors.	Sec. 1-7, 12-14.
Revised Statutes of Ontario, Cap. 196.	An Act respecting Joint Stock Companies for the erection of Exhibition Buildings.	Sec. 1-3, 5-7.
Revised Statutes of Ontario, Cap. 197.	The Mining Companies Incorporation Act.	The whole Act.
Revised Statutes of Ontario, Cap. 199.	An Act respecting Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water.	Sec. 1-11, 14-17, 20-43, 55-58.
Revised Statutes of Ontario, Cap. 200.	An Act respecting Companies for supplying Steam, Heat, Electricity or Natural Gas for Heat, Light or Power.	Sec. 1-3, 5-8.
Revised Statutes of Ontario, Cap. 201.	An Act respecting Cheese and Butter Manufacturing Associations and Companies.	The whole Act.
Revised Statutes of Ontario, Cap. 202.	An Act respecting Co-operative Associations.	The whole Act.
Revised Statutes of Ontario, Cap. 206.	The Ontario Trust Companies Act.	The whole Act.
Revised Statutes of Ontario, Cap. 211.	An Act respecting Benevolent, Provident and other Societies.	The whole Act.
Revised Statutes of Ontario, Cap. 213.	An Act respecting Cemetery Companies.	Sec. 1-2, subss. 1-3, 14-20, 25, 26, 30.
Revised Statutes of Ontario, Cap. 215.	An Act respecting the changing of the names of Incorporated Companies.	The whole Act.
Revised Statutes of Ontario, Cap. 216.	The Directors Liability Act.	The whole Act.
Revised Statutes of Ontario, Cap. 217.	An Act to prevent fraudulent statements by Companies and others.	The whole Act.
Revised Statutes of Ontario, Cap. 218.	An Act respecting Fees payable by Incorporated Companies and other Bodies.	The whole Act.
Revised Statutes of Ontario, Cap. 219.	An Act respecting Returns required from Incorporated Companies.	The whole Act.

SCHEDULE E.—*Concluded.*

REPEAL.

Session and Chapter.	Short Title.	Extent of Repeal.
Revised Statutes of Ontario, Cap. 221.	An Act respecting Investments by Corporations.	The whole Act.
Revised Statutes of Ontario, Cap. 222.	The Joint Stock Companies Winding-up Act.	The whole Act.
61 Vic., Cap. 19.	An Act to amend the Ontario Companies Act.	The whole Act.
61 Vic., Cap. 20.	An Act to amend the Timber Slides Companies Act.	The whole Act.
62 Vic. (2), Cap. 11.	An Act to amend the Statute Law.	Sec. 19, 20 and 21.
63 Vic., Cap. 23.	An Act to amend the Ontario Companies Act.	The whole Act.
63 Vic., Cap. 26.	An Act to provide for the incorporation of Co-operative Cold Storage Associations.	Sec. 1-16 Schedule A.
1 Edw. VII., Cap. 18.	An Act to amend the Ontario Companies Act.	The whole Act.
2 Edw. VII., Cap. 24.	An Act to amend the Ontario Companies Act.	The whole Act.
3 Edw. VII., Cap. 7.	The Statute Law Amendment Act, 1903.	Sec. 34, 35, 36.
4 Edw. VII., Cap. 11.	The Statute Law Amendment Act, 1904.	Sec. 45, 46, 47, 48.

FORMS AND PRECEDENTS.

The Forms following that relate to the incorporation and subsequent changes in the constitution of companies under the Ontario Companies Act, were prepared by the author for the first edition of the Manual, and were submitted to and approved by the Attorney-General's Department of Ontario. They have since been made official, and some of them have been embodied in the Companies Act.

Certain of the Forms herein have been drawn so as to represent the steps taken in the formation of a company by the name of The Hamilton Stove Company, Limited, and also in matters arising subsequent thereto.

While these Forms are drawn for Ontario companies the procedure in the other Provinces is very similar, and the necessary changes may easily be made.

FORM No. I.

AGREEMENT FOR SALE TO PROPOSED COMPANY OF STOCK-IN-TRADE, ETC., AND PAYMENT THEREFOR IN SHARES WHICH ARE TO BE CONSIDERED AS PAID-UP SHARES.

THIS AGREEMENT made this day of A.D. 190 .

Between of the City of in the County of Furniture Manufacturer, of the First Part, of the said City of , Accountant, of the Second Part, of the said City of , Furniture Manufacturer, of the Third Part,

and

of the said City of , Esquire, of the Fourth Part.

Whereas, the said parties of the first, second and third parts are desirous of forming and incorporating a company under the provisions of the Ontario Companies Act, for the purpose of carrying on the business of manufacturing, buying, selling and otherwise dealing in furniture of all kinds and descriptions.

And whereas, the said party of the fourth part is the trustee for the said company for whose incorporation application is about to be made, and whose proposed corporate name is to be "The Company, Limited."

And whereas, the party of the first part has for some years past been engaged in a business similar to that which the proposed incorporated company is to engage in, and the said parties of the second and third parts have each an interest in the said business, and are owners of the land and premises, machinery, tools, implements, rolling stock, goods, wares, merchandise, stock-in-trade of furniture and other property belonging to the said business, hereinafter more particularly set forth, which are suitable to the objects of the said company, and it is proposed that the said parties of the first, second and third parts hereto shall become shareholders in the said company, and shall transfer to the said company as soon as the same is incorporated the said lands and premises, machinery, tools, implements, rolling stock, goods, wares, merchandise, stock-in-trade of furniture and other property, and which said property so to be transferred to the said company is of the value of twenty-five thousand dollars, and the said parties of the first, second and third parts shall receive paid up stock in the said company as the consideration therefor.

Now this agreement Witnesseth that the parties of the first, second and third parts have agreed and do agree with the party of the fourth part to become shareholders in the said company, and to take stock therein to the amount of twenty-five thousand dollars, that is to say: The said is to take two hundred shares, the said is to take twenty-five shares, and the said is to take twenty-five shares, the said shares being of the value of one hundred dollars each, and to subscribe the Memorandum of Agreement and stock-book for the amount of the said shares hereinbefore agreed to be taken by them.

And in consideration of the issue of such shares as aforesaid to them, the parties of the first, second and third parts, they hereby agree with the party of the fourth part to sell, convey, transfer and make over to the said proposed company on the first day of , A.D. 190 , or as soon thereafter as the company may be incorporated, the said business carried on under the firm name of , and the assets thereof hereinafter particularly mentioned and described, that is to say:

1. The stock-in-trade of goods, wares, merchandise, lumber, furniture manufactured, and in the course of manufacture belonging to the said business.

2. All the machinery, tools, implements, plant, horses, wagons, and rolling stock belonging to or used in connection with the said business, and owned by the said parties of the first, second and third parts, or either or any of them.

3. The good-will of the said business.

4. The furniture, warerooms and premises on Street in the City of , being the northerly fifty feet of lot number and the whole of lot number in block on Street aforesaid; and that the said conveyance and transfer shall be made free and clear of all incumbrances, and as regards the land by a good and sufficient deed in fee simple, and as regards the chattels and other assets by such assurances as may vest the full and absolute title thereto in the said company.

And it is agreed that the shares that shall be allotted to the parties of the first, second and third parts, and being the shares to be subscribed for by them in the Memorandum of Agreement and Stock-Book of the company in pursuance of this agreement, shall be fully paid up shares of the stock of the said company, and the party of the fourth part covenants and agrees with the parties of the first, second and third parts to use his best endeavors to procure the issue and allotment of such shares as hereinbefore mentioned to the parties of the first, second and third parts as soon as possible after the incorporation of the said company, and upon the conveyance and transfer of the said lands, plant, machinery, and other property as above mentioned.

In Witness whereof, the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered (L.S.)
In presence of (L.S.)
(L.S.)
(L.S.)

FORM No. 2.

AGREEMENT FOR SALE TO PROPOSED COMPANY OF A GOING CONCERN, FOR WHICH PAYMENT IS TO BE MADE IN PAID UP SHARES AND UNDER WHICH OWNER ENTERS COMPANY'S SERVICE.

THIS AGREEMENT made this day of A.D. 190 .

Between of the of , Manufacturer, hereinafter called the vendor, of the Fir t Part, and of , Esquire, hereinafter called the Trustee, of the Second Part.

Whereas, the vendor has heretofore carried on business at as a manufacturer of and dealer in

And whereas the said (*name of party of First Part*) and (*names of other corporators*), all of the City of , are desirous

of forming and incorporating a company under the provisions of the Ontario Companies Act, to be called "The Company of " (*hereinafter called the company*), to purchase, acquire and carry on the business heretofore carried on by the vendor and the good will and stock-in-trade of the vendor, and to manufacture, buy, sell and deal in

And whereas the nominal capital of the said proposed company is to be dollars, divided into shares of dollars each.

And whereas the said party of the Second Part is trustee for the said company so to be incorporated.

Now This Indenture Witnesseth, that it is hereby agreed by and between the vendor, the party of the First Part and the Trustee, the party of the Second Part, as follows:—

The vendor shall sell, and the company shall purchase the business of manufacturing and selling heretofore carried on by the vendor, and all plant, machinery, implements, tools, furniture, chattels and effects used by the vendor in or in connection with his said business, also the stock-in-trade of the vendor, and the benefit of all advertising and other contracts and engagements to which the vendor is on the date hereof entitled in relation to his said business. Also the good will of the said business with the exclusive right to represent such company as carrying on such business in continuation of the vendor and in succession to him. Also all Canadian Trade Marks and Patent Rights owned by the vendor (*here insert particulars of any Trade Marks and Patents to be conveyed to the company*), with the exclusive right to use the said Trade Marks, and exercise and enjoy the said patent rights and each of them.

The consideration for the said sale shall be the sum of thousand dollars of lawful money of Canada. The said sum of thousand dollars shall be paid and satisfied by the allotment to the vendor, or to whom he shall appoint of shares in the capital stock of the company, on each of which shares the sum of one hundred dollars shall be credited in the books of the company as having been paid up, making the said shares fully paid up, and certificates for the said shares as fully paid up shares shall be issued to the persons to whom such shares shall be allotted.

The vendor hereby directs that of such shares shall be allotted to of the City of , and the residue of such shares to the vendor.

The purchase shall be completed forthwith after the organization of the said company, and possession of the property agreed to be hereby sold shall be given to the company, provided that the

company shall duly allot the said shares pursuant to the provisions hereof.

In the meantime the business shall be carried on by the vendor in the ordinary and usual manner, so as to maintain the business as a going concern.

As from the date hereof until completion of the sale the vendor shall be considered to be carrying on the said business on account and for the benefit of the company.

On or at any time after the organization of the company the vendor shall at the expense of the company execute and do all such assurances and things as may reasonably be required by the company for vesting in it the property hereby agreed to be sold, and giving to it the full benefit of the said sale.

The vendor shall indemnify the company against all actions and proceedings, claims and demands in respect of the said contract and engagements in relation to the said business, the benefit whereof is agreed to be hereby sold, except as to breaches thereof occurring subsequent to the incorporation of the company, and it is hereby declared that the company is not to be liable for any such breaches which may have heretofore occurred.

The vendor shall discharge all outgoings in respect of the premises in which the said business is now carried on up to the date hereof, and the vendor will permit the company to occupy and use the said premises for the purposes of the company's business at a rental of dollars per month from the date hereof until such time as other premises can be secured.

The vendor shall in consideration of the making of this agreement forthwith upon the incorporation of the said company, enter into the employ of such company and serve the said company faithfully and diligently, and give the said company the full benefit and advantage of his knowledge of and services in the said business until the first day of , 190 , without salary or remuneration in the nature of salary (or as the case may be).

In Witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Witness:

Signatures.

FORM No. 3.

ANOTHER FORM OF AGREEMENT.

Memorandum of agreement, made this day of A.D. 190
Between of the first part, and of the second part.

Witnesseth, that the said party of the first part hereby undertakes to sell, assign, transfer and make over unto The Company, Limited, as soon as letters patent have been obtained by the said parties of the second part incorporating the said company, all the rights granted unto by letters patent of invention, dated at the City of Ottawa, on the day of A.D. 190 , under the Great Seal of the Dominion of Canada, and bearing the number the same being granted for and also any rights for renewal thereof and any improvements therein.

The said parties of the second part agree to pay unto the said party of the first part, in consideration of the execution by him of these presents, the sum of dollars, of which sum the amount of dollars shall be paid forthwith, and the further sum of dollars, as follows:

and as to the balance or sum of dollars the said parties of the second part undertake to pay the same, by allotting unto the said party of the first part shares each of paid-up and unassessable stock in the said company, which the said party of the first part hereby agrees to accept in full payment and discharge of such balance.

The said parties hereto hereby declare that this agreement is made and entered into in contemplation of the formation of the aforesaid company, and the acquisition by it of and the payment of said acquisition in the manner hereinbefore mentioned and set forth.

In Witness whereof, the said parties hereto have hereunto set their hands and seals at the of in the of this day of , A.D. 190 .

Signed sealed and delivered
in the presence of (Seal)

FORM No. 4.

ANOTHER FORM OF AGREEMENT.

Memorandum of agreement, made this day of , A D. 190 .

Between of the first part, and The Company, Limited, a company proposed to be formed under the provisions of the Ontario Companies Act, represented herein by , who are nominated as provisional directors of the said company, and act herein as trustees for the said company, of the second part.

Whereas the parties of the first part are the joint owners of the patent or the sole right to and other purposes.

And whereas the parties of the first part are the shareholders of the said proposed company, and have paid up per cent. on all their shares therein, amounting in all to dollars, and they have agreed to sell the said patent or sole right to the said company for the said sum of dollars of lawful money of Canada, payable as follows:

The said sum of dollars in cash, and the balance or sum of dollars, to be acknowledged by the said proposed company as received by them in cash, and as paid in on the said shares of the said parties of the first part, thereby making the said shares as paid up in full.

Now these presents witness that in consideration of the premises and of the said sum of dollars, and for the purpose of carrying out the said agreement, the parties of the first part do grant, assign, and transfer to the said parties of the second part, as such trustees and their assigns the said patent and sole right to , and the said parties of the second part, representing herein the said proposed company, do hereby acknowledge and admit that the said shares of the said parties of the first part are fully paid-up shares and unassessable.

In witness whereof, the said parties hereto have hereunto set their hands and seals this day of , A.D. 190 .

Signed, sealed and delivered
in presence of

(Seal)

FORM No. 5.

OPTION AGREEMENT.

KNOW ALL MEN BY THESE PRESENTS.

That I, , of the of in the of , and am held and firmly bound to of the of , in the of , and , and to h personal representative and assigns, to sell and dispose of my in and upon all and singular th certain parcel or tract of land and premises situate lying and being in the of , in the in the known and described as lot number for the sum of .

In these conditions I bind myself, my heirs, executors, administrators and assigns firmly by these presents. This agreement to

remain irrevocable for the space of
months from the date hereof.

In Witness whereof, at the of I hereunto set my hand and seal this day of A.D. 19 .

Witness:

(Seal)

FORM No. 6.

CONSENT TO USE OF FIRM NAME AS NAME OF PROPOSED COMPANY WITH AFFIDAVIT OF EXECUTION.

In the matter of the application of and others for incorporation under the Ontario Companies Act as The Company, Limited.

I, of the City of Toronto, in the County of York, Merchant, carrying on business at the said City of Toronto under the name of , hereby consent that the name, The Company, Limited, be granted to the company, incorporation of which is now being sought by and others under the provisions of the Ontario Companies Act.

Witness my hand at Toronto, this day of , 190 .

Signature,

Witness:

I, , of the City of Toronto, in the County of York, Student at Law, make oath and say, That I was personally present and did see whom I personally know, sign the above consent at the said City of Toronto.

Sworn before me at Toronto, in the County of York, this day of 190 .

Signature.

A Commissioner, etc.

This form is unnecessary where all petitioners are members of the old firm and signify consent in petition.

FORM No. 7.

CONSENT TO USE OF NAME OF AN EXISTING COMPANY AS NAME OF PROPOSED COMPANY.

In the matter of the application of and others for incorporation under the Ontario Companies Act as The Company, Limited.

Under the provisions of section 28 of the Ontario Companies Act, The Company, Limited, hereby consents to the use by the applicants herein of the name of The Company, Limited.

Dated at Toronto this day of , A.D. 190 .

The Company, Limited,

Witness:

President.

[L.S.]

Secretary.

This Form is for use where an existing company is desirous of granting its name, to a new corporation, incorporated for the purpose of acquiring its business or promoting its objects. It should be verified by an affidavit or declaration as in Form 6.

FORM No. 8.

NOTICE OF ALLOTMENT OF SHARES.

THE CRESCENT PORTLAND CEMENT COMPANY, LIMITED.

Office No. 100 King Street East.

TORONTO, 10th May, 1907.

SIR,—The Provisional Directors have this day allotted to you two hundred shares in the above company, in accordance with your application.

THOMAS TAYLOR,
Secretary.

To.....

Toronto.

FORM No. 9.

PROSPECTUS.

(A Copy of this Prospectus has been fyled with the Provincial Secretary of Ontario.)

CRESCENT PORTLAND CEMENT COMPANY, LIMITED.

Incorporated under the Ontario Companies Act. Authorized Capital, $500,000. Divided into ten thousand shares of fifty dollars each.

DIRECTORS.

John Smith, Cement Manufacturer, 34 James St., Hamilton, Ont., President. Wm. H. Rose, Manufacturer, Guelph, Vice-President. Robt. R. Jones, Broker, Guelph, Secretary. Arthur H. Ross, M.D., Weston, William Black, Broker, 716 Scott St., Toronto (*c*).

(*c*) This letter "c" and the italic letters that occur in the text, refer to similar subsection letters of section 99, Ontario Companies Act, and show that the requirements of that section have been complied with.

AUDITORS.

W. K. Brown & Co., Canada Life Building, Toronto (*m*).

HEAD OFFICE, TORONTO.

The ever increasing demand for Portland Cement means that manufacturers of cement can always be sure of a market, and of getting their price, and a good price (*m*).

Objects. Crescent Portland Cement Company, Limited, is incorporated for the purpose of manufacturing Portland Cement bricks and building materials.

Location of Property. The Grand Trunk Railway crosses valuable beds of marl and clay, about four miles from Guelph. This company is being formed to take over these beds, which consist of about 400 acres.

Plans. The company's plans are for a modern, up-to-date factory and equipment, to be built beside the deposits, thus saving the expense of long haulage from the beds to the factory. The land needs no drainage.

Purchase Price. The company has entered into a contract (*l*), dated July 7th, 1907, with William Black of 716 Scott Street, Toronto, Broker, for the purchase of the cement beds. The price (*f*) is $80,000 of which $40,000 is to be paid in cash and $40,000 in shares of the company. The cash is payable $1,000 as a deposit, and the balance in instalments as the company's stock is sold, the vendor (*h*) to get 50 per cent. of the moneys paid in, until said $40,000 is paid, without interest. Of this sum $20,000 in cash and $28,000 in stock (*g* and *k*) is payable to William Rogers of Guelph, retired farmer, from whom Mr. Black procured the option on the property.

Management. The company has arranged with Newstead Barber of Lansing, Michigan, an experienced manufacturer of cement, to take charge of the erection of the plant and superintend the works, and by contract (*l*), dated June 20th, 1907, has agreed to give him a bonus of $5,000 in paid up stock in return (*f*) for his taking a smaller salary than he could now obtain.

Expenses. The estimated preliminary expenses (*j*) consist of Government incorporation fees, solicitor's fees and similar expenses, travelling expenses, and engineers and architects charges, $3,000 is expected to cover all. The erection of the plant is estimated to cost about $120,000. In order, however, to enable the company to ratify the contract of purchase of the lands, the minimum subscription (*d*) on which the directors may proceed to allotment is fixed at only $4,000, but the directors offer the entire stock of the company, and reserve the right to refuse to allot any stock if they think that sufficient is not being subscribed to make the enterprise a success.

Payments. Twenty per cent. of the subscription (*d*) is payable with the application. The balance on call (*e*) of the directors, and not sooner than 2, 4, 6 and 8 months from the date of the allotments.

Statutory Information. The original incorporators (*a*), (each of whom subscribed for one share for the purpose of incorporation) were John Hogg, Thomas Henry Barnes and John Bunyan, Law Students; John Henry Hamilton, Stenographer, all of the City of Toronto, and William Newman Taylor, of the Township of Eramosa, Farmer.

No amount of stock has been fixed as the qualification (*b*) for directors, and no provision has been made as to the remuneration (*b*) of directors or officers other than the payment of $5.00, and travelling expenses for attending directors' meetings. The by-laws provide that calls (*e*) on subscribed stock shall be made as ordered by the directors, but that no call except the first shall be

for more than twenty-five per cent. of the subscription, and that there shall be 30 days between calls. No shares or debentures, except the shares above mentioned have been issued (*f*) or agreed to be issued as paid up or otherwise than for cash; and no amount has been paid (*h*) or is payable for good will of the property proposed to be acquired.

The company's charter authorizes the payment of a commission (*i*) on sale of stock; and an agreement (*l*), dated the 10th July, 1907, has been entered into between the Corporate Trust Company, and the company by which the former is to receive twenty per cent. on the subscriptions for stock in return for underwriting services.

Nothing has been paid (*k*) or agreed to be paid to any promoter, and no director has any interest in the promotion of the company, or in the property to be acquired, except Mr. Wm. Black, from whom the company is purchasing the property. The President of the company, Mr. John Smith, has been for years connected with large cement works in various capacities, and in order to secure his services to the company, and thus enhance the value of his own stock, Mr. Black has agreed to donate (*n*) to Mr .Smith, 5,000 of his shares. Apart from this each director will pay in full (*n*) for all shares held by him.

Copies of the contracts (*l*) above referred to may be seen any day at the office of the Corporate Trust Co.

Subscriptions should be made on the form at the foot hereof, and should be sent to the Corporate Trust Company, 81 Julia Street, Toronto, to whom all cheques should be made.

Dated 22nd July, 1907.

Signed,

JOHN SMITH.
A. H. ROSS.
WM. H. ROSE.
W. BLACK.
R. R. JONES.

To the Corporate Trust Company, Toronto:

GENTLEMEN,—I hereby make application for two hundred shares in the capital stock of the Crescent Portland Cement Company, Limited, on account of which I herewith enclose marked cheque for $1,000 payable to your order.

Hamilton, 1st May, 1907.

 Signature of Applicant.

FORM No. 10.

PROSPECTUS OF A MINING COMPANY.

KING AND QUEEN MINING COMPANY, LIMITED.

No Personal Liability.

(A Copy of this Prospectus fyled with the Provincial Secretary of Ontario, 17th July, 1907.)

1. Incorporated under the Ontario Companies Act, on the 5th of July, 1907. Authorized capital $2,500,000 divided into 2,500,000 shares of $1.00 each.

2. The general objects of the Company are to carry on in all their branches the operations of a mining, milling, reduction and development company.

3. The Company is specially empowered by its charter to issue its stock at a discount, the shareholders not being liable for anything except the actual amount subscribed; to hold its meetings out of Ontario; and to pay a commission of twenty-five per cent. on the sale of stock and debentures.

4. The head office is at Toronto.

5. The original incorporators, (who are the present directors) were James Edwards, and John R. Fergus, Solicitors; Edward Vincent, Law Student; and Edwin James and Margaret Alley, Stenographers, all of the City of Toronto, who each subscribed for one share for the purpose of incorporation.

6. The Company has entered into a contract, dated July 15th, 1907, with John Lewis Smith of Toronto, by which Mr. Smith agrees to sell and the company to buy, ten mining claims or 400 acres in all, staked in the Larder Lake District, Ontario, and which had been transferred to Mr. Smith by transfers duly recorded. The transfers to the Company have been executed and deposited with a trustee to be handed over on the company legally ratifying the contract as soon as it obtains the certificate enabling it to do business.

7. The amount payable therefor, is $2,000,000 fully paid up shares of the company's capital stock, leaving 500,000 shares in the treasury unissued (less the incorporators' holdings). The Company has not agreed or proposed to issue any other shares except for cash. There is no lien or charge on any of the properties. None of the directors have or had any interest in said property or said contract.

8. The preliminary expenses of the Company should be small consisting merely of legal fees, payments to the Government for charter, mining licenses and recording fees, and travelling expenses. Two thousand dollars is estimated to cover them all. The amount required afterwards for surveys and development work will depend on how many of the properties the Company retains, and the work that may be done on each claim.

9. In order to comply with the strict provisions of the Companies Act, the directors have fixed the amount on which the Company will proceed to allotment at only $1,000, thus, making the Company sure of at once being in a position to adopt the contract of purchase. The directors, however, offer for sale the entire balance of the unissued stock, the first 100,000 shares being offered at the rate of 15 cents per share, so as to raise money quickly for development purposes. All shares offered for subscription are offered on the terms that the entire amount of the subscription be paid therefor in cash.

10. The by-laws do not provide any qualification for a director except that he be a shareholder. The by-laws provide also that the directors shall not receive any stated salary as such, but, by resolution of the Board, may be allowed fees for attending meetings and travelling expenses, and that any director who is called upon to perform any extra service for the Company shall be remunerated therefor.

11. Messrs. Frank Wright & Co., Toronto have been appointed auditors.

12. A copy of the contract of purchase may be inspected on any business day at the office of Edward & Fergus, the Company's solicitors, 534 Victoria Street, Toronto.

Dated the 17th day of July, 1907.

Signed,

J. Edwards.
Edward Vincent.
M. Alley.
John R. Fergus.
E. James.

General and Other Clauses.

In preparing the statement of the objects of a company it would be well to refer

1st. To the specific object clauses.

2nd. To the incidental powers set out in the governing statute.

3rd. To the special provisions regulating the conduct of the company's business, for insertion in the charter, and

4th. To the provisions respecting preference stock, if it is proposed to have such stock.

The incidental powers, conferred by the governing statute need not, of course, be repeated in the application for the charter. Powers that are expressly excluded by the statute cannot in any way be obtained. Hence, both these classes of objects, or powers, should be omitted, but any permissible objects not expressly conferred by the statute, and which are or may be necessary or desirable for the working of the undertaking should be carefully embodied in the petition or application for the charter.

The following clauses are intended to designate the primary or controlling object of the company. They are taken from charters of leading companies, and have been approved of, either by the Secretary's Department at Ottawa or Toronto.

They may be varied to meet the necessities of each particular case and are suggested as precedents subject to modification.

They are arranged in relation to the subjects. The numerals refer to Form numbers.

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SPECIFIC OBJECT FORMS.

FORM No. 11.

ABATTOIR.

To construct, equip and operate abattoirs and cold-storage plants, and to buy, sell and otherwise deal in, and advance money on the security of live stock and dressed meats.

FORM No. 12.

ACCOUNTANTS.

(*a*) To carry on the business of public accountants and auditors; (*b*) The making of examinations and inspections of the accounts of financial and mercantile businesses throughout the Dominion of Canada, the regular auditing of company accounts, and the preparation of special and annual statements of affairs, together with the certifying to the correctness of such statements of affairs and balance sheets of firms and corporations or individuals as may enter into agreements with the company for such services; (*c*) To make examinations of and reports upon the accounts and financial condition and also upon the property and its physical condition, of corporations, co-partnerships and individuals, in order to facilitate bankers and financial institutions and individuals in making contracts with or extending credit to such corporations, firms and individuals, and also to make such examinations and reports for the use and information of directors, officers and other parties in interest, reorganization committees, purchasers and underwriters of securities, and any others who may desire the same; (*d*) To collect information of general, financial and commercial interests and promulgate and distribute the same.

FORM No. 13.

ACETYLENE CONSTRUCTION.

To manufacture, construct, install, sell, work, utilize and otherwise deal in machinery, plant and other apparatus for the generation and supply of light, heat and power.

FORM No. 14.

ADVERTISING.

(*a*) To buy and sell advertising space or privileges; (*b*) To acquire and operate franchises for the purpose of advertising or for the buying or selling of advertising privileges; (*c*) To engage in the business of printing and publishing; and (*d*) To act for others as an agency for any of the above objects.

FORM No. 15.

AGENCY.

To act as agent for any Insurance Company which stands registered as such under The Ontario Insurance Act, and to lend money on personal property and chattels; Provided, however, that the Company shall not exercise any powers within the intent and meaning of The Ontario Loan Corporations Act.

FORM No. 16.

AGRICULTURAL IMPLEMENTS.

To carry on business as an engineer and engine-manufacturer, boiler maker, machinist, and machinery manufacturer, tool maker, mill-wright, founder, metal-worker, smith, shipbuilder, manufacturer of agricultural implements, vehicles, electrical plants, motors and equipments, rolling stock and hardware; to buy, sell, manufacture, deal in, retake, repair, alter, let or hire any of the articles or products connected with the business; and to carry on business as a general manufacturer and contractor.

FORM No. 17.

APARTMENT HOUSE.

To purchase, lease, take in exchange or otherwise acquire lands or interests therein together with any buildings or structures that may be on the said lands or any of them, and to sell, lease, exchange, mortgage or otherwise dispose of the whole or any portion of the said lands, and all or any of the buildings, or structures that are now, or may hereafter be erected thereon, and to take and hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to otherwise improve, alter and manage the said lands and buildings.

FORM No. 18.

AUTOMOBILE.

(*a*) To buy, sell, trade and carry on the business of manufacturers of automobiles, cycles, bicycles, tricycles, motors, engines, carriages and conveyances of all kinds, and in all articles used in the construction thereof; (*b*) To carry on the business of machinist; (*c*) To apply for, purchase, lease or otherwise acquire any patents, brevets d'inventions, licenses, concessions or the like conferring exclusive or limited right to use any invention which may seem capable of being used for any of the purposes of the Company and to use, exercise, lease, sell or grant licenses in respect thereof or otherwise turn to account the property or rights so acquired.

FORM No. 19.

BAKER.

To carry on a general baking, confectionery, catering and restaurant business.

FORM No. 20.

BEET SUGAR.

To manufacture, refine and sell sugar, syrups and other products of sugar-beets or sugar cane, and, for the more economical carrying on of the Company, (*a*) To grow sugar beets; (*b*) To feed, fatten and sell live stock, and (*c*) To manufacture lime.

FORM No. 21.

BICYCLES.

To manufacture, buy, sell, let to hire, trade and deal in bicycles, automobiles, motor vehicles and engines, motors and vehicles of all kinds, howsoever operated, and the parts thereof, and all kinds of motive powers, to operate the same and all kinds of machinery and materials for generating, producing and transmitting such motive powers.

FORM No. 22.

BISCUITS.

To manufacture, deal in, buy and sell, breadstuffs, cakes, biscuits and confectionery, and such other goods as may seem meet in connection therewith.

FORM No. 23.

BOAT MANUFACTURING.

To build, manufacture, buy, sell, let to hire, trade and deal in all kinds of boats, motor vehicles, motors and engines, and the parts thereof, and all kinds of motive powers to operate the same.

FORM No. 24.

BOOKBINDERS.

To carry on (1) the manufacturing and dealing in paper, envelopes, boxes and mucilage, the business of bookbinding, lithographing, engraving, and general printing in all their branches; (2) to carry on the business of a general stationer, dealer in, and manufacturer of blank books, and all knick-knacks, articles and notions made or dealt in by wholesale or retail stationers; (3) with the right to deal in, buy, sell and negotiate any sales of such machinery as is used in the manufacture of the articles aforesaid, and to manufacture the same.

FORM No. 25.

BOOKSELLERS.

To carry on the businesses of booksellers, publishers, stationers, printers, lithographers, stereotypers, electrotypers, photographic printers, photo-engravers, engravers, die sinkers, envelope manufacturers, book-binders, account book manufacturers, dealers in stamps and dealers in or manufacturers of any other articles or things of a character similar or analagous to the foregoing or any of them or connected therewith, and to acquire, possess and dispose of copyrights.

FORM No. 26.

BOOT AND SHOE MANUFACTURER.

To manufacture and deal in boots, shoes, leggings, laces, belts, trunks, bags and other leather goods.

FORM No. 27.

BREWERY.

To brew, malt, distil or otherwise manufacture and sell all kinds of wines, liquors, beer, ale, stout, porter and other intoxicating or fermented drinks, and also charged waters, aereated waters, mineral waters, soda water, and all other unfermented drinks.

FORM No. 28.

BRICK MAKER.

(*a*) To manufacture and sell brick, terra cotta, tiles, drain and sewer pipes, and such like productions, and (*b*) to purchase land for said purposes, and to erect thereon buildings for the manufactories and dwellings for the workmen.

FORM No. 29.

BRIDGE AND IRON WORKS.

To carry on the business of merchants, manufacturers and dealers in all kinds of metals, and all materials and supplies relating thereto; to conduct the work and business of a foundry, machine shop, factory, engine, structural metal, boat and bridge building establishment, to manufacture, construct, repair, buy, sell, let, hire, exchange, trade and deal in articles, tools, machines, machine tools, constructions, erections, conveniences and vessels, including locomotive engines, stationary engines, and all other engines, motors, electrical apparatus, air compressors, mining and pumping machinery, boilers, machinery of all kinds, railway cars, trucks, carriages, rolling stock for railways, yachts, boats, barges, tugs and all other vessels and parts of the same, and all articles composed or manufactured in whole or in part of iron, steel, or other metal, or wood or other material, or combination thereof.

FORM No. 30.

BROKERS.

(*a*) To purchase, sell or invest in debentures, bonds, stocks and other securities of any government or of any municipal corporation or school corporation or of any chartered bank or of any incorporated company; (*b*) To borrow money upon the mortgage or pledge of any property, real or personal of the Company, but, without the power to issue debentures or to receive deposits, and (*c*) To conduct a general brokerage business, and to do all such things as are incidental or conducive to the attaining of the above objects or any of them, provided that the said objects shall not be deemed to include power to carry on the business of a loan corporation within the meaning of The Ontario Loan Corporations Act.

FORM No. 31.

BROOM.

To manufacture and sell brooms, brushes, whisks and domestic woodenware.

FORM No. 32.

BUILDER.

To make, build, construct and operate any and all public and private works, undertakings, constructions and operations, and, generally, to carry on the business of a public and private contractor and of a manufacturer of building materials.

FORM No. 33.

BUILDING.

(*a*) To purchase, lease, take in exchange or otherwise acquire lands or interests therein together with any buildings or structures that may be on the said lands or any of them, and to sell, lease, exchange, mortgage or otherwise dispose of the whole or any portion of the lands, and all or any of the buildings or structures that are now or may hereafter be erected thereon, and to take such security therefor as may be deemed necessary; (*b*) To erect buildings, and deal in building material; (*c*) To take or hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to sell mortgage or otherwise dispose of said mortgages; (*d*) To improve, alter and manage the said lands and buildings, and (*e*) To guarantee and otherwise assist in the performance of contracts or mortgages of persons, firms or corporations with whom the Company may have dealings, and to assume and take over such mortgages or contracts on default.

FORM No. 34.

CANNING AND PRESERVING.

(*a*) To manufacture, produce, buy, sell and deal in all kinds of canned, preserved, pickled and cured fruits, vegetables, grains, meats, fish, fowl and game and extracts, syrups, jams, marmalades, essences, sauces, relishes, jellies, ærated or evaporated fruits, cider and cider vinegar, and, for the more economical carrying out of the said undertaking, to buy and sell all kinds of fruits, vegetables and meats.

FORM No. 35.

CARPENTER.

To carry on business as a carpenter, contractor and builder, and to manufacture and deal in woodenware, building materials and lumber.

FORM No. 36.

CARPET.

(1) To manufacture and deal in carpets, rugs, yarns, and wool, cotton and jute; (2) For the said purposes, to manufacture, purchase and sell wrought and cast iron and brass work and other hardware, and the tools and implements necessary for all such manufactures respectively.

FORM No. 37.

CARRIAGE.

To manufacture, buy, sell and deal in carriages and other vehicles.

FORM No. 38.

CATTLE.

(*a*) To carry on business as ranchers, farmers, breeders and dealers in all kinds of live stock, and manufacturers and dealers in the products thereof; and (*b*) To acquire under lease, license or by purchase and to sell and deal in and let, lease or license premises, grazing rights and privileges either exclusive or limited.

FORM No. 39.

CEMENT.

To manufacture, buy and sell and to otherwise deal with Portland Cement, marl, kirselguhr clay, putty, whiting, bricks, lime, paints, fertilizers, deodorizers, drain and other tiles and stone, and gravel, and artificial stone and its products, and to manufacture and deal in all compositions into which any of the said articles and materials can be converted or used, and for the said purposes, (*a*) to construct and operate on the property of the company or on property to be acquired for the purpose, tramways to railroads, and to navigable waters, and to the various marl beds, clay lands and cement rock deposits and other properties of the Company, (*b*) Subject to the consent of municipalities, and of owners of property interested to build pipe lines from the said marl beds to the Company's works, (*c*) To purchase, lease or otherwise acquire water powers and water privileges for the purpose of generating power or electricity with which to carry on the Company's operations, (*d*) To dispose of any surplus electricity generated by the company in the operation of its works and plant, (*e*) To purchase, own and operate vessels for the purpose of conveying cement and other materials in connection with the Company's works; (*f*) To build docks, wharves and works where it may be found necessary to carry

on the Company's business, and (*g*) To build storehouses and elevators at any points where it may be found necessary to carry on the Company's business.

FORM No. 40.

CEREAL.

(*a*) To manufacture, sell and deal in oats and other grain and the manufactured products thereof, and everything used in said manufacture, and to carry on the business of elevating, milling, storing, warehousing and forwarding oats and other grain and the manufactured products thereof and a general commission business; (*b*) To acquire, purchase and otherwise provide trade marks, trade names, labels and designs, hydraulic, electric or other power, wood, coal or other fuel and to dispose of any surplus thereof.

FORM No. 41.

CHEMIST.

To purchase, import, manufacture, sell and deal in drugs, druggists' specialties, medical and pharmaceutical preparations and toilet requisites.

FORM No. 42.

CIGAR MANUFACTURER.

To manufacture, buy, sell and deal in tobacco, cigars, cigarettes and other products of tobacco.

FORM No. 43.

CLOTHING.

To import, manufacture, buy and sell all kinds of ready-to-wear garments, wearing apparel, clothing, furnishings, fancy-goods and kindred articles.

FORM No. 44.

CLUB, ATHLETIC.

To conduct and carry on a lawn tennis club for promoting and encouraging the practice and playing of lawn tennis, bowling and other athletic games and recreation, and such other or similar games as can be conveniently conducted and carried on in connection therewith.

To hold or arrange matches and competitions and to offer and grant or contribute towards prizes, awards and distinctions for winners in such matches and competitions.

FORM No. 45.

CLUB, COUNTRY.

To establish a country club for the encouragement of rowing, rackets and other sports, and for the maintenance of a country place for social meetings and purposes of amusement.

FORM No. 46.

CLUB, POLITICAL.

