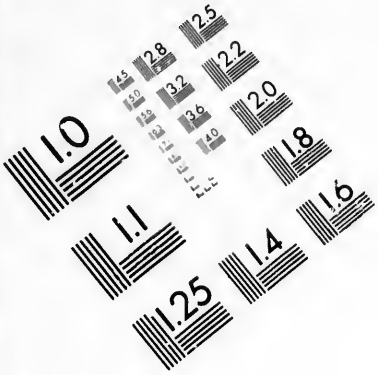

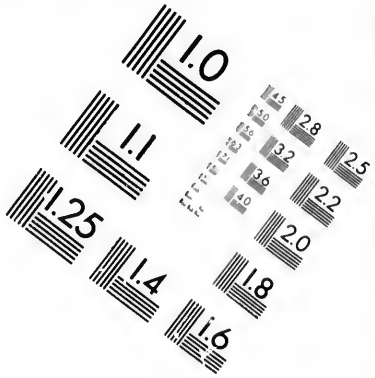

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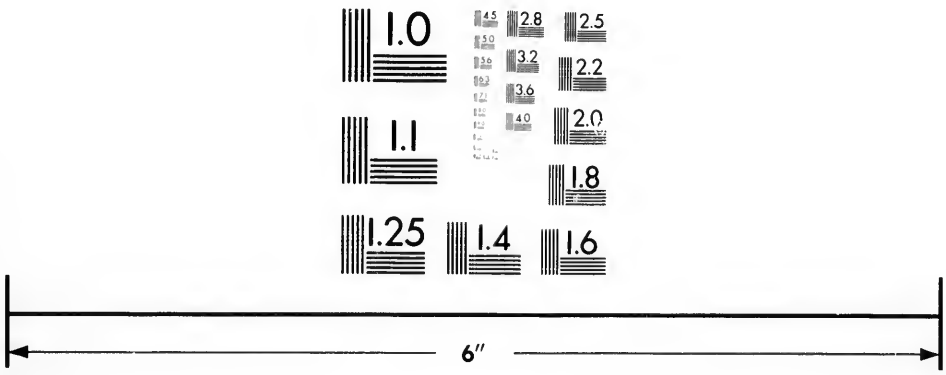

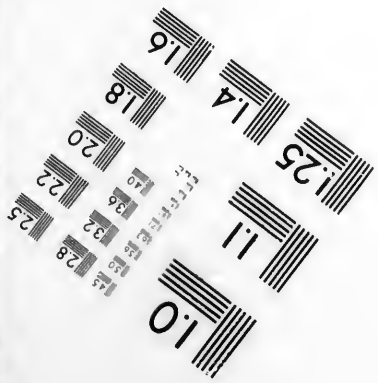

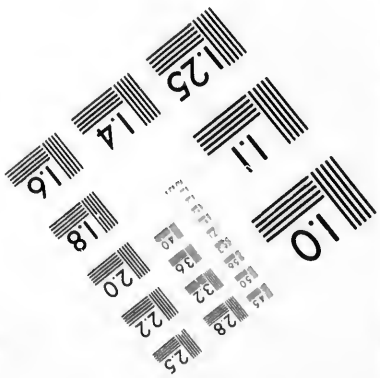

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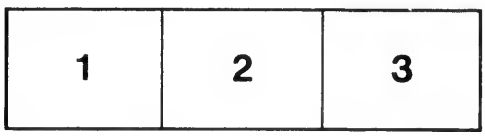

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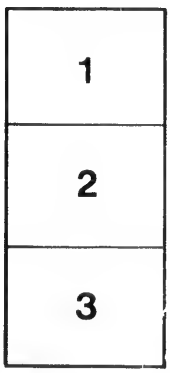