To carry on a literary, debating and political Club, not for the purpose of gain, but as an educational institution, for the discussion of literary, political and philosophical topics, and the practice of public debating and platform speaking by the members, and to encourage and promote lawful athletic games and exercises.

FORM No. 47.

CLUB, SOCIAL.

To establish and operate a Club for social entertainment in the City of and the establishing of branches of the same in other places throughout the Dominion of Canada.

FORM No. 48.

CLUB, LADIES.

To conduct an athletic Club with the necessary means for recreation, and to provide social accommodation and refreshment for the members thereof.

FORM No. 49.

COAL.

To purchase, sell and deal in coal, wood and other fuels; to purchase, build, charter, equip, load on commission, sell, repair, let out to hire and trade with steam or other ships, boats and vessels of all kinds.

FORM No. 50.

COFFEE AND SPICE.

To buy, sell, manufacture and deal in and with food products; to buy, sell, roast, blend, grind, put up and dispose of coffee, spices and other condiments for general use; to prepare and put up syrups, essences, flavourings and otherwise to engage in the preparation, manufacture and sale of all commodities appertaining to, or in any way relating to food products.

FORM No. 51.

COLD STORAGE.

To carry on the business of a warehousing and cold storage company in all its branches, and, for that purpose, (*a*) To operate and maintain conveyances for transportation and cold storage by land or water of any and all products, goods or manufactured articles; (*b*) To issue certificates and warrants, negotiable or otherwise, to persons warehousing goods with the Company, (*c*) To raise, purchase, sell and otherwise deal in eggs, butter, cheese and all other farm, field, orchard, garden and dairy products; (*d*) To conduct abattoirs or slaughter houses, to slaughter all kinds of animals and manufacture, purchase, sell and otherwise deal in meats, fertilizers, fat, tallow and other substances derived from the said animals and carry on the business of pork packing; (*e*) To establish and maintain wholesale and retail shops and generally to carry on any business undertaking which may be conveniently carried on with the above.

FORM No. 52.

COLLAR.

To manufacture and sell shirts, collars and cuffs.

FORM No. 53.

COLLEGE, BOYS.

To establish and carry on a college or seminary of learning for the education of youth.

FORM No. 54.

COLLEGE, BUSINESS.

(*a*) To establish and carry on a business college and training school and to impart, in all its branches, instruction in commercial subjects; (*b*) To establish branch schools, and (*c*) To publish such text-books, blank forms and documents as may be required for the use of similar colleges and schools.

FORM No. 55.

COLLEGE, LADIES.

To establish and carry on a girls' and young ladies' college.

FORM No. 56.

COMMERCIAL.

(*a*) To carry on the business of wholesale and retail merchants in all kinds of goods, wares and merchandise, also the business of general warehousemen in all its branches and generally to trade

and deal in all produce, provisions, materials and goods of every description; and (*b*) To purchase, charter, hire, build or otherwise acquire, steam and other ships or vessels, with all equipment and furniture and to employ the same in the conveyance of passengers, mails, and merchandise of all kinds, and to carry on the business of carriers by land and water, ship-owners, warehousemen, wharfingers, barge-owners, lightermen and forwarding agents.

FORM No. 57.

COMMERCIAL (ANOTHER FORM).

To establish, maintain and conduct a jobbing, commission, brokerage and general agency business and as incidental to such business to manufacture and deal in goods, wares and merchandise.

FORM No. 58.

CONTRACTOR.

To contract for, build, construct and equip public and private works, and for the said purposes, (*a*) To invest in and acquire and hold the bonds, debentures and stocks of other companies with which the Company hereby incorporated is empowered to contract, and (*b*) To distribute amongst the shareholders of the Company in kind any property of the Company, and, in particular, any shares, bonds, debentures or securities of any other companies belonging to the Company hereby incorporated, or of which the Company hereby incorporated may have the power of distribution.

FORM No. 59.

CORSET.

(*a*) To manufacture, buy, sell, import or export all kinds of corsets, corset waists, braces, infants' bands, corset steels, corset clasps, dress steels, dress shields, hose supporters, bustles, laces, lace, trimmings, corset and other boxes and cartons and dry goods and small wares in general; (*b*) To purchase, exchange, lease, acquire, apply, work, sell, and deal in all patents of invention, patent rights and improvements thereon, trade marks, and trade names capable of being used for the purposes of the company; (*c*) To carry on the business of a printing, publishing, stereotyping, engraving, wood cutting, lithographing and book-binding establishment in connection with the business of the company, and to deal in and sell all articles of merchandise connected therewith.

FORM No. 60.

COSTUME.

(*a*) To manufacture, buy, sell, deal in and with clothing, wearing apparel and general dry goods, and in and with all machines,

materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

FORM No. 61.

CREAMERY.

To manufacture and sell butter, cheese and all other milk and dairy products.

FORM No. 62.

DEPARTMENT STORE.

To purchase and sell dry goods; to purchase, manufacture and sell goods and merchandize generally.

FORM No. 63.

DEVELOPMENT.

To develop and improve lands and the use and productiveness thereof for agricultural, horticultural and grazing purposes; to supply seeds; to manufacture and otherwise produce, purchase and otherwise acquire, sell, supply and deal in implements, appliances, fertilizer and other articles and things required, used or necessary for the proper and successful cultivation of the soil, and to provide arrangements and facilities for the purchase, sale, transportation and storage of the products of the soil and of any of the articles and things above mentioned.

FORM No. 64.

DISTILLING.

(1) To manufacture or distil alcohols, acids, ethers and essences produced either in the fermentation or destructive distillation of grain, wood or other vegetable matters or products of vegetable matters; (2) To manufacture, distil, rectify, age, buy, sell and deal in all kinds of spirituous and alcoholic liquors; (3) To carry on the business of malting, warehousing, elevating and forwarding; (4) To arrange and provide for the consumption or economic use of the refuse or bye-product of any of the manufactures of the Company; and, (5) To carry on any business which may be necessary or expedient for the consumption or economic use of the refuse or bye-products of any of the manufactures of the Company.

FORM No. 65.

DRIVING PARK.

To construct and maintain a driving park.

FORM No. 66.

DRY GOODS.

(*a*) To carry on the business both wholesale and retail of general dry goods merchants, drapers, haberdashers, milliners, dressmakers, tailors, furriers, lacemen, clothiers, hosiers, glovers, and general outfitters; (*b*) To acquire, purchase, hold, sell, dispose of, supply, manufacture and produce all manner and kinds of goods, wares, and merchandise dealt in or appertaining or incidental to the business or any part of the business aforesaid; (*c*) To take, acquire, hold, sell and dispose of real and personal property of every nature and kind as security for or in satisfaction wholly or in part of debts, liabilities or obligations incurred or to be incurred in respect of or in connection with the business aforesaid or any of the purposes or objects of the company; (*d*) To acquire any business of the nature or character which the company is authorized to carry on and the goodwill thereof; (*e*) To act as agents for traders, dealers and manufacturers of any goods, wares or merchandise of the nature or description hereinbefore mentioned; (*f*) To purchase, acquire, hold, lease and dispose of patent rights and licenses in any way relating to the business of the company, or any interest in such patent rights and licenses and such motive and manufacturing powers or any interest therein as may be considered desirable or necessary for or in connection with the aforesaid objects of the company.

FORM No. 67.

ELECTRIC LIGHTING.

To produce, manufacture, supply, acquire, lease, sell and dispose of electricity and electric currents for heat, light and power and for any other purposes for which the same may be used; (*b*) To acquire, manufacture, construct, lay, erect, maintain, complete and operate all works, structures, apparatus, motors, poles, wires, appliances and connections, materials, supplies and machinery as are or may be in any way used in connection with the business of production, manufacturing, acquiring, leasing, selling and supplying electric current, or electricity for any purpose, and to lease, sell or otherwise deal with or dispose of the same; (*c*) To acquire by purchase, license, lease or otherwise and to use license, lease or otherwise dispose of any water-powers or other powers, rights, easements and privileges in connection with the production, manufacture, acquiring, leasing or supplying electricity or electric current for heat, light or power, or for any other purpose for which the same may be used, and, also, to acquire by purchase, license, lease

or otherwise, and use, and, in any of the said ways again dispose of, any invention, letters patent for inventions, or the right to use any invention in any way connected with, or pertaining to the business of the Company, and (*d*) To acquire shares in the capital stock, debentures and securities of other electric companies possessing powers similar to those of the Company hereby incorporated as the consideration for goods, wares or merchandise sold to such other companies in the ordinary course of business.

FORM No. 68.

ELECTRIC MANUFACTURING.

To manufacture, import, export, buy and sell, lease, rent and operate electrical appliances, apparatus, machinery, and instruments of all kinds appertaining to electrical work, also patent rights, letters patent of invention and processes, or other contrivances in any way relating to electrical appliances, apparatus, machinery and instruments; and for the purpose of carrying on its business to purchase, hold, improve, lease, sell or dispose of lands whether improved or not wherever situate throughout the Dominion of Canada, and develop and improve any natural waterways and water powers which may be situate on any of the said lands and for the improvement of the said lands, to erect, construct and build thereon, such mills, factories, manufactories or other buildings and works which the company may deem expedient, and operate the same; to utilize any water power so developed for the purpose of generating pneumatic, hydraulic or electric power, and to use any of the said power so created to generate light, heat or power, and to use and distribute the same as required for or incidental to the business of the company; to issue, hand over and allot as paid-up stock, shares of the capital stock of the company hereby incorporated in payment, or in part payment, of any business, franchise, undertaking, property, right, power, privilege, lease, license, patents, real estate, stock, assets or other property or rights which it may lawfully acquire by virtue hereof at the value thereof.

FORM No. 69.

ELECTRIC POWER.

To manufacture, sell or purchase electric power, whether generated by water-power, steam or other force, and to apply the same in any of the arts or sciences, or in the manufacture of any article, or in any condition in which the use of electricity is employed for the purposes of the Company's business; to purchase any lands, or purchase, or erect any buildings, wharves, or bridges,

or other structures that the Company may require, and to purchase, erect or instal hydraulic, or electric machinery, plant and apparatus of any kind or nature, which may be necessary or desirable for the purposes of the Company's business, or to sell any of such lands, buildings or other structures or machinery, plant or apparatus, and to promote any industry, or enterprise that may be deemed advantageous to the Company, provided it is one to or from which the company may derive, or supply power, or the means of using, or producing it.

FORM No. 70.

ELEVATOR, GRAIN.

To carry on the business of owning and operating grain elevators and warehouses; to carry on the business of millers; to purchase any and all grain, seeds and farm products; to manufacture and sell all useful products therefrom; to erect and operate all necessary mills, elevators, warehouses, plant and machinery; to act as grain dealers in the purchase and sale of all seeds, grain or other farm products; and to act as agents for remuneration or otherwise for all parties in the purchase, storing and sale of such grain, seeds and farm products.

FORM No. 72.

ELEVATOR, MANUFACTURING.

(*a*) To manufacture, erect, build, furnish, equip, construct, repair, maintain and operate, buy, sell and in general utilize, and deal in and deal with, elevators and all kinds of hoisting machinery, including the acquisition by purchase, manufacture or otherwise of all materials, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned or any part thereof; (*b*) To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign, transfer, invest, trade and deal in engines, dynamos, generators, pumps and any and all kinds of machinery incidental to the manufacture, erection, building, furnishing, equipment, construction, repairing, maintenance and operation of elevators, and all kinds of hoisting machinery.

FORM No. 73.

ENGINE WORKS.

To manufacture, buy, sell and deal in gasoline or gas engines and motors, steam-engines, boilers, electrical motors, machinery,

yachts and other boats and vessels, vehicles and appliances, and to carry on the business of a founder, steel manufacturer, machinist and wood-worker.

FORM No. 74.

ESTATE.

To purchase, lease, take in exchange or otherwise acquire lands or interests therein, together with any buildings or structures that may be on the said lands or any of them, and to sell, let, lease, exchange, mortgage, or otherwise dispose of the whole or any portion of the lands, and all or any of the buildings or structures that are now or may hereafter be erected thereon, and to take and hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to otherwise improve, alter and manage the said lands and buildings.

FORM No. 75.

EXPORT.

To carry on the business of a general export and import commission and shipping agent, and to acquire, for that purpose, the business, rights, franchises, connection and goodwill of any person, firm or corporation carrying on or interested in any similar business.

FORM No. 76.

FARM.

To manufacture and sell cured, fresh, canned and preserved meats, fruits, vegetables and dairy products; to breed and deal in all kinds of live stock; and to carry on, in all its branches, the business of farming, dairying and stock raising.

FORM No. 77.

FENCE.

To manufacture and sell stationary and portable fences, steel posts and gates of all kinds; to manufacture and sell all tools and machinery used in and about the manufacture of fences, posts and gates; and to acquire by purchase, from time to time, such patent rights as may be found necessary for the due carrying on of the business of the company.

FORM No. 78.

FLORAL.

To carry on the business of a florist and to produce, raise, purchase, sell and deal in trees, plants, shrubs, seeds and flowers.

FORM No. 79.

FLOUR MILL.

To buy, sell and manufacture flour and oat meal and to buy, sell, grind and hash all kinds of grain.

FORM No. 80.

FOUNDRY.

To carry on a general foundry and machine shop business, and to manufacture every description of iron and steel and other metal work, and to deal in the same.

FORM No. 81.

FURNACE.

To manufacture and sell heating furnaces and their attachments, stoves and ranges of any and every description, machinery and castings of all kinds, and to do a general business in iron founding.

FORM No. 82.

FURNITURE.

To manufacture, buy, sell and deal in furniture, boxes, metal, metal work, plated ware, articles made in whole or in part of wood, metal or paper, castings, dies and fittings, furnishings and supplies for offices, vaults, schools, churches, halls, theatres and other public and private buildings, and to manufacture, buy, sell and deal in the raw materials required by the Company, or any of them, and in connection with the above mentioned objects; to carry on the trades and businesses of an electro-plater, printer, lumberer, saw-miller, planer and wood-worker, or any of them, and to buy, sell and deal in the products of the said businesses or any of them.

FORM No. 83.

FURNITURE (ANOTHER FORM.)

To carry on business as a furniture dealer, upholsterer and house-furnisher.

FORM No. 84.

GAS.

To manufacture and supply gas for heating, cooking and all other purposes for which gas is capable of being used, and to manufacture and supply electric, galvanic or other artificial light either in connection with gas or otherwise, and to manufacture and

supply electricity for the purpose of generating heat or power, and for all other purposes for which electricity is capable of being used; and to acquire any patent or other rights for the manufacture or production of any artificial light; and to manufacture or buy, and also to sell or lease all fittings, machines, apparatus or other things required for the use of the said company or its consumers.

FORM No. 85.

GLASS.

To buy, sell, manufacture and deal in all kinds of materials used for painting, glazing and decorating houses and buildings and constructing signs, and to buy, sell and manufacture plain, stained and ornamental-glass and generally, to carry on a painting and glazing business in every branch thereof.

FORM No. 86.

GLOVES.

To manufacture, buy, sell and deal in mitts, gloves, gauntlets, hats, caps, robes, garments and raw materials for the manufacture of the same, and for the said purposes, to purchase, sell and control necessary patents and patent rights.

FORM No. 87.

GRAIN AND PRODUCE DEALER.

(*a*) To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign and transfer or otherwise dispose of, invest, trade, deal in and deal with cereals and cereal products and the by-products thereof, and all articles entering into the manufacture thereof and the sale and disposition thereof, and generally to carry on the business of manufacturers of, and dealers in cereals and cereal products and the by-products thereof, and in connection therewith to acquire by lease, license, purchase or otherwise trade marks, trade names, labels and designs, and hydraulic, electric or other power, and to utilize the same and dispose of any surplus power; (*b*) To construct, acquire, operate, hire, lease, mortgage, sell or otherwise dispose of elevators for elevating wheat, grain or other produce, with the requisite engines, plant, machinery and appliances therefor, and also sheds, stores and warehouses for the reception and storage of wheat, grain and other produce and any other goods, wares, merchandise and effects, and generally to carry on an elevator and storage business, and in connection therewith to acquire by lease, license, purchase or otherwise hydraulic, elec-

tric or other power, and to utilize the same and dispose of any surplus power; (c) To construct, acquire, charter, operate, hire, lease, mortgage, sell or otherwise dispose of all kinds of steam and sailing vessels, barges, boats and other vessels, wharves, docks, dry docks, workshops, warehouses, freight sheds, stations and other buildings, railway and steamboat terminals.

FORM No. 88.

GRAIN MERCHANT (ANOTHER FORM).

To manufacture, buy, sell and deal in grain, flour, meal and other agricultural produce, and for the said purposes to carry on the business of a miller, shipper, forwarder and warehouseman.

FORM No. 89.

GROCERS.

To carry on in all its branches, the business of a wholesale grocer and liquor merchant, and, for the said purpose, (a) To purchase, prepare, manufacture, buy, sell and deal in all goods, wares and merchandise bought, sold and dealt in by wholesale and retail grocers, and to own and operate retail branches for like purposes; (b) To hold, own, mortgage, sell, assign, transfer and deal in and deal with goods, wares, merchandise and property of every class and description, and (c) To carry on a warehousing and cold storage business.

FORM No. 90.

GROCER'S BROKERAGE.

To carry on the business of a general broker and commission agent for the purchase and sale of the goods, wares and merchandise usually bought and sold or dealt in in the grocery business, and to buy and sell such goods, wares and merchandise on its own account.

FORM No. 91.

HALL.

To acquire by purchase or otherwise real estate in the City of , for the purpose of erecting thereon or on any part thereof, a public hall or other buildings for such lawful purposes as the Company may deem fit, with power to sell, mortgage, lease, rent or otherwise dispose of the said real estate, or any part thereof, or the buildings thereon erected or to be erected, and generally to transact all business connected with the same.

FORM No. 92.

HARDWARE.

To manufacture, buy and sell hardware and kindred goods and articles.

FORM No. 93.

HARVESTER MACHINERY.

To manufacture, buy, sell and deal in farm machinery, agricultural implements, vehicles and tools ot every description with all their appliances, and for the said purposes, to acquire and hold absolutely or for a term of years under lease or otherwise and to sell, assign, lease, mortgage and transfer contracts, agreements, options, leases, plants, real estate, leaseholds, tools, machinery, patents, inventions, shop-rights, copy-rights, trade marks, tradenames, patterns, brands and any, or all of them and the stock-in-trade and good-will of any other incorporated Company, or companies, or individual, and for the said purposes, but by way of security, to take and hold mortgages, liens and charges upon real property.

FORM No. 94.

HOLDING CORPORATION.

To purchase shares of the capital stock of the said The Company, Limited, of The Company, Limited, and of the Company, Limited, incorporated by Letters Patent issued under The Ontario Companies Act, and to purchase shares of the capital stock of any other manufacturing company which may be incorporated by Letters Patent under the said Act with objects and powers analagous to those of the said The Company, Limited, the said The Company, Limited, and the said the Company, Limited, or any of them.

FORM No. 95

HOTEL.

To carry on the business of hotel-keeping or inn-keeping in all its branches, and, for the said purposes,; to erect hotels and buildings appurtenant thereto, and to contract with the owner of land, or of any such building for the construction, erection, or enlargement, alteration or improvement of any such building.

FORM No. 96.

HOTEL, TEMPERANCE.

To carry on the business of conducting temperance hotels and places of refreshment and entertainment at which liquors or refreshments containing alcohol shall not be sold or supplied, and to make and deal in beverages and refreshments not containing alcohol.

FORM No. 98.

ICE.

(*a*) To manufacture buy, sell and deal in ice and ice-dealers' supplies; (*b*) To carry on the business of cold storage and warehousemen and wharfingers.

FORM No. 99.

INVESTMENT.

To carry on business as a general financial agent, broker and promoter; to finance or assist in financing partnerships and joint stock companies; to buy, sell and otherwise deal in financial and industrial securities; to promote or assist in promoting partnerships and joint stock companies, and to act as agents in the buying, assembling, exchanging and disposing of such properties as may enter into the assets of the companies to be promoted.

FORM No. 100.

IRON.

To manufacture and deal in iron, steel and other metals.

FORM No. 101.

JEWELLER.

To carry on business as a manufacturer and importer of all kinds of precious stones, jewellery, bullion, clocks, watches and other articles similar thereto and all kinds of jewellers', clock makers' and watch-makers' supplies, tools, machinery and equipment and to manufacture, buy, sell, and deal in all the said articles and all articles entering into the manufacture, sale and disposition thereof.

FORM No. 102.

LAND.

(*a*) To acquire by purchase or otherwise, and hold lands, water privileges and rights and interests therein; to build upon, develop,

cultivate, farm, settle and otherwise improve and utilize the same; and to mortgage, lease, sell or otherwise deal with or dispose of the same; and generally to carry on the business of a land and land improvement company; (*b*) To aid and assist by advances of money or otherwise with or without security, settlers and intending settlers upon any lands belonging to the company or in the neighbourhood of such lands, and generally to promote the settlement of said lands; (*c*) To apply for and obtain from the proper authorities in any province, district or territory of the Dominion of Canada or elsewhere such license, registration and recognition of the company and of its rights, powers, privileges and objects as may be considered expedient, and to do whatever may be necessary or expedient to comply from time to time with all or any laws, ordinances, decrees, regulations and other requirements, now or in future existing in any such place.

FORM No. 103.

LAND AND BUILDING CO.

(*a*) To purchase, lease, take in exchange or otherwise acquire lands or interests therein together with any buildings or structures that may be on the said lands or any of them, and to sell, lease, exchange, mortgage or otherwise dispose of the whole or any portion of the lands, and all or any of the buildings or structures that are now or may hereafter be erected thereon, and to take such security therefor as may be deemed necessary, (*b*) To erect buildings, and deal in building material; (*c*) To take or hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to sell mortgage or otherwise dispose of said mortgages; (*d*) To improve, alter and manage the said lands and buildings, and (*e*) To guarantee and otherwise assist in the performance of contracts or mortgages of persons, firms or corporations with whom the Company may have dealings, and to assume and take over such mortgages or contracts in default.

FORM No. 104.

LAUNDRY.

To carry on the business of a steam and general laundry and to wash, clean, purify, scour, bleach, wring, dry, iron, color, dye, disinfect, renovate and prepare for use all articles of wearing apparel, household, domestic and other linen and cotton, woollen goods, clothing and fabrics of all kinds, and to buy, sell, hire, manufacture, repair, let on hire, alter, improve, treat and deal in all apparatus, machines, materials and articles of all kinds which are

capable of being used for any such purposes; and to take over, acquire, hold, sell or otherwise dispose of all necessary real and personal property, brands, trade marks, trade names, patents of invention and copyrights.

FORM No. 105.

LEATHER MERCHANT.

To manufacture and sell leather.

FORM No. 106.

LIGHT AND POWER.

(1) To carry on the business of an electric light and power company in all its branches, and generally to provide, purchase, lease or otherwise acquire and to construct, lay down, erect, establish, operate, maintain and carry out all necessary works, stations, engines, machinery, plant, cables, wires, works, lines, generators, accumulators, lamps, meters, transformers, and apparatus connected with the generation, accumulation, distribution, transmission, supply, use and employment of electricity; and to generate, accumulate and distribute electricity for the supply of electric light, heat and motive power, and for industrial or other purposes, and to undertake, and enter into contracts and agreements for the lighting of cities, towns, streets, buildings and other places, and the supply of electric light, heat and motive power for any or all public or private purposes. (2) To sink wells and shafts, and to make, build, construct, erect, lay down and maintain, reservoirs, water works, cisterns, dams, culverts, main and other pipes and appliances; and to execute and do all other works and things necessary or convenient for obtaining, storing, selling, delivering, measuring, and distributing water for the creation, maintenance or development of hydraulic, electric or other mechanical power or for any other purposes of the company. (3) To construct, alter, work, carry out or control, and to purchase, take on lease, or otherwise acquire, and to sell, lease or otherwise dispose of any works, mains, lines, machinery or plant, of any kind or description, or any roads, ways, bridges, or other things whatsoever which may seem capable of being used or operated with any part of the company's undertaking for the time being, or calculated directly or indirectly to benefit the company; and to acquire rights over or in connection with such works, mains, lines, machinery, plant, roads, bridges, ways or other things whatsoever; and to equip, maintain and operate by electricity, hydraulic or other mechanical power all

works belonging to the company or in which the company may be interested, and to contribute to subsidies or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof. (4) From time to time to apply for purchase or acquire by assignment, transfer or otherwise and to exercise, carry out and enjoy any statute, ordinance, order, license, power, authority, franchise, concession, right or privilege which any government or authorities, supreme, municipal or local, or any corporation or other public body may be empowered to enact, make or grant, and to pay for, aid in, and contribute towards carrying the same into effect; and to appropriate any of the company's stock, bonds and assets to defray the necessary costs, charges and expenses thereof. (5) To procure the company to be registered and recognized in any foreign country and to designate persons therein, according to the laws of such foreign country to represent this company and to accept service for and on behalf of this company of any process or suit.

FORM No. 107.

LIGHTING.

To construct, maintain, complete and operate works for the production, sale and distribution of electricity and natural gas, or either of them, for the purposes of light, heat and power.

FORM No. 108.

LIQUOR.

To buy, sell and deal in, export and import wines, liquors and spirits of all kinds whether as principals or agents.

FORM No. 109.

LITHOGRAPHING AND ENGRAVING.

To carry on business generally as printers, publishers, lithographers, engravers, stereotypers, electro-typers, embossers, engrossers, book publishers, book-binders, paper-makers, envelope and paper box makers, stationers, manufacturers, advertising agents, dealers in and vendors of novelties, office and other supplies; to buy, sell, manufacture, trade, work and deal in plant, machinery tools, furniture, supplies, appliances and all articles requisite in, used or connected with or which can or may be used in connection with the said arts and business or either of them.

FORM No. 110.

LIVE STOCK.

(*a*) To carry on the business of a dealer and trader in live stock, (which term shall include horses, cattle, sheep, pigs and other useful and merchantable animals and poultry,) the business of a farmer, live stock-rancher and butcher; (*b*) The business of importing, exporting, shipping, raising, keeping, buying, selling and trafficking in live stock; (*c*) Of manufacturing, producing, packing, canning, curing, buying, selling and dealing in all products of and from such live stock, garden, agriculture and dairy-products and general provisions; (*d*) So far as necessary for the purposes of the Company's business hereinbefore mentioned, to carry on the business of cold storage and cold storage warehousemen and to construct, acquire and operate cold storage plants, warehouses and abattoirs; (*e*) To construct, acquire and operate boats by steam or otherwise, cars and vehicles for the purpose of and in connection with the said business.

FORM No. 111.

LUMBER.

To carry on the business of a lumberer, saw and planing-miller and manufacturer of lumber and woodenware and to buy, own, hold, sell and deal in timber-limits, timber-lands and logs, and to manufacture, buy, sell and deal in timber, lumber and wood of all kinds and to manufacture articles in the making of which timber or wood is required, or can be utilized.

FORM No. 113.

MACHINERY.

To manufacture, buy, sell, lease, exchange, dispose of or otherwise deal in all kinds of machinery and hardware specialties.

FORM No. 114.

MANUFACTURING.

To manufacture, purchase, sell or otherwise deal in , either directly or indirectly, through the medium of agents or otherwise.

FORM No. 115.

MANTLE MANUFACTURING.

To manufacture, buy and sell mantles, cloaks, robes, dresses and all kinds and descriptions of garments and clothing.

FORM No. 116.

MEAT.

To manufacture, prepare, can, cure, buy, sell and deal in meats of all kinds, game, poultry and farm products, and, for the said purposes, to carry on a general abattoir and cold storage business.

FORM No. 117

MEDICAL.

To manufacture and deal in all kinds of physicians' supplies, surgical appliances, dental-supplies, drugs, proprietary-medicines and druggists' supplies and sundries.

FORM No. 118.

MILK.

(*a*) To produce, buy, sell, and deal in (1) milk and cream and all beverages, food, compositions and supplies into which milk and cream or any of their products enter or may enter as component part; (2) mineral, aerated, distilled and other waters, and (3) meats, foods, beverages, compositions and supplies and all products of the farm and dairy; (*b*) To purchase, lease, maintain and operate farms, mineral springs, stores, shops, restaurants and marts for the production, storage, distribution and sale of the above mentioned products or any of them and all compounds, compositions, articles and substances containing the same or any of them.

FORM No. 119.

MILLING.

To buy and sell grain and other farm products and to manufacture flour and the bye-products of grain and to carry on a grain-elevating business.

FORM No. 120.

MILLING (ANOTHER FORM).

To carry on the business of purchasing, selling, storing, shipping and dealing in grain, and manufacturing, buying, and selling flour and other products of grain, to construct, acquire, operate, hire, lease, make, sell or otherwise dispose of elevators for elevating wheat, grain or other products and with power to acquire,

lease and utilize hydraulic, electric or other power for the purposes of the said business and generally to carry on an elevator and storage business; to construct, acquire, charter, sell, lease, operate and otherwise dispose of all kinds of steam or sailing vessels, barges, boats or other vessels, wharves, docks, workshops, stations, and other buildings; to acquire and hold shares in any ship or ships in connection with the company's business, and to manage, navigate and operate the same; and to acquire shares in any company incorporated for the purpose of owning, managing and operating any ship or ships, and to lease, hire and charter any such ship.

FORM No. 121.

MINERAL WATER.

To manufacture, deal in and sell carbonated, mineral, distilled and table waters and non-alcoholic beverages, and, to extract salts for medicinal and other purposes.

FORM No. 122.

MINERAL WOOL.

To manufacture mineral wool pipe and boiler coverings, mineral wool, bricks and boards, scoria block, and silicia cement, to deal in asbestos fibre and sand, and to buy, sell or deal in any of the above, or their products.

FORM No. 123.

MINING.

(*a*) To prospect for, open, explore, develop, work, improve, maintain, and manage gold, silver, copper, coal, iron and other mines, mineral and other deposits and properties and to dig for, raise, crush, wash, smelt, assay, analyze, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same, or any part thereof, or any interest therein;

(*b*) To acquire by purchase, lease, concession, license, exchange or other legal title, mines, mining lands, easements, mineral properties, or any interest therein, minerals and ores and mining claims, options, powers, privileges, water and other rights, patent rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and

either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, or any interest therein;

(*c*) To construct, maintain, alter, make, work and operate on the property of the company, or on property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water-powers, aqueducts, wells, roads, piers, wharfs, buildings, shops, stamping-mills and other works and machinery, plant, and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, implements, provisions, chattels and effects required by the company or its workmen or servants;

(*d*) To build, acquire, own, charter, navigate and use steam and other vessels;

(*e*) To take, acquire and hold as the consideration for ores, metals or minerals sold or otherwise disposed of, or for goods supplied, or for work done by contract or otherwise, shares, debentures, bonds or other securities of or in any other company having objects similar to those of a company incorporated under this Act, and to sell or otherwise dispose of the same;

(*f*) To enter into any arrangement for sharing profits, union of interests, or co-operation with any other person or company, carrying on or about to carry on any business or transaction which may be of benefit to a company incorporated under this Act;

(*g*) To purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person or company carrying on any part of the business which a company incorporated under this Act is authorized to carry on, or possessed of property suitable for the purposes thereof;

(*h*) To subscribe for and take and hold shares or stock in any company incorporated for the purpose of acquiring, holding, constructing, maintaining, and keeping in repair, roads, bridges, improvements in waterways, or other means of communication, and drainage works, and other improvements, upon, through, over or adjacent to, or leading to or from the lands of a company incorporated under Part XI of the Ontario Companies Act; Provided, that the consent of the shareholders shall be first obtained by resolution passed at a special general meeting called for that purpose; and

(*i*) To do all such acts, matters and things as are incidental or necessary to the due attainment of the above objects, or any of them.

If a Mining Company is to be a No-Personal Liability Company, the applicants must add the following words to that effect to the prayer of their petition. That no liability in excess of the amount actually paid, or agreed to be paid, to the Company for shares therein shall attach to any holder of such shares.

FORM No. 124.

MOTOR VEHICLES.

To manufacture motor driven vehicles and gasoline engines.

FORM No. 125.

NAVIGATION.

To carry on the business of a Navigation Company in all its branches.

FORM No. 126.

NAVIGATION (ANOTHER FORM).

(*a*) To construct, own, charter and navigate vessels, steamships, boats and all other kinds of water-craft including tugs and barges for the transportation of passengers, goods and merchandise and to sell and dispose of old boats, vessels and water-craft; (*b*) To carry on the business of a common-carrier of passengers, goods and merchandise and of a forwarder, wharfinger and warehouseman, and (*c*) To construct, own and use such docks, warehouses and other terminal facilities as may be convenient and necessary for the purposes of the Company and to make and enter into contracts and agreements with common-carriers and others necessary for giving effect to the purposes of the Company as aforesaid or any of them.

FORM No. 127.

NECKWEAR AND WEARING APPAREL.

To carry on the business of a manufacturer of and dealer in neckwear, furnishings, small-wares, clothing and wearing-apparel of every description.

FORM No. 128.

NEWS.

To buy and sell books, magazines, newspapers and other periodical publications, and stationery and fancy goods; to print and publish books and magazines.

FORM No. 129.

NEWSPAPER.

(*a*) To print, publish, circulate and deal in newspapers and publications of all kinds; (*b*) To carry on the business of newspaper and general publishers, advertisers, printers, lithographers and engravers, and (*c*) To manufacture and deal in paper, machinery and other articles necessary or useful in carrying out the objects of the Company.

FORM No. 130.

OIL LANDS.

To bore or mine for any kind of mineral, mineral substance, petroleum, mineral oils or gases, and to deal in the same; to erect or acquire by any title, and to operate smelters, refineries or other manufactories for refining, manufacturing or utilizing the same; to erect, build or acquire by any title, and to operate pipe lines or other methods of carriage and transportation, either by land or water; to acquire by any title and to deal with in any manner the stock, shares, bonds and other securities and evidences of title in other companies or incorporations of a like nature, or in the properties or assets thereof; to do a general trading business in connection with any of the businesses above defined, and generally to conduct any and every kind of business that may be necessary or accessory to the carrying on of any of the businesses or operations hereinabove defined.

FORM No. 132.

PACKING.

(1) To manufacture, buy, sell and otherwise deal in condensed, preserved and evaporated fruits and vegetables, and other food

products, and all materials necessary or incidental to the business of condensing, preserving, evaporating, packing and preparing for market all products of the orchard, garden, farm and dairy; to acquire by purchase, lease or otherwise, and to own, sell, lease, mortgage, convey, improve and operate lands, factories, elevators and buildings for the manufacture and storage of all such products. (2) To carry on any other business, whether manufacturing or otherwise, germane to the purposes and objects above set forth, and which may seem to the company capable of being conveniently carried on in connection with the business or objects of the company, or calculated directly or indirectly to enhance the value or render profitable any of the company's property or rights.

FORM No. 133.

PAPER BOX.

(*a*) To manufacture and deal in paper, paper box board, paper boxes, pails, bags, envelopes, calendars, labels, and paper products and novelties of all kinds; (*b*) To print, lithograph, stamp, emboss and carry on any other process in connection with said business; (*c*) To generate light, heat and power, and to sell or otherwise dispose of any surplus in excess of the requirements of the company.

FORM No. 134.

PAPER MAKER.

(*a*) To carry on in all its branches the business of a paper dealer; (b) To buy, sell, manufacture and deal in all kinds of paper, envelopes, blank books, stationery, paper bags and other accessories of the paper trade.

FORM No. 135.

PATENT.

(*a*) To encourage invention and to promote the interests of inventors and patentees; (*b*) To assist inventors and others in procuring and utilizing patents of invention; (*c*) to publish a journal devoted to the interests of patentees and inventors and those interested in patents and inventions; (*d*) To buy, sell and negotiate the sale of, and to deal in all kinds of inventions, patents of invention and patent rights or any interest therein.

FORM No. 137.

PATENT MEDICINES.

(a) To manufacture, buy, sell, and deal in drugs, medicines, proprietary or otherwise, chemicals, druggists' supplies and sundries, and the by-products thereof, and, generally, to carry on the business of a manufacturer of and a dealer in the said articles and those of a like nature and all articles entering into the manufacture or composition thereof.

FORM No. 138.

PETROLEUM.

Generally, to carry on the business of a producer and refiner of and a dealer in petroleum oil and the bye-products thereof, and for the said purposes, to prospect for, open, explore, develop, work, improve, maintain and manage, acquire by purchase, lease or otherwise, and sell, lease or otherwise dispose of petroleum oil-lands, or rights, or interests therein and to purchase, buy, sell and deal in crude petroleum oil and other oils and other products thereof; to sink oil-wells, to erect, acquire by purchase, lease or otherwise maintain and operate oil refineries; to store, tank and warehouse refined and crude petroleum-oil and bye-products thereof; to construct and operate pipe-lines for transportation of oil; to construct maintain, alter, make, work and operate on the property of the company, or on property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water-powers, aqueducts, wells, roads, piers, wharves, buildings, shops, and other works and machinery, plant and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, implements, provisions, chattels, and effects required by the company or its workmen, or servants; to build, acquire, own, charter, navigate and use steam and other vessels, and to do all such other acts, matters and things as are incidental or necessary to the due attainment of the above objects, or any of them.

FORM No. 139.

PIANO.

To manufacture, buy, sell and generally trade in pianos and parts of same, and all kinds of musical instruments and parts of same, piano-stools and benches, music-cabinets and piano-players.

FORM No. 140.

PLATE-GLASS.

To carry on the business of a plate glass and mirror company in all its branches, and incidentally thereto to manufacture mirrors and to do a general business of glaziers to the plate glass trade; to represent Canadian and foreign manufacturers of and dealers in plate, ornamental and other glass, mirrors and articles of that description.

FORM No. 141.

PLUMBING, ETC., SUPPLY.

To conduct a general plumbing, heating and sheet metal business, and to manufacture, sell, import and deal in plumbing, heating, engineering, electrical, gas, hardware, metal and water works supplies.

FORM No. 142.

POWER.

(*a*) To acquire by lease, purchase, or otherwise, and to utilize and develop water-powers and other powers for the production of electric, pneumatic, hydraulic, or other power, or force; (*b*) To construct, or acquire by lease, purchase, or otherwise and to operate works and appliances for the production of electric, pneumatic, hydraulic, or other power, or force, also works and appliances for the delivery and transmission under, or above ground of electric, pneumatic, hydraulic, or other power or force; (*c*) To acquire by lease, purchase, or otherwise electric, pneumatic, hydraulic, or other power, or force and to use, sell, lease, or otherwise dispose of the same and of power and force produced by the Company; (*d*) To construct, or acquire by lease, purchase, or otherwise and to operate in connection with the works, lines and business of the Company, and for the the purposes thereof, lines of telegraph, or telephone, or other works and means of communication; (*e*) To aid by way of bonus, loan, guarantee, or otherwise any industry, or enterprise using, or agreeing to use power supplied by the Company, or supplying, or agreeing to supply power to the Company. (*See also under Gas.*)

FORM No. 144.

PRINTING AND PUBLISHING.

(*a*) To engage in a general printing and publishing business, including the business of, embossing, lithographing, engraving, book-binding, electrotyping, stereotyping, photoengraving, manufacturing and dealing in paper boxes and stationery and generally to exercise all other powers, incidental to or connected with those above more particularly set out.

FORM No. 145.

PRODUCE.

To produce, purchase, sell and deal in butter, cheese, eggs, milk, vegetables, poultry, fruit, and other food, farm and dairy products, and the various materials entering into the production thereof. (2) To manufacture, lease, purchase and sell all machinery, tools, implements, apparatus and all other articles and appliances used in connection with any or all of the purposes aforesaid, or with selling and transporting the manufactured and other products of the company. (3) To carry on the business of refrigerating, cold storage, warehousemen, wharfingers, forwarding agents, and preservers and packers of provisions of all kinds.

FORM No. 146.

PROMOTION.

To carry on a general agency, promotion and brokerage business.

FORM No. 147.

PROVISIONS.

To carry on business as a meat and pork-packer, general and cold storage warehouseman and provision, butter, cheese, egg, game, poultry, fish, grocery, grain, fruit, vegetable and farm and dairy produce merchant, and for the said purposes, (*a*) To raise, buy, kill, sell and deal in live stock of all kinds and to manufacture all kinds of meats, meat products and dairy products and all articles required in connection with the manufacture and sale of these and all other commodities aforesaid.

FORM No. 148.

PULP.

(1) To carry on in all its branches a pulp wood, lumber and timber business, and to carry on any other business whether as manufacturers, merchants or otherwise which may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's property or rights; (2) And in particular, without limiting the generality of the foregoing words, to construct, build, and operate pulp, paper and lumber mills and to engage in the manufacture and sale of any and all products of the forest or any product in which lumber, timber, pulp or paper or any material used in the manufacture of lumber, timber, pulp or paper is employed, and to act as general merchants in connection with the matters aforesaid or any of them; (3) To purchase, lease or acquire water or other powers; to generate electrical or other power and use, lease, sell or otherwise dispose of the same; to acquire, hold and dispose of pulp concessions and timber licenses granted by the Crown; and to purchase, construct, charter and navigate steam or sailing vessels in connection with the business of the company.

FORM No. 149.

QUARRY.

(*a*) To quarry, manufacture and sell all kinds of stone and (*b*) To manufacture and sell all kinds of cement.

FORM No. 150.

RACING.

The acquisition of real estate in the City of or in the neighbourhood thereof for the purpose of constructing and maintaining thereon a race-course and steeple-chase course with grand stands, stables and all the accessories of a modern race-course and for the establishment and maintenance of a racing association, Jockey club and hunt club, and for the purpose also of establishing and maintaining one or more social clubs in connection with the said racing association, and generally for the purpose of encouraging and promoting horse-racing and horse-riding, and social intercourse among persons interested in such matters.

FORM No. 151.

RAILWAY APPLIANCES.

(*a*) To manufacture, purchase, or otherwise acquire, hold, own, mortgage, sell, assign, transfer, invest, trade and deal in railway supplies and appliances of every class and description; (*b*) To purchase, take on lease, erect or otherwise acquire real or personal property, or any rights which the company may think necessary or convenient for the purposes of its business; (*c*) To manufacture, purchase, lease or otherwise acquire, machinery and any and all apparatus and tools necessary or useful in connection with the business of the company, and to sell, lease, or otherwise dispose of the same.

FORM No. 152

RANCHING.

To raise, buy, sell and otherwise deal in cattle and other live stock, fruits, farm and dairy products, and generally, to carry on the business of a rancher, fruit grower, farmer and dairyman and dealer in the products and supplies of, for, or pertaining to all or any of the branches of such business.

FORM No. 153.

REALTY (UNDER ONTARIO ACT).

To acquire by purchase, lease, exchange or otherwise land, buildings and hereditaments of any tenure or description, and any estate or interest therein and to turn the same to account as may seem expedient and to sell, lease, exchange, mortgage or otherwise encumber or dispose of upon such terms as may seem desirable the whole or any portion of such lands, and all, or any of the buildings or structures that are now, or may hereafter be erected thereon, and to prepare building sites, and to construct, reconstruct, alter, improve, decorate, furnish and maintain offices, flats, houses, factories, warehouses, shops, wharves, buildings, works and conveniences of all kinds on any such lands and to consolidate, connect or subdivide properties.

FORM No. 154.

REALTY (UNDER DOMINION ACT).

To acquire by purchase, lease or otherwise, and to hold, use, improve, manage, mortgage, charge, lease, sell, dispose of and deal

in lands, tenement and hereditaments and immovables in the Northwest Territories and elsewhere in Canada, and elsewhere, and interests therein, and to erect, alter, repair and maintain buildings upon any lands in which the company may have any interest, and generally to carry on in Canada and elsewhere the business of a real estate and improvement company.

FORM No. 155.

REGISTRY AND IDENTIFICATION.

To carry on a general business of registration, indentification and temporary care in respect of persons or property; such persons and property to more particularly mean and to be limited to the identification of signatures; or the identification and temporary care of papers of any kind which have been lost or mislaid; or of movables or effects in like circumstances, viz.:—when beyond the possession or control of the owner; or the identification of persons at banks or at any other places where such persons may require identification; or the identification of persons, who, through sudden illness, unconsciousness, or mental or physical infirmity are unable to secure immediate communication with relatives or friends, in this latter case to more particularly mean and to be limited to the notification of the persons whose names and addresses have been registered on the company's books, for the purpose, and to contract with any person or persons to register the names of all such persons who may require identification under any circumstances, or in any place whatsoever, or whose signatures, or papers, or documents of any kind, or whose movables, or effects, may require identification, under any circumstances whatsoever.

FORM No. 156.

RINK.

(*a*) To purchase, take on lease, hire, or otherwise acquire and hold lands or buildings, or any interest therein in the for the purposes of park, sport, recreation, and amusements, and entertainments; (*b*) To erect buildings on such lands as aforesaid or any of them for the purposes of skating, curling, hockey and other amusements and for purposes of entertainments; (*c*) To equip same with gymnasium and other apparatus, and (*d*) To use, convert, adapt and maintain all or any of such lands, buildings and premises for the purposes aforesaid, or any of them, with their usual and necessary adjuncts.

FORM No. 157.

SADDLER AND HARNESS MAKER.

(*a*) To carry on the business both wholesale and retail of harness makers and saddlers; (*b*) To manufacture, sell and deal in all kinds of harness, saddlery, hardware, robes, whips, blankets, bells, trunks, leather bags, fly nets, gloves, fur coats, fur caps and articles of all kinds capable of being used for the purposes of a wholesale and retail harness and saddlery business or likely to be required by customers of any such business and to sell and manufacture any and all goods or materials used therein or any of them.

FORM No. 158.

SALT.

(1) To search for, get, work, raise, manufacture, make merchantable, sell, and deal in salt; (2) To apply for, obtain, register, purchase, lease or otherwise acquire, patents necessary for the better carrying on of the undertaking as aforesaid.

FORM No. 159.

SANATORIUM.

To establish and carry on a hospital and sanatorium with all modern appliances and methods, and for that purpose to purchase the necessary lands and buildings, and to erect and maintain suitable buildings on the lands so purchased as from time to time required and to purchase any other hospital or sanatorium now existing or hereafter to be established.

FORM No. 160.

SCHOOL, BOYS. (See also College.)

To establish and maintain a school for the instruction of boys in classics, modern languages and other subjects usually taught in a school for boys.

FORM No. 161.

SCHOOL.

To establish and carry on a school where students may obtain a liberal education in the arts and sciences, and to promote the

study, practice and knowledge thereof, and for such purposes to provide for the delivery and holding of lectures, exhibitions, classes and conferences calculated directly or indirectly to advance the cause of education whether general, professional or technical; to give or arrange concerts and musical entertainments and to give prizes and awards.

FORM No. 162.

SEWER PIPE.

To manufacture, sell and deal in sewer pipes, bricks, terra-cotta and all products of clay, sand or cement.

FORM No. 163.

SHIP BUILDING.

To construct, build, acquire, own, navigate, employ, use, sell, mortgage, lease, charter or otherwise dispose of steam and other vessels for the conveyance of passengers, goods and merchandise and to carry on the business, in all its branches, of a shipbuilder, common-carrier of passengers and goods, forwarder, wharfinger, warehouseman and of elevating grain, and, for the said purposes, (*a*) To construct, build, acquire, own, use, sell, mortgage, lease and dispose of wharves, docks, warehouses, elevators, offices and other facilities or buildings; (*b*) To construct, build, acquire, own or aid in and subscribe towards the construction, maintenance and improvement of terminals, harbours, piers, wharves, elevators, warehouses, roads, docks, dock-yards and other buildings and works necessary or convenient for the purposes of the Company; (*c*) To construct, acquire, own, use, sell, lease, or otherwise dispose of all facilities for the lightering of steam, or other vessels and to undertake the work of raising, removing or relieving vessels which have been wholly, or partially sunk, ground or injured and to carry on the business of a wrecking company and to collect charges therefor.

FORM No. 164.

SHIRT AND COLLAR.

(*a*) To carry on the business of merchants, manufacturers and dealers in all kinds of cotton, linen, silk and other textile fabrics, as well as by all processes of manufacture to make the same fit for

use as wearing apparel, and to sell and deal in such manufactured articles. (*b*) To carry on the business of merchants, manufacturers and dealers in cardboard, paper and other similar materials, and by all processes of manufacture to make the same fit or use, and to sell and deal in the same as manufactured articles. (*c*) To take, acquire and hold securities of any nature and kind, real or personal, for debts, liabilities, or obligations to the company incurred in respect of or in connection with any of the aforesaid purposes of the company.

FORM No. 165.

SHOE.

To manufacture boots, shoes, over-shoes and rubbers of every description and other goods, wares and merchandise made from leather or rubber.

FORM No. 166.

SMELTING.

To prospect for, open, explore, develop, work, improve, maintain and manage gold, silver, copper, coal, iron and other mines, minerals and deposits and properties and dig for, raise, crush, wash, smelt, assay, analyse, reduce and amalgamate and otherwise treat ores, metals and minerals whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same or any part thereof or any interest therein.

FORM No. 167.

SOAP.

To manufacture, buy, sell and deal in soaps of any nature and kind whatsoever, essential-oils, perfumes, pomades, glycerine, lard, wool and machinery oils of all kinds and any and all by-products of tallow, grease, oils and soaps, and also, all kinds of caustic, carbonate and bi-carbonate alkalies, salt and the like and any and all materials used in the manufacture of any, or all of the said articles.

FORM No. 168.

STATIONERS.

(*a*) To manufacture and deal in all kinds of books, stationery, leather and fancy goods, book-machinery, materials, office and other

supplies; (b) To bind and to publish books; (c) To acquire necessary patents of invention, licenses, copyrights and to act as agents.

FORM No. 169.

STORE, GENERAL.

To purchase, manufacture, prepare, buy, sell and deal in all goods, wares and merchandise bought, sold and dealt in by wholesale and retail grocers and to own and operate retail branches; and for the said purposes, (a) To hold, own, mortgage, sell, assign, transfer and deal in and deal with goods, wares, merchandise and property of every class and description; and (*b*) To carry on a warehousing and cold storage business.

FORM No. 170.

STOVE.

To manufacture, buy, sell and deal in all kinds of stoves, grates, furnaces, gas ranges and other articles used in connection therewith, electric fixtures and all appurtenances thereto, and to carry on such other business as manufacturers and merchants in metals as may from time to time be thought advisable, and to manufacture, sell and deal in all kinds of brass, copper, tin, galvanized iron and malleable goods of every kind.

FORM No. 171.

STREET RAILWAY.

(*a*) To lay out, construct, complete, maintain and operate works for the production, utilization and sale of, and to produce and sell steam, gas and electricity and steam, gas, electrical, pneumatic, mechanical, hydraulic and other power for all purposes; (*b*) Elsewhere than in the Dominion of Canada, to obtain legislative, governmental, municipal or other authority, concession or power and there to survey, lay out, construct, complete, maintain and operate and from time to time, to extend, remove and change as required, double or single iron or steel railways and branches, side-tracks and turn-outs for the passage of cars, carriages and other vehicles adapted to the same upon and along streets, highways and other public places and upon and along lands purchased, leased or otherwise acquired by the Company; also telegraph and telephone lines and works in connection therewith, and to allow the use of said

railways and other works by lease, license or otherwise for reward; and to take, transmit and carry for reward telegrams, messages, passengers and freight, including mails, express and other freight, upon or by means of the same, by force or power of animals or by steam, pneumatic, mechanical or electrical power, or by a combination of them or any of them; and also there to acquire, by purchase, lease or otherwise, and upon such terms and conditions as may be agreed on and to maintain and operate for reward, any existing or future line or lines of railway, telegraph and telephone, gas-works and lines, electric light works and lines, steam, gas, electrical, pneumatic, mechanical, hydraulic and other power, works and lines, and the assets, rights, properties, powers, concessions and franchises connected therewith and shares in the capital stock and bonds, debentures and other securities of any company owning or operating the same or any of the same, and to assume the liabilities thereof or connected therewith, or such parts thereof as may be agreed on; and (c) For the said purposes:—(1) To acquire by purchase, lease or otherwise and upon such terms and conditions as may be agreed on, real and personal property and estates and interests therein, including water-powers, lakes, ponds, streams and water-courses; (2) To acquire by lease, purchase or otherwise and upon such terms and conditions as may be agreed on, rights, powers, concessions, privileges and franchises to enable the company properly to exercise and carry on all or any of the rights, powers, concessions, privileges, franchises and objects of the company; (3) To enter into contracts and agreements with any or all legislative, governmental, municipal or other authorities, councils, corporations and bodies, firms and private individuals, respecting the exercise by the company of all or any of its rights, concessions, privileges, franchises and powers and respecting the acquisition by the company of rights, concessions, privileges, franchises and powers in connection therewith; (4) To apply for and obtain from any and all legislative, governmental, municipal and other authorities, powers and bodies, confirmation, registration and recognition of the company, and of its rights, powers, concessions, privileges, franchises and objects within any place outside of the said Dominion of Canada, and such additional rights, powers, concessions, privileges, franchises and objects as may be considered expedient; and to do whatever may be necessary or expedient to comply from time to time with all or any laws, ordinances, decrees, regulations and other requirements now or in future existing in any such place; (5) To sell, assign, transfer and convey to any persons or corporations having power to acquire the same, and on such terms and conditions and for such considerations as may be agreed on, all or from

time to time any of the works, undertakings, real and personal properties, rights, powers, concessions, privileges and franchises of the company; (6) To do all acts and exercise all powers and carry on all business incidental to the due carrying out of the objects for which the Company is incorporated and necessary to enable the company to profitably carry on all or any of its undertakings.

FORM No. 173.

TANNER.

To carry on business as a tanner and hide, skin, leather, harness, glove, mitt, wool and moccasin merchant and to manufacture, buy, sell and deal in hides, skins, leathers, harness, gloves, mitts, wools and moccasins and the by-products thereof and all articles entering into the manufacture thereof and the sale and disposition thereof.

FORM No. 174.

TEA.

To carry on business as a tea-merchant and general trader.

FORM No. 175.

TELEPHONE.

(1) To carry on the general business of a Telephone Company, and for the said purposes but subject to the consent in that behalf of the municipal councils interested, to construct, erect, maintain and operate a line, or lines of telephone along the sides of and across or under any public-highways, streets, bridges, water-courses or other such places, and (2) To manufacture, buy, sell and deal in and with all kinds of materials and supplies and other articles necessary or convenient for use in connection with and in carrying on such business or any part thereof, and, amongst other things, to acquire and undertake inventions, patents, good-will, rights and property, and the whole or any part of the business and assets of any person, firm or company carrying on any of the branches of business which the company hereby incorporated is authorized to carry on.

FORM No. 176.

TENT AND AWNING.

To manufacture and sell tents, sails, flags, awnings and like articles.

FORM No. 177.

TERMINALS.

To construct, acquire, operate, hire, lease, sell or otherwise dispose of wharves, docks, workshops, warehouses, freight-sheds, stations and other buildings, hotels, railway and steamboat-terminals and facilities, and generally, to carry on the business of a Terminals Company, and for the said purposes, (*a*) To acquire by purchase or otherwise and hold lands, water-powers, water-privileges and rights and interests therein; to build upon, develop and otherwise improve and utilize the same, and to lease, sell or otherwise deal with or dispose of the same; (*b*) To lay out, construct, complete, maintain and operate, hire, lease, sell or otherwise dispose of works for the production, utilization and sale of and to produce and sell steam, gas and electricity, and steam, gas, electrical, pneumatic, mechanical, hydraulic and other power for all purposes; (*c*) To construct, acquire, operate, hire, lease, sell or otherwise dispose of elevators for elevating wheat, grain or other produce with the requisite engines, plant, machinery and appliances therefor, and, also, sheds, stores and warehouses for the reception and storage of wheat, grain and other produce and any other goods, wares, merchandise and effects, and generally, to carry on an elevator and storage business.

FORM No. 178.

THEATRE.

To erect a building to be used as a theatre or opera house, and to manage or lease the same for the purposes of a theatre or opera house, and to lease any stores or offices forming a portion or portions of the said building.

FORM No. 179.

THEATRE (ANOTHER FORM).

(*a*) To produce, own, purchase and present, and to license others to produce and present theatrical plays, operas, circus performances, vaudeville novelties and all other forms of entertainment or amusement usually presented in theatres, opera houses, parks and other places of entertainment or amusement; (*b*) To hold, sell, assign and transfer, copyrighted and uncopyrighted plays and operas, and all scenery and properties, and all patented and unpatented devices which may be used in connection with theatres, opera houses, parks and places of entertainment or amusement; (*c*) To build, own, lease, rent or otherwise acquire and hold theatres, playhouses, music halls, parks and other places where theatrical, operatic and vaudeville performances and other forms of entertainment or amusement may be presented; (*d*) To give public or private performances of any kind therein or anywhere else; and (*e*) To carry on the business of a refreshment room and caterers for places of entertainment and amusement generally.

FORM No. 180.

TIMBER.

(*a*) To carry on business as a timber merchant, saw-mill proprietor and timber-grower and to buy, sell, grow, prepare for market, manipulate, export, import, and deal in wood and timber of all kinds and to manufacture and deal in articles of all kinds in the manufacture of which timber, or wood, is used, and, for the said purposes, (1) To purchase, lease or acquire water or other power and to use the same and to lease or otherwise dispose of any surplus thereof; (2) To acquire by purchase or otherwise timber of every description and to acquire, hold and dispose of timber-limits and licenses; (3) To purchase, construct, charter and navigate steam or other vessels and to construct and operate on the property of the Company or on property acquired for the purpose, tramways and railway-sidings; (4) To carry on the business of a general merchant, and, (5) To manufacture and sell pulp and paper or any product in which pulp and paper may be used.

FORM No. 181.

TOBACCO.

To purchase, manufacture and sell tobacco and the products of tobacco, and such goods as are usually sold in connection therewith.

FORM No. 182.

TOWING.

To carry on the business of towing and wrecking, and all business that may lawfully be done by means of tugs and the appliances and machinery used therewith, and for the said purpose, to acquire, own and operate tugs, scows, boats, vessels, pumps, docks and other appliances and machinery.

FORM No. 183.

TRANSFER.

(*a*) To carry on the business of transferring from place to place goods, wares, merchandise and persons by means of carts, waggons, carriages, omnibusses and other vehicles, and any business incidental thereto; (b) To carry on the business of warehousemen and keepers of warehouses, yards and other places for the storage of goods, wares and merchandise, and any business incidental thereto.

FORM No. 184.

TRANSIT.

(*a*) To operate and sail vessels and employ them in the general transportation business as ocean and inland carriers and carry on any business connected therewith; (*b*) To purchase or receive gifts of land or sites suitable for the construction of docks to be used by the company's vessels, or vessels of any other company, or purchase elevators, warehouses, wharves, jetties or piers as may be required; (*c*) To construct by contract or otherwise basins, docks, jetties, wharves, warehouses or other buildings at any point or points where the company's vessels may call at or trade with, including the terminal ports which may be deemed necessary or useful to the company and to carry on the business of warehousemen, wharfingers and carriers of passengers and goods of every description; (*d*) To purchase, construct or otherwise acquire steamers, barges, or any other kind of craft suitable for ocean or inland navigation, also to charter any steamer or vessel that may be considered desirable and advantageous to the company, either for the inland or ocean navigation; (*e*) To acquire by purchase, lease or otherwise howsoever any other marine transportation company, and to acquire rights over or in connection with them or any of them;

(5) To establish and maintain agencies of this company to carry on in Canada, Great Britain and elsewhere any business or trade that may be directly or indirectly required for or capable of being used in connection with any of the objects of the company; (6) To distribute any of the assets or property of the company among the members in specie or otherwise, but so that no distribution amounting to a reduction of capital be made without the sanction of the court, where necessary.

FORM No. 185.

TWINE.

To manufacture, buy, sell, trade and deal in rope, cordage, twine, oakum and other products and manufactures of hemp, jute, flax, manilla, sisal, cotton, paper and other fibres, and for such purposes to acquire patents for the manufacture of all such goods, and to manufacture and sell all machinery covered by such patents and to sell such patents or right to manufacture thereunder.

FORM No. 186.

UNDERWRITERS.

To carry on business as brokers and agents, and to procure capital, credit or other assistance for establishing, extending or reorganizing any enterprise or industry lawfully carried on or intended to be carried on by any person or corporation.

FORM No. 187.

UPHOLSTERER.

To carry on in all its branches, the business of an upholsterer, decorator, repairer of and a cleaner of carpets, furniture and hangings and of a manufacturer of and dealer in awnings.

FORM No. 188.

WAGON.

To manufacture, sell and deal in wagons, sleighs, farm and railroad carts, carriages and vehicles of all descriptions.

FORM No. 189.

WAREHOUSE.

To carry on, in all its branches, the business of a navigation, transportation, warehousing, wharfinger and grain-elevating company, and, for the said purposes, to own and operate vessels, warehouses, docks and elevators, and, as a source of revenue in the carrying trade of the company, to deal in goods, wares and merchandise.

FORM No. 190.

WATER AND GAS.

Subject to the provisions of The Ontario Gas and Water Act, to construct, complete, acquire and maintain works for supplying water and gas in the said Town of

FORM No. 191.

WATER POWER.

(*a*) To purchase, lease or acquire and develop water or other power, and to use the same and to lease, sell or otherwise dispose of any surplus thereof, and (*b*) To purchase, lease, take in exchange or otherwise acquire lands or interests therein, together with any buildings or structures that may be on the said lands or any of them, and to sell, lease, exchange, mortgage or otherwise dispose of the whole, or any portion of the lands, and all or any of the buildings, or structures that are now or may hereafter be erected thereon, and to take and hold mortgages for any unpaid balance of the purchase money on any of the lands, buildings or structures so sold, and to otherwise improve, alter and manage the said lands and buildings; Provided, however, that except as to taking and holding mortgages as aforesaid, nothing herein contained shall be deemed to empower the company to make loans, whether for building purposes or not upon lands not the property of the company, or upon land which, though once the property of the company, has by any deed, conveyance, transfer or alienation become the property of another.

FORM No. 192.

WIRE AND NAIL.

To manufacture and draw wire of all descriptions, and to deal in the same and in the products thereof of whatever form ; to manufacture and deal in plumbers and painters' supplies.

FORM No. 193.

WOOLLEN MILLS.

To carry on the business of manufacturing, dealing in, buying and selling wool, silk and cotton, woollen goods, worsted, silk and cotton goods and all textile fabrics and yarns, composed wholly or in part of wool, worsted, silk or cotton, and dealing in and vending products of their own and other mills, and all other commodities connected therewith; (*b*) To buy, sell, manufacture and generally deal in custom and ready-made clothing, knit goods, rugs, and felts for all purposes; (*c*) To acquire, construct and operate machinery and plant for the manufacture of worsted yarns, fabrics, braids and other materials composed wholly or in part of worsted, and for the purposes of the company to construct, maintain and operate machinery for the production and distribution of electricity for the purposes of light, heat and power.

FORM No. 196.

PETITION FOR LETTERS PATENT.*

To His Honour The Lieutenant-Governor of the Province of Ontario.

The petition of William John Thomas, Foundryman; Samuel Andrew Thomson, Machinist; Thomas Taylor, Gentleman; and Thomas Bright Taylor, Stove Manufacturer, all of the City of Hamilton, in the County of Wentworth, and Province of Ontario; Henry Victor Taylor, of the City of New York, in the State of New York, one of the United States of America, Moulder, and George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, Capitalist.

Humbly sheweth as follows:—

1. Your petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a charter, under the provisions of *The Ontario Companies Act*, constituting your petitioners and such others as may become shareholders in the Company thereby created, a

* For form of petition for a company without share capital see Schedule C Ontario Companies Act.

body corporate and politic under the name of The Hamilton Stove Company (Limited), or such other name as shall appear to Your Honour to be proper in the premises.

2. Your petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive (*a*).

3. Your petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your petitioners as aforesaid (*b*).

4. Your petitioners are of the full age of twenty-one years.

5. The object for which incorporation as aforesaid is sought by your petitioners is to manufacture and sell stoves and furnaces.

6. The head office of the company will be at Hamilton, Ont.

7. The amount of the capital stock of the company is to be two hundred thousand dollars.

8. The said stock is to be divided into four thousand shares of fifty dollars each.

9. The said William John Thomas, Thomas Taylor and Thomas Bright Taylor are to be provisional directors of the company (*c*).

10. That by subscribing therefor in a Memorandum of Agreement and Stock Book duly executed in duplicate, with a view to the incorporation of the company, your petitioners have taken the amount of stock set opposite their respective names as follows:—

William John Thomas	Fifty-nine thousand nine hundred dollars.
Samuel Andrew Thomson..	One hundred dollars.
Thomas Taylor.....	Sixty thousand dollars.
Thomas Bright Taylor.....	Fifty-nine thousand nine hundred dollars.
Henry Victor Taylor	One hundred dollars.
George Peter Sharpe	Twenty thousand dollars.

*

* If any payment in cash or otherwise, has actually been made by any petitioner on his stock, particulars thereof may be set out here. If it is desired to insert any special provisions in the charter it should be so stated here.

(*a*) Add here, when proper, "except the name '.....' and your petitioners elsewhere show that they have received the necessary consent in writing under section 28 of the said Act to the use of the name applied for."

(*b*) If otherwise, then the interests liable to be so affected shall be set out at length by affidavit to be briefly referred to here.

(*c*) The directors, who must be at least three in number, must be petitioners and shareholders. *Each director must hold stock absolutely in his own right.*

Your petitioners therefore pray that Your Honour may be pleased by Letters Patent under the Great Seal to grant a charter to your petitioners, constituting your petitioners and such others as have or may become subscribers in the Memorandum of Agreement and Stock Book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

And your petitioners, as in duty bound will ever pray.

Dated at Hamilton, this 15th day of May, 1907.

(Signatures of Witness.)	(Signatures of Petitioners.)
A. F. Lobb, as to	W. J. Thomas,
A. F. Lobb, as to	Thos. Taylor,
A. F. Lobb, as to	Thos. B. Taylor,
John G. Gibson, as to	S. A. Thomson,
John G. Gibson, as to	H. V. Taylor,
	By his Attorney, Herbert Mason.
John G. Gibson, as to	G. P. Sharpe,
	By his Attorney, Herbert Mason.

Signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by persons who are not petitioners, or directly interested in the formation of the Company.

Signatures by Attorney must be made under a *specific*, not general power, duly executed, which power must accompany this application. This Rule also applies to the Memorandum of Agreement and Stock Book, but with the addition that the amount of stock which is to be taken by the Attorney for his principal must be stated.

Witnesses, in their verifying affidavits, must identify each signature *in the form* in which it was made.

FORM No. 197.

AFFIDAVIT VERIFYING PETITION; AND AS TO NAME OF COMPANY.

PROVINCE OF ONTARIO, County of Wentworth, TO WIT:	IN THE MATTER of the application of William John Thomas and others for the incorporation by the grant of Letters Patent of The Hamilton Stove Company, Limited.

I, William John Thomas, of the City of Hamilton, in the County of Wentworth, Foundryman, make oath and say:—

1. That I am one of the applicants herein.

2. That I have a knowledge of the matter, and that the allegations in the within petition contained, are, to the best of my knowledge and belief, true in substance and in fact.

3. That I am informed, and believe that each petitioner signing the petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble thereto.

4. That the proposed corporate name of the company is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the Company as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this seventeenth day of May, A.D. 1907. JOHN ROE, *A Commissioner, etc.*	W. J. THOMAS.

FORM No. 198.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION AND MEMORANDUM OF AGREEMENT.

PROVINCE OF ONTARIO, County of Wentworth, TO WIT:	IN THE MATTER of the herein application for the incorporation by the grant of Letters Patent of The Hamilton Stove Company, Limited.

I, Arthur Freeman Lobb, of the City of Hamilton, in the County of Wentworth, Province of Ontario, make oath and say:—

1. That I was personally present and did see the annexed Petition and Memorandum of Agreement and Stock Book duly signed and executed by William John Thomas, Samuel Andrew Thomson, Thomas Taylor and Thomas Bright Taylor, four of the parties thereto.

2. That I know the said parties.

3. That I am a subscribing witness to the said petition and Memorandum of Agreement and Stock Book.

Sworn before me at the City of Hamilton, in the County of Wentworth, this Seventeenth day of May, A.D. 1907.	A. F. LOBB, *(Signature of Deponent.)*

JOHN ROE,
A Commissioner, etc.

FORM No. 199.

POWER OF ATTORNEY TO SIGN PETITION AND STOCK BOOK AND MEMORANDUM OF AGREEMENT (*a*).

Know all men by these presents that I, George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, do hereby make, constitute and appoint Herbert Mason, of the City of Hamilton, in the Province of Ontario, Esquire, my true and lawful attorney, for me and in my name and stead to sign the petition of William John Thomas and others now seeking incorporation under the name of The Hamilton Stove Company, Limited, under the provisions of the Ontario Companies Act, and also in my name and as my act and deed to sign the Memorandum of Agreement and Stock Book of the said company for four hundred shares of the capital stock thereof at fifty dollars per share, and generally to do all lawful acts requisite and necessary for effecting the premises, hereby agreeing to ratify and confirm all that my said Attorney shall do herein.

(*a*) The power of Attorney should in every case be given for the specific purpose in view, as shown above, and not in general terms, or for general business, as it will be retained by the Provincial Secretary.

In Witness whereof, I have hereunto set my hand and seal at Edinburgh this second day of May, A.D. 1907.

Signed and sealed in the presence of GEORGE INGLIS	G. P. SHARPE. [Seal.]

A similar Power of Attorney must be furnished by Mr. H. V. Taylor.

FORM No. 200.

AFFIDAVIT VERIFYING POWER OF ATTORNEY.

CITY OF EDINBURGH, County of Edinburgh, Scotland.	IN THE MATTER of the Power of Attorney given by George Peter Sharpe, of the City of Edinburgh, Capitalist, to Herbert Mason, of the City of Hamilton, in the Province of Ontario, Esquire.

I, George Inglis, of the City of Edinburgh, Student-at-Law, make oath and say:—

1. That I was personally present and did see the Power of Attorney hereunto annexed duly signed and sealed by George Peter Sharpe, one of the applicants for incorporation as The Hamilton Stove Company, Limited.

2. That I know the said George Peter Sharpe.

3. That the signature "G. P. Sharpe" is of the proper handwriting of the said George Peter Sharpe.

4. That the signature "Geo. Inglis," attesting the signature aforesaid, as the witness thereto, is the true signature of me, this deponent.

Sworn before me at the City of Edinburgh, this second day of May, 1907.	GEO. INGLIS.

(L.S.) PETER ROWE.
Notary Public.

A similar affidavit should be furnished verifying Mr. Taylor's Power of Attorney.

FORM No. 201.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION AND MEMORANDUM OF AGREEMENT AND STOCK BOOK WHEN SIGNED UNDER POWER OF ATTORNEY.

PROVINCE OF ONTARIO, County of Wentworth, TO WIT:	IN THE MATTER of the application, under the Ontario Companies Act, of William John Thomas and others for Incorporation as The Hamilton Stove Company, Limited.

I, John George Gibson, of the City of Hamilton, in the County of Wentworth, Student-at-law, make oath and say:—

1. That I was personally present and did see Henry Victor Taylor, one of the applicants for incorporation by Letters Patent of the said Company, by his Attorney Herbert Mason, duly authorized in that behalf, sign the petition and Memorandum of Agreement and Stock Book hereunto annexed, and marked as Exhibit "A" to this, my affidavit.

2. That I was personally present and did see George Peter Sharpe, one of the applicants for incorporation by Letters Patent of the said Company, by his Attorney, Herbert Mason, duly authorized in that behalf, sign the petition and Memorandum of Agreement and Stock Book hereunto annexed, and marked as Exhibit "A" to this my affidavit.

3. That I know the said Herbert Mason.

4. That the signatures "H. V. Taylor" and "G. P. Sharpe" are of the proper handwriting of the said Herbert Mason.

5. That the signatures "Jno. G. Gibson," attesting the signatures hereinbefore mentioned, are the true signatures of me, this deponent.

Sworn before me at the City of Hamilton,
in the County of Wentworth, this seventeenth day of May, A.D. 1907.

JNO. G. GIBSON.

JOHN ROE,
A *Commissioner, etc.*

FORM No. 202.

THE HAMILTON STOVE COMPANY, (LIMITED).*

MEMORANDUM OF AGREEMENT AND STOCK BOOK (*a*).

We the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of The Ontario Companies Act, (*b*) under the name of The Hamilton Stove Company, (Limited), or such other name as the Lieutenant-Governor may give to the Company, with a capital of Two hundred thousand dollars, divided into four thousand shares of fifty dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts (*c*).

In witness whereof we have signed.

Name of Subscriber.	Seal.	Amount of Subscription.	Date and Place of Subscription.		Residence of Subscriber.	Name of witness.
			Date.	Place.		
		$				
W. J. Thomas.....(*d*)....	L. S.	59,900	15th May, 1907.	Hamilton..	Hamilton..	A. F. Lobb. (*e*)
Thos Taylor.....	L. S.	60,000	15th " " .	" ..	" ..	A. F. Lobb.
Thos. B. Taylor.....	L. S.	59,900	15th " " .	" ..	" ..	A. F. Lobb.
S. A. Thomson	L. S.	100	17th " " .	" ..	" ..	Jno. G. Gibson.
H. V. Taylor (by his Attorney, H. Mason)	L. S.	100	17th " " .	" ..	New York.	Jno. G. Gibson.
G. P. Sharpe (by his Attorney, H. Mason)	L S.	20,000	17th " " .	" ..	Edinburgh, Scotland.	Jno. G. Gibson.

(*a*) To be executed in duplicate; both to be sent to and one deposited in the office of the Provincial Secretary. (*b*) The name of any other Act, if any, may be inserted here. (*c*) If the subscriptions for stock are to be subject to any conditions, such, for instance as usually attend upon the creation and holding of Preference Stock, the conditions should beset out here. (*d*) If a signature is by Power of Attorney, the Power must be specific, both as to purpose and as to the amount to be subscribed by the attorney, and must be filed with that duplicate original Stock-Book which is to be retained by the Provincial Secretary. (*e*) Witnesses must, by affidavit, prove *each* signature (preferably in the form in which it is made) in both of the duplicates.

*For Form of Memorandum of Agreement for a Company without share capital see Schedule D, Ontario Companies Act.

Forms 203, 204 and 205 altered to 9 and 10.

FORM No. 207.

Instalment Scrip.

When shares are paid for in full a Stock Certificate is usually issued to the Shareholder at once and no other receipt is necessary. Where, however, calls are made on the shares from time to time or when from any other cause payment is not made in full, Instalment Scrip is issued to the Shareholder. When the Stock is paid for in full, these receipts are surrendered to the Company and Certificates of Stock issued.

(Instalment Scrip and Stock Certificates may be bound in the same manner as bank cheques are.)

Stub.

The
Hamilton Stove Company,
Limited.

INSTALMENT SCRIP.

No. 1.

Dated 5th May, 1907.

1,198 Shares of $50 each.

First Instalment 10 per cent.

$5,990.

Received receipt for same.

THOMAS BRIGHT TAYLOR.

Scrip.

No. 1—$5,990. *1,198 Shares of $50 Each.*

The Hamilton Stove Company, Limited.

INSTALMENT SCRIP.

Received from Thomas Bright Taylor, Esq., Five Thousand Nine Hundred and Ninety Dollars, being the first call of ten per cent. on Eleven Hundred and Ninety-eight Shares of the Capital Stock of the Hamilton Stove Company, Limited, which said shares are reserved and set apart for him or his assigns, on condition that he or they fulfil the terms of subscription.

In Witness Whereof, we have hereunto subscribed our names at the City of Hamilton, this 5th May, 1907.

THOMAS TAYLOR, Secretary. { *Seal.* } WILLIAM JOHN THOMAS, President.

FORM No. 208.

Stock Certificate—Common.

When Stock has been fully paid up, the Instalment Scrip is exchanged for Stock Certificates, the receipt of which by the Shareholder is acknowledged in the Stub as shown.

On the back of these Certificates a blank form of Transfer (see Form No. 289c) is usually printed.

The
Hamilton Stove Company,
Limited.

Hamilton, 1st June, 1907.

Certificate No. 1.
For 2 Shares.

Issued to Samuel Andrew Thomson, of the City of Hamilton.

Received the above certificate this 1st day of June 1907.

S. A. THOMSON.

Certificate No...cancelled....1907.

Certificates issued in its stead as follows:
No.....for.....Share
No.....for..... Share
No.....for.....Share
No.....for.....Share

SHARES, $50 EACH.

No. 1. *Two Shares.*

The Hamilton Stove Company, Limited.

Incorporated under The Ontario Companies Act.

This Certifies that Samuel Andrew Thomson, of the City of Hamilton, is the owner of Two Fully Paid Shares of the Capital Stock of the Hamilton Stove Company, Limited, transferable only on the books of the Company, by the said owner hereof, in person or by duly authorized Attorney on surrender of this Certificate.

Seal.

In Witness Whereof, the said Company has caused this Certificate to be signed by the duly authorized officers, under the corporate seal of the Company, at Hamilton, Ontario, this first day of June, 1907.

THOMAS TAYLOR, Secretary.

WILLIAM JOHN THOMAS, President.

FORM No. 209.

Preference Stock Certificate.

Certificate No.....

For..... Shares

Issued to

.....

.....

Dated .....

From whom transferred—

.....

No. of Original Certificate.	No. of Original Shares.	No. of Shares Transferred.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Original Certificate Surrendered and Examined

by .....

and .....

Received Certificate No.....

for..... Shares

this.....day of.....190....

.....

SHARES, $100 EACH.

INCORPORATED UNDER THE ONTARIO COMPANIES ACT.

No. ..... *Shares.*

Canada Cycle and Motor Company, Limited.

AUTHORIZED CAPITAL STOCK, $6,000,000.

Divided into { 7% Preference Cumulative Stock, $3,000,000
Ordinary Stock..... $3,000,000 }

This Certifies that.....

is the owner of .....fully paid Preference Shares of One Hundred Dollars each in the Capital Stock of Canada Cycle and Motor Company, Limited, which shares are transferable only on the books of the Company by the owner in person or by Attorney on surrender of this Certificate.

This Certificate shall not become valid until countersigned by The National Trust Gompany, Limited, Transfer Agent and Registrar of Transfers.

In Witness Whereof, the Company has caused this Certificate to be signed by the duly authorized officers thereof this.....

....

Secretary. President.

Countersigned and Registered—

.....

The National Trust Co., Limited,

Toronto, Canada.

Transfer Agent and Registrar.

by.....

Entered.....

SHARES, $100 EACH.

PREFERENCE SHARES.

FORM No. 210.

Preference Stock Certificate, Stating Conditions.

Certificate No.....
For.....Shares

Issued to
.....
.....
.....
.....

Dated.....
From whom transferred—
.....

No. of Original Certificate.	No. of Original Shares.	No. of Shares. Transferred.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Original Certificate Surrendered and Examined
by.....
and.....

Received Certificate No.....
for.....Shares
this.....day of.....190....
.....

No. 777. *100 Shares.*

PREFERRED STOCK. PREFERRED STOCK.

.....Company, Limited.

This Certifies, that.....
is the owner of.....shares of the par value of One Hundred Dollars ($100) each fully paid, of the preferred capital stock of the.....Company, Limited, transferable only on the books of the Company at its Transfer Office in the City of Toronto on surrender of this Certificate and delivery to the Transfer Agent of a duly executed instrument of Assignment and Transfer. The holders of the preferred stock are entitled out of the net profits whenever declared by the Board of Directors to cumulated dividends at the rate of seven per centum per annum, to be paid in preference to and with priority over any payment of dividends on the common stock, and no dividends are payable on the common stock until all accumulated arrears of dividends on the preferred stock for any previous year or years together with interest on such arrears at the rate of....per centum per annum shall have been paid. In the event of the dissolution of the Corporation the holders of the preferred stock will be entitled to receive the par value of their preferred shares with all accumulations of all unpaid dividends and interest thereon out of the surplus funds of the Company after payment of all indebtedness of the Company other than to its shareholders, before anything shall be paid to the holders of the common stock, and any surplus after the payment of all indebtedness of the Company to parties other than shareholders of the Company, and after the payment to the preferred shareholders as hereinbefore provided for shall belong to and be exclusively divisable among the holders of the common stock of the Company. The holders of the common stock are entitled to receive all moneys appropriated to dividends after the payment of such cumulative dividends on the preferred stock and interest upon arrears of such dividends as hereinbefore provided for. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar of Transfers of the Company.

Countersigned and Registered—
.....Transfer Agents.
by.....
Entered

In Witness Whereof, the said Company has caused this Certificate to be signed and its Corporate Seal to be affixed by its duly authorized officers this.....day of.....1907.

.....Secretary. [*SEAL*] .....Treasurer.

Where the conditions under which it is proposed to issue preference shares are too numerous or too lengthy to be printed on the Certificate, they are omitted and a reference is made thereon to the letters patent or the by-law under which they are issued.

FORM No. 211.

BY-LAWS.

Much care should be exercised in the preparation of by-laws. Generally a set of by-laws in use by some other company is taken, a few names and dates inserted and the set adopted. This slipshod method usually results in unforseen difficulties, misunderstandings and possibly litigation.

As it is impossible to frame a set of by-laws that will be proper and sufficient for all kinds of companies organized under the laws of different Provinces, the following are given as examples of by-laws in general, which companies can alter to suit their respective circumstances and requirements. The first task of a person about to draw up a set of by-laws should be to examine carefully the charter of the company and the statutes under which it is incorporated. After he has done that, he may derive some assistance from an examination of the following table. Nothing that is needless should be included, and nothing necessary should be omitted. By-laws must have a preamble and an enacting clause as given herewith. They should be grouped or classified so that those relating to any matter may be easily found.

Whereas, the Directors of The Hamilton Stove Company, Limited, deem it expedient that certain By-laws for regulating the affairs of the company should be made.

Now therefore be it enacted, and it is hereby enacted.

MEETINGS.

1. That the annual meeting of the shareholders shall be held at the office of the company in the City of , at eleven a.m., on the fourth Wednesday in the month of January, in each year, to receive the report of the directors for the past year, to elect Directors for the ensuing year, and for all other general purposes relating to the management of the company's affairs.

2. That a general meeting of the shareholders may be called at any time by the Directors whenever they deem the same necessary or advisable for any purpose, and it is incumbent on the President to call a special meeting of the shareholders whenever required so to do in writing by the holders of not less than one-tenth of the subscribed capital stock of the company, for the transaction of any business specified in such written requisition and notice calling the meeting.

3. That notice of the time and place of holding the annual, special or other meetings of the shareholders of this company shall be given by mailing a circular addressed to each shareholder at

his last address as shewn by the books of the company, at least ten (10) days previous to the time appointed for holding such meeting (*a*).

That at annual, general and special meetings of the company the quorum (*b*) shall be ascertained as follows, that is to say, if the shareholders at the time of the meeting do not exceed ten in number, the quorum shall be three; if they exceed ten there shall be added to the above quorum one for every four additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that no quorum shall in any case exceed twenty.

4. That meetings of the directors shall be held as often as the business of the Company may require, and shall be called by the President.

5. That at general meetings of the Company, every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy duly appointed in writing (*c*).

6. That questions at meetings shall be decided by a majority in value of the shareholders present, either in person or by proxy, and in case the number of votes is equal, the President or Chairman shall have a deciding or casting vote.

DIRECTORS.

7. That the affairs of the company shall be managed by a Board of three directors, of whom two shall form a quorum.

8. That the President and Vice-President shall be chosen by the directors from amongst themselves at the first board meeting after the annual meeting.

9. That the President shall, if present, preside at all meetings of the company. He shall call meetings of the Board of Directors and shareholders when necessary, and shall advise with and render such assistance to the manager as may be in his power. In his absence the Vice-President shall have and exercise all the rights and powers of the President. A director may at any time summon a meeting of directors.

(*a*) Or by publishing the same in some newspaper published at or near, as may be, to the office or chief place of business of the Company.

(*b*) This by-law provides for a quorum. It is questionable whether such is necessary. If all shareholders have notice, as is provided, the business of the company should go on. Provisions for a quorum more often lead to obstruction than good business.

(*c*) Any one may be a proxy under the Ontario or Quebec Acts. The Dominion Act, Sec. 88, however, requires the holder of a proxy to be himself a shareholder.

10. That questions arising at any meeting of Directors shall be decided by a majority of votes. In case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote.

11. That the secretary shall keep a record of the proceedings at all meetings of the board and of the shareholders of the company, and shall be the custodian of the seal of the company, and of all books, papers, records, etc., belonging to the Company, which he shall deliver, when authorized so to do by a resolution of the board, to such person or persons, as may be named in the resolution.

12. That any shareholder not in arrears for payments for calls upon his stock may be elected a director.

13. That the directors shall hold office for one year, and until their successors shall be elected.

14. That in case of the death of a director, or his being unable to act as such, or his ceasing to be a shareholder, the vacancy thereby created may be filled for the unexpired portion of the term by the board from among the qualified shareholders of the company.

15. That directors, as such, shall not receive any stated salary for their services, but by resolution of the board may be allowed dollars for attendance at each regular or special meeting of the board, if present at roll-call and until adjournment, unless excused.

16. That the board shall from time to time fix the salary or wages to be paid officers of the company.

EXECUTIVE COMMITTEE (*a*).

17. There shall be a committee of directors called the executive committee, consisting of the President, the Vice-President, and not less than nor more than other directors, who shall be elected annually by the board. The President, or, in his absence, the Vice-President, shall be the chairman of such executive committee.

Whereas the number of directors of this company is seven, and it is desirable to authorize said directors to delegate their powers to an Executive Committee of three. Now, therefore, be it resolved, that the directors of the company may delegate any of their powers to an Executive Committee consisting of not less than three to be elected by the directors from their number.

(*a*) Sec. 82 of the Ontario Companies Act provides that the shareholders may by resolution authorize the directors to delegate their powers to an executive committee. This form may be used for that purpose.

The executive committee shall, when the board is not in session, supervise and control the operations, and superintend the business of the company generally.

The executive committee shall meet on in every week, if necessary, and at such other times as they may appoint, and also at the call of the President, the Vice-President or the manager.

Minutes of the proceedings of the executive committee shall be kept in a book provided for that purpose, which shall always be open for the inspection of any director.

The board of directors, may, if they see fit, fill any vacancy which may occur upon the executive committee for the unexpired remainder of the term by appointing thereto any qualified director.

Every member of the executive committee shall be paid for each attendance at the meetings of the committee such sum as shall be fixed from time to time by resolution of the board of directors.

SEAL.

18. That the common seal of the company shall be of a design formed by two concentric circles, between which shall be the name of the company in full, and in the centre shall be inscribed "Incorporated 1907," and such seal, an impression of which appears on the margin hereof, is hereby adopted as the common seal of the company.

Whenever used this seal shall be authenticated by the signatures of the President and Secretary.

19. That the office of director shall be vacated. (*a*) If he is found lunatic or becomes of unsound mind. (*b*) If he is absent from the meetings of the directors during a period of three calendar months without special leave of absence from the directors. (*c*) If he is requested in writing by all his co-directors to resign. (*d*) If by notice, in writing, to the company he resign his office.

STOCK.

20. That calls upon subscribed stock shall be made from time to time as the board may determine—no call shall exceed twenty-five per cent. of the subscribed stock, and there shall be an interval of at least thirty days between calls.

21. That it shall not be compulsory on the board to receive full payment of any share or shares until the same shall have been demanded by call.

22. That the board shall have power to summarily forfeit shares and the money paid thereon, upon which any call shall have remained unpaid for six months after it shall be due and payable, and such forfeited stock shall thereupon become the property of the Company, and may be disposed of in such manner as the Company in general meeting think fit.

23. That receipts for payment of calls shall be issued from time to time as such payments are made, but stock certificates shall only be issued when shares are fully paid up, and both receipt and certificate shall be authenticated by the signatures of the President and Secretary, and sealed with the Company's seal.

24. That shareholders may, with the consent of the Board, but not otherwise, transfer their shares, and such transfers shall be recorded in a book provided for the purpose, and signed by the shareholder and his transferee and duly witnessed, but no person shall be allowed to hold or own stock in the Company without the consent of the Board (*a*).

ACCOUNTS.

25. That the directors shall cause true accounts to be kept,—

Of the stock-in-trade of the Company.

Of the sums of money received and expended by the Company, and the matter in respect of which such receipt and expenditure takes place; and,

Of the credits and liabilities of the Company.

26. That the books shall be kept at the head office of the company, and shall be open to the inspection of the members during the hours of business (*b*).

27. That once at least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year. A balance sheet shall be made out in every year, or oftener, if desirable, and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under the necessary headings.

(*a*) This rule may be desirable under certain circumstances, but as a general thing the owner of fully paid-up shares can transfer them at will. The consent of the Board must be had when transferring shares that are not fully paid-up, and the new holder should be as responsible a person as the old.

(*b*) Restrictions as to the time and manner of inspecting the books may, subject to the provisions of the Statutes, be imposed by the Company in general meeting, or it may, in certain cases, be well to strike this by-law out altogether.

BANK ACCOUNT.

28. That a bank account shall be kept in the name of the Company at a bank to be selected by the Board.

CHEQUES FOR MONEY.

29. That all cheques, drafts or orders for the payment of money shall be signed by the Treasurer and countersigned by either the President or Vice-President.

No cheques shall be signed by both the Treasurer and President, or the Vice-President, in blank.

DIVIDENDS (*a*)—RESERVE FUND.

30. Dividends upon the capital stock of the company, when earned, shall be paid semi-annually on the first days of and in each year.

Before payment of any dividends or making any distribution of profits, there may be set aside out of the net profits of the company such sum or sums as the directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the company, or for any other such purpose as the directors shall think conducive to the interests of the company.

SOLICITOR.

31. That Charles Brown, of Hamilton, Esq., shall be the Solicitor of the Company, but he may at any time be removed by a resolution of the Company, passed in general meeting.

AUDITORS.

32. That one or more auditors shall be appointed annually by the shareholders at the annual general meeting, whose duty it shall be to examine and audit all books, vouchers and accounts of the Company and all documents having reference to the business thereof. They shall be supplied with a list of all books kept by the Company and with a copy of the balance sheet and abstract of the affairs thereof, and it shall be their duty to examine the same and make a report thereon to the board as soon after the close of the financial year as possible, together with such suggestions or recommendations as they may think fit. Their remuneration shall be $ ~~each~~, per annum.

(*a*) See Resolution, Form No. 281.

DECLARATION OF SECRECY.

33. Every director, manager, auditor, trustee, officer, servant, agent, accountant, or other person employed in the business of the Company, shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting all transactions of the Company with the customers and the state of accounts with individuals, and in matters relating thereto, and shall by such declaration pledge himself not to reveal any of the matters, which may come to his knowledge in the discharge of his duties, except when required so to do by the directors or any meeting, or by a court of law, or by the person to whom such matters relate, and, except so far as may be necessary, in order to comply with any of the provisions in these presents contained.

CHANGING BY-LAWS.

34. That the Board may from time to time repeal, amend and re-enact these by-laws, but such change, unless in the meantime confirmed at a general meeting duly called for the purpose, shall only have force until the next annual meeting of the Company, and if not confirmed thereat, shall from that time only cease to have any force.

FORM No. 212.

BY-LAW UNDER ONTARIO COMPANIES' ACT, FIXING AND DECLARING RATE OF DISCOUNT.

By-law No. of The Mining Company, Limited (No personal liability), fixing and declaring the rate of discount at which shares are to be sold.

Whereas The Limited (No personal liability) deem it advantageous and proper to sell the unissued shares of the Company at a discount, as hereinafter provided.

Now, therefore, The Limited, enacts as follows:

That the unissued shares of the Company shall be sold at a discount on their par value of seventy-five per cent., and the price per share accordingly shall be twenty-five cents instead of one dollar.

Passed by the said Company this 12th day of October, A.D. 1907.

President.

[Seal.]

Secretary.

A copy of the by-law must be verified by an affidavit, which may be adapted from Form 230, and must be transmitted to the Provincial Secretary within 24 hours after it was sanctioned. As a matter of precaution, the shareholder to whom such stock is issued should agree to be subject to the terms of this by-law.

FORM No. 213.

ANOTHER BY-LAW UNDER ONTARIO COMPANIES' ACT, FIXING RATE OF DISCOUNT AND LIMITING TRANSFER OF SHARES.

By-law No. authorizing the sale of one hundred and fifty thousand shares of the capital stock of The Mining Company, Limited (No personal liability), at a discount of seventy-five per cent., and limiting the transfer of the same.

Whereas The Limited (No personal liability) deem it advantageous and proper to issue one hundred and fifty thousand shares of the capital stock of the said Company at a discount of seventy-five per cent., and to limit the transfer of the same until the 1st day of November, 1907.

Now, therefore, the said The Limited, enacts as follows:

That one hundred and fifty thousand shares fully paid-up and non-assessable in the capital stock of The Limited, be issued at the price or sum of twenty-five cents each, and that the shares be allotted among the applicants therefor, or such of them as the directors may, by resolution from time to time, determine.

Such shares at twenty-five cents each shall be sold upon the express condition that the same shall be non-transferable until the first day of November, 1908, without the previous consent of the directors, and that the usual stock certificates shall not be issued therefor until the said first day of November, 1908, in order to ensure that the said shares so sold at twenty-five cents each may not interfere with subsequent issues of stock at higher prices when deemed advisable.

Passed by the said Company this 12th day of November, A.D. 1907.

President.

[Seal.]

Secretary.

FORM No. 214.

BY-LAW AUTHORIZING DIRECTORS TO BORROW MONEY, ISSUE DEBENTURES, ETC.

Whereas The Ontario Companies' Act, Sec. 73, authorizes the directors of this company to borrow money for the purposes of the

company, if authorized by by-law. And whereas it is necessary and expedient to borrow money for the purposes of the company.

Now, therefore be it enacted, and it is hereby enacted, that the directors of the company may borrow money upon the credit of the company, issue bonds, debentures or other securities of the company, charge, hypothecate, mortgage or pledge all or any of the real or personal property, rights and powers of the company to secure any such bonds, debentures or other securities or any liability of the company.

Passed by the said company this date of , 190 .

President.

[Seal.]

Secretary.

FORM No. 215.

INSTALMENT LIST.

INSTALMENT NO. 1.

In accordance with a resolution of the Board of Directors of The Hamilton Stove Company, Limited, a first call of ten per cent. of the Capital Stock of the Company is due and payable on the 5th day of May, 1907.

When Received.	Shareholders' Names.	Shares.	Instalment.	Interest.	Amount Received.	Remarks.
1904						
May 5..	W. J. Thomas.	1,198	$5,990		$5,990	
5..	Thos. Taylor .	1,200	6,000		6,000	
5..	Thos. B. Taylor	1,198	5,990		5,990	
5	S. A. Thomson	2	10		10	
5..	H. V. Taylor..	2	10		10	
June 5..	G. P. Sharpe .	400	2,000	$10 00	2,010	
		4,000	20,000	$10 00		
	*Interest..	.....	10			
			$20,010		$20,010	

May 5, Entered Cash Book, folio 1.
June 5, Entered Cash Book, folio 4.

NOTE.—An Instalment List is prepared immediately after any call is made upon the Capital Stock.

* This is for period between 5th May, when call was payable, and 5th June, when it was received.

FORM No. 216.

EXAMPLES OF AGENDA FOR DIRECTORS' MEETINGS.

To elect Chairman.
To appoint Secretary.
To approve design for seal.
To approve agreement for renting offices.
To appoint a Committee to buy books and furniture.
To appoint a Solicitor.
To appoint Bankers, and give directions as to opening account and signature of cheques thereon.
To consider and approve prospectus.

To draw cheques in favor of.
To read and confirm minutes of last meeting.
To produce bank book showing credit of $
To consider applications for shares.

FORM No. 217.

AGREEMENT APPOINTING SECRETARY OR MANAGER.

This agreement, made the day of , between The Company, Limited (hereinafter called the Company), of the one part, and A. B., of , of the other part. Whereas the directors of the Company are empowered to appoint a secretary (or manager) of the Company, either for a fixed term or otherwise, and to fix and determine his remuneration, which may be by way of salary or otherwise.

Now it is hereby agreed as follows:

1. The said B. shall be secretary (or manager) of the Company for a term of years, to be computed from the date hereof.

2. There shall be paid by the Company to the said B., as such secretary (or manager) as aforesaid, a salary at the rate of $ per annum. Such salary shall commence from the date hereof, and shall be payable quarterly on every day of day of day of , and day of , the first of such quarterly payments to be made on the day of

3. The said B. shall, unless prevented by ill-health during the said term, devote the whole of his time, attention, and abilities to the business of the Company, and shall obey the orders, from time to time, of the Board of Directors of the Company, and in all respects conform to, and comply with, the directions and regulations given and made by them, and shall well and faithfully serve the Company, and use his utmost endeavors to promote the interests thereof.

4. The said B. shall, during his tenure of the said office, be entitled to leave of absence for a period in each year not exceeding weeks, and, unless otherwise arranged between the Board of Directors of the Company and the said B., such leave of absence shall be granted in each year as follows, namely, from the day of to the day of , etc., etc. The aforesaid salary of the said B. shall continue notwithstanding such leave of absence.

5. Either of the parties hereto may determine this agreement by giving to the other not less than calendar months' notice in writing, and upon the expiration of the period specified in such notice, the said B. shall cease to be secretary (or manager) of the Company.

In Witness, etc.

FORM No. 218.

AGREEMENT OF AMALGAMATION BETWEEN THE COMPANY, LIMITED, AND THE COMPANY, LIMITED.

THIS INDENTURE made the third day of February, A.D. one thousand nine hundred and seven.

BETWEEN:—

The Company, Limited, of the first part, and The Company, Limited, of the second part.

Whereas the companies parties hereto were incorporated under the laws of the Province of Ontario, and have objects within the scope of the Ontario Companies Act.

And whereas the companies' parties hereto under authority contained in the said Ontario Companies' Act have agreed to unite, amalgamate and consolidate upon the terms and conditions hereinafter set out:

Now, therefore, this indenture witnesseth as follows:—

1. In this agreement the phrase "Amalgamated Company" shall mean the Company formed by the union, amalgamation and consolidation of the companies' parties hereto.

2. The Company and the Company hereby agree to unite, amalgamate and consolidate their stock, property, businesses and franchises, and do hereby unite, amalgamate and consolidate their stock, property, businesses and franchises and form one company upon the terms and conditions hereinafter set out.

3. The name of the amalgamated company shall be "The Company, Limited."

4. The amount of the capital stock of the amalgamated company shall be $250,000. The said capital shall be divided into shares of $100.00 each.

5. The head office of the amalgamated company until otherwise determined by by-law shall be at the City of Toronto, in the Province of Ontario.

6. The number of the Board of Directors of the amalgamated company until otherwise determined by by-law shall be eight. The first directors of the amalgamated company shall be:—

and they shall hold office until the first annual meeting of the amalgamated company for the election of directors or until their successors are appointed.

7. Each shareholder in The Company on surrender of his stock certificate or certificates shall be entitled to receive, and there shall be issued to him by the amalgamated company, shares as fully paid up, and free from calls and other liability to an amount which will give him in such shares of the amalgamated company an amount equal to $145.31 for every hundred dollars paid up upon the shares held by him in The Company.

Provided always that should any shareholder of The Company become entitled under the provisions of this paragraph to receive a fraction of a share in the amalgamated company a transferable fractional share certificate for such fraction shall be issued to such shareholder; and that any number of such fractional certificates together making up a full share, shall be exchanged for a certificate for a full share on request of the holder of such fractional certificates; provided always further, that a holder of a fractional certificate shall not be entitled to receive any dividends in respect of the fraction of a share represented thereby.

8. Each holder of preference shares in The Company shall be entitled to receive, and there shall be issued to him by the amalgamated company one share in the capital stock of the amalgamated company, issued as fully paid up and free from calls and other liability for every $100 paid up upon such preference shares in The Company held by him.

9. Each holder of ordinary shares in The Company shall be entitled to receive, and there shall be issued to him by the amalgamated company as fully paid up and free from calls and other liability, one share in the capital stock of the amalgamated company for every $2,000 paid up upon such ordinary shares held by him.

Provided always, that should any holder of ordinary stock in The Company become entitled under the provisions of this paragraph to receive a fraction of a share in the amalgamated

company a transferable fractional share certificate for such fraction shall be issued to such holder; and that any number of such fractional certificates together making up a full share shall be exchanged for a certificate for a full share on request of the holder of such fractional certificates; provided always further that a holder of a fractional certificate shall not be entitled to receive any dividends in respect of the fraction of a share represented thereby.

10. The amalgamated company shall possess all the properties, real, personal and mixed, rights, privileges and franchises, and be subject to all the liabilities, contracts, disabilities and duties of each of the companies so consolidated.

11. All rights of creditors to obtain payment of their claims out of the property, rights and assets of the company liable for such claims and all liens upon the property, rights and assets of either of such companies shall be unimpaired by such union, amalgamation and consolidation and all debts, contracts, liabilities and duties of either of the said companies shall thenceforth attach to the amalgamated company and be enforced against it to the same extent as if the said debts, contracts, liabilities and duties had been incurred or contracted by it.

12. No action or proceeding by or against the companies' parties hereto, or either of them shall attach or be affected by such union, amalgamation or consolidation, but for all the purposes of such action or proceeding such company may be deemed still to exist, or the amalgamated company may be substituted in such action or proceeding in the place thereof.

13. The by-laws of The Company shall so far as applicable be the by-laws of the amalgamated company until repealed, amended, altered or added to by the by-laws of the amalgamated company.

14. An application shall be made to the Lieutenant-Governor for Letters Patent to confirm this agreement.

In witness whereof this Indenture has been duly executed by the parties under their corporate seals, and the hands of their proper officers in that behalf.

Signed, sealed and delivered,
In the presence of:

(Seal.) Company, Limited.
President.
Secretary.

(Seal.) Company, Limited.
President.
Secretary-Treasurer.

We hereby certify that the above agreement consisting of this and the four preceding pages was adopted by more than two-thirds in value of all the shareholders of The Company, Limited, and The Company, Limited, at the special general meeting of the said companies duly called for considering the same and held separately.

Witness the Corporate Seals of the said companies and our hands.

FORM No. 219.

PETITION FOR LETTERS PATENT CONFIRMING AN AGREEMENT OF AMALGAMATION BETWEEN THE COMPANY, LIMITED, AND THE COMPANY, LIMITED.

To

His Honour the Lieutenant-Governor of the Province of Ontario.

The Joint Petition of The Company, Limited, and The Company, Limited.

Humbly sheweth:—

1. That the Company, Limited, was incorporated under The Ontario Joint Stock Companies' Act by Letters Patent, dated the 23rd day of March, 1881, and The Company, Limited, was incorporated by Letters Patent under The Ontario Companies' Act, dated the thirtieth day of March, 1901.

2. That the Board of Directors of each of your joint petitioners is duly and lawfully constituted, having regard to the provisions of the statutes and by-laws in that behalf.

3. That pursuant to the provisions of section 8 of The Ontario Companies' Act, your petitioners' directors have entered into a joint agreement for the amalgamation of your petitioners, which said agreement has been duly adopted by the shareholders of each of your petitioners at meetings thereof duly called in accordance with the statutes and by-laws in that behalf, and held separately for the purpose of taking the said agreement into consideration:—the said agreement having been adopted at such meetings by more than two-thirds of the votes of all the shareholders of each of your petitioners.

4. That by the said agreement the name of the proposed amalgamated company is to be "The Company, Limited."

5. That your petitioners are desirous of obtaining Letters Patent under the Great Seal of the Province of Ontario, confirming the said agreement.

6. That the objects of the proposed amalgamated company are to be those set out in the letters patent above referred to incorporating each of your petitioners.

7. That the undertaking of the Company will be carried on from the City of Toronto, and that its Post Office address will be Toronto.

8. That the head office of the Company will be at the City of Toronto.

9. That the amount of capital stock of the Company will be two hundred and fifty thousand dollars ($250,000).

10. That are to be the first directors of the Company.

Your joint petitioners therefore pray that Your Honour may be pleased to grant under the Great Seal Letters Patent, confirming the said agreement for amalgamation.

And your joint petitioners as in duty bound will ever pray.

Dated at Toronto, this 2nd day of March, 1907.

WITNESS:	The	Company, Limited. (L.S.)
		President.
as to execution by both Petitioners.		*Secretary.*
	The	Company, Limited. (L.S.)
		President.
		Secretary.

FORM No. 221.

NOTICE OF LOSS OF CERTIFICATE.

LOST OR MISLAID.

Certificate No. 37, dated 13th September, 1907, for five shares of stock of The Company, Limited, issued to of the City of

Application having been made to the company to issue a duplicate of the above certificate, the public is hereby warned against negotiating for, or purchasing the original.

.....

Secretary-Treasurer.

Toronto, 9th May, 1907.

FORM No. 222.

INDEMNITY BOND FOR RE-ISSUED CERTIFICATE.

Know all men by these presents, that we W. J. Thomas, of the City of Hamilton, as principal, and Thomas Taylor, of the City of Hamilton, as surety, are held and firmly bound unto the Hamilton Stove Company, Limited, a corporation duly organized under the laws of the Province of Ontario, its successors and assigns, in the sum of five thousand dollars ($5,000), to the payment of which to the said corporation, its successors and assigns, we do, by these presents, jointly and severally, firmly bind ourselves, our heirs, executors and administrators.

Signed and sealed, this twenty-fourth day of April, 1907.

The condition of the above obligation is that: Whereas the said W. J. Thomas, the owner of twenty- five (25) shares of the capital stock of the Hamilton Stove Company, Limited, of the par value of $100 each, has made application to the Board of Directors of the said company for the issue to him of a new certificate for the said twenty-five shares of stock, alleging that the original certificate No. 27, issued to him, therefor, on the 20th June, 1906, is lost, stolen or destroyed, and that its present whereabouts and conditions are unknown to him; and,

Whereas, the said application has been granted, and the said new certificate for twenty-five shares of the stock of the Hamilton Stove Company, Limited, pursuant to the resolution of the said Board of Directors was this day issued to the said W. J. Thomas.

Now therefore, if the said W. J. Thomas, his heirs, executors, or administrators, or any of them, do and shall, from time to time, and at all times hereafter, save, defend, keep harmless and indemnify the said Hamilton Stove Company, Limited, its legal successors and assigns, of, from and against, all demands, claims or causes of action, arising from or on account of said certificate No. 27 for twenty-five shares of the capital stock of the said company, and of and from all costs, damages and expenses that shall, or may arise therefrom, and shall also deliver, or cause to be delivered up to the said Hamilton Stove Company, Limited, the said missing certificate No. 27 for cancellation, whenever and, and so soon as the same shall be found then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered, in the presence of, HENRY G. SINCLAIR.	W. J. THOMAS.	[L.S.]
	THOMAS TAYLOR.	[L.S.]

The foregoing bond is suitable for any Province. It is used where a certificate has been stolen or lost, and, in order to sell the stock, etc., etc., the owner of the shares wishes to get a new certificate.

FORM No. 223.

ASSIGNMENT OF SHARES TO BROKER AS COLLATERAL SECURITY FOR ADVANCE.

In consideration of making an advance for of dollars, repayable in two months (*or* on call, *or* as the case may be), with interest at per cent. per annum, have assigned to them as collateral security for the due payment of said advance and agree to keep up a cash margin thereon of not less than .

Should the above advance not be duly paid with interest at maturity, or the margin of security not kept at per cent. above the value quoted in the ordinary newspaper reports are hereby authorized to sell or dispose of said security, without notice, and to apply proceeds in liquidation of said advance.

The whole without prejudice to the ordinary legal remedies thereon.

Toronto 190 .

FORM No. 224.

AUDITORS' CERTIFICATE.

To the President, Directors and Shareholders of The Toronto Stove Company, Limited.

Gentlemen,—We, the undersigned, having examined the securities and vouchers, and audited the books of the company, certify that we have found them correct, and that the annexed balance sheet is a correct statement of the Company's affairs for the year ending the 30th of June, 1907.

JOSEPH BLAKE,
W. O. DOUGLAS, B.A.,
Auditors.

Toronto, 13th July, 1907.

FORM No. 225.

BALANCE SHEET, GENERAL FORM.

Dr. Balance Sheet of the Co. made up to 190 . Cr.

CAPITAL AND LIABILITIES.		$	$	PROPERTY AND ASSETS.		$	$
I. Capital.	Showing:			III. Property held by the company.	Showing:		
	1. The number of shares - - - - - -				7. Immovable property, distinguishing—		
	2. The amount paid per share - - - -				(a.) Freehold land - - - - - -		
	3. If any arrears of calls, the nature of the arrear, and the names of the defaulters.				(b.) " buildings - - - - -		
	4. The particulars of any forfeited shares -				(c.) Leasehold " - - - - -		
II. Debts and Liabilities of the Company	Showing:				8. Movable property, distinguishing—		
	5. The amount of loans on mortgages or debenture bonds.				(d.) Stock in Trade - - - - - -		
	6. The amount of debts owing by the company, distinguishing—				(e.) Plant - - - - - - - - -		
	(a.) Debts for which acceptances have been given:				The cost to be stated, with deductions for deterioration in value, as charged to the reserve fund or profit and loss.		
	(b.) Debts to tradesmen for supplies of stock in trade or other articles:			IV. Debts owing to the company.	Showing:		
	(c.) Debts for law expenses:				9. Debts considered good for which the company hold bills or other securities.		
	(d.) Debts for interest on debentures or other loans:				10. Debts considered good for which the company hold no security:		
	(e.) Unclaimed dividends:				11. Debts considered doubtful and bad.		
	(f.) Debts not enumerated above.				Any debt due from a director or other officer of the company to be separately stated.		
VI. Reserve Fund.	Showing:			V. Cash and investments.	Showing:		
	The amount set aside from profits to meet contingencies.				12. The nature of investment and rate of interest.		
VII. Profit and Loss.	Showing:				13. The amount of cash, where lodged, and if bearing interest.		
	The disposable balance for payment of dividend, etc.						
Contingent Liabilities.	Claims against the company not acknowledged as debts.						
	Moneys for which the company is contingently liable.						

FORM No. 226.

BALLOT FOR ELECTION OF DIRECTORS.

At the first (or annual) meeting Limited, I hereby cast for each of the following persons the number of votes set opposite their respective names, to wit:

1. ....Votes
2. ....Votes
3. ....Votes
4. ....Votes
5. ....Votes

to serve as directors of said Company for the year beginning the day of 190 , and until their successors in office are duly elected.

.....

If by proxy add Name of shareholder.

By.....

Proxy.

FORM No. 228.

TREASURER'S BOND.

Know all men by these Presents, that we, of as principal, and of , as surety, are held and firmly bound unto the Company; a corporation of the Province of Ontario, its successors and assigns, in the sum of dollars ($), lawful money of Canada, to be paid to such corporation, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

In witness whereof, we have hereunto set our hands and seals this day of , 190 .

The condition of the above obligation is that,

Whereas, the said has been appointed Treasurer of the above named company, and is about to enter upon the duties of his office as such Treasurer.

Now, therefore, if he shall in all respects fully and faithfully discharge his duties as such Treasurer, so long as he shall hold the said office or continue therein during the term for which he is now appointed, and also, if, in case of his death, resignation or removal from office from any cause, all the books, papers, vouchers,

money or other property of whatever kind in his possession belonging to the company, shall be forthwith restored to the company, then this obligation is to be void, otherwise to be in full force and virtue.

Signed, sealed and delivered in the presence of [L.S.]
[L.S.]

FORM No. 229.

BY-LAW FOR INCREASE OF CAPITAL STOCK.

BY-LAW NUMBER 29.

A By-law to increase the capital stock of The Hamilton Stove Company, Limited.

Whereas the capital stock of The Hamilton Stove Company, Limited, is two hundred thousand dollars, divided into four thousand shares of fifty dollars each, of which nine-tenths has been taken up, and ten per centum thereon paid in;

And whereas, for the due carrying out of the objects of the Company, the said Company considers it requisite to make a by-law increasing the capital stock of the company to the sum of two hundred and fifty thousand dollars;

Now therefore, The Hamilton Stove Company, Limited, enacts as follows, that is to say:

1. That the capital stock of the said company be, and the same is hereby increased from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock at fifty dollars each.

2. That the new shares be issued and allotted in such manner and proportion as the directors of the company may deem proper for the benefit of the company (*a*).

(*a*) Where it is thought advisable the by-law may, instead of clause 2, contain the following:—

2. That the new shares be issued and allotted to the present shareholders of the company in proportion to the number of shares now held by them respectively at fifty dollars per share.

3. That should the present shareholders of the company not subscribe for sufficient new shares to carry out the objects of the company, then the same may be issued and allotted in such manner and proportion, and at such price per share, not however less than par, as the directors of the company may deem proper for the benefit of the company.

In case a redivision of the shares is contemplated, vary clause 1, and add the following:—That the original capital stock of four thousand shares of the value of fifty dollars each, shall be redivided into twenty thousand shares of the value of ten dollars each, and that until otherwise ordered the capital stock of the company shall consist of twenty-five thousand shares of the value of ten dollars each.

3. That this by-law be submitted with all due despatch for the sanction of the shareholders of the company at a general meeting thereof to be called for considering the same.

Passed this third day of June, A.D. 1907.

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Hamilton, 3rd June, 1907.

The original by-law must be produced to the Provincial Secretary. A copy of the by-law to be retained by the Provincial Secretary should accompany the original, and should have appended to it the words:

"Certified under the seal of the said company to the Honorable the Provincial Secretary."

THOS. TAYLOR, *Secretary.* [Seal.] W. J. THOMAS, *President.*

FORM No. 230.

AFFIDAVIT VERIFYING BY-LAW FOR INCREASE OF CAPITAL STOCK.

PROVINCE OF ONTARIO, County of Wentworth, To Wit: } In the matter of the increase of the capital stock of The Hamilton Stove Company, Limited.

I, Thomas Taylor, of the City of Hamilton, Esquire, make oath and say:

1. That I am the Secretary of the said The Hamilton Stove Company, Limited.

2. That the paper writing marked "A" annexed to this, my affidavit, is By-law Number 29, passed on the 3rd June, 1907, by the said Company, for the purpose of increasing the capital stock of the said Company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars, by the issue of one thousand shares of new stock of fifty dollars each.

3. That the said by-law was sanctioned by a vote of not less than two-thirds in value of the shareholders of the said company, present in person or by proxy at a general meeting of the company duly called for considering the by-law, and held on the 11th July, 1907.

4. That a copy of the said by-law has been certified under the seal of the company to the Provincial Secretary.

Sworn before me at the City of Hamilton, in the County of Wentworth, this twelfth day of July, 1907. } THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

This affidavit may be adapted for use in case of the increase or decrease of the number of directors, or the removal of the head office of the Company.

FORM No. 231.

BY-LAWS REGULATING THE CALLING OF A GENERAL MEETING (*a*).

"C"

BY-LAWS NOS. 2 & 3.

Whereas, the directors of The Hamilton Stove Company, Limited, deem it expedient that certain by-laws for regulating the affairs of the Company should be made. Now, therefore, be it enacted, and it is hereby enacted:

2. That a general meeting of the shareholders may be called at any time by the directors, when they deem the same necessary or advisable for any purpose, and it is incumbent on the President to call a special meeting of the shareholders whenever required so to do in writing, by one-fourth part in value of the shareholders of the company, for the transaction of any business specified in such written requisition and notice, calling the meeting.

3. That notice of the time and place for holding the annual, special or other meetings of the company, shall be given by mailing a circular addressed to each shareholder, at his last address as shewn by the books of the company, at least ten days previous to the time appointed for holding such meeting.

FORM No. 232.

AFFIDAVIT VERIFYING BY-LAWS REGULATING THE CALLING OF A GENERAL MEETING.

PROVINCE OF ONTARIO, County of Wentworth, To Wit: } In the matter of the By-laws of The Hamilton Stove Company, Limited.

(*a*) From regular by-laws of Company for which see *post*.

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Secretary of the above-named Company, make oath and say:

That the annexed paper marked "C" is a true and correct copy of by-laws Nos. 2 and 3, regulating the calling of special general meetings of the Company.

Sworn before me at the City of Hamilton, in the County of Wentworth, this third day of June, 1907. } THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM No. 233.

AFFIDAVIT PROVING DUE CALLING UNDER THE COMPANY'S BY-LAWS OF A GENERAL MEETING.

PROVINCE OF ONTARIO, County of Wentworth, To Wit: } In the matter of a General Meeting of The Hamilton Stove Company, Limited

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That I am the Secretary of the said The Hamilton Stove Company, Limited.

2. That a general meeting of the shareholders of the said company was held at the said City of Hamilton, on the 11th July, A.D. 1907.

3. That the said meeting was duly called pursuant to the by-laws of the Company, by mailing a notice calling the same, duly addressed to each shareholder, at least ten days prior to such meeting.

4. That said meeting was called for considering and sanctioning By-law No. 29 of the said company, increasing the capital stock of the company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock of fifty dollars each.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 11th day of July, A.D. 1907. } THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM No. 234.

NOTICE IN LOCAL NEWSPAPER OF A SPECIAL GENERAL MEETING WHERE PROVISION FOR CALLING MEETINGS HAS NOT BEEN MADE.

"A"

NOTICE.

A special general meeting of the shareholders of The Hamilton Stove Company, Limited, for considering and sanctioning By-law No. 29 (passed by the Company 3rd June, 1907) for the increase of the capital stock of the company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars, by the issue of one thousand shares of new stock at fifty dollars each, will be held at the Company's Office, No. 100 King street east, in the City of Hamilton, on Wednesday, the 11th day of July next, at the hour of 10 o'clock in the forenoon.

By Order,

THOS. TAYLOR,
Secretary.

This form may be used for notice in *The Ontario Gazette* if necessary. This and the following form are not necessary where by-laws regulating the calling of meetings have been passed.

FORM No. 235.

AFFIDAVIT PROVING DUE CALLING OF GENERAL MEETING WHERE NO BY-LAW FOR THE PURPOSE HAS BEEN PASSED (*b*).

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit:

In the matter of the calling of a general meeting of The Hamilton Stove Company, Limited.

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Secretary of the above-named Company, make oath and say:

1. That a notice calling a general meeting of The Hamilton Stove Company, Limited, for the 11th day of July, 1907, at the Company's Office, in the City of Hamilton, for the purpose of consid-

(*b*) If the meeting was called under special provisions in the Charter, the affidavit must be drawn to suit the circumstances.

ering and sanctioning By-law No. 29 (made by the directors 3rd June, 1907,) (*a*) increasing the capital stock of the company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock of fifty dollars each, was inserted in *The Hamilton Times*, a newspaper published at the head office and chief place of business of the company, on the 1st day of July, 1907.

2. That at least ten days' prior notice of the said meeting was given in the said *The Hamilton Times*.

3. That the newspaper cutting hereto annexed and marked "A," to this, my affidavit, is a true copy of the said notice.

4. That at least ten days' notice was also given by publishing the same in *The Ontario Gazette* (or *as the case may be*), by mailing the same as a registered letter duly addressed to each shareholder of the said company.

5. That the clipping from the said *The Ontario Gazette* attached to this, my affidavit, and now shown to me, marked "B," is a true and correct copy of the said notice given as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 11th day of July, A.D. 1907. } THOMAS TAYLOR

JOHN ROE,
A Commissioner, etc.

FORM No. 236.

PETITION FOR SUPPLEMENTARY LETTERS PATENT INCREASING CAPITAL STOCK.

To His Honour the Lieutenant-Governor of the Province of Ontario.

The Petition of the Hamilton Stove Company, Limited,

Humbly Sheweth:

1. That The Hamilton Stove Company, Limited, was incorporated under the Ontario Companies Act by Letters Patent, dated 21st March, A.D. 1907.

2. That the capital stock of the company was by the said letters patent, fixed at two hundred thousand dollars, of which nine-tenths has been taken up and ten per centum thereon paid in.

3. That the said capital is insufficient for the purposes of the said company.

(*a*) *Or* for increasing or decreasing the number of directors, *or* for, etc., etc., *as the case may be*.

4. That the company made, on the third day of June, A.D. 1907, a by-law increasing the capital stock of the company to the sum of two hundred and fifty thousand dollars, such amount being considered by your petitioners requisite for the due carrying out of the objects of the company (*a*).

5. That the said by-law was sanctioned by a vote of not less than two thirds in value of the shareholders at a general meeting of the company duly called for considering the same, held at the City of Hamilton, on the 11th day of July, A.D. 1907.

Your Petitioner therefore prays that Your Honour may be pleased to grant, under the Great Seal, Supplementary Letters Patent confirming the said By-law.

And your Petitioner, as in duty bound, will every pray.

Witness:	W. J. THOMAS, *President.*
JOHN ROE.	THOMAS TAYLOR, *Secretary.*

[Seal.]

Dated at Hamilton,
this eleventh day of July, A.D. 1907.

FORM No. 237.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION FOR SUPPLEMENTARY LETTERS PATENT.

PROVINCE OF ONTARIO, County of Wentworth, To Wit:	In the matter of the Petition of The Hamilton Stove Company, Limited, for Supplementary Letters Patent confirming a By-law increasing the capital stock of the Company.

I, John Roe, of the City of Hamilton, in the County of Wentworth, Solicitor, make oath and say:

1. That I was personally present and did see William John Thomas, as the President, and Thomas Taylor, as the Secretary of the said company, sign, and seal with the Company's Common Seal,

(*a*) In case a redivision of the shares is contemplated, add the following:—

That by the same By-law it was enacted that the four thousand shares of the existing capital stock of the par value of fifty dollars each be redivided into twenty thousand shares of the par value of ten dollars each, and that the new capital stock should consist of an issue of five thousand shares of the value of ten dollars each.

the Petition for Supplementary Letters Patent marked as Exhibit "A" to this, my affidavit.

2. That I know the said parties.

3. That the signatures "W. J. Thomas" and "Thos. Taylor" are the true signatures of the said parties.

4. That the signature "John Roe," attesting the signatures hereinbefore mentioned, is the true signature of me, this deponent.

Sworn before me at the City of Hamilton, In the County of Wentworth, this 11th day of July, 1907.	JOHN ROE.

R. W. EVERETT,
A Commissioner, etc.

FORM No. 238.

AFFIDAVIT RESPECTING *BONA FIDE* CHARACTER OF INCREASE OF CAPITAL STOCK.

PROVINCE OF ONTARIO, County of Wentworth, To Wit:	In the matter of the petition of The Hamilton Stove Company, Limited, for Supplementary Letters Patent to confirm a By-law for the increase of the capital stock thereof.

I, William John Thomas, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That I am the President of the Hamilton Stove Company, Limited, and that I have a knowledge of the matters herein deposed to.

2. That nine-tenths of the capital stock of the Company has been taken up, and ten per centum thereon paid in.

3. That the present capital of the company is insufficient for the purposes of the Company.

4. That the proposed increase in the capital stock of the company is *bona fide*, and in the opinion of the company requisite and necessary for the due carrying out of the objects of the company.

5. That the allegations in the said petition contained are, to the best of my knowledge and belief, true in substance and in fact.

Sworn before me at the City of Hamilton, in the County of Wentworth, this eleventh day of July, A.D. 1907.	W. J. THOMAS.

JOHN ROE,
A Commissioner, etc.

FORM No. 239.

BY-LAW FOR REDUCING THE CAPITAL STOCK.

By-law No.....

A By-law to reduce the capital stock of The Company, Limited.

Whereas the capital stock of The Company, Limited, is thousand dollars, divided into shares of dollars each.

And whereas the capital stock of the said company is greater than the requirements of the company call for in the exercise of its business, (*or*, and whereas the value of the company's property has greatly decreased, *or* and whereas the capital stock of the said company has become impaired by depreciation of its assets and by losses).

And whereas the said company considers it expedient to make a by-law reducing the capital stock of the Company to the sum of dollars.

Now therefore, The Company, Limited, enacts as follows, that is to say:

1. That the capital stock of the said company be, and the same is hereby decreased from the sum of thousand dollars to the sum of thousand dollars divided into shares of dollars each.

2. That the present shareholders of the Company shall be entitled to receive one share of the hereby reduced stock of the value of dollars for each share of the value of dollars now held by them. (*Or* That such reduction be effected by cancelling paid up capital to the extent of dollars per share, or, by cancelling the present liability of dollars per share.)

3. That all stock certificates now issued be returned to the company to be cancelled, and that new certificates in accordance with the terms of this by-law, be issued to the shareholders for the number of shares now respectively held by them.

Passed this first day of March, A.D. 1907.

Secretary *President.*

[Seal.]

1st March, 1907.

The original by-law must be produced to the Provincial Secretary. A copy of the by-law to be retained by the Provincial Sec-

retary should accompany the original, and should have appended to it the words:

"Certified under the Seal of the said Company to the Honourable the Provincial Secretary."

Secretary. *President.*

[Seal.]

FORM No. 241.

BY-LAW INCREASING (OR DECREASING) THE NUMBER OF DIRECTORS.

BY-LAW NUMBER 30.

Whereas the number of the directors of The Hamilton Stove Company, Limited, is three (or, *as the case may be*), and it is expedient that the number should be increased:

Now, therefore, the said The Hamilton Stove Company, Limited, enacts as follows:

That the number of directors of the said company be and the same is hereby increased (*or*, decreased) to five.

Dated at Hamilton, this seventh day of June, A.D. 1907.

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Sanctioned this eleventh day of July, A.D. 1907.

The copy of this by-law transmitted to the Provincial Secretary should have appended to it the words: "Certified under the Seal of the said Company to the Honourable the Provincial Secretary."

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

Affidavit verifying the by-law may be adapted from No. 230.

FORM No. 242.

NOTICE PUBLISHING BY-LAW IN *THE ONTARIO GAZETTE*, CHANGING NUMBER OF DIRECTORS.

Under the provisions of the Ontario Companies Act, The Hamilton Stove Company, Limited, hereby gives public notice that it has sanctioned a by-law for the purpose of increasing the number of directors of the company, of which the following is a true copy:

"Whereas the number of directors of The Hamilton Stove Company, Limited, is three (or, *as the case may be*), and it is expedient that the number should be increased;

"Now, therefore, the said The Hamilton Stove Company, Limited, enacts as follows:

"That the number of directors of the said company be and the same is hereby increased to five."

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Dated at Hamilton,
this eleventh day of July, A.D. 1907.

This notice may be adapted for publishing in *Ontario Gazette*, By-law changing head office.

FORM No. 243.

AFFIDAVIT PROVING PUBLICATION IN *ONTARIO GAZETTE* OF BY-LAW CHANGING NUMBER OF DIRECTORS.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit:

In the matter of the By-law of The Hamilton Stove Company, Limited, changing the number of the directors of the said company.

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That I am the Secretary of the said The Hamilton Stove Company, Limited.

2. That the by-law made by the said company on the seventh day of June, 1907, increasing the number of directors thereof from three to five, was published in *The Ontario Gazette*, on the 13th day of July, A. D. 1907.

3. That the clipping from the said *The Ontario Gazette*, attached to this, my affidavit, and now shown to me marked "B," is a true and correct copy of the said notice given as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this sixteenth day of July, A.D. 1907.

THOMAS TAYLOR.

R. W. EVERETT,
A Commissioner, etc.

This affidavit may be adapted for use in case of the removal of the head office of the company.

FORM No. 244.

BY-LAW CHANGING HEAD OFFICE.

BY-LAW NUMBER. 30.

Whereas the head office of The Hamilton Stove Company, Limited, is in the City of Hamilton, in the County of Wentworth, and Province of Ontario;

And whereas it is deemed expedient that the same should be changed to the City of Toronto, in the said Province;

Therefore The Hamilton Stove Company, Limited, enacts as follows:

1. That the head office of The Hamilton Stove Company, Limited, be and the same is hereby changed from the City of Hamilton to the City of Toronto.

2. That this by-law be submitted with all due despatch for the sanction of the shareholders of the company at a general meeting thereof to be called for considering the same.

Passed this 3rd day of July, A.D. 1907.

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Hamilton, 3rd July, 1907.

The copy of this by-law transmitted to the Provincial Secretary should have appended to it the words: "Certified under the Seal of the said Company to the Honourable the Provincial Secretary."

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Affidavit verifying the by-law may be adapted from No. 243.

FORM No. 245.

RESOLUTION AUTHORIZING APPLICATION FOR CHANGE OF NAME.

At a meeting of the directors of The Company, held at the , of , on the day of , 190 , it was moved by seconded by , that the company be, and it is hereby authorized to apply by petition to the Lieutenant-Governor of the Province of Ontario for an Order changing the corporate name of the company from that of "The Hamilton Stove Company, Limited," to that of "The Toronto Stove Company, Limited." Carried.

Certified a true copy.

[Seal.] *Secretary.*

FORM No. 246.

PETITION FOR ORDER CHANGING NAME OF COMPANY.

To His Honour the Lieutenant-Governor of the Province of Ontario.

The petition of The Hamilton Stove Company, Limited,

Humbly Sheweth:

1. That The Hamilton Stove Company, Limited was incorporated under a general Act (*a*), viz., the Ontario Companies Act, by Letters Patent under the Great Seal, bearing date the twenty-first day of March, A.D. 1907.

2. That your Petitioner is desirous of changing its corporate name to that of The Toronto Stove Company, Limited.

3. That your Petitioner is in a solvent condition, as is shown by the verified statement in general balance sheet of the company, hereto annexed.

4. That the change desired is not for any improper purpose and is not otherwise objectionable.

5. That the new name is not that of any known company incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

6. That the company has authorized the making of the application, and that a true copy of the resolution in that behalf is hereunto attached. That the said resolution was passed by the shareholders at a general meeting of the company duly called for considering the same held at the of on the day of 190 .

7. That the company is not in arrear in making its annual returns.

Your Petitioner therefore prays that your Honour will be pleased by Order to change the corporate name of Your Petitioner from that of "The Hamilton Stove Company, Limited," to that of "The Toronto Stove Company, Limited."

And your Petitioner, as in duty bound, will ever pray.

THOS. TAYLOR, *Secretary.* W. J. THOMAS, *President.*

[Seal.]

Dated at Hamilton,
25th July, A.D. 1907.

(*a*) If Company was incorporated under some other Act, insert title here.

FORM No. 247.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION.

PROVINCE OF ONTARIO, County of Wentworth To Wit:	In the matter of the application under the Ontario Companies Act of The Hamilton Stove Company, Limited, for an Order changing its name.

I, Arthur Freeman Lobb, of the City of Hamilton, in the County of Wentworth, Student-at-law, make oath and say:

1. That I was personally present and did see William John Thomas and Thomas Taylor, President and Secretary, respectively, of the said company, sign the said petition marked as Exhibit "A" hereto; and affix thereto the common seal of the company, that I know the said parties, and that the signatures "W. J. Thomas" and "Thos. Taylor" are of the true signatures of the said parties.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 25th day of July, A.D. 1907. J. ROE, *A Commissioner etc.*	A. F. LOBB.

FORM No. 248.

AFFIDAVIT VERIFYING PETITION FOR CHANGE OF NAME.

PROVINCE OF ONTARIO, County of Wentworth, To Wit:	In the matter of the petition of The Hamilton Stove Company, Limited, for an Order of His Honour the Lieutenant-Governor changing its corporate name to that of "The Toronto Stove Company, Limited."

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 25th day of July, 1907. JOHN ROE, *A Commissioner, etc.*	THOMAS TAYLOR.

FORM No. 249.

EVIDENCE OF THE COMPANY'S SOLVENCY.

Evidence of the solvency of the company must consist of a sworn copy of the last balance sheet or other sufficient statement of the affairs of the company, prepared by some responsible person conversant with its business. The statement should, with reasonable detail, show the nature, character and value of the company's assets, and the character of its liabilities. If more than a month or so has elapsed since the preparation of the statement, the affidavit verifying its contents must, if such be the case, show that the position of the company has not materially changed since the statement was prepared.

Toronto, June 30th, 1907.

BALANCE SHEET OF THE COMPANY, LIMITED.

Assets.

Real Estate, buildings, machinery and plant	$35,036 30
Accounts receivable	498 59
Cash	3,557 20
	$39,092 09

Liabilities.

Amount of paid up capital	$37,500 00
Amount owing by company	511 21
Balance	1,080 88
	$39,092 09

This is the statement marked "A" mentioned in the affidavit of sworn before me this day of A.D. 1907.

.....

A Commissioner in H. C. J.

FORM No. 250.

AFFIDAVIT VERIFYING BALANCE SHEET.

PROVINCE OF ONTARIO,
County of
To Wit:

In the matter of the application of "The Company, Limited," for a change of name under the provisions of the Ontario Companies Act.

I, of the of in the County of Chartered Accountant, make oath and say:

1. I have been auditor for the said company for several years, and am intimately acquainted with its financial position.

2. The annexed statement marked "A" is a just and true account of the financial position of the said company, up to the present date, and the said company is perfectly solvent.

Sworn before me at the of
in the County of .....
this day of *Signature of deponent.*
June, A.D. 1907.

A Commissioner in H. C. J.

FORM No. 252.

FOR SURRENDER OF CHARTER.

PETITION FOR ACCEPTANCE OF SURRENDER.

To His Honour the Lieutenant-Governor of the Province of Ontario.

The petition of The Limited,

Humbly Sheweth:

1. That the said company was incorporated by Letters Patent issued under the Ontario Companies Act (*a*), bearing date the for the purposes and objects following, that is to say:—(here set out the objects).

2. That the said company as shown by the statement of its affairs hereto annexed has no debts existing or other rights in question (*b*).

3. That at a special general meeting of the shareholders of the company duly called according to the by-laws of the company held on the day of 190 , at the company's office in the City of , a resolution was unanimously passed "that the affairs of the company be wound up and that the company surrender its charter, and that for the purpose aforesaid the President and Secretary-Treasurer be and they are hereby authorized to execute and deliver all necessary deeds and documents."

(*a*) If incorporated otherwise set out the facts.

(*b*) *Or*, that said company has parted with its property, divided its assets rateably amongst its shareholders and has no debts or liabilities. *Or*, that the debts and obligations of the Company have been duly provided for or protected or that the creditors of the Company or other persons holding them consent.

4. That notice of the intention of the company to apply for acceptance of surrender of its charter was inserted in the a newspaper published in the locality in which the operations of the company have been carried on, and in the *Ontario Gazette*, on the following date, viz., , and the cutting hereto annexed is a true copy of the said notice.

5. Your petitioner therefore prays that the surrender of the charter of the said company may be accepted, and that the same may be cancelled, and the said company dissolved from and after the day of , 190 .

And your Petitioner as in duty bound will ever pray.

Place *President.*

Date *Secretary-Treasurer.*

[Seal.]

FORM No. 253.

AFFIDAVIT VERIFYING PETITION FOR SURRENDER OF CHARTER.

PROVINCE OF ONTARIO, County of To Wit: } In the matter of the herein application for the surrender of the charter of The Limited.

I, of the of in the County of Esquire, make oath and say:

1. That I am the Secretary (*a*) of the said Company.

(*a*) *Or* President or one of the directors, *as the case may be.*

2. That I have a knowledge of the matter, and that the allegations in the within Petition contained are to the best of my knowledge and belief, true in substance and in fact.

3. That the statement of the affairs of the said Company hereto annexed is true and correct.

Sworn before me at the of in County of this day of A.D. 190 . } (*Signature of Deponent.*)

(Signed)

A Commissioner, etc.

FORM No. 254.

STATEMENT OF AFFAIRS FOR SURRENDER OF CHARTER.

This statement should show the exact financial position of the company, giving the debts, etc., if any, due by company, and how they have been provided for.

The following is a statement made where all the assets were, by agreement, conveyed to the principal shareholder, he having released the other shareholders from their obligations on unpaid shares.

STATEMENT OF AFFAIRS OF THE COMPANY, LIMITED.

Assets.

Estimated value of land and premises situated on street in the city of	$5,000 00
do. do. on street	2,000 00
Outstanding Accounts—	
K. W. White	30 00
J. W. Slater	1 35
M. W. McFayden	300 00
R. W. Day	400 00
	$7,731 35

Liabilities.

There are no liabilities except to capital stock.

This statement must be verified by an affidavit made by an officer or agent conversant with the company's affairs.

FORM No. 255.

NOTICE IN LOCAL NEWSPAPER AND *ONTARIO GAZETTE* OF APPLICATION FOR ACCEPTANCE OF SURRENDER OF CHARTER.

NOTICE.

Under the provisions of the Ontario Companies Act, The Company, Limited, hereby gives public notice that it will make application to His Honour the Lieutenant-Governor of Ontario for the acceptance of the surrender of its charter on and from the of 190 .

Dated at

this 190 .

Secretary.

LICENSE TO EXTRA PROVINCIAL CORPORATION.

FORM No. 256.

RESOLUTION AUTHORIZING APPLICATION FOR LICENSE UNDER 63 Vic. 24, ONTARIO (*a*).

At a meeting of the directors of the company held at the of on the day of 190 , It was moved by , seconded by , that the Company be and

(*a*) Dispensed with in case of a Dominion Co.

it is hereby authorized to apply by petition to the Lieutenant-Governor of the Province of Ontario in Council for a license enabling the company to exercise the powers granted by the company's letters patent of incorporation, or so many of them as may be approved of by the said Lieutenant-Governor in Council, in the Province of Ontario, and to carry on its business and acquire lands and interests in lands for the purposes of its business in the said Province. Carried.

Certified a true copy.

[Seal.]

Secretary.

FORM No. 257.

PETITION FOR LICENSE FOR EXTRA PROVINCIAL CORPORATION.

To His Honour the Lieutenant-Governor of the Province of Ontario, in Council.

The petition of Limited, Humbly sheweth:

1. That your petitioner was incorporated under the (*a*) Companies Act of the Dominion of Canada, under the name of Limited, by Letters Patent (*b*) dated the of 190 .

2. That your petitioner has satisfied itself and is assured that the name under which it is carrying on business is not on any public ground objectionable, and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, doing business in Ontario, or a name under which any known business is being carried on in Ontario or so nearly resembling the same as to deceive.

3. That the head office of your petitioner is situated in the of

4. That there is no limit, either statutory or otherwise to the existence (*b*) of your petitioner.

5. That your petitioner is a valid and subsisting corporation.

6. That your petitioner may under the provisions of its charter carry on business in Ontario, and may hold the lands necessary for so carrying on such business.

7. That by its charter your petitioner is authorized to carry on the following business (here set out the objects in full).

(*a*) Here set out the law or laws under which the Company was incorporated.

(*b*) *Or* as the case may be.

8. That your petitioner desires that a license may be issued to your petitioner under the provisions of 63 Vic. chapter 24 (Ontario), authorizing your petitioner to use, exercise, and enjoy, within the Province of Ontario, all or so many of the powers, privileges and rights as were granted to your petitioner by its said charter (*b*) and may be approved by your Honour in Council.

9. That the authorized capital stock of your petitioner is the sum of $ divided into shares of dollars each. Of which $ has been subscribed and issued and fully paid up (*b*).

10. That the chief place of business of your petitioner in the Province of Ontario is in the said of .

11. That your petitioner has by the power of attorney, duly executed under its common seal, hereto annexed, appointed of the of , in the Province of Ontario, Esquire, to be your petitioner's Attorney and Representative in Ontario in accordance with the said Act, being 63 Vic. cap. 24, and his consent to so act is herewith attached.

12. That the herein application for a license to carry on business in Ontario, was duly authorized and approved at a meeting (*a*) of the directors of your petitioner held at the of , on the day of , 190 , and that a true copy of the Resolution in that behalf is hereto attached.

Your petitioner therefore prays that Your Honour will be pleased to issue a license to your petitioner authorizing your petitioner to use, exercise and enjoy,within the Province of Ontario, all (or so many of) the powers, privileges and rights set forth in its said charter as shall be approved of by your Honour.

And your petitioner, as in duty bound, will ever pray, etc.

Secretary. *President.*

[Seal.]

Dated at in the County of and Province of this day of , 1907.

FORM No. 258.

AFFIDAVIT VERIFYING PETITION FOR LICENSE (*b*).

PROVINCE OF County of To Wit:	In the matter of the application under an Act respecting the Licensing of Extra Provincial Corporations, for the grant of License to The Company.

(*a*) *Or* as the case may be.

(*b*) This proof may be made by statutory declaration or by affidavit or by deposition.

I, , of the City of , in the County of , Esquire, make oath and say:

1. That I was personally present, and did see and , President and Secretary, respectively, of the said Company, sign the said Petition marked as Exhibit "A" hereto; and affix thereto the Common Seal of the Company, that I know the said parties, and that the signatures " " and " " are of the true signatures of the said parties.

2. That I have a knowledge of the matter, and that the allegations in the within Petition contained are, to the best of my knowledge and belief, true in substance and in fact.

Sworn before me at the City of , in the County of , this day of A.D. 1907.
A Commissioner, etc.

.....
Signature of deponent.

FORM No. 259.

POWER OF ATTORNEY FROM EXTRA PROVINCIAL CORPORATION.

Know all men by these presents, that The Company, for causes and considerations it thereunto moving, has made, nominated, constituted and appointed, and by these presents does make, nominate, constitute and appoint of the of , Merchant (*a*), the true and lawful attorney and representative of The Company, to act as its said attorney and representative, and to sue or be sued, plead or be impleaded in any Court in Ontario, and, generally, on its behalf and within the Province of Ontario, to accept service of process and to receive all lawful notices, and for the purposes aforesaid to do all acts, and to execute all deeds, and other instruments, relating to the matters within the scope of this Power of Attorney; and the Act being 63 Vic. cap. 24 (Ontario); and the said The Company does hereby confirm and agree to confirm all and singular that its said attorney and representative shall lawfully do or cause to be done in the premises by virtue hereof.

Until due lawful notice of the appointment of another and subsequent attorney and representative has been given to and accepted by the Provincial Secretary of Ontario, service of process, or of papers and notices upon the said shall and will be accepted by this said company as sufficient service in the premises.

(*a*) *Or* as the case may be.

In Witness Whereof the corporate seal of The Company has been hereunto affixed, and the hands of its President and Secretary have hereunto been set this day of in the year of our Lord one thousand nine hundred and seven.

Witness.

[Seal.]

Secretary. *President.*

The due execution of this instrument must be attested on oath by an independent witness.

FORM No. 260.

CONSENT TO ACT AS ATTORNEY FOR AN EXTRA PROVINCIAL CORPORATION.

I, , of the , of , in the County of , and Province of Ontario, having been appointed by the Company, its attorney and representative in the Province of Ontario by Power of Attorney, under date the day of , 190 , hereby accept said appointment and agree to act as said Attorney under the provisions of 63 Vic. Cap. 24, until due lawful notice of the appointment of another and subsequent attorney and representative has been given to, and accepted by the Provincial Secretary of Ontario.

Dated at this)
day of , 190 .) .....

Witness: *Signature.*

FORM No. 262.

NOTICE BEFORE FORFEITURE OF SHARES.

THE COMPANY, LIMITED.

Hamilton, No. Street, , 190 .

SIR,—In my letter of the day of , I gave you notice that at a meeting, etc.

I am now instructed to inform you that the directors require you, on or before the day of , to pay the said sum of $, together with interest thereon, at the rate of per cent. per annum, from the said day of up to the day of payment, and that in the event of non-payment of the said call and interest on or before the said day of at the

place aforesaid, the shares in respect of which such call was made will be liable to be forfeited.

I am, etc.,

Secretary.

To , etc.

FORM No. 263.

NOTICE OF SALE OF STOCK ON WHICH CALLS ARE UNPAID.

SALE OF STOCK OF THE COMPANY.

Public notice is hereby given that the undersigned, Treasurer of said company will sell at public auction shares of the capital stock of The Company, on which fifty per centum has been paid in, belonging to for non-payment of call on the stock of said according to the statute in such case made and provided. The sale will be held at the office of the said company, No. , in city, on the day of , 190 , at two o'clock in the afternoon.

Dated, , 190 .

Treasurer.

FORM No. 264.

NOTICE OF CALL.

I beg to give you notice that the directors of The Company, Limited, have made a call of $5 per share, and that the same will be payable to Mr. , the Treasurer of the Company, at the Company's Office Street, on the day of 190 .

The amount payable by you upon the shares held by you in respect of such call is $

Your obedient servant,

Secretary.

Hamilton , 190 .

FORM No. 265(*a*.)

NOTICE OF FIRST GENERAL MEETING.

The first general meeting of the shareholders of The Hamilton Stove Company, Limited, for the purpose of organizing the company

(*a*) Under the Ontario Companies Act this notice is required to be sent by registered letter addressed to each shareholder.

for the commencement of business, will be held at the Company's Office, No. 100 King street east, in the City of Hamilton, on Wednesday, the 23rd day of May next, at the hour of 10 o'clock in the forenoon.

By order,
THOS. TAYLOR.

Hamilton,
30th April, 1907.

FORM No. 267.

COLLATERAL NOTE PLEDGING STOCK WITH POWER OF SALE.

Toronto, 190 .

Six months after date, for value received, I promise to pay to , or order, dollars, and interest at the rate of per cent. per annum, for such further time as said principal sum or any part shall remain unpaid, I having deposited with this obligation, as collateral security, shares of the capital stock of the Company, with authority to sell the same, without notice, either at public or private sale, or otherwise at the option of the holder or holders hereof, on the non-performance of this promise, he or they giving me credit for any balance of the net proceeds of such sale remaining after paying all sums due from me to the said holder or holders, or to his or their order. And I hereby further agree that the holder or holders hereof may purchase at said sale.

FORM No. 268.

PLEDGE OF SHARES OF STOCK.

Toronto, , 190 .

To

Having borrowed from you the sum of dollars, which is to be repaid to you on the day of next, and which sum is secured by my promissory note in your favor for that amount bearing even date herewith, I have, for further securing the repayment of such sum, transferred shares of the Company, to your name in the books of the said Company, to be held by you on the following terms, viz.:

1. All dividends which may be declared upon the shares are to be received by you and paid to me.

2. All new shares created in respect of the above shares are to be held by you as the original shares, the calls or assessments thereon to be paid by me.

3. On the day of , 190 , upon your being repaid the amount advanced as above, with interest thereon at the rate of per cent. per annum, the said shares and all newly created shares (if any) are to be transferred to me.

4. If I shall make default in repayment of the said advanced sum on the day of , 190 , or in payment of the said calls as they become due, you may, at any time afterwards, on giving me days' notice of your intention so to do, and without being liable for any diminution in prices which may have taken place in the meantime, and without any further consent by me, sell the said shares, and any such new shares as aforesaid, at such price, or prices, and in such manner in all respects, as you shall think proper, and may retain out of the proceeds the amount then due to you, with interest thereon at the rate aforesaid, and all costs attending the said sale, and may demand and claim of me any balance that may remain unpaid by the means aforesaid.

(Signature of Pledger.)

I, the undersigned (the pledgee) agree to hold the said shares upon the terms and conditions before mentioned.

(Signature of Pledgee.)

FORM No. 269.

RECEIPT FOR COLLATERALS WITH AUTHORITY TO SELL SAME.

Received from of a certificate for shares of the capital stock of the Company (insert other securities, if any) as collateral security, for the prompt payment at maturity of his promissory note for dollars, dated the day of , 190 , and payable months after the date thereof, said securities to be returned to him in case said note be then paid.

In case of non-payment of said note at maturity, I am at liberty to sell the securities, or such portion as may be necessary, either at public or private sale, or at the brokers' board without notice, and apply proceeds to the payment of said note and expenses.

FORM No. 270.

POWER OF ATTORNEY TO MAKE TRANSFERS, RECEIVE DIVIDENDS, ETC.

Know all men by these presents that I, do make, constitute and appoint of my true and lawful attorney, for me and in my name and on my behalf, to sell, assign and trans-

fer the within shares in the capital of The Company, Limited, to me belonging, to receive the consideration money, and to give a receipt or receipts for the same, to receive and give receipts for all dividends that are now due, and that shall hereafter become due and payable on the same, for the time being, and generally to do all lawful acts requisite for effecting the premises, hereby ratifying and confirming all that my said attorney shall do therein.

In witness whereof, I have hereunto set my hand and seal at this day of in the year of Our Lord one thousand nine hundred and seven.

Signed and sealed in the presence of)

[Seal.]

.....

Signature.

FORM No. 272.

POWER OF ATTORNEY TO SUBSCRIBE FOR SHARES, ETC.

Know all men by these presents, that I, of the of in the of do hereby appoint of the of my true and lawful attorney, for me and in my name and stead and in my behalf, and for my sole and exclusive use and benefit, to subscribe for shares of the value of dollars each, in the capital stock of the proposed The Company, Limited, and to vote at meetings of the shareholders or directors of the said proposed company in respect to the said stock, and also for me and in my name, and as my act and deed, to execute and do all such assurances, deeds, covenants and things as may be requisite or necessary in obtaining letters patent incorporating said company and in managing the affairs of the said proposed company, when incorporated. And generally to act in relation to the said proposed company as fully and effectually in all respects as I myself could do, if personally present.

And I do hereby grant full power to my said attorney to substitute and appoint one or more attorney or attorneys under him, with the same or more limited powers, and others to appoint.

I, the said hereby agreeing and covenanting for myself, my heirs, executors and administrators, to allow, ratify and confirm whatsoever my said attorney, or his substitute, or substitutes, shall do or cause to be done in the premises, by virtue of these presents, including in such confirmation whatsoever shall be done

between the time of my decease or of the revocation of these presents, and the time of such decease or revocation becoming known to my said attorney, or such substitute or substitutes.

As Witness, etc.

Signed, sealed, etc.

For affidavit verifying, use Form No. 200.

FORM No. 273.

SPECIAL CLAUSES IN POWERS OF ATTORNEY.

TO DEPOSIT MONEYS AND DRAW CHEQUES IN THE PRINCIPAL'S NAME AND TO INVEST AND REINVEST.

Upon receipt of any moneys which shall be paid to the said attorney by virtue of the premises, to pay or deposit the same in my name, or otherwise, with any banker, broker, or other agent, to draw out such moneys from time to time, and to apply the same for any of the purposes aforesaid, or from time to time to invest the same at the discretion of the said attorney, and from time to time to sell, vary, and dispose of such investments, and to apply the purchase money for any of the purposes aforesaid.

FORM No. 274.

TO SIGN OR INDORSE BILLS OR NOTES.

And to make, draw, sign, or indorse, in my name any bills of exchange or promissory notes in which I shall be interested or concerned, or which shall be requisite in or about my business.

FORM No. 275

TO VOTE AT MEETINGS OF COMPANY.

To vote at the meetings of any company or companies, and otherwise to act as my proxy or representative, in respect of any shares now held, or which may hereafter be acquired, by me therein, and for that purpose to sign and execute proxies or other instruments in my name and on my behalf.

FORM No. 276.

REVOCATION OF POWER OF ATTORNEY.

Know all men by these presents, that I, of for divers good causes and considerations, me hereunto especially moving, have revoked countermanded, annulled and made void, and by

these presents do revoke, countermand, annul and make void, a certain deed-poll, or power of attorney, under my hand and seal, bearing date to of given, delivered and executed, and all powers and authorities whatsoever therein expressed and delivered.

As Witness, etc.

Signed, sealed, etc.

FORM No. 277.

RESOLUTION AUTHORIZING CORPORATION NOTE.

Resolved, That the president be and hereby is authorized to make a contract for the purchase of for the use of this corporation, and is hereby authorized in carrying out such purchase to give notes of this corporation to the amount of dollars.

FORM No. 278.

PROMISSORY NOTE OF CORPORATION.

A promissory note given by a company does not require to be sealed. It should be signed with the corporate signature only, thus

Toronto, 21st May, 1907.

$5,000.00

Three months after date the Toronto Steel Company, Limited, promises to pay to the order of Walter B. Scott, the sum of Five thousand Dollars.

Value received

Toronto Steel Company, Limited.
HENRY HARVEY,
Treasurer.

FORM No. 279.

RESOLUTION OF DIRECTORS TO BORROW MONEY, AND CERTIFICATE OF SECRETARY.

Resolved, That the Treasurer of this corporation, be and he is hereby authorized to borrow money for this company in his discretion, and to give therefor such notes and pledges as collateral security to as may seem proper, and said Treasurer is hereby authorized to make and execute with the such agreement or agreements in respect to the securing of indebtedness of this company now or hereafter existing to said Bank, as may be required, or as may be expedient.

Directors.

I, Secretary of The , a company incorporated under the laws of the Province of , do hereby certify that the foregoing is a true and correct copy of a resolution of the board of directors of said company, adopted at a duly constituted meeting of said board of directors, and that the same is made under the authority of a by-law of the company approved by the shareholders thereof on the day of , 190 , and numbered .

This Resolution is entered on page in the Director's Minute book of the said company.

Witness my hand and the seal of said Corporation, this day of A.D.

[Seal.]

Secretary.

FORM No. 280.

PREAMBLE AND RESOLUTION CONFIRMING ACT OF OFFICER.

Whereas, by reason of the board of directors failing to have a quorum at the time fixed for its regular meeting on Wednesday the day A.D. , and Henry Taylor as President, has been performing such duties as should have devolved upon the board of directors; therefore be it

Resolved, That the acts, doings and transactions of Henry Taylor as President, during the interim from A.D. to as shown by the records, books of account, writings and events, be and the same are hereby ratified, confirmed and approved, and declared to be and to be considered the acts and deeds of this board of directors.

FORM No. 281.

PREAMBLE AND RESOLUTION DECLARING DIVIDEND.

Whereas, there is to the credit of "Surplus Earnings Account," (*or* Revenue Account, if so called) on the business books of this company, $, over and above the current liabilities of this company; and

Whereas, there is to the credit of this company $ over and above the necessary cash capital to conduct its business, therefore, be it

Resolved, That a dividend of ten per cent, upon the paid up capital of the company be and the same is hereby declared from the "Surplus Earnings Account" of this company, payable in cash

to the shareholders of this company of record on the day of A.D. 190 , and that with a view to making out the requisite cheques, the transfer books be closed from the day of to the day of .

Or Resolved, that an interim dividend of per share be paid on the day of , to the shareholders on the register on the day of , and that with a view to making out the requisite cheques, the transfer books be closed from the day of to the day of .

FORM No. 283.

PREAMBLE AND RESOLUTION DECLARING OFFICE OF DIRECTOR VACANT.

Whereas, by reason of a director of this company, ceasing to hold shares of the capital stock of this company, and not being present at any meeting of this board of directors since a meeting held on day of A.D. 190 , therefore, be it

Resolved, That the office of director as filled by be and the same is hereby declared vacant, from this day of A.D. , and that said vacancy be filled in accordance with the by-laws of this company by this board of directors appointing as a director of this company to fill such vacancy, by this resolution declared; and be it further

Resolved, That the Secretary of this company certify a copy of this resolution to the shareholders for action at their next meeting.

FORM No. 284.

RESIGNATION OF DIRECTOR.

Where a director ceases to be a shareholder, he should at once send his resignation to the board. It may be worded as follows:—

To the Board of Directors of the Company.

GENTLEMEN,—Having disposed of my shares in the Company, I hereby tender my resignation as a director thereof.

Yours truly,

HERBERT TAYLOR.

This resignation being addressed to the board should be enclosed to the Secretary or President of the Company as such. It is the duty of the officer receiving it to bring it before the board at its first meeting.

Where a director wishes to express his disapproval of some action taken by the Board while still retaining his interest as a shareholder in the company, the form of resignation may be.

To the Board of Directors
of The Company.

GENTLEMEN,—I hereby tender my resignation as a director of The Company, such resignation to take effect immediately.

Yours truly,
HERBERT TAYLOR.

FORM No. 286.

PROXY.

THE HAMILTON STOVE COMPANY, LIMITED.

I, A. B., of the City of , in the of , being a holder of shares of the above company, hereby appoint , of (failing him, of), as my proxy to vote for me, and on my behalf, at the (annual or special, as the case may be) general meeting of the company, to be held on the day of next.

As Witness my hand and seal this day of 190 .

Signed
in presence of

FORM No. 287.

REGISTER OF DIRECTORS.

ELECTED.		NAME.	ADDRESS.	CALLING.	RETIRED.		REMARKS.
1	$\frac{3}{8}$	$2\frac{1}{2}$	2	2	$\frac{5}{8}$	$\frac{3}{8}$	$2\frac{1}{2}$

NOTE.—The figures in each column denote the proper breadth in inches or fractions of an inch of such column.

FORM No. 288.

Specimen page—REGISTER OF SHAREHOLDERS (*a*).

DATE.		NAME.	ADDRESS.	CALLING.	REMARKS.
1	$\frac{3}{8}$	$2\frac{1}{2}$	$2\frac{1}{4}$	$2\frac{1}{4}$	3

NOTE.—The figures in each column denote the proper breadth in inches or fractions of an inch of such column.

(*a*) If thought desirable, this book may be omitted and the additional column necessary to give all the particulars required by the Act, inserted in the Index to Share Ledger.

FORM No. 289.

REGISTER OF TRANSFERS.

TO WHOM.			DATE.		No. OF SHARES.	Margin for binding, say two inches.	PAID IN.		UN-PAID		FROM WHOM.		REMARKS.
NAME.	CALLING.	ADDRESS.									NAME.	ADDRESS.	
5	2	2	[illegible]	[illegible]	$1\frac{1}{8}$		[illegible]	[illegible]	[illegible]	[illegible]	$2\frac{1}{2}$	$2\frac{1}{2}$	$3\frac{1}{2}$

NOTE.—The figures in each column denote the proper breadth in inches or fractions of an inch of such column.

FORM No. 289a.

TRANSFER BOOK. Specimen Page.

The Hamilton Stove Company, Limited.

TRANSFER No. 1.

Folio.....

Power of Attorney.

No.....

Folio .....

Power of Attorney.

No.....

For Value Received, I,.....of.....

in the County of..... .....do hereby assign and transfer unto.....

of the.....of.....in the County of.....

.....Shares, amounting to the sum of..... .....Dollars, in the Capital Stock of **The Hamilton Stove Company, Limited**, on which has been paid the sum of .....Dollars, subject to the By-laws, Rules and Regulations of the Company already passed or hereafter to be passed by the said The Hamilton Stove Company, Limited.

Witness my hand, at the office of the Company, in the City of Hamilton, this.....day of ....in the year of our Lord, 190....

Witness:

I Hereby Accept the foregoing transfer of .....Shares of the Capital Stock of The Hamilton Stove Company, Limited, as above mentioned.

Dated this.....day of.....190....

Witness: .....

FORM No. 289b.

STOCK LEDGER. Specimen Page.

Name.....

Occupation..... *Address*.....

Date.			Call or Transfer.	C.B. Fol.	Transfer No.	DR. (Shares disposed of)			CR. (Shares acquired)			BALANCE.		
						Shares.	Paid on.		Shares.	Paid on.		Shares.	Paid on.	
Jan.	4	1900	Call No. 1, 10%	5					100	1,000				
Feb.	5	"	" No. 2, 20%	16					"	2,000		100	3,000	
July	13	"	" No. 3, 10%	84					"	1,000		"	4,000	
Aug.	23	"	Transfer		5	40	1,600					60	2,400	
Jan.	5	1901	Call No. 4, 20%	147					60	1,200		"	3,600	
"	10	"	Transfer		18				30	1,800		90	5,400	
"	15	"	Call No. 5, 5%	151					90	450		90	5,850	
Mar.	1	"	Transfer		21				10	500		100	6,350	
"	2	"	Call No. 5 (arrears 15% on the 10 shares)	160					10	150		"	6,500	
July	15	1902	Transfer		38	100	6,500							
(a) $\frac{5}{8}$	$\frac{3}{8}$	$\frac{1}{2}$	$1\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{3}{8}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{3}{8}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{3}{8}$

(a) Note.—These figures in each column denote the proper breadth in inches or fraction of an inch of such column.

EXPLANATION OF STOCK LEDGER.

All purchases, sales or payments on shares by a shareholder of record are entered in his account in this book, one line across the entire page being devoted to each transaction.

On the left hand side of the account, the first three columns give the date, the fourth particulars as to whether the entry is in respect of calls, or transfers, or original issue, the fifth the folio of the cash book from which it is entered, the sixth the number of the transfer, the seventh debits the person with the shares he sells, the eighth and ninth shew the amount paid upon them. It should be noted that the price received by the person selling the stock does not affect this entry in any way, only the amount received by the company being recorded here in order to show if there is any further liability to the company on the stock transferred. The tenth column credits him with the number of shares he subscribes for or purchases, the eleventh and twelfth the amount paid in answer to calls or paid upon shares he may purchase. The difference between the debit and credit side is the number of shares he owns, and it appears in column thirteen, and the amount paid thereon in column fourteen.

In the account given herein, Herbert Williams is an original subscriber for one hundred shares of one hundred dollars each. The first three entries shew that he paid calls, 1, 2 and 3 amounting in all to $4,000. Entry number 4 indicates that he sold forty shares upon which he had paid $1,600, leaving him with a balance of 60 shares upon which he had paid $2,400. Entry No. 5 shews that he paid call No. 4 of twenty per cent. on 60 shares amounting to $1,200. Entry No. 6 states that he bought 30 shares upon which all calls amounting to sixty per cent. were paid, making his balance ninety shares. Entry No. 7 is for call No. 5 of five per cent. amounting to $450 on 90 shares, which he paid. Entry No. 8 shews that he bought ten shares upon which only fifty per cent. or $500 had been paid. In entry No. 9, he paid up the arrears of 15 per cent. on these ten shares. In entry No. 10 he disposes of all his stock, transferring to E. V. O'Sullivan one hundred shares upon which all calls amounting to 65 per cent. had been paid.

If instead of calls having been made as above, the shares were paid for in full at once, the first entry would be "Jan. 4, 1907, original issue" in first four columns, and he would be credited in the tenth column with 100 shares, and in the eleventh with $10,000 paid on.

The pages of this book should be numbered, and an alphabetical index to it kept.

FORM No. 289c.

TRANSFER OF SHARES.

For value received hereby sell, assign and transfer unto shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint my attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

In the presence of } Witness my hand and seal this day of 190 .

Notice.—This form is usually printed upon the back of the stock certificate. The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever.

FORM No. 289d.

SHARE WARRANT.

THE COMPANY, LIMITED.

Capital $100,000.

No. . $ Shares.

Share Warrant.

This is to certify that the bearer of this warrant is entitled to fully paid-up shares of $ each in the above-named company, numbered to inclusive, subject to the regulations of the company, and to the conditions indorsed hereon.

Given under the common seal of the Company, this day of , 1907.

(Seal of the Company.)

President. *Secretary.*

Dividend Coupon No.

On shares included in the share warrant numbered as below. Payable at the company's office at a time to be fixed by advertisement.

No. Secretary.

NOTE.—It is not uncommon to annex to a share-warrant a series of coupons numbered consecutively. When they are exhausted fresh coupons are issued.

FORM No. 290.

REQUISITION BY SHAREHOLDERS FOR SPECIAL GENERAL MEETING.

To the Directors of The Hamilton Stove Company, Limited.

We, the undersigned, members of the above-named Company, holding not less than one-tenth of the subscribed capital of the company, do hereby, under the provisions of the Ontario Companies Act, section 37 require you, within 21 days from the date hereof, to convene a special general meeting of the company, to be held at the Company's Office in this City, for the purpose of considering, and, if thought fit, passing the subjoined resolution (or for such other business as shall be mentioned in this notice).

RESOLUTION.

"That," etc. (set it out).

Signatures.

Hamilton, 15th July, 1907.

FORM No. 291.

NOTICE BY SHAREHOLDERS CALLING A SPECIAL GENERAL MEETING.

NOTICE.

We, the undersigned shareholders of The Hamilton Stove Company, Limited, (a Company incorporated under the Ontario Companies Act), being the holders of more than one-tenth part in value of the subscribed stock of the company, by virtue of the statute in such behalf made and provided, hereby call a general meeting of the shareholders of the Company.

And take notice that the said meeting will be held at the head offices of the Company in the City of Hamilton on the day of , A.D. 1907, at the hour of 2 o'clock in the afternoon.

The purposes of the meeting are: (1) To elect directors; (2) to consider the position the Company should take in reference to the litigation pending between the shareholders and the company.

Dated at Hamilton, this day of A.D. 1907.

Signatures of Shareholders.

FORM No. 292.

WAIVER OF NOTICE OF MEETING OF INCORPORATORS.

We, the undersigned, being all the incorporators and all the subscribers to the stock of the Company, organized under

the laws of , having its principal office at , do hereby waive notice of the time, place and purpose of the first meeting of the stockholders of the said company, and do fix the day of , 190 , at o'clock in the noon, as the time, and the office of at , as the place of the first meeting of the incorporators and subscribers to the stock of said company

And we do hereby waive all the requirements of the statutes (*a*) as to the notice of this meeting, and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated , 190 .

FORM No. 293.

NOTICE—REGULAR MEETING OF DIRECTORS.

Hamilton, 10th May, 1907.

DEAR SIR,—You are hereby notified that the regular monthly meeting of the Board of Directors of The Hamilton Stove Company will be held at the Company's Office, No. 100 King Street east, in the City of Hamilton, on Wednesday the 23rd day of May next, at the hour of 10 o'clock in the forenoon.

By Order,

THOMAS TAYLOR,

Secretary.

FORM No. 294.

ANNUAL REPORT OF DIRECTORS.

CANADA CYCLE & MOTOR CO., LIMITED.

Report of the Board of Directors, Annual Meeting, October 26th, 1906.

The report herewith submitted covers the operations of the company for twelve months, ending July 31st, 1906.

For the first time since the commencement of the decline of the bicycle business, our sales in Canada show an increase over those of the previous year. Whilst this increase has not been large, it has been fairly general throughout the whole of Canada, and denotes that there is an awakening in the demand.

The manufacture of automobiles formed an important part of the factory's operations during the past year. Practically every car turned out has been sold, so that the energies of the plant are now entirely devoted to the production of the new models for 1907 * * * *

(*a*) If it is a subsequent meeting insert here "*and By-laws.*"

We are pleased to be in a position to report that the output for 1907 will be largely in excess of the past year. Up to the present time we have succeeded in placing agencies abroad for our cars in London, England, and in Australia and New Zealand, so that we are hopeful of the development of an export trade in automobiles as well.

The increasing motor business has demanded a considerable enlargement of our plant. During the past year the following additions have been made * * * with a view to future development. The land owned by the Company for manufacturing purposes now exceeds nine acres.

During the year the factory has been operated continuously, employing an average of about three hundred men Our sales totalled $904,207.29. After providing for all necessary contingencies in connection with the business, making suitable provision for bad and doubtful accounts, and providing for depreciation in machinery and plant, we show a profit on the year's trading operations of $32,405.54. Your Board have felt that the profits from the business are required for the increasing of our factory facilities to take care of the rapidly growing automobile business. On this account no dividend will be paid.

Statement of assets and liabilities as at July 31st, 1906, is submitted herewith.

The accounts of the Company have been duly audited and certified to by Messrs. Edwards & Co.

All of which is respectfully submitted.

JOS. N. SHENSTONE, *President.* T. A. RUSSELL, *Secretary and General Manager.*

FORM No. 295.

CANADA CYCYLE AND MOTOR CO., LIMITED.

ANNUAL STATEMENT OF ASSETS AND LIABILITIES, JULY 31ST, 1906.

Assets.

Cash on hand and in Banks		$ 8,285 44	
Accounts and Bills Receivable		332,918 69	
STOCK ON HAND—			
Bicycles, Motor Vehicles, Parts and Accessories	$144,558 84		
Raw Material and Supplies	116,671 83		
Insurance, Duty, Freight, Stationery and Office Supplies	15,627 66	276,858 33	$ 618,062 46

Real Estate and Buildings	$99,205 57	
Machinery, Tools, Patterns, Furniture and Fixtures	162,435 02	261,640 59
Patents, Trade Marks, Good-will, etc.		299,990 20
		$1,179,693 25

Liabilities.

Accounts and Bills Payable	$327,077 47	
Contingent Account	20,210 24	
Capital Stock	800,000 00	
Profit and Loss Account being Profit on year's business	32,405 54	$ 1,179,693 25

SPECIAL PROVISIONS FOR INSERTION IN LETTERS PATENT.

Under the provisions of the Ontario, Quebec and Dominion Companies Acts, the applicants may ask for the embodying in the letters patent of any provision which might be embodied in any by-law of the company when incorporated.

The precedents that follow are the clauses more commonly used:—

Caution.—Unless provision to the contrary is made in the letters patent (for which see Form 335), no change or alteration of these special provisions can be made by the directors or shareholders, however desirous they may be of doing so except subject to the same formalities as those by which the charter was obtained.

FORM No. 296.

CERTAIN AMOUNT OF STOCK TO BE SUBSCRIBED.

That the undertaking of the Company shall not be commenced until the subscribed and fully paid up stock amounts to fifty thousand dollars.

FORM No. 297.

VESTING ISSUE AND ALLOTMENT OF SHARES IN THE SHAREHOLDERS.

That the shares of the said Company, other than those already subscribed for, shall be issued and allotted to subscribers therefor only when and as directed by a majority vote of the shareholders at a meeting duly called for that purpose, or at a meeting of shareholders of the said Company when all shareholders are fully represented.

FORM No. 298.

VESTING ISSUE AND ALLOTMENT OF SHARES IN SHAREHOLDERS.

(Another Form.)

That the stock of the Company shall be allotted by the shareholders at a general meeting of the Company called for that purpose, and that such allotments shall always require a vote of at least sixty per centum of the shares theretofore subscribed and allotted and not in default for calls.

FORM No. 299.

PROHIBITING SALE OR TRANSFER OF STOCK WITHOUT CONSENT OF DIRECTORS.

No member shall, without the express sanction of the directors, sell his stock to a person who is not a member of the company without having first offered it for sale through the directors to the members of the company at the current price therefor, and the directors shall allocate such stock amongst the members desirous of purchasing the same in such way as to equalize as nearly as may be the holdings of stock. No person shall hold or control directly or indirectly more than 25 shares of the capital stock of the company, and no transfer of any stock in violation of this provision shall made by any member or authorized by the directors.

Provided always that the shareholders may, by a three-fourths majority of the members present at a meeting duly called for the purpose, sanction the transfer of shares otherwise than as above provided.

FORM No. 300.

YEARLY AUDIT.

That it may be directed that the accounts of the Company shall be examined once at least in every year, and that the correctness of the balance sheet shall be ascertained and certified by an auditor.

FORM No. 301.

AUDITOR—APPOINTMENT OF, BY PREFERENCE SHAREHOLDERS.

That the holders of the preference stock shall have the right to appoint the auditor or one of the auditors of the company if more than one auditor is appointed (*a*).

(*a*) Where a Municipal Corporation having been authorized by by-law approved of by the people, purchased the preference shares in a manufacturing concern, the above provision and also No. 333, was inserted in the Letters Patent.

FORM No. 302.

GIVING CONTINUING SHAREHOLDER, OR THE COMPANY, RIGHT TO PURCHASE SHARES OF RETIRING SHAREHOLDER.

(1) That save as hereinafter provided, no share or interest in the Company shall at any time be transferred to any person not already a shareholder, so long as any shareholder is willing to purchase said share or interest at the prescribed price hereinafter defined.

(2) That in order to ascertain whether any shareholder is willing to purchase any such share or interest, the person, whether a shareholder of the Company or not, proposing to transfer the same, hereinafter called the "retiring shareholder," shall give notice in writing to the Company that he desires to transfer the same, and such notice shall constitute the Company his agent for the sale of the share or other interest to any shareholder of the Company at the prescribed price.

(3) That if the Company shall within the space of thirty days after such notice find a shareholder desiring to purchase such share or interest, hereinafter called the "purchasing shareholder," and shall give notice thereof to the retiring shareholder, he shall be bound at such time within fifteen days thereafter as the Company shall appoint upon payment of the prescribed price, to transfer such share or interest to the purchasing shareholder.

(4) That if in any case the retiring shareholder after becoming bound as aforesaid, makes default in transferring such share or interest, the Company may receive the purchase money and shall thereupon cause the name of the purchasing shareholder to be entered upon the register as the holder of such share or interest, and shall hold the purchase money in trust for the retiring shareholder, his executors, administrators or assigns, and the receipt of the Company for the purchase money shall be a good discharge to the purchasing shareholder, and he shall not be bound to see to the application thereof, and after the name of the purchasing shareholder has been entered in the register in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person, and the purchasing shareholder shall be deemed and taken to be the owner of the said share or interest.

(5) That if within the space of thirty days after being served with such notice as aforesaid, the Company shall not find a shareholder desiring to purchase the same, and shall not give notice thereof in manner aforesaid, the retiring shareholder shall at any time within six calendar months afterwards be at liberty to sell and transfer such share or interest to any person and at any price, subject to the right of the Company to the control given by law in the case of partly paid stock; and if no such sale is made within such six months it shall be incumbent upon the retiring shareholder to give notice again to the Company as above provided with the like results.

(6) That the prescribed price shall mean the amount paid in on such share, plus the proportionate part of undivided profits, not including contingent-fund shewn by the annual balance sheet of the Company next prior to the giving of such notice, provided that if instead of there being undivided profits such balance sheet shews an impairment of capital of the said Company, then the proportionate part of such impairment shall be deducted from the amount paid in upon such share or interest in ascertaining such prescribed price.

(7) That the Company shall in all cases of receiving notice of desire to sell stock as aforesaid, allow the other shareholders the opportunity to take same in proportion to their respective holdings of stock in the Company, making all necessary adjustments to avoid fractions of shares, and for that purpose giving the preference in all cases to shareholders who have the larger holdings.

FORM No. 303.

GIVING SHAREHOLDERS, OR THE COMPANY, RIGHT TO PURCHASE SHARES WITH CERTAIN EXCEPTIONS, AND PROVIDING FOR EXPULSION OF SHAREHOLDER WHO ENTERS INTO COMPETITION WITH COMPANY.

(Another Form.)

Clauses 1 to 7 as printed in preceding Form.

8. That any share may be transferred by a shareholder to any son, daughter, or other issue, father, mother, sister, wife or husband of such shareholder, and any share of a deceased shareholder may be transferred by his executors or administrators to any son, daughter, or other issue, father, mother, brother, sister, wife or husband of such deceased shareholder, and Clause 1 hereof shall not apply to any transfer authorized by this clause.

9. That no shareholder of the Company shall without the consent in writing of all the shareholders for the time being of the Company, be interested as a shareholder, partner, director, manager, lender, employee or otherwise in any concern carrying on any business in competition with the Company; and if it shall be proved to the satisfaction of the Directors of the Company that any shareholder has committed a breach of this clause, they may serve him with notice in writing requiring him to retire from or otherwise determine his interest in such concern, and stating that in the event of non-compliance with such requisition within twenty-eight days, his shares will be liable to be transferred, and unless within twenty-eight days after the service of such notice, it shall be proved to the satisfaction of the directors that the requisitions thereof have been complied with, such shareholder shall be deemed to have served the Company with a transfer notice pursuant to clause 2 hereof, and the Company shall be constituted his agent for the sale and transfer of the same in pursuance of clauses 2, 3, 4, 5, 6 and seven above set forth.

10. That where any shareholder of the Company, other than a director, who is employed by the Company in any capacity, is dismissed from such employment, or ceases to be employed by the Company, the directors may at any time within sixty days after such shareholder is dismissed or ceases to be employed as aforesaid, resolve that such shareholder do retire and thereupon such shareholder shall be deemed to have served the Company with a transfer notice pursuant to clause 2 hereof, and the Company shall be constituted his agent for the sale and transfer of the same in pursuance of clauses 2, 3, 4, 5, 6 and seven above set forth.

FORM No. 304.

PROVIDING AND MAINTAINING A CONTINGENT ACCOUNT AND DISTRIBUTING BALANCE OF PROFITS IN CASH AND STOCK DIVIDENDS.

(1) That all the annual net earnings of the Company, after providing for an annual dividend of six per centum, shall each year be carried to a contingent account opened and kept by the Company, until such contingent account shall amount to ten per centum of the paid up capital of the Company, and upon any subsequent increase of the capital such net earnings in excess of six per centum dividend shall each year be carried to the credit of such account until the same shall reach a sum equal to ten per centum of the capital as so increased, and the said contingent account is to be maintained at a sum equal to ten per centum of the paid

up capital, and if by reason of any exigency or necessity it shall be temporarily reduced, then as soon as possible thereafter it is to be restored in the manner hereinbefore provided, and kept restored and maintained at the sum hereinbefore mentioned.

(2) That after providing for a contingent account as aforesaid, not less than one-half of the remaining net profits shall each year be distributed and paid in cash dividends to the shareholders for the time being, and the balance or such part thereof as the directors may from time to time determine, may be applied annually in stock dividends to be issued and allotted to the said several shareholders according to their respective holdings, subject to such regulations and adjustment as the directors may from time to time determine upon, with a view to avoiding the allotment of fractions of shares, until the capital stock of the said Company shall have by this means been fully taken up and paid.

FORM No. 305.

PROVIDING THAT BY-LAWS MUST BE APPROVED BY SHAREHOLDERS.

That no by-law of the Company shall be binding longer than the holding of the annual meeting of shareholders next after the enactment of such by-law or until the holding of a general meeting called for the purpose of approving such by-law, unless the same shall then be approved by the votes of the holders of not less than three-fourths in number of the shares represented at such meeting, and of not less than two-thirds in number of all the shares theretofore issued, and no by-law after being so approved by the shareholders shall be repealed or amended except at a general meeting called for that purpose and by the votes of the holders of not less than four-fifths in number of the shares represented at such meeting, and of not less than three-fourths in number of all the shares theretofore issued.

FORM No. 306.

DEVOTING PERCENTAGE OF PROFITS TO CHARITY.

From time to time one-tenth share of the gross profits earned by the said Company shall be carried to a separate account in the books of the said company, and shall be devoted by the said Company to furthering such forms of religious and benevolent work to which the said Company shall agree to devote the same, and that no contributions to religious or benevolent works shall be made by the said Company except out of the said share so to be set apart.

FORM No. 307.

ELECTION, APPOINTMENT AND PAYMENT OF DIRECTORS AND OFFICERS.

That the election of directors and the appointment of officers and the fixing of salaries shall require a two-thirds vote of the stockholders of the said Company at a meeting duly called for the purpose or at the annual meeting, to make the same valid.

FORM No. 308.

PAYMENT OF PRESIDENT AND DIRECTORS.

That no by-law or resolution, either of the directors or of the shareholders for the payment of the president, or of any director, for services of any kind whatsoever, whether such services be performed as president or as director, or as an employee of the Company, shall be valid or acted upon unless and until the same be confirmed at an annual meeting of the Company, or at a special meeting of the shareholders of the Company called for that purpose, by a vote of at least sixty per centum of the shares subscribed and not in default for calls at the time of such confirmation.

FORM No. 309.

FIXING QUALIFICATION OF DIRECTORS IN A MINING COMPANY.

That no person shall be qualified to hold office in the Company as a director thereof unless he is a shareholder therein, owning at least five hundred shares of the capital stock of the Company absolutely in his own right, and having at least twenty-five per centum paid up upon the said shares.

FORM No. 310.

PROVIDING FOR TWO-YEAR TERM FOR DIRECTORS.

That the after directors of the Company shall be elected by the shareholders in general meeting of the Company for a term of two years.

FORM No. 311.

NUMBER OF VOTES NECESSARY FOR ELECTION OF DIRECTOR.

That no shareholder shall hereafter be elected a director unless he or she receive at such election a vote of at least sixty per centum

of the shares subscribed, and not in default for calls at the time of such election.

FORM No. 312.

GIVING SHAREHOLDERS POWER TO REMOVE BOARD OF DIRECTORS AT ANY TIME.

That the shareholders be empowered at any time to remove the existing Board of Directors and appoint a new Board in its place at a special general meeting duly called for considering the same.

FORM No. 313.

DIRECTORS—NON-REMOVAL OF.

That the directors of the company shall not be removed from office during such term thereof as may be fixed by by-law of the company, and that such term of office shall not be diminished during the currency thereof.

FORM No. 314.

PAYMENT OF PROFITS IN DIVIDENDS.

The net earnings of the Company after providing thereout any sinking fund required for bonds or debentures, and after setting aside a reasonable percentage for a contingent fund, shall be applied each year in payment of dividends to shareholders.

FORM No. 315.

CASH DIVIDEND.

That your petitioners are desirous that it may be directed that at least seventy-five per centum of the net yearly profits of the company shall each year be divided among the shareholders in dividends in cash.

FORM No. 316.

PAYMENT OF STOCK DIVIDEND.

The directors shall have power after distributing and paying among shareholders an annual dividend of seven per centum on the actual amount of their paid up capital and after setting aside any rest that may be prescribed by the by-laws of the Company, to pay any further profits earned by the Company, or any part thereof they see fit by the issue to the shareholders of fully paid up shares of the Company in lieu of cash.

FORM No. 318.

PAYMENT OF PRELIMINARY EXPENSES.

That the directors of the company may pay out of the funds of the Company all expenses of or incidental to the formation, registration and advertising of the Company, and remunerate any person or Company for services rendered in placing of the shares in the Company's capital, or any debenture or other securities of the Company, or in or about the formation or promotion of the Company, or the conduct of its business.

FORM No. 319.

PROHIBITING COMPANY DOING WORK IN CONNECTION WITH LIQUOR AND OTHER BUSINESSES.

No work shall be undertaken by the said Company in any way connected with the liquor or tobacco traffic, or with theatrical performances, or in any other lines of business which shall in the opinion of the said Company be contrary to the doctrines taught in the Holy Bible.

FORM No. 320.

"NO PERSONAL LIABILITY" IN MINING COMPANIES LETTERS PATENT.

That no liability in excess of the amount actually paid, or agreed to be paid, to the Company for shares therein shall attach to any holder of such shares.

FORM No. 321.

RETAINING OFFICERS OF OLD BUSINESS AND LIMITING SALARY TO BE PAID OFFICER.

That so long as the said and the said live and continue able and willing to give their attention to the business of the Company, their services shall be retained in connection therewith to discharge such duties as the board may from time to time assign to them, the salary of the said to be $1,500 per annum for the first two years, and of the said $900 for the first year and $1,200 for the second year. Thereafter their salaries shall be equal in amount but shall be fixed by the Board.

Preference Stock Clauses.

As to preference clauses, generally, the Ontario Secretary's Department are not interested in them, unless a given application for

the incorporation of a Company contemplating the issue of preference stock asks to have the conditions fixed beyond alteration by the Company by having them inserted in the Letters Patent. If petitioners for incorporation desire that there shall be inserted in their charter conditions with reference to preference stock, the proper plan would be, first, to agree upon the phraseology to be employed for the purpose, and then to use such phraseology in the company's stock book, inserting it in the Ontario Statutory Form after the words "dollars each," at the end of the first paragraph in the undertaking; then, upon the completion of the stock book, the exact phraseology employed in it should be inserted in the petition with a request that it be made a part of the Letters Patent.

In drafting the clauses for preferred stock, the following matters are to be provided for:—

(1) Amount of each class.

(2) Rate of dividend on preferred stock.

(3) Dates for the declaration and payment of dividends. This matter may, however, be relegated to the by-laws.

(4) Whether the dividends on preferred stock are to be cumulative or non-cumulative.

(5) Whether the holders of preferred stock are to be preferred on winding up, and to what extent, and whether they are to participate any further in the distribution of the assets, *i.e.*, are they to share with the common stockholders in the distribution of the surplus assets after both classes of stockholders have been paid in full the par value of their shares.

(6) Voting powers of the preferred stockholders. If nothing is said they have the same voting power as the common stockholders, or they may be given the power to elect exclusively, either a majority or minority of the directors.

(7) Preferred stock may be made subject to redemption at any time.

The following precedents are taken from the Letters Patent of well known companies, and illustrate the extent to which the terms of preferred stock may be varied.

FORM No. 322.

PREFERENCE STOCK WITH FIXED DIVIDEND AND PRIORITY IN CASE OF WINDING UP.

That the said stock is to be divided into two thousand shares of one hundred dollars each, of which one thousand shares shall be preference stock having a priority as to repayment of capital in

the case of a dissolution or winding-up over the ordinary or common stock of the company, and having a first, fixed, preference, annual dividend of seven per cent. payable half yearly.

FORM No. 323.

PREFERENCE SHARES WITH FIXED RATE OF DIVIDEND AND EQUAL DIVIDEND AFTER COMMON SHARES.

The said preferred stock shall not be entitled to any further participation in profits unless and until the aggregate amount in per cent. of the dividends paid on account of the common stock shall equal the aggregate amount up to that time paid upon the preferred stock. When the said aggregate dividends so paid on the common stock shall equal the aggregate dividends paid upon the preferred stock, the said preferred stock shall share rateably with the common stock in any further profits of the Company, and so from time to time, so long as the said equality shall be maintained, or having ceased, shall have been restored.

FORM No. 325.

PREFERENCE SHARES WITH FIXED DIVIDENDS AND PRIORITY ON A DISSOLUTION, AND RESERVE FUND.

1. That preference shares shall confer the right to a fixed cumutive preferential dividend at the rate of seven per centum payable half-yearly, and the right in a liquidation, dissolution or winding-up to repayment of capital in priority to the ordinary shares, but they shall not confer a right to any further participation in profits or assets.

FORM No. 326.

PREFERENCE SHARES WITH FIXED AND ADDITIONAL DIVIDENDS, PRIORITY ON A DISSOLUTION AND WITH RIGHT TO SELECT ONE DIRECTOR AND ALSO ELECT A BOARD OF DIRECTORS.

That of the capital stock of the Company one thousand shares, that is to say, one hundred thousand dollars, shall be issued as preference stock and shall have priority as follows, that is to say,—The profits of the Company which it shall from time to time be determined to distribute shall be applicable.

Firstly, to the payment of a fixed cumulative preferential dividend at the rate of six per centum per annum on the capital paid up on the said preference shares.

Secondly and next, after the payment of the said dividend at the rate of six per centum per annum on the preference shares, there shall be set aside annually out of the net profits of the Company during the period of fifteen years, the sum of five thousand dollars each year as a guarantee or reserve fund to secure to the said preference shareholders the annual payment of six per centum dividend on their said preference shares during the said period, and the said sum to set apart shall be transferred by the Company to a Trustee or Trust Company, to hold upon a Declaration of Trust for the purposes hereinbefore referred to, and next after the satisfaction of such purpose for the general benefit and advantage of the Company hereby incorporated and the shareholders thereof.

Thirdly, namely after the payment of the said dividend to the preference shareholders, and after setting apart the said annual sum hereinbefore mentioned, the said profits shall be applied to the payment of a dividend at the same rate on the capital paid up on the ordinary shares.

Fourthly, to the payment of a further dividend not exceeding two per centum per annum on the capital paid up on the said preference shares, and

Fifthly, the surplus shall be applicable to the payment of dividends on the capital paid up on the ordinary shares only.

The said preference shares shall also confer a right to priority in the return of capital upon a winding up, dissolution or liquidation of the Company, it being the intention of this provision to make the status of the preference stockholders as between themselves and the holders of the ordinary stock on any winding up, dissolution or liquidation of the Company or on any division of capital, that of secured shareholders having first claim and charge upon the assets of the Company, and whose claims shall be paid in full out of the assets of the Company next and first after the satisfaction of the liabilities and indebtedness of the Company to its creditors. ...

That so long as the number of directors of the company shall not exceed three, the holders of preference shares shall have the right to elect one of the directors of the company, and that if the number of directors shall at any time exceed three, then for such time the holders of preference shares shall be entitled to elect two of said directors.

The said holders of preference shares shall, subject to the provisions of the said Act, also have the right in the event of default of the Company to pay an annual dividend at the rate hereinbefore mentioned, if in their discretion they think proper to do so, to elect a Board of Directors who may be taken exclusively from the said

preference shareholders, and the said Board of Directors, under the direction of the said preference shareholders shall thereafter continue and manage and control the business and affairs of the Company so long as may be considered necessary and expedient by the said preference shareholders.

FORM No 327.

PREFERENCE SHARES WITH FIXED, ADDITIONAL AND CUMULATIVE DIVIDENDS, PRIORITY ON A DISSOLUTION, FIXING DATES OF PAYMENT OF DIVIDENDS AND DEFINING STATUS OF SHAREHOLDERS.

That of the capital stock of five million dollars, one million five hundred thousand dollars shall be Ordinary Stock divided into fifteen thousand shares of one hundred dollars each, and that three millions, five hundred thousand dollars shall be Preference Cumulative Stock, divided into thirty-five thousand shares of one hundred dollars each, which on any distribution of profits shall be entitled to interest, or dividends at the the rate of five per centum per annum in half-yearly dividends of two and one-half per centum each in priority to the Ordinary Stock, but when for any half-year a dividend at the rate of at least three per centum per annum, and not more than five per centum per annum, shall be paid on the said Ordinary Stock, the dividend for such half-year on the said Preference Stock shall be increaesd by one quarter of one per centum, making two and three-quarters per centum for such half-year; and when for any half-year a dividend at the rate of six per centum per annum shall be paid on the said Ordinary Stock, the dividend for such half-year on the said Preference Cumulative Stock shall be further increased by one-quarter of one per centum, making three per centum for such half-year; and for every further increase at the rate of one per centum per annum of dividend on the said Ordinary Stock over the rate of six per centum per annum there shall be a further increase of dividend by and at the rate of one-half per centum per annum on the said Preference Cumulative Stock until the dividends on the said Preference Cumulative Stock shall have reached the rate of seven per centum per annum, and the dividend on the said Preference Cumulative Stock shall not be raised or increased, beyond the rate of seven per centum per annum. The said Preference Cumulative Stock and the dividends thereon shall have preference and priority over all other stock of the Company, such preference and priority applying and belonging thereto during the continuance of the Company either as a going-concern, or in liquidation.

That the interest, or dividends payable on the said Preference

Cumulative Stock in the event of non-payment thereof as the same shall mature half-yearly shall to the extent of the arrears thereof accumulate and be paid out of the net profits of the Company on any future distribution of profits in preference and priority to the Ordinary Stock of the Company until paid in full.

That any dividends declared on the said Preference Cumulative Stock shall be paid on the fifteenth days of the months of January and July to those shareholders on record on the first days of January and July respectively in each year.

That the holders of shares of the said Preference Cumulative Stock shall in all respects possess the rights, powers and privileges, and be subject to the liabilities of shareholders within the meaning of the provisions of the said The Ontario Companies Act saving and excepting only that in respect of dividends, and in liquidation they shall as against the Ordinary Shareholders be entitled to the preference and priority herein set forth, and that they shall be restricted in the amount of dividends as hereinbefore set forth.

FORM No. 328.

PREFERENCE SHARES WITHOUT PRIORITY ON A DISSOLUTION AND SUBJECT TO CANCELLATION.

That of the four hundred shares into which the capital stock of the Company is divided one hundred and fifty shares, shall, when issued be preference stock entitling the holders thereof to cumulative dividends at the rate of seven per centum per annum out of the net earnings of the Company before dividends are paid upon any other shares but such stock shall not be entitled to any preference in the distribution of assets. The said preference stock or any part thereof may from time to time be cancelled by the Company at its option after five years from the date of issue thereof upon repayment to the holders thereof of the amounts paid or accredited thereon together with any unpaid dividends thereon plus a premium of ten dollars upon each of the said prefereace shares so cancelled; provided, however, that the by-law creating the issue of the said preference stock embodies the said conditions as to cancellation; and, further provided, that the scrip for the said stock sets forth the fact that the same may be cancelled as aforesaid.

FORM No. 329.

PROVIDING FOR FIRST PREFERENCE STOCK WITH PRIORITY ON A DISSOLUTION AND ALSO SECOND PREFERENCE STOCK.

That of the eight hundred shares into which the capital stock of the Company is divided, twenty shares shall when issued be first

preference stock, entitling the holders thereof to a non-cumulative dividend in each year of an amount equal to eight per centum upon the amount actually paid in on said stock payable from profits if earned, and which shares as to dividends shall be on a parity with the second preference stock hereinafter mentioned, and as to distributive share of the assets on the dissolution or winding up of the company shall have preference over Ordinary Stock, and over any other stock at any time issued.

That two hundred and eighty shares of the said capital stock shall be second preference stock entitling the holders thereof to a non-cumulative dividend not to exceed eight per centum in any year, payable from profits along with and in the same manner as dividends shall be payable on the first preference stock, and before the payment of any dividend on the Ordinary Stock. The remaining five hundred shares of said capital stock shall be Ordinary Stock, entitling the holders thereof to receive by way of dividends all the net accumulated profits of the said Company after payment of the dividends upon the first and second preference stock.

FORM No. 330.

PREFERENCE SHARES WITH OPTION AS TO DIVIDEND.

Such preference shares shall be entitled to the following preferences and priorities over ordinary stock in the Company, that is to say: (1) A dividend to amount to at least seven dollars on each share, in each and every year, or, at the option of the holders of such preference stock whatsoever dividend may be declared at any time on the ordinary stock of the company.

FORM No. 331.

REDEMPTION OF PREFERENCE STOCK BY COMPANY.

The Company may from time to time pursuant to by-law duly passed for that purpose, and ratified by the shareholders at a special meeting to be called for that purpose, or at any annual or general meeting, redeem or buy in for cancellation any and all of the preferred stock of the Company, without the consent of the owners or holders thereof, upon repayment of the amount paid or accredited thereon, together with all unpaid dividends that may have been declared thereon.

FORM No. 332.

PREFERENCE SHARES WITH POWER TO THE COMPANY TO RETIRE SAME UPON PAYMENT OF CERTAIN PREMIUM.

That the amount of the capital stock of the Company is to be one hundred and seventy-five thousand dollars.

That the said stock is to be divided into seventeen hundred and fifty shares of one hundred dollars each, of which five hundred (500) shares are to be preference stock, and entitled to dividends out of net earnings before dividends are paid upon any other shares to the extent of six per centum per annum upon the par value thereof, and in any distribution of the assets of said Company upon dissolution or sale thereof, said five hundred shares shall, up to the par value thereof, together with any accrued unpaid dividends cumulated at the said rate, be entitled to a preference over all other shares or stock of said Company; but said preference stock may be retired or reduced by said Company on any interest day on and after five years from the date of payment of the first interim dividend instalment declared such retiring or redemption to be at par plus a premium of ten dollars ($10) upon each of the said preference shares of stock.

FORM No. 333.

PREFERENCE SHAREHOLDERS MAY APPLY FOR WINDING UP ORDER.

That if during any three successive years the first fixed preference dividends of five per centum per annum upon the preference stock as hereinbefore provided be not paid thereon then, and in that event the holders of such preference stock shall be entitled to apply for and obtain from the Court an order winding up the Company, and the date upon which the winding up order is made by the Court upon such application by the holders of such preference stock after the failure to pay such third successive dividend is made, shall be deemed to be the date of the expiry of the period fixed for the duration of the Company.

FORM No. 334.

GIVING SHARE OF PROFITS AS SALARY.

The directors shall have power to pay the salaries or any part thereof of any of the Company's officers who agree thereto by allow-

ing to them a percentage of the net annual profits earned by the Company.

FORM No. 335.

PROVIDING, IN LETTERS PATENT, FOR REPEAL OR ALTERATION OF SPECIAL PROVISIONS THEREIN.

The foregoing special provisions or any of them except clauses and may from time to time be repealed or amended by by-law passed at a general meeting called for that purpose, but only by the votes of the holders of not less than four-fifths in number of the shares represented at such meeting, and of not less than three-fourths in number of all shares theretofore issued.

FORM No. 336.

REFERRING QUESTION TO SHAREHOLDERS.

That upon the request of any two directors any question coming before the Board of Directors shall be referred to the shareholders of the company, and that a meeting of such shareholders shall be forthwith called to dispose thereof, and the directors shall be bound by and shall carry out the will of such meeting of shareholders, and shall not dispose of such question until after said meeting of shareholders has been held.

FORM No. 337.

PROVIDING FOR ISSUE OF RESERVED STOCK.

That $162,600 of the capital stock of the Company shall be reserved and shall be issued from time to time as the Board of Directors, under the authority of a resolution of the shareholders passed by a majority of three-fourths at a special meeting called for the purpose, or at the annual general meeting, may determine; provided always, that any part of such capital stock which it may be decided to issue shall first be offered to the respective shareholders of the Company *pro rata* according to the shares held by them respectively, and shall be allotted to others only after such offer has not been availed of.

FORM No. 338.

REQUIRING APPROVAL OF SHAREHOLDERS FOR INCREASE OF SALARY.

The salary or remuneration of any officer or employee of the Company shall not exceed in any one year the sum of $1,500.00,

unless the shareholders, by resolution passed by a majority of three-fourths at a special meeting called for the purpose, or at the annual general meeting, authorize an increase.

FORM No. 339.

GIVING SHAREHOLDERS PRIOR RIGHT TO SUBSCRIBE FOR STOCK.

That no capital stock of the said Company whether authorized by Letters Patent or by any Supplementary Letters Patent or otherwise, save and except the stock subscribed for by the applicants for Letters Patent on the occasion of the application for such Letters Patent shall at any time be issued or allotted except upon the terms of the then existing shareholders having the prior right to subscribe and take such additional capital at par in proportion to their holdings, subject to such regulations and adjustment as the directors may from time to time determine upon with a view to avoiding the allotment of fractions of shares.

FORM No. 340.

POWER TO DISTRIBUTE PROPERTY.

To distribute among the shareholders from time to time in specie any property or any proceeds of sale or disposal of any property of the Company.

(See Doughty and Lomagunda Reefs Limited, (1902), 2 Ch. 837.)

63 VICTORIA, CHAPTER 24.

An Act respecting the licensing of Extra Provincial Corporations.

Assented to 30th April, 1900.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Extra Provincial corporation, meaning of.

1. In this Act the expression "Extra Provincial Corporation" means a corporation created otherwise than by or under the authority of an Act of the Legislature of Ontario.

Corporations which do not require license.

2. Extra Provincial Corporations of the classes mentioned in this section are not required to take out a license under this Act, viz., corporations created by or under the authority of—

Class I. An Act of the Legislature of the late Province of Upper Canada, or by Royal Charter of the Government of that Province;

Class II. An Act of the Legislature of the late Province of Canada, or by Royal Charter of the Government of that Province, and carrying on business in Ontario at the date of the commencement of this Act;

Class III. Corporations which have before the commencement of this Act received from the Government of Ontario a license to carry on business in Ontario, or which

have been authorized by Act of the Legislature of Ontario to carry on business in Ontario, provided that such license or Act is in force at the date of the commencement of this Act;

4. The fees payable by Extra-Provincial Corporations coming within class III. of section 2 of chapter 24 of the Acts passed in the 63rd year of the reign of Her late Majesty Queen Victoria, intituled *An Act respecting the licensing of Extra-Provincial Corporations*, for fyling the annual statement or return required of such corporations shall be as follows, viz., $5 if the capital stock of the company does not exceed $100,000, and $10 if it does exceed $100,000. Amended by 1 Edward VII, cap. 18.

Class IV. Corporations now or hereafter licensed or registered under the provisions of *The Ontario Insurance Act* or of *The Loan Corporations Act*. Rev. Stat. cc. 203, 205.

Class V. Corporations liable to payment of taxes imposed by chapter 8 of the Ontario Statutes for 1899, intituled *An Act to supplement the revenues of the Crown in the Province of Ontario*, or by chapter 31 of the said statutes for 1899, intituled "An Act respecting Brewers and Distillers and other Licenses." Amended by 1 Edward VII, cap. 19.

Class VI. Corporations not having gain for any of their objects.

3. Extra Provincial Corporations of the classes mentioned in this section are required to take out a license under this Act, viz., Corporations (other than those mentioned in section 2) created by or under the authority of— Corporations which require license.

Class VII. An Act of the Legislature of the late Province of Canada, or by Royal Charter of the Government of that Province, authorized to carry on business in Upper Canada, but not carrying on business in Ontario at the date of the commencement of this Act;

Class VIII. An Act of the Dominion of Canada, and authorized to carry on business in Ontario;

Class IX. Corporations not coming within any of the foregoing classes.

Rights to license when within VII. or VIII.

4. A corporation coming within class VII or VIII shall, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on its business and exercise its powers in Ontario.

Rights to license when within IX.

5. A corporation coming within class IX may, upon complying with the provisions of this Act and the regulations made hereunder, receive a license to carry on the whole or such parts of its business and exercise the whole or such parts of its powers in Ontario as may be embraced in the license; subject, however, to such limitations and conditions as may be specified therein.

Carrying on business without license prohibited.

6. No Extra Provincial Corporation coming within Class VII or VIII or IX shall carry on within Ontario any of its business unless or until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent or other person shall, as the representative or agent of or acting in any other capacity for any such Extra Provincial Corporation, carry on any of its business in Ontario unless and until such corporation has received such license and unless such license is in force. Amended by 1 Edward VII., cap. 19.

Proviso.

Provided that taking orders for or buying or selling goods, wares and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of this Act.

Proviso.

Provided further that this section shall not apply until the first day of November, A.D. 1900, to any such

corporation which at the date of the commencement of this Act is carrying on business in Ontario.

Provided also that the onus of proving that a corporation has no resident agent or representative and no office or place of business in Ontario, or that it was at the date of the commencement of this Act carrying on business in Ontario, shall in any prosecution for an offence against this section rest upon the accused. Proviso.

7. An Extra Provincial Corporation coming within Class VII or VIII or IX may apply to the Lieutenant-Governor in Council for a license to carry on its business or part thereof, and exercise its powers or part thereof, in Ontario; and upon the granting of such license such corporation may thereafter while such license is in force carry on in Ontaio the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license; subject, however, to the provisions of this Act, and to such limitations and conditions as may be specified in the license. Provided always, that no limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within Class VII or VIII, to carry on in Ontario all such parts of its business, and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein. Amended by 1 Edward VII., cap. 19, sec. 3. Application for license. Proviso.

8. The Lieutenant-Governor in Council may from time to time make regulations respecting the following matters, namely:— Regulations by Order-in-Council.

(*a*) The evidence required, upon the application for a license under this Act, respecting the creation of the corporation applying and its powers and objects and its existence as a valid and subsisting corporation;

(*b*) The appointment and continuance by the corporation of a person or company as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;

(*c*) The forms of licenses, powers of Attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act;

and such regulations shall be published in the ONTARIO GAZETTE.

Special Orders-in-Council.

The Lieutenant-Governor in Council may make orders with respect to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay.

The following Regulations under this section were approved by Order-in-Council, dated 23rd May, A.D. 1900.

Petition. The application must be by petition of the company addressed to the Lieutenant-Governor in Council, and signed by the executive officers of the company, and passed under its common seal. This petition must state the material facts, such as

1. The name of the Kingdom, Dominion, State, Province or other jurisdiction under the laws of which the applicant company was incorporated and is working;

Name. 2. Its corporate name, which must not contain the words "Loan," "Mortgage," "Trust," "Trusts," "Investment" or "Guarantee."

Evidence must also be fyled showing that the corporate name of the company is not on any public ground objectionable and that it is not that of any known Company incorporated or unincorporated or of any partnership or individual doing business in Ontario or a name under which any known business is being carried on in Ontario or so nearly resembling the same as to deceive.

Where an extra provincial Company with a name similar to one already doing business in Ontario, applies for a license it is usual to require it to use in its business transactions in the Province of Ontario, and in the Dominion of Canada, a name which will distinguish it from the existing company, thus, The Electric Development and Securities Company uses in Ontario the name International Electric Securities Company.

3. The date and manner of its incorporation;

4. The place where its head office is situated;

5. Whether its existence is limited by statute or otherwise, and if so, the period of its existence yet to elapse, and whether its existence may be lawfully extended;

6. Whether it is a valid and subsisting corporation;

Powers. 7. Whether it has power, either expressed or implied, to carry on its business in Ontario;

8. Whether it has power to hold land in Ontario, and, if so, the conditions, if any, under which such land is to be held;

9. Its authorized powers set out in full;

10. The powers which it desires to exercise in the Province of Ontario;

Capital, etc. 11. The amount of its authorized capital and whether such capital is divided into shares, and, if so, how;

12. The amount of its subscribed capital;

13. The amount of its paid-up capital;

14. Its head office, or other chief place of business in Ontario;

15. The name, description, and place of residence of its chief agent, or representative in Ontario;

16. That the company has authorized the making of the application and has duly appointed an attorney;

17. The name, description and place of residence of such attorney, and

18. Such further and other information as the Provincial Secretary may require.

The contents of, the signatures to, and the impression of the seal upon the petition must be verified.

Copy of Charter, etc. If the application be on behalf of a Company incorporated under the laws of the *Dominion of Canada*, a copy of its charter, or of the Act incorporating it, certified by the Deputy Registrar-General, or by the Clerk of the Parliaments, respectively, must be produced with the application. A similar observation will apply to a Company incorporated under the laws of any of the Provinces of the Dominion of Canada, regard being had to the proper officers in that behalf for the purposes of certification.

If the application be on behalf of a Company incorporated under the laws of *Great Britain and Ireland*, the copy of the Memorandum and Articles of Association produced must be certified to be a true copy by the Registrar of Joint Stock Companies at London, Edinburgh or Dublin, as the case may be.

If the application be on behalf of a Company incorporated under the laws of one of the *United States of America*, the evidence of incorporation must consist, of a duly certified copy of the

papers originally, and, if any, subsequently, fyled in the Department of the Secretary of State, or other proper officer having the custody of the papers, and duly verified by such officer.

Attorney. A person resident in the Province of Ontario, or a Company having its head office in the Province, must be appointed by the applicant Company to be its Attorney and representative in Ontario, and a Power of Attorney duly executed, for the purpose, under the Seal of the Company, must be transmitted with the papers. The power itself may contain any provision not inconsistent with the duties of the Attorney to be exercised under the laws of the Province, but it must include words expressly authorizing the Attorney "to act as such, and to sue and be sued, plead or be impleaded in any Court in Ontario, and generally on behalf of the Company, and within Ontario to accept service of process, and to receive all lawful notices, and, for the purposes of the Company, to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the Power of Attorney." The power must also provide that until due lawful notice of the appointment of another and subsequent Attorney has been given to and accepted by the Provincial Secretary, service of process, or of papers and notices upon the person or Company mentioned in the original or other power last fyled with the Provincial Secretary shall be accepted by the applicant Company as sufficient service in the premises. The consent of the person so appointed Attorney to act as such Attorney, duly verified by affidavit, must be furnished (*a*).

Who may be Attorney. The Attorney-General's Department has ruled that the appointment of a firm of solicitors as attorney, will not comply with this provision. The appointment must be of a *person*, resident in the Province of Ontario or an *incorporated company* having its head office in the Province

The reason for not accepting as sufficient in the premises a firm is the possibility of a firm dissolving, and thereby rendering nugatory any provision which had been made with a view to its acting as an attorney for a company.

There is no objection to a shareholder of the company being appointed its Attorney.

A woman may be appointed Attorney.

It may be noted that the powers usually conferred by a license are identical with those conferred upon the Company by its creating instrument, and that while in issuing a license the Department has power to limit a company's powers, it has not power to extend them.

Dominion Company's Attorney. The question has been asked, if a company incorporated under a Dominion Statute, and having its head office in the Province of Ontario, should appoint an Attorney? and the Departmental reply was,—that the Act required the appointment of an Attorney in every case. A company incorporated under a Dominion Statute, and having its head office

(*a*) See Form 260.

in the Province of Ontario has inherent power to change its head office at will from one Province to another, and thereafter it might happen that there was no one in Ontario upon whom process could be served.

Proof to be furnished in application for license.

9. Upon the application for a license the applicant shall establish to the satisfaction of the Provincial Secretary, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations made hereunder have been complied with; and the Provincial Secretary, the Assistant Provincial Secretary or such other officer may for the purposes aforesaid, or for any other purpose under this Act, take any requisite evidence in writing under oath or affirmation.

Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration or by affidavit or by deposition before the Provincial Secretary or Assistant Provincial Secretary or other officer as aforesaid, or before any Justice of the Peace or Commissioner for taking Affidavits or Notary Public, who for this purpose are hereby authorized and empowered to administer oaths or to take affirmations.

Or if made outside of Ontario may be made before any person authorized to take affidavits under the *Registry Act*.

Dealing with real estate.

10. A corporation receiving a license under this Act may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of In orporation or other creating instrument, acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Ontario Companies Act* with power to carry on the business and exercise the powers embraced in the license.

Notice of granting license.

11. Notice of the granting of a license under this Act shall be given by the Provincial Secretary in the ONTARIO

GAZETTE, and a copy of such GAZETTE containing such notice shall be *prima facie* evidence, in all proceedings by and against the corporation and otherwise under this Act or otherwise, of the granting of the license and of the terms thereof mentioned in the notice; and a copy of the license certified by the Provincial Secretary or Assistant Provincial Secretary shall be sufficient evidence of the license before all courts and tribunals.

Returns to be made by licensees.

12. A corporation receiving a license under this Act shall, on or before the eighth day of February in every year during the continuance of the license, make and transmit to the Provincial Secretary a statement under oath and according to a form approved of by the Lieutenant-Governor in Council containing information similar to that required under section 79 of *The Ontario Companies Act*, or so much thereof or such additional information as may be prescribed in such form, and the Lieutenant-Governor in Council may at any time require the corporation to supply such further and other information as shall seem to him to be reasonable and proper.

Suspension, cancellation or restoration of license after default of licensee.

13. If a corporation receiving a license under this Act makes default in observing or complying with the limitations and conditions of such license or the provisions of section 12 of this Act, or the regulations respecting the appointment and continuance of a representative in Ontario, the Lieutenant-Governor in Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation and restore such license.

Notice.

Notice of such suspension, revocation, removal or restoration shall be given by the Provincial Secretary in the ONTARIO GAZETTE.

Penalty for carrying on business without a license.

14. If any Extra Provincial Corporation coming within Class VII or VIII or IX shall contrary to the provisions of section 6 hereof, carry on in Ontario any part of its busi-

ness, such corporation shall incur a penalty of fifty dollars for every day upon which it so carries on business; and so long as it remains unlicensed under this Act it shall not be capable of maintaining any action, suit or other proceeding in any Court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said section 6.

Provided, however, that upon the granting or restoration of the license, or the removal of any suspension thereof, such action, suit or other proceeding may be maintained as if such license had been granted or restored or such suspension had been removed before the institution thereof. Proviso.

15. If any company, firm, broker, agent or other person shall, contrary to the provisions of section 6 hereof, as the representative or agent of or acting in any other capacity for an Extra Provincial Corporation, carry on any of its business in Ontario, such company, firm, broker, agent or other person shall incur a penalty of twenty dollars for every day upon which it, he or they so carry on such business. Penalty for agent of unlicensed corporation carrying on business.

16. The Lieutenant-Governor in Council may when or after granting a license remit in whole or in part any penalty incurred under this Act by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable. Power to remit penalties or costs.

17. The penalties imposed by this Act shall be recoverable only by action at the suit of or brought with the written consent of the Attorney General of Ontario, and any action or proceeding to recover any such penalty shall Penalties, how recoverable.

be commenced within six months after the liability for such penalty has been incurred, and not afterwards.

18. *There shall be paid to His Majesty for the public uses of Ontario by every Corporation requiring a license under this Act such fees as may from time to time be approved of by the Lieutenant-Governor in Council.* As amended by 3 Edward VII. c. 7, sec. 53.

Fees.

Section 18 of this Act was repealed by 3 Edward VII., cap. 7, Sec. 53, so that the merits upon which may be decided the amount of fee to be charged for a license are now considered by His Honour the Lieutenant-Governor-in-Council in each individual case. While it is not uncommon for Extra Provincial Companies to take a license authorizing them to use if they please the whole of their capital in the Province, it is quite common for companies to fix that proportion of their capital which they intend to employ, and by taking out a license authorizing them to use such amount and no more, pay for the license such fee as would be paid by an Ontario Company seeking incorporation with the same amount of nominal capital.

A fee of $2 is payable on fyling a new power of Attorney.

Change of Name. Where the name of a licensed Company has been changed, a certified copy of the instrument changing the name should be fyled. Fee $2.

Change of Head Office. As a licensed company may change its head office under the provisions of its creating Act or equivalent instrument, it would seem to be sufficient for the company to notify the Provincial Secretary's Department of such change. Fee for fyling $2.

Fees to be paid by companies on filing statements.

There shall be paid to Her Majesty for the public uses of Ontario, upon transmitting to the Provincial Secretary the statement required by section 12 hereof, the fee of five dollars if the capital stock of the company does not exceed the sum of one hundred thousand dollars, and a fee of ten dollars if the capital stock of the company exceeds the said sum of one hundred thousand dollars, and until such fee has been paid such statement shall be deemed not to have been made and transmitted as required by said section.

Granting license as to real estate to other corporations.

19. An Extra Provincial Corporation which is not required by this Act to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions

of its own charter, Act of incorporation or other creating instrument to acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes and subject to the same conditions and limitations as if such corporation had been incorporated under *The Ontario Companies Act* with power to carry on the business or exercise the powers embraced in the license. For such license there shall be paid to Her Majesty, for the public uses of Ontario such fee as the Lieutenant-Governor may prescribe, and compliance with section 12 hereof may be dispensed with by the Lieutenant-Governor in whole or in part.

The Company must, however, be one which is not required to take out a license under the Act authorizing it to carry on business in Ontario.

The application must be by formal petition signed by the executive officers of the company and passed under its common seal. This petition must set forth fully all the facts material in the premises, and show (1) that the company has inherent power to acquire and hold lands in Ontario, and (2) that the company has duly authorized the making of the application. Satisfactory evidence as to the incorporation of the company, its powers, the uses to which the lands are to be put, etc., etc., must be furnished.

20. A statement showing the licenses issued under this Act during the preceding calendar year, and the authorized capital stock of the companies licensed, and the fee paid for each license shall be laid before the Legislature at each session thereof.

Notice of passing of Act.

21. Notice of the passing of this Act in such form and with such particulars thereof as the Provincial Secretary may think proper shall be published by him in the ONTARIO GAZETTE, and in the CANADA GAZETTE, and in the official gazette or other official publication of each Province of Canada, for such time as to him may seem best.

Commencement of Act.

22. This Act shall commence and take effect on and after the first day of July, A.D. 1900, and on and after that day section 107 of *The Ontario Companies Act* shall be and the same is hereby repealed.

Repeal of Rev. Stat. c. 191, s. 107.

Increase of Capital Employed in Ontario. Under 63 Vic. chap. 24, Section 5, it has been ruled by the Department, that a licensed company increasing the amount of capital it has been authorized by its license to employ in the Province of Ontario, must take out for the purpose a Supplementary License, in-as-much as it renders its first license liable to be forfeited and revoked if it increase its capital without leave, a fact which must sooner or later, come to the official knowledge of the Department, as the amount of capital a company is using must be disclosed by its annual statement.

Sale of Stock at Discount. Power to authorize an extra provincial corporation to sell its stock at a discount cannot be granted by license under the Ontario Act, respecting the licensing of extra provincial corporations. As the Department of the Provincial Secretary understands the law, this power may be conferred only on Ontario Companies taking incorporation under The Ontario Companies Act.

Head Office in Ontario, but Operating outside the Provinces. Where the operations of a Company incorporated under the laws of the Dominion of Canada were carried on wholly in foreign parts, although the Company's Head Office was at the City of Ottawa, where a majority of the directors resided, the Company was required to take out a license on the ground that it would be difficult to show that a company carrying on its operations beyond the boundaries of the Province, but managing its affairs at some place as its head office in the Province, was not within the spirit, if not within the letter, of the Act, carrying on business within the intent and meaning of the same.

DOMINION LEGISLATION.

Information and Official Instructions.

Under The Companes Act, Chapter 79, R.S.C. 1906, respecting the granting of Letters Patent and Supplementary Letters Patent, with forms of application, tariff of fees and other information relating thereto.

Prepared for the use and guidance of intending applicants by the Department of the Secretary of State.

Letters Patent.

The Secretary of State, may, by letters patent under his seal of office, grant a charter to any number of persons not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic for any of the purposes and objects to which the legislative authority of the Parliament of Canada extends, excepting the construction and working of railways or of telegraph or telephone lines, or the busi-

ness of banking, and the issue of paper money, or the business of insurance, or the business of a loan company.

The Application and What it should Contain.

The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars:—

(*a*) The proposed corporate name of the company.

(*b*) The purposes for which its incorporation is sought.

(*c*) The place within Canada which is to be its chief place of business;

(*d*) The proposed amount of its capital stock;

(*e*) The number of shares and the amount of each share.

In cases where the amount of the capital stock does not exceed $50,000, the shares may be $25 and upwards. Where the capital stock is more than $50,000, and does not exceed $100,000 the shares may be $50 and upwards; where the capital stock exceeds $100,000 the amount of each share must be not less than $100.

(*f*) The names in full and address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

(*g*) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company.

The petition must be signed by each of the applicants in person, and in presence of a witness. If, however, this is found impracticable in any case the applicant may sign by an Attorney, but the original Power of Attorney, or a duly authenticated notarial copy thereof, must be produced. Each signature should be verified by an affidavit or statutory declaration made by the witness thereof.

If it is not specifically stated in the purposes for which incorporation is sought that the operations of the company are to be carried on throughout the Dominion of Canada, that fact should be set out in a supplementary paragraph to be added to such purposes.

The application may ask for the embodying in the Letters Patent of any provision which, under this Act, might be made by by-law of the company or by by-law of the directors approved by a vote of shareholders; and such provision so embodied shall not,

unless provision to the contrary is made in the letters patent, be subject to repeal or alteration by by-law.

The application shall be accompanied by a memorandum of agreement, in duplicate, under seal, both of which may be similar to—and shall in their essential features conform to—the forms contained in the Act.

PROOF REQUIRED IN SUPPORT OF AN APPLICATION FOR LETTER PATENT.

(*a*) An affidavit or Statutory Declaration establishing the sufficiency of the petition and of the Memorandum of Agreement and stock book, also that the proposed name of the company is not that of any other known incorporated or unincorporated company;

(*b*) Affidavit or Statutory Declaration verifying the signatures to the petition and Memorandum of Agreement and stock book.

Intending applicants may procure complete sets of application forms for Letters Patent upon application to the Honourable the Secretary of State, Ottawa.

Fees.

No steps shall be taken in the Department of the Secretary of State towards the issue of any Letters Patent or supplementary Letters Patent under 'The Companies Act, cap. 79, R.S.C., 1906,' until after all fees therefor are duly paid.

The following is the tariff of fees payable under section 17 of the Act:—

When the proposed Capital Stock of the Company is $20,000 or less than $20,000	$ 50 00
When more than $20,000 and less than $50,000	150 00
When $50,000 or upwards and less than $100,000	200 00
When $100,000 or upwards and less than $150,000	225 00
When $150,000 or upwards and less than $200,000	250 00
When $200,000 or upwards and less than $300,000	300 00
When $300,000 or upwards and less than $400,000	325 00
When $400,000 or upwards and less than $500,000	350 00
When $500,000 or upwards and less than $600,000	375 00
When $600,000 or upwards and less than $700,000	400 00
When $700,000 or upwards and less than $800,000	425 00
When $800,000 or upwards and less than $900,000	450 00
When $900,000 or upwards and less than $1,0000,000	475 00
When $1,000,000	500 00
For every additional Million Dollars or fractional part thereof	100 00

For Supplementary Letters Patent to increase the Capital Stock, the fee to be according to the above tariff, but on the increase only.

For Supplementary Letters Patent for any purpose other than an increase of Capital, a fee of..... 100 00

All fees must be paid in cash or by an accepted cheque made payable to the order of the Honourable the Secretary of State and should be transmitted to him by Registered Letter.

Notice Published in the 'Canada Gazette' of the Granting of Letters Patent.

Notice of the granting of the letters patent shall be forthwith given by the Secretary of State by two insertions in the *Canada Gazette*, and thereupon, from the date of the letters patent, the persons therein named, shall be a body corporate and politic, by the name mentioned in the letters patent; and a copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

This notice is published in the *Canada Gazette* without charge to the applicants.

If the company fails or neglects to cause such copy to be so inserted, it is guilty of an offence and liable on summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day that such failure or neglect continues.

Supplementary Letters Patent.

Supplementary letters patent may be granted to a Company for:—

1. Changing corporate name of company.
2. Obtaining of further powers.
3. Increasing the capital stock.
4. Decreasing the capital stock.
5. Subdividing the existing shares.

The application for supplementary letters patent to change the corporate name of a company should consist of the following documents, viz.:—

1. Petition of company for change of name.
2. Affidavit or declaration verifying facts set out therein.

3. Copy of resolution or by-law of company authorizing change of name and the application for same.

4. Certificate, affidavit or declaration verifying same.

For extending the powers of a company should consist of the following documents, viz.:—

1. Petition by Directors for Supplementary Letters Patent.

2. Affidavit or declaration verifying signatures of the petitioners.

3. Affidavit or declaration verifying truth of facts set out in petition.

4. Verified copy of notice calling special or general meeting.

5. Copy of by-law or resolution passed by the shareholders.

6. Affidavit or declaration verifying same.

For increasing or decreasing the capital stock or subdividing the shares should consist of the following documents:—

1. Petition of Directors for Supplementary Letters Patent.

2. Affidavit or declaration verifying petition.

3. Affidavit or declaration verifying signatures to petition.

4. Certified copy of by-law under seal of company.

5. Verified copy of notice calling special or general meeting.

6. Copy of proceedings at special or general meeting with respect to passage and sanction of by-laws.

7. Affidavit or declaration verifying such minutes.

These Forms may be adapted from those given for Ontario Companies.

FORMS OF APPLICATION FOR LETTERS PATENT WITH NECESSARY AFFIDAVITS.

Application for Incorporation under "The Companies Act."

For this Form see Companies Act, page 587.

Memorandum of Agreement and Stock Book.

For this Form see Companies Act, page 588.

DECLARATION.

Province of County of To Wit:	In the matter of the application of and others for incorporation under 'The Companies Act, 1906,' as

I, of the City of in the County of Province of make oath and say:—

1. That I am one of the applicants herein.

2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and in fact.

3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble thereto.

4. That the proposed corporate name of the company is not on any public grounds objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the company as aforesaid.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act, 1893.'

Declared, etc.

AFFIDAVIT.

CANADA: Province of County of To Wit:	IN THE MATTER OF the application of and others for incorporation under 'The Companies Act, 1906,' under the name of

I, of the City of in the County of , make oath and say:—

1. I was personally present and did see the within Petition and Memorandum of Agreement and stock book duly signed and executed by the parties thereto.

2. The said Petition and Memorandum of Agreement and Stock Book were executed at the City of aforesaid.

3. I know the parties.

4. I am a subscribing witness to the said Petition and Memormandum of Agreement and stock book.

Sworn before me, etc.

CHAPTER 79.

REVISED STATUTES CANADA, 1906.

An Act respecting Companies.

SHORT TITLE.

Short title.

1. This Act may be cited as the Companies Act.

PART I.

JOINT STOCK COMPANIES.

Application of Part.

New companies.

Old companies.

2. This part applies to,—

(*a*) All companies incorporated under it;

(*b*) All companies incorporated under the Companies Act, chapter one hundred and nineteen of *The Revised Statutes of Canada*, or to which that Act applied before the fifteenth day of May, one thousand nine hundred and two, excepting loan companies.

Interpretation.

Definitions.

3. In this part, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,—

'Company.'

(*a*) "The company" or "a company" means any company to which this part applies;

'Undertaking.'

(*b*) "The undertaking" means the business of every kind which the company is authorized to carry on;

Real Estate.'

(*c*) "Real estate" or "land" includes messuages, lands, tenements, and hereditaments of any tenure, and all immovable property of any kind;

'Shareholder.'

(*d*) "Shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder;

'Manager.'

(*e*) "Manager" includes the cashier and his secretary;

'Court.'

(*f*) "Court" means in Ontario, the High Court of Justice, in Quebec, the Superior Court in and for that province; in Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the Supreme Court in and for each of those provinces, respectively; in Manitoba, the Court of King's Bench for Manitoba; in the provinces of Saskatchewan and Alberta, a superior court, and in the Yukon Territory, the Territorial Court; and,

(*g*) "Judge" means in the said respective provinces and territory a judge of the said courts respectively. 'Judge.'

Preliminaries.

4. The provisions of this part relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only, and no letters patent or supplementary letters patent issued under this part shall be held void or voidable on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent. Are directory only.

Formation of New Companies.

5. The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines, the business of insurance, the business of a loan company and the business of banking and the issue of paper money. Companies incorporated for certain purposes. Exceptions.

2. Nothing in this part shall be construed to authorize any company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance. No power to issue paper money or for banking.

6. The Governor in Council may, from time to time, designate the seal of office to be used by the Secretary of State as the seal under which letters patent may be granted under this Act. Seal.

7. The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars:— Application.

(*a*) The proposed corporate name of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable; Name.

(*b*) The purposes for which its incorporation is sought; Purposes.

(*c*) The place within Canada which is to be its chief place of business; Chief place of business.

(*d*) The proposed amount of its capital stock; Capital.

Shares.

(*e*) The number of shares and the amount of each share;

Applicants.

(*f*) The names in full and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

Stock taken and amount paid.

(*g*) The amount of stock taken by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company.

Form of application.

8. The application shall be in accordance with form A in the schedule to this Act and may ask to have embodied in the letters patent then applied for, any provision which could under this part be contained in any by-law of the Company or of the directors approved by a vote of shareholders, which provision so embodied shall not, unless power is given therefor in the letters patent, be subject to repeal or alteration by any by-law.

Memorandum of agreement.

9. The application shall be accompanied by a memorandum of agreement in duplicate under seal which shall be in accordance with form B in the schedule to this Act.

Condition precedent to issuing of letters patent to be established.

10. Before the letters patent are issued the applicants shall establish to the satisfaction of the Secretary of State the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company or one likely to be confounded with any such name; and for that purpose the Secretary of State shall take any requisite evidence in writing by oath or affirmation or by solemn declaration and shall keep of record any such evidence so taken.

Averments to be recited.

11. The letters patent shall recite such of the established averments in the application and memorandum of agreement as to the Secretary of State seems expedient.

Name of company.

12. The Secretary of State may give to the company a corporate name, different from that proposed by the applicants if the proposed name is objectionable.

Notice to be published.

13. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State by two insertions in the *Canada Gazette*, in the form C in the schedule to this Act; and thereupon, from the date of the letters patent, the persons therein named, and such persons as shall have become subscribers to the memorandum of agreement or who thereafter become shareholders in the company, and their successors shall be a body corporate and politic, by the name mentioned in the letters patent.

2. A copy of every such notice shall forthwith be, by the company to which such notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency of the company is established. Further publication.

As to Existing Companies.

14. Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this part, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for letters patent to carry on its business under this part, and the Secretary of State, with the approval of the Governor in Council, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this part. Existing companies may be incorporated.

2. Upon the issuing of such letters patent all the rights, property and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company. Effect of letters patent.

3. It shall not be necessary in any such letters patent to set out the names of the shareholders. Names of Shareholders.

4. After the issue of such letters patent the company shall be governed in all respects by the provisions of this part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent. Effect of letters patent.

15. If a subsisting company applies for the issue of letters patent under this part, the Secretary of State may, by the letters patent, extend the powers of the company to such other objects for which letters patent may be issued under this part as the applicant desires, and as the Secretary of State thinks fit to include in the letters patent. Scope of letters patent.

16. The Secretary of State may in any letters patent issued under this part to any subsisting company name the first directors of the new company, and the letters patent may be issued to the new company by the name of the old company or by another name. First directors.

17. Any company incorporated under any general or special Act of any of the provinces of Canada, and any company duly incorporated under the laws of the United Kingdom or of any foreign country for any of the purposes or objects for which letters patent may be issued under this part, and being at the time of the application a subsisting and valid corporation, may apply for letters patent under this part, and the Secretary of State, upon receiving satisfactory evidence that the Act of incorporation or charter of the company so applying is valid and subsisting and that no public or private interest will be prejudiced, may issue letters patent in- Existing companies incorporated by Act may be incorporated under this Part.

corporating the shareholders of the company so applying as a company under this part, limiting, if necessary, the powers of the said company to such purposes or objects as might have been granted had the shareholders applied in the first instance to the Secretary of State for letters patent under this part, and thereupon all the rights, property and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company.

Proceedings continued.

Name of shareholders.

2. It shall not be necessary in any such letters patent to set out the names of the shareholders.

Effect of letters patent.

3. After the issue of such letters patent the company shall be governed in all respects by the provisions of this part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent.

Proceedings for incorporation of chartered companies.

18. Every company desirous of obtaining letters patent under the last preceding section shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company, and shall also designate the place in Canada where its principal office will be situated and the name of the agent or manager in Canada authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein.

Return to Minister.

19. Every such company to which such letters patent have been granted, when so required shall make a return to the Secretary of State of the names of its shareholders, the amount of its paid-up capital and the value of its real and personal estate held in Canada, and, in default of making the said return within three months, the letters patent may be cancelled.

Publication of notice.

20. Notice of the issue of such letters patent shall be published in the *Canada Gazette*.

Change of Name.

Minister may change name by supplementary letters.

21. If it is made to appear to the satisfaction of the Secretary of State that the name of a company, given by original or supplementary letters patent issued under this part, is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, the Secretary of State may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the company to some other name which shall be set forth in the supplementary letters patent.

22. When a company is desirous of adopting another name, the Secretary of State, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters patent and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent. Company may obtain change of name.

23. No alteration of name under the two sections last preceding shall affect the rights or obligations of the company; and all proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name. Change not to affect rights or obligations.

Fees and Forms.

24. The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for any letters patent or supplementary letters patent under this part, the amount of which may be varied according to the nature of the company, the amount of the capital stock or other particulars as the Governor in Council thinks fit. Tariff by Governor in Council.

2. No steps shall be taken in the Department of the Secretary of State towards the issue of any letters patent or supplementary letters patent under this part, until after all fees therefor are duly paid. Must be paid before letters issued.

25. The Governor in Council may prescribe the forms of proceedings and registration in respect to letters patent and supplementary letters patent issued under this part, and in respect to all other matters requisite for carrying out the objects of this part. Forms to be prescribed by Governor in Council.

Commencement of Business.

26. The company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for. Ten per cent of capital to be paid.

Forfeiture of Charter.

27. In case of non-user by the company of its charter for three consecutive years or in case the company does not go into actual operation within three years after the charter is granted, such charter shall be and become forfeited. Forfeiture of charter for non-user.

General Powers and Duties of the Company.

28. All powers given to the company by letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this part. Powers given subject to this Act.

As to real estate.

29. The company may acquire, hold, mortgage, sell and convey any real estate requisite for the carrying on of the undertaking of the company.

Loans.

2. The company shall in no case make any loan to any shareholder of the company.

Property and power vested by incorporation.

3. The company shall forthwith upon incorporation under this part, become and be vested with all property and rights, real and personal, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities, requisite or incidental to the carrying on of its undertaking, as if it was incorporated by a special Act of Parliament, embodying the provisions of this part and of the letters patent and supplementary letters patent issued to such company.

Offices, agencies, domicile.

30. The company shall, at all times, have an office in the city or town in which its chief place of business in Canada is situate, which shall be the legal domicile of the company in Canada; and the company may establish such other offices and agencies elsewhere as it deems expedient.

Notice.

2. Notice of the situation of such principal office and of any change therein shall be published in the *Canada Gazette*.

Acts of attorney binding.

31. Every deed which any person, lawfully empowered in that behalf by the company as its attorney, signs on behalf of the company and seals with his seal, shall be binding on the company and shall have the same effect as if it was under the seal of the company.

Contracts, of agent binding on company.

32. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company.

Cases where seal not necessary.

2. In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order.

No individual liability.

3. No person so acting as such agent, officer or servant of the company shall be thereby subjected individually to any liability whatever to any third person.

Name with word 'limited' required to be used in certain ways.

33. The company shall keep its name, with the word *limited* after the name, painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on, and shall have

its name, with the said word after it, engraven in legible characters, on its seal, and shall have its name, with the said word after it in legible characters, mentioned in all notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company.

Obtaining of further Powers.

Company may authorize directors to apply for extension of powers.

34. The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such further or other purposes or objects for which a company may be incorporated under this part, as are defined in such resolution.

Application by directors.

35. The directors may, at any time within six months after the passing of any such resolution, make application to the Secretary of State, for the issue of such supplementary letters patent.

Evidence of resolution.

36. Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State the due passing of the resolution authorizing the application, and for that purpose the Secretary of State shall take any requisite evidence in writing, by oath or affirmation, or by statutory declaration under the Canada Evidence Act, and shall keep of record any such evidence so taken.

Supplementary letters patent granted.

Notice of issue.

37. Upon the due passing of such resolution being so established, the Secretary of State may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form D in the schedule to this Act.

Effect of letters.

2. From the date of the supplementary letters patent, the undertaking of the company shall extend to and include the further or other purposes or objects set out in the supplementary letters patent as fully as if such further or other purposes or objects were mentioned in the original letters patent.

Publication of notice.

3. A copy of every such notice shall forthwith be, by the company to which the notice relates, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

Liability of Shareholders.

Limited to amount unpaid on stock.

38. The shareholders of the company shall not, as such, be responsible for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof.

Liability of shareholders.

Action when.

39. Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an action therefor by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part.

Amount recoverable.

2. The amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs from such shareholder.

Application.

3. Any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares.

Set off against creditor's action.

40. Any shareholder may plead by way of defence in whole or in part to any action by any creditor under the last preceding section any set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company.

Trustees, not personally liable.

Estate liable.

41. No person, holding stock in the company as an executor, administrator, tutuor, curator, guardian or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate would be if living, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if competent to act and holding such stock in his own name.

Holder of stock as collateral security.

2. No person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered for the purposes of such liability as holding the same and shall be liable as a shareholder accordingly.

Trustees represent stock and pledgeor.

42. Every such executor, administrator, curator, guardian or trustee shall represent the stock held by him, at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote as a shareholder.

Prospectus.

43. Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the date of and names of the parties to any contract entered into by the company or the promoters, directors or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise. Prospectus must specify contracts entered into by company, or promotors.

2. Every prospectus or notice which does not specify such date and names shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice without notice of such contract, be deemed fraudulent on the part of the officers of the company who knowingly issue such prospectus or notice. Unless specified prospectus fraudulent.

Holding Stock of other Companies.

44. The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless nor until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company duly called for considering the subject of the by-law; provided that if the letters patent authorize such purchase it shall not be necessary to pass such by-law. Conditions on which company may purchase stock of other companies. Proviso.

Capital Stock.

45. The stock of the company shall be personal estate, and shall be transferable, in such manner and subject to all such conditions and restrictions as are prescribed by this part or by the letters patent or by the by-laws of the company. Stock to be personal estate.

46. In so far as the stock of the company or any increased amount thereof is not allotted by the letters patent or the supplementary letters patent and when no other definite provision is made by such letters patent or supplementary letters patent such stock shal be allotted at such times and in such manner as the directors by by-law shall prescribe. Allotment of stock.

47. The directors of the company may make by-laws for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is by such by-laws declared. Preference stock.

2. Such by-laws may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient. Provisions as to control of affairs.

By-law to be sanctioned.

48. No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or until the same shall be unanimously sanctioned in writing by the shareholders of the company.

Rights and liabilities of holders of preference stock.

49. Holders of shares of such preference stock shall be shareholders within the meaning of this part, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this part; provided that in respect of dividends, and in any other respect declared by by-law as authorized by this part, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law.

Execution of trusts.

50. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.

Receipt of shareholder as a discharge.

2. The receipt of the shareholder in whose name the same stands in the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share whether notice of such trust has been given to the company or not.

Application of money.

3. The company shall not be bound to see to the application of the money paid upon such receipt.

Increase or Reduction of Capital, etc.

By-law to consolidate shares.

51. The directors of the company may, at any time, whenever the par value of the existing shares of the company is less than one hundred dollars each, make a by-law consolidating them into shares of a larger par value; but no such consolidated share shall exceed the par value of one hundred dollars.

Purchase of fractions of shares by company.

2. For the purpose of such consolidation, the company shall have the power to purchase fractions of shares, and shall be bound to sell any shares held from such purchases within two years after the purchase.

By-law for subdivision of shares.

3. The directors of the company may also, at any time, make a by-law subdividing the existing shares into shares of a smaller amount.

Increase of capital.

52. The directors of the company may, at any time after ninety per centum of the capital stock of the company has been taken up and fifty per centum thereon paid in, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company.

2. No by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent. By-law to increase capital to be approved and confirmed.

53. Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted. By-law to allot stock.

2. In default of the manner of the allotment of the shares of the new stock being prescribed by such by-law, the control of such allotment shall vest absolutely in the directors. Directors allot, when.

54. The directors of the company may, at any time, make a by-law for reducing the capital stock of the company to any amount which they consider advisable and sufficient for the due carrying out of the undertaking of the company. Reduction of capital by by-law.

2. Such by-law shall declare the number and value of the shares of the stock as so reduced, and the allotment thereof, or the manner in which the same shall be made. Declaration contained in.

3. The liability of the shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain the same as if the capital had not been reduced. Liability to creditors not affected.

55. At any time, not more than six months after the approval of a by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, the directors may apply to the Secretary of State for the issue of supplementary letters patent to confirm the same. Supplementary letters to confirm by-law.

56. The directors shall, with such application, produce a copy of such by-law under the seal of the company, and signed by the president or vice-president and the secretary, and establish to the satisfaction of the Secretary of State, the due passage and approval of such by-law and the expediency and *bona fide* character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for. Evidence with application.

2. The Secretary of State shall, for that purpose, take any requisite evidence in writing, by oath or affirmation or by solemn declaration, and shall keep of record any such evidence so taken. Evidence, how taken.

57. Upon the due passage and approval of such by-law being so established, the Secretary of State may grant such supplementary letters patent. Granting of the letters.

2. Notice of the granting of such letters patent shall be forth- Notice.

with given by the Secretary of State in the *Canada Gazette*, in the form E in the schedule to this Act.

Effect of letters.

3. From the date of such supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares subdivided, as the case may be, to the amount in the manner and subject to the conditions set forth by such by-law.

New stock subject to provisions of this Part.

4. The whole of the stock, as so increased or reduced or with such subdivided shares shall become subject to the provisions of this part, in like manner, as far as possible, as if every part thereof had been or formed part of the stock of the company originally subscribed.

Calls.

Calls within the first year.

58. Not less than ten per centum upon the allotted shares of stock of the company shall, by means of one or more calls formally made, be called in and made payable within one year from the incorporation of the company.

Calls for residue.

2. The residue shall be called in and made payable when and as the letters patent, or the provisions of this part, or the by-laws of the company direct.

Call when demand made.

59. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

Interest on calls.

60. If a shareholder fails to pay any call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per centum per annum from the day appointed for payment to the time of actual payment thereof.

Payment in advance on shares.

61. The directors may, if they think fit, receive from any shareholder willing to advance the same, beyond the sums then actually called for, all or any part of the amounts remaining unpaid on the shares held by such shareholders.

Interest may be allowed.

2. Upon the money, so paid in advance, or so much thereof, as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate not exceeding eight per centum per annum, as the shareholder who pays such sum in advance and the directors agree upon.

Forfeiture of shares for non-payment of calls.

62. If after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as by such letters patent or by resolution of the directors or by the by-laws is limited in that behalf, the directors, in their discretion, by vote to that effect duly recorded in their minutes, may

summarily declare forfeited any shares whereon such call is not paid.

2. Such shares so declared forfeited shall thereupon become the property of the company, and may be disposed of as the company by the by-laws or otherwise prescribes. Revert to company.

3. Notwithstanding such forfeiture, the holder of such shares at the time of foreiture shall continue liable to the creditors of the company at such time for the full amount unpaid on such shares at the time of forfeiture, less any sums which are subsequently received by the company in respect thereof. Liability of holders to creditors.

63. The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction. Enforcement of payment of calls by action.

2. In such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this part. What only need be alleged and proved.

Transfer of Shares.

64. Except for the purpose of exhibiting the rights of parties to any transfer of shares towards each other and of rendering any transferee jointly and severally liable with the transferrer to the company and its creditors, no transfer of shares unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction, shall be valid for any purpose whatever until entry of such transfer is duly made in the register of transfers; provided that, as to the stock of any company listed and dealt with on any recognized stock exchange by means of scrip, commonly in use endorsed in blank and transferable by delivery, such endorsation and delivery shall, excepting for the purpose of voting at meetings of the company, constitute a valid transfer. Invalid without entry. Exception.

65. No transfer of shares whereof the whole amount has not been paid in shall be made without the consent of the directors. Unpaid shares.

66. No share shall be transferable until all previous calls thereon are fully paid in. With calls unpaid.

67. The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company. Registration of transfer.

68. Any transfer of the shares or other interest of a deceased shareholder, made by his personal representative, shall, notwithstanding such personal representative is not himself a shareholder, Transfer by personal representative.

be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer.

Borrowing Powers.

Authority.

69. If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time,—

Borrowing.

(*a*) Borrow money upon the credit of the company;

Amount.

(*b*) Limit or increase the amount to be borrowed;

Issue of bonds.

(*c*) Issue bonds, debentures or other securities of the company for sums not less than one hundred dollars each, and pledge or sell the same for such sums and at such prices as may be deemed expedient;

Hypothecation.

(*d*) Hypothecate, mortgage, or pledge the real or personal property of the company, or both, to secure any such bonds, debentures or other securities and any money borrowed for the purposes of the company.

Limitation as to bills and notes.

2. Nothing in this section contained shall limit or restrict the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company.

Dividends.

Not to impair capital.

70. No dividend shall be declared which will impair the capital of the company.

Debts deducted from dividends.

71. The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company, on account of calls or otherwise.

Directors.

Number of board.

72. The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors.

Provisional directors.

73. The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead.

Failure to elect directors, how remedied.

74. If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent special general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

Qualifications of directors elected.

75. No person shall be elected as a director or appointed as a director to fill any vacancy unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the

by-laws of the company, and not in arrear in respect of any call thereon.

76. The company may, by by-law, increase to not more than fifteen, or decrease to not less than three, the number of its directors, or may change the company's chief place of business in Canada; provided that no by-law for either of the said purposes shall be valid or acted upon unless it is approved by a vote of at least two-thirds in value of the stock represented by the shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of such by-law, certified under the seal of the company, has been published in the *Canada Gazette*.

By-laws for increase or decrease of number.

When to be valid.

77. Directors of the company shall be elected by the shareholders, in general meeting of the company assembled at some place, within Canada, at such times, in such manner and for such term, not exceeding two years, as the letters patent, or in default thereof, as the by-laws of the company prescribe.

Election of directors.

78. In the absence of other provisions in that behalf, in the letters patent or by-laws of the company,—

If no other provision.

(*a*) The election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election;

Yearly election.

(*b*) Every election of directors shall be by ballot;

By ballot.

(*c*) Any vacancy occurring in the board of directors may be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company;

Vacancies filled by directors.

(*d*) The directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company: and may also appoint all other officers thereof.

Officers appointed by directors.

79. Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the company, given at any general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses whatsoever which such director sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he sustains or incurs, in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

Director indemnified in suits respecting execution of his office.

And generally.

Exception.

Powers of Directors.

Powers and duties of directors.

80. The directors of the company may administer the affairs of the company in all things, and make or cause to be made for the company, any description of contract which the company may, by law, enter into; and may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this part, as to the following matters:—

By-laws.

As to stock.

(*a*) The regulating of the allotment of stock, the making of calls thereon; the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock;

Dividends.

(*b*) The declaration and payment of dividends;

Directors.

(*c*) The amount of the stock qualifications of the directors, and their remuneration, if any;

Agents and officers.

(*d*) The appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company and their remuneration;

Meetings.

(*e*) The time and place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings;

Penalties.

(*f*) The imposition and recovery of all penalties and forfeitures not otherwise provided for in this part;

Generally.

(*g*) The conduct, in all other particulars, of the affairs of the company not otherwise provided for in this part.

Confirmation of by-laws.

81. The directors may, from time to time, repeal, amend or re-enact such by-laws, but every such by-law, excepting by-laws made respecting agents, officers and servants of the company, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall only have force until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time, cease to have force.

Liability of Directors and Officers.

Declaring and paying dividend when company is insolvent.

82. If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or impairs the capital thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all debts thereafter contracted during their continuance in office, respec-

tively; provided that, if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such declaration and is able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or, if no newspaper is there published, in the newspaper published in the place nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

Exoneration from liability.

83. Whenever any transfer of shares not fully paid in has been made with the consent of the directors to a person who is not apparently of sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been; provided that if any director present when any such transfer is allowed does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such transfer and is able so to do, enter on the minute book of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest to such place, such director may thereby, and not otherwise, exonerate himself from such liability.

Liability of directors for transfer of shares to insolvent.

Exoneration from liability.

84. If any loan is made by the company to any shareholder in violation of the provisions of this part, all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest to the company, and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the repayment thereof.

Loan by company to shareholders.

85. The directors of the company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part.

Liability of directors for wages unsatisfied.

Limitation as to time.

2. The amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

Liability of directors for premature commencement of business.

86. Every director of any company who expressly or impliedly authorizes the commencement of operations by the company or the incurring of any liabilities by the company before ten per centum of its authorized capital has been subscribed and paid for, shall be jointly and severally liable with the company for the payment of any such liabilities so incurred.

Meetings.

Special meeting.

87. Shareholders who hold one-fourth part in value of the subscribed stock of the company may at any time by written requisition and notice call a special meeting of the company for the transaction of any business specified therein.

Provisions as to.

88. In the absence of other provisions in that behalf in the letters patent or by-laws of the company,—

Notice.

(*a*) Notice of the time and place for holding a general meeting of the company shall be given at least fourteen days previously to the time in such notice specified for such meeting, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published;

Votes.

Proxies.

Calls to be paid.

(*b*) At all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him; and such votes may be given in person or by proxy if such proxy is himself a shareholder; provided that no shareholder shall be entitled either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable upon all the shares held by him;

Majority vote.

Casting vote.

(*c*) All questions proposed for the consideration of the shareholders at such meetings shall be determined by the majority of votes, and the chairman presiding at such meetings shall have the casting vote in case of an equality of votes.

Books of the Company.

Books shall contain.

89. The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,—

Charter, agreement, by-laws.

(*a*) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of all by-laws of the company;

(*b*) The names, alphabetically arranged, of all persons who are or have been shareholders; Names of shareholders.

(*c*) The address and calling of every such person, while such shareholder, as far as can be ascertained: Address and calling.

(*d*) The number of shares of stock held by each shareholder: Number of shares.

(*e*) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder; and, Amounts paid.

(*f*) The names, addresses and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director. Names, addresses and calling of directors.

90. A book called the register of transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company. Register of transfers.

91. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder. Books to be open for inspection.

2. Every such shareholder, creditor or personal representative or judgment creditor may make extracts therefrom. Extracts therefrom.

Inspection.

92. Upon the application of shareholders representing not less than one-fourth in value of the issued capital stock of the company a judge in the province or territory in which the chief place of business of the company is situated may, if he deems it necessary, appoint a competent inspector to investigate the affairs and management of the company who shall report to the judge the result of the investigation. Application to a judge for an investigation.

2. The application shall be supported by such evidence as the judge may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. Evidence on application.

3. The judge may make necessary rules as to such investigation and prescribe the manner in which and the extent to which the investigation shall be conducted, or may, if he deems it necessary, examine the officers or directors of the company under oaths as to matters that come in question. Special powers of judge.

4. The expense of such investigation shall, in the discretion of the judge, be defrayed by the company, or by the applicants, or partly by the company and partly by the applicants as the judge Costs.

Security.

may order, who may, if he thinks fit, require the applicants to give security to cover the probable cost of the investigation.

Investigation by order of the company.

93. The company may by resolution passed at the annual meeting, or at a general meeting called for the purpose, appoint an inspector to examine into the affairs of the company, and may in such resolution direct the manner and extent of such investigation and the matters to be investigated.

Report in such cases.

2. The inspector so appointed shall have the same powers as an inspector appointed by a judge, and shall make his report in such manner and to such persons as the company by the resolution directs.

Production of books.

94. It shall be the duty of all officers and servants of the company to produce for the examination of any inspector appointed by a judge or by the company all books and documents relating to the affairs of the company in their custody or power.

Examination on oath.

2. Any such inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly.

Procedure.

Service of process upon company.

95. Any summons, notice, order or other process or document required to be served upon the company, may be served by leaving the same at the office of the company in the city or town in which its chief place of business in Canada is situate, with any adult person in the employ of the company, or by serving the same on the president or secretary of the company, or by leaving the same at the domicile of either of them, with any adult person of his family or in his employ.

Constructive service.

2. If the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises; and such publication shall be deemed to be due service upon the company.

Cases where use of seal not necessary.

96. Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, manager or other authorized officer of the company, and need not be under the seal of the company.

Service of notices on members.

97. Notices to be served by the company upon the shareholders may be served either personally or by sending them through the post, in registered letters addressed to the shareholders at their places of abode as they appear on the books of the company.

98. A notice or other document served by post by the company on a shareholder shall be deemed to be served at the time when the registered letter containing it would be delivered in the ordinary course of post. Time from which service reckoned.

99. Any description of action may be prosecuted and maintained between the company and any shareholder thereof. Action between company and shareholders.

100. In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name as incorporated by virtue of letters patent, or of letters patent and supplementary letters patent, as the case may be, under this part. Setting forth incorporation in legal proceedings.

101. Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of any shares or the legal right of possession of the same changes by any lawful means, other than by transfer according to the provisions of this part, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file in the court in the province or territory in which the head office of the company is situated, a declaration and petition in writing, addressed to the justices of the court, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an order or judgment adjudicating and awarding the said shares to the person or persons legally entitled to the same. Procedure to settle ownership when shares are transmitted otherwise than by transfer. Order of court may be obtained on petition.

102. Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases shall be the same as those observed in analogous cases before such court. Notice of intention to present. Pleading.

103. The costs and expenses incurred by the company in procuring such order or judgment shall be paid to the company by the person or persons, to whom such shares are declared lawfully to belong and such shares shall not be transferred in the books of the company until such costs and expenses are paid, but this provision shall in no way prejudice the right of the person adjudged to be the lawful owner of such shares to recourse according to the practice of the court for such costs and expenses against any person contesting his right to such shares. Costs.

Order to guide company.

104. The company shall be guided by the order or judgment of the court establishing the right to such shares.

Order a release.

2. Such order or judgment shall have the effect of a release from every other claim to the said shares or arising in respect thereof and shall fully indemnify and save harmless the said company from any such claim.

Statements and Returns.

Annual statement of officers at general meeting.

105. The directors of every company shall lay before its shareholders annually and at or before each general meeting of the company for the election of officers, a full printed statement of the affairs and financial position of the company.

Return to be made of.

106. It shall be the duty of the company to make a return to the Secretary of State whenever a written request shall be by him made therefor, containing the following particulars:—

Capital and shares.

(*a*) The amount of the capital of the company, and the number of shares into which it is divided;

Number of shares taken.

(*b*) The number of shares taken from the commencement of the company up to the date of the return;

Calls on each share.

(*c*) The amount of calls made on each share;

Calls received.

(*d*) The total amount of calls received;

Calls unpaid.

(*e*) The total amount of calls unpaid;

Shares forfeited.

(*f*) The total amount of shares forfeited;

Names and additions and shares of former shareholders.

(*g*) The names, addresses and occupations of the persons who have ceased to be members within the twelve months next preceding, and the number of shares held by each of them.

Evidence.

Books to be *prima facie* evidence, when.

107. All books required by this part to be kept by the company shall in any action, suit or proceeding against the company or against any shareholder be *prima facie* evidence of all facts purporting to be thereby stated.

Proof of service by registering letter.

108. Proof that any letter properly addressed and registered containing any notice or other document permitted by this part to be served by post was properly addressed and registered and was put into the post office, and of the time when it was so put in, and of the time requisite for its delivery in the ordinary course of post, shall be sufficient evidence of the fact and time of service.

Evidence of by-laws.

109. A copy of any by-law of the company under its seal and purporting to be signed by any officer of the company shall be received as against any shareholder of the company as *prima facie* evidence of such by-law in all courts in Canada

110. In any action or other legal proceeding, the notice in the *Canada Gazette* of the issue of letters patent or supplementary letters patent under this part shall be *prima facie* proof of all things therein contained, and on production of such letters patent or supplementary letters patent or of any exemplification or copy thereof, the fact of such notice and publication shall be presumed. Proof of incorporation.

111. Except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling letters patent or supplementary letters patent issued under this part, such letters patent or supplementary letters patent, or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth. Proof of matters set forth in letters patent.

112. Proof of any matter which is necessary to be made under this part may be made by oath or affirmation, or by solemn declaration before any justice of the peace, or any commissioner for taking affidavits, to be used in any of the courts in any of the provinces of Canada, or any notary public, each of whom is hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose. Proof by declaration or affidavit.

Offences and Penalties.

113. Every company which fails or neglects to cause a copy of the notice of the granting of letters patent to such company inserted by the Secretary of State in the *Canada Gazette*, or to cause a copy of any notice of any supplementary letters patent extending the powers of the company to any further or other purposes or objects than such as were theretofore conferred upon the company inserted by the Secretary of State in the *Canada Gazette*, to be, forthwith after such insertion in the *Canada Gazette*, inserted on four separate occasions in at least one newspaper in the county, city or place where the head office or chief agency of the company is established, is guilty of an offence and liable on summary conviction before two justices of the peace to a penalty not exceeding twenty dollars for each day such failure or neglect continues. Neglect to have notice in *Canada Gazette* of the granting of letters patent inserted in other newspapers. Penalty.

114. Every company which does not keep painted or affixed its name, with the word *limited* after it, in manner directed by this part shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed, and every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty. Neglect to keep painted or affixed name of company and word 'limited.' Penalty.

115. Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any Not having word 'limited on seal.

seal purporting to be a seal of the company, whereon its name with the word *limited* after it, is not engraven in legible characters; or,—

On notice.

(*a*) Issues, or authorizes the issue of any notice, advertisement or other official publication of such company; or,

Bill or note.

(*b*) Signs or authorizes to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods; or

Bill of parcels.

(*c*) Issues or authorizes to be issued any bill of parcels, invoice or receipt of the company;

Penalty.

wherein its name, with the said word after it, is not mentioned in legible characters, shall incur a penalty of two hundred dollars, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Neglect to keep books.

116. Every company who neglects to keep any book or books required by this part to be kept by the company, shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding twenty dollars for each day that such neglect continues.

Penalty.

False entries in and refusing inspection of books.

117. Every director, officer or servant of the company, who knowingly makes or assists in making any untrue entry in any book required by this part to be kept by the company, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit as required by this part any entry made therein, or to allow the same, as required by this part, to be inspected and extracts to be taken therefrom, is guilty of an indictable offence.

Penalty.

Neglect to make return to Minister.

118. Every company which for a space of one month neglects or refuses to comply with the written request of the Secretary of State to make the return to him required by this part shall incur a penalty not exceeding twenty dollars for every day during which such default continues.

Penalty.

Permitting default.

2. Every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Refusing to produce books and answer questions.

119. Any officer or agent who on any examination by any inspector appointed by a judge or by the company under this part, refuses to produce any book or document relating to the affairs of the company or to answer any question relating to the affairs of the company, shall incur a penalty not exceeding twenty dollars in respect of each offence.

Penalty.

SCHEDULE.

FORM A.

Application for Incorporation under the Companies Act.

To the Honourable the Secretary of State of Canada:

The application of
respectfully showeth as follows:—

The undersigned applicants are desirous of obtaining letters patent under the provisions of the first part of the Companies Act, constituting your applicants and such others as may become shareholders in the company thereby created a body corporate and politic under the name of
limited, or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the company under which incorporation is sought is not the corporate name of any other known company incorporated or unincorporated or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of twenty-one years.

The purposes for which incorporation is sought by the applicants are:

The chief place of business of the proposed company within Canada will be at in the county of
in the province of

The amount of the capital stock of the company is to be $.

The said stock is to be divided into
shares of $ each.

The following are the names in full and the address and calling of each of the applicants with the amount of stock taken by each applicant respectively:

Applicant.	Amount of Stock subscribed.

The said
will be the first or provisional directors of the company.

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate, one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the company, a body corporate and politic for the purposes above set forth.

Signatures of Witnesses.	Signatures of Applicants.

Dated at this day of
19 .

NOTE.—If any cash has been paid in on stock or if any property is intended to be accepted on account of stock it should be here stated.

FORM B.

(To be executed in duplicate; one duplicate to be transmitted with the application.)

The Company of (Limited).

MEMORANDUM OF AGREEMENT AND STOCK BOOK.

We the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the first part of the Companies Act, under the name of the Company of (Limited), or such other name as the Secretary of State may give to the company, with a capital of dollars, divided into shares of dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital

stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

Name of Subscriber.	Seal.	Amount of Subscription.	Date and Place of Subscription.		Residence of Subscriber.	Name of Witness
			Date.	Place.		

FORM C.

Public notice is hereby given that under the first part of the Companies Act, letters patent have been issued under the seal of the Secretary of State, bearing date the
day of incorporating (*here state names, address and calling of each corporator named in the letters patent*) for the purpose of (*here state the undertaking of the company, as set forth in the letters patent*), by the name of (*here state the name of the company as in the letters patent*) with a total capital stock of dollars divided into
shares of dollars.

Dated at the office of the Secretary of State of Canada, this
day of 19 .

A. B.,
Secretary.

FORM D.

Public notice is hereby given that under the first part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the
day of , whereby the undertaking of the company has been extended to include (*here set out the other purposes or objects mentioned in the supplementary letters patent*).

Dated at the office of the Secretary of State of Canada, this
day of 19 .

A. B.,
Secretary.

FORM E.

Public notice is hereby given that under the first part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the day of , whereby the total capital stock of (*here state the name of the company*) is increased (*or* reduced, *as the case may be*) from dollars to dollars.

Dated at the office of the Secretary of State of Canada, this day of 19 .

A. B.,
Secretary.

ALBERTA.(*a*)

Under the provisions of Chapter 20, Ordinance of 1901 and amendments.

5. Any three or more persons associated for any lawful purpose to which the authority of the Legislative Assembly extends may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration form an incorporated company with or without limited liability.

TABLE B.

Table of Fees to be Paid to the Registrar by a Company having a capital divided into Shares.

For registration of a company whose nominal capital does not exceed $10,000 a fee of		$10 00
For registration of a company whose nominal capital exceeds $10,000 the above fee of $10 with the following additional fees regulated according to the amount of nominal capital, that is to say :		
For every $5,000 of nominal capital or part of $5,000 after the first $10,000 up to $25,000	$5 00	
For every $5,000 of nominal capital or part of $5,000 after the first $25,000 up to $500,000	2 00	
For every $5,000 of nominal capital or part of $5,000 after the first $500,000	1 00	
A Company not having a capital divided into Shares.		
For registration of a company whose number of members does not exceed 10		$10 00
For registration of a company whose members exceed 10 but does not exceed 100		25 00

(*a*) Copies of the Companies Ordinance in pamphlet form may be obtained on application to the Hon. the Provincial Secretary, Edmonton, Alta.

BRITISH COLUMBIA.(*a*)

THE COMPANIES ACT, 1897.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

9. Mode of forming a company.—Any five or more persons associated for any lawful purpose within the scope of this Act may, by subscribing their names to a Memorandum of Association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

(*a*) Copies of the British Columbia Companies Act, in pamphlet form, may be obtained on application to the Honourable the Provincial Secretary, Victoria, B.C.

TABLE B.

Table of Fees to be paid to the Registrar of Joint Stock Companies by a Company having a capital divided into shares.

For registration of a company whose nominal capital does not exceed $10,000, a fee of..... $25 00

For registration of a company whose nominal capital exceeds $10,000, the above fee of $25, with the following additional fees, regulated according to the amount of nominal capital; (that is to say)—

For every $5,000 of nominal capital, or part of $5,000, after the first $10,000, up to $25,000..... $5 00

For every $5,000 of nominal capital, or part of $5,000 after the first $25,000, up to $500,000..... $2 50

For every $5,000 of nominal capital, or part of $5,000, after the first $500,000.....$1 25

For registration of any increase of capital made after the first registration of the company, the same fees per $5,000, or part of a $5,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration. This provision shall apply to an extra-provincial company licensed or registered which increases its capital.

For a license to or registration of any extra-provincial company the same fees as are payable for registering a new company. In the case of an extra-provincial trading or business company which proves to the satisfaction of the Registrar that it is actually carrying on an established business beyond the Province in which at least fifty per cent. of its subscribed

capital is invested, there shall be accepted in commutation of the fees prescribed in the preceding item, a fee of two hundred and fifty dollars.

For a license to or registration under this Act of any extra-provincial company already registered in this Province as a foreign company..... $10 00

And in addition thereto, if the license or certificate of registration under this Act is issued pursuant to section 56 hereof, the same fees as are payable for registering a new company hereunder, allowing credit as part of such fees for the amount of fees paid by such extra-provincial company in respect of its original registration in this Province.

TABLE C.

Table of fees to be paid to the Registrar of Joint Stock Companies by a company not having a capital divided into shares.

For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20.... $10 00

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100..... $25 00

MANITOBA.(*a*)

Under the provisions of the Revised Statutes of Manitoba, 1902, chapter 30, sec. 4, the Lieutenant-Governor-in-Council may, by letters patent under the great seal of the Province, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created a body corporate and politic, for any purposes or objects to which the legislative authority of the Legislature of Manitoba extends, except the construction and working of railways and the business of insurance.

TARIFF OF FEES.

By Order in Council, bearing date the sixth day of May, A.D., 1904, it is ordered that the following schedule of fees, for letters patent of incorporation, under the provisions of chapter 30, Revised Statutes of Manitoba, 1902, not exceeding in length ten (10) folios, of one hundred (100) words each, be approved:

When the capital stock does not exceed $5,000			$ 15.00
Over $ 5,000,	and not exceeding $	20,000	40.00
Over 20,000,	and not exceeding	40,000	60.00
Over 40,000,	and not exceeding	60,000	75.00
Over 60,000,	and not exceeding	80,000	90.00

Over $ 80,000, and not exceeding	$ 100,000	$100.00
Over 100,000, and not exceeding	125,000	110.00
Over 125,000, and not exceeding	150,000	120.00
Over 150,000, and not exceeding	175,000	130.00
Over 175,000, and not exceeding	200,000	140.00
Over 200,000, and not exceeding	300,000	150.00
Over 300,000, and not exceeding	400,000	160.00
Over 400,000, and not exceeding	500,000	170.00
Over 500,000, and not exceeding	1,000,000	200.00
Over 1,000,000,		250.00

with an extra charge of $5 per folio, for every folio over ten.

And that, in addition to the above fees, applicants must deposit with the Provincial Secretary, with their petition, the further sum of $25 toward payment of the cost of the notice in *The Manitoba Gazette*, provided for by section 18 of the said "The Joint Stock Companies Act," as amended by chapter 7, 3 Edward 7, any surplus of said sum of $25 to be subsequently returned to the applicants; but, if such notice costs more than $25, the applicants must pay the extra cost.

And that, in cases of petitions for supplementary letters patent, where the capital stock is increased, the fees to be according to the above schedule, but on the increase only; and, where the capital stock is not increased, $15, and $5 per folio for every folio over five;

And that the fee to be paid for an Order in Council, authorizing the change of name of a company, shall be $10, including the sum of $5 to be paid for notice in *The Manitoba Gazette*, as required under section 4 of chapter 27, Revised Statutes of Manitoba, 1902.

(*a*) Blank petitions and copies of the Companies Act may be secured from the Department of the Provincial Secretary, Winnipeg, Man.

NEW BRUNSWICK.(*a*)

Under the provisions of the New Brunswick Joint Stock Companies Act, being Chapter 85 of the Consolidated Statutes of 1903.

3. The Lieutenant-Governor-in-Council may, by letters patent under the Great Seal, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created, a body corporate and politic for any purposes or objects to which the legislative authority of the Legislature of New Brunswick extends, except the construction and working of railways and the business of insurance, or for the management of trades' unions, friendly societies, building societies, or other associations of like character.

TARIFF OF FEES.

(1.) When the proposed Capital Stock of the Company is $5,000 or less, the fee to be Thirty dollars, ($30.00).

(2.) Above $5,000 and less than $10,000, Forty dollars.

(3.) $10,000 and less than $25,000, Fifty dollars.
(4.) $25,000 and less than $50,000, Sixty dollars.
(5.) $50,000 and less than $100,000, Eighty dollars.
(6.) $100,000 and less than $200,000, One hundred and twenty dollars.
(7.) $200,000 and less than $300,000, One hundred and sixty dollars.
(8.) $300,000 and less than $500,000, Two hundred dollars.
(9.) $500,000 and not more than $1,000,000, Two hundred and fifty dollars, ($250 00).
(10.) For every $500,000, or any part thereof, in excess of $1,000,000, an additional fee of Fifty dollars, ($50.00).
(11.) On Supplementary Letters, when application is to increase the Capital Stock, the fees shall be payable upon the increased amount for which letters are applied for, according to the aforegoing scale.

In all other cases a fee of Fifty dollars, ($50.00), but not to exceed the amount paid for original Letters Patent.

(*a*) Copies of the New Brunswick Joint Stock Companies Act in pamphlet form may be obtained on application to the Honourable the Provincial Secretary, Fredericton, N. B.

NOVA SCOTIA.(*a*)

JOINT STOCK COMPANIES

Being Chapter 128 of the Revised Statutes of Nova Scotia, 1900.

SHORT TITLE.

1. This Chapter may be cited as the "Nova Scotia Companies' Act."

PART I.

CONSTITUTION AND INCORPORATION.

Memorandum of Association.

6. Any three or more persons associated for any lawful purpose, except the formation of a banking, loan or trust company, may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Chapter in respect to registration, form an incorporated company with or without limited liability.

(*a*) Copies of the Nova Scotia Companies' Act in pamphlet form, may be obtained on application to the Hon. the Provincial Secretary, Halifax, N.S.

Table of Fees to be paid to the Registrar of Joint Stock Companies by a Company having a capital divided into shares.

For registration of a company having a nominal capital, not exceeding ten thousand dollars..... $20 00
and a yearly fee of $20.

not exceeding fifty thousand dollars ..... and a yearly fee of $40.	$30 00
not exceeding one hundred thousand dollars ..... and a yearly fee of $60.	40 00
not exceeding one hundred and fifty thousand dollars ..... and a yearly fee of $80.	50 00
not exceeding five hundred thousand dollars ..... and a yearly fee of $100.	60 00
exceeding five hundred thousand dollars ..... and a yearly fee of $150.	70 00

Company not having a capital divided into shares.

For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	$10 00
For registration of a company whose number of members as stated in the articles of association, exceeds 20, but does not exceed 100	25 00

PRINCE EDWARD ISLAND.(*a*)

Under the Provisions of the Prince Edward Island Joint Stock Companies Act, Chapter 14, 51st Victoria, incorporation is granted for the same purposes and subject to the same conditions of procedure and form as prevail under the Dominion of Canada Joint Stock Companies Act.

TARIFF OF FEES.

When the proposed capital stock of the company is less than $10,000, fee to be paid	$ 20 00
10,000 and under $25,000	25 00
25,000 and under $50,000	30 00
50,000 and under $100,000	40 00
100,000 and under $200,000	60 00
200,000 and under $300,000	80 00
300,000 and under $500,000	100 00
500,000 and upwards	120 00

(*a*) Copies of the Prince Edward Island Joint Stock Companies Act in pamphlet form, may be obtained on application to the Honourable the Provincial Secretary, Charlottetown, P.E.I.

QUEBEC.

REVISED STATUTES, CHAPTER III.

SECTION II.

INCORPORATION OF JOINT STOCK COMPANIES.

Copies of this Act may be obtained on application to the Honourable the Provincial Secretary, Quebec.

TARIFF OF FEES.

Approved by Order in council of the 18th of May, 1903.

No. 17.—On letters patent incorporating joint stock companies, when the capital is $20,000, and less than $20,000, the fee will be..... $40.00
No. 18.—$20,000, and less than $50,000, ... 130.00
No. 19.—$50,000 or more, and less than $100,000, ... 180.00
No. 20.—$100,000, or more, and less than $150,000 ..... 200.00
No. 21.—$150,000, or more, and less than $200,000 ..... 225.00
No. 21-a.—$200,000, or more, and less than $300,000 ..... 275.00
No. 21-b.—$300,000, or more, and less than $400,000 ..... 300.00
No. 21-c.—$400,000, or more, and less than $500,000 ..... 325.00
No. 21-d.—$500,000, or more, and less than $600,000 ..... 350.00
No, 21-e.—$600,000, or more, and less than $700,000 ..... 375.00
No. 21-f.—$700,000, or more, and less than $800,000 ..... 400.00
No. 21-g.—$800,000, or more, and less than $900,000 ..... 425.00
No. 21-h.—$900,000, or more, and less than $1,000,000..... 450.00
No. 21-i.—$1,000,000, the fee will be 500.00
No. 21-j.—For every million dollars of additional capital, or fraction thereof, the fee will be 100.00

No. 21-k.—When application is made to increase the capital, the fee will be calculated on the actual amount of the increases in question, and the fee payable will be the same as that payable on letters patent for the incorporation of a company whose capital is of the same amount as the said increase.

No. 21-l.—On application for supplementary letters patent, other than those for the increase of capital, the fee will be 50% of the amount required as the fee for the incorporation.

SASKATCHEWAN.(*a*)

Under the provisions of Chapter 20, Ordinance of 1901.

5. Any three or more persons associated for any lawful purpose to which the authority of the Legislative Assembly extends may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration form an incorporated company with or without limited liability.

The Table of Fees, which includes Gazette fee, ranges from $15 for a company with a capital of $10,000 to $320 for a capital of one million.

(*a*) Copies of the Companies Ordinance in pamphlet form may be obtained on application to the Hon. the Provincial Secretary, Regina, Sas.

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R. S. C. 1906, s. 7, omits residence in Canada. Correct s. 17 in page 26 of this book.
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