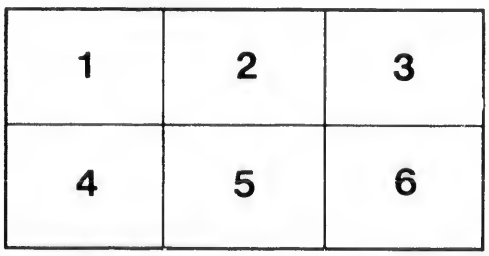

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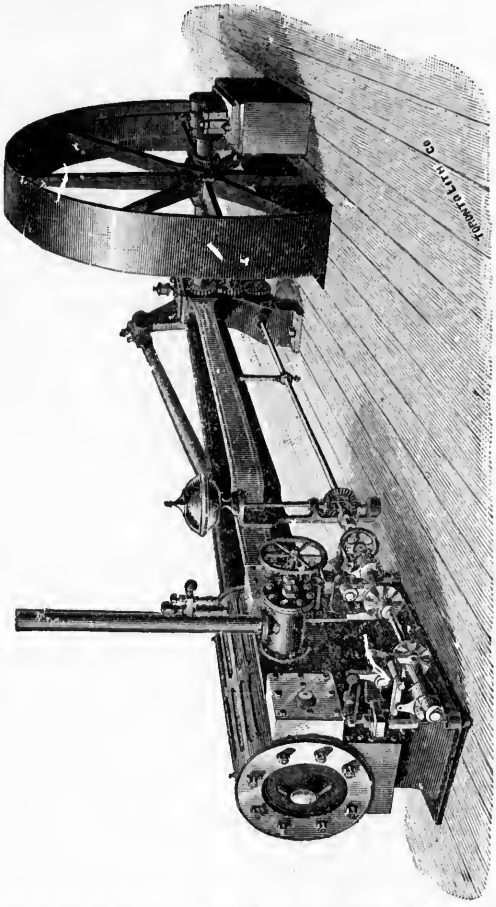

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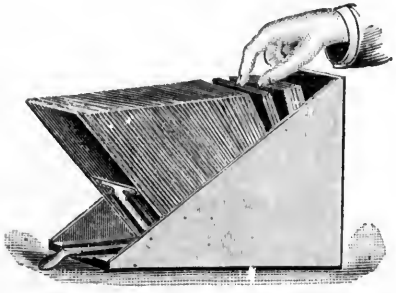

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Shareholders' and Directors' Manual

OF

EVERY-DAY LAW AND PRACTICE.

FOR THE USE OF SHAREHOLDERS, DIRECTORS AND OFFICERS OF COMPANIES; CONTAINING A COMPENDIUM OF THE LAWS RELATING TO JOINT STOCK COMPANIES, AND PRACTICAL INFORMATION AS TO THE STEPS TO BE TAKEN AND THE PROOFS TO BE FURNISHED IN APPLYING FOR CHARTERS OF INCORPORATION

UNDER THE

ACTS OF THE DOMINION OF CANADA

AND OF THE PROVINCES THEREOF,

RELATING TO THE FORMATION OF

JOINT STOCK COMPANIES BY LETTERS PATENT,

TOGETHER WITH

INFORMATION RESPECTING THE ORGANIZATION AND MANAGEMENT OF SUCH COMPANIES,

AND A NUMBER OF FORMS AND BY-LAWS SUITABLE FOR THE USE THEREOF.

BY

J. D. WARDE,

OF THE PROVINCIAL SECRETARY'S DEPARTMENT, TORONTO.

FOURTH EDITION, REVISED AND ENLARGED.

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SECRETARY OF THE PROVINCE OF ONTARIO,

BY

THE AUTHOR.

PREFACE TO FIRST EDITION.

Having for some years, in connection with his duties in the Provincial Secretary's Department, had charge of the applications for charters under *The Ontario Joint Stock Companies' Letters Patent Act*, and noticing the small percentage of such applications that were in proper form, it occurred to the writer that a work containing practical information respecting the steps to be taken in the formation, incorporation and management of a Joint Stock Company would be of advantage as well to intending applicants and the general public, as to Directors, Shareholders and Officers of existing companies. With this object in view, the following pages have been prepared. They contain such of the Acts relating to the formation of Joint Stock Companies, with explanatory notes, as it was thought desirable or necessary to give in a work of this size. A table of Forms, suitable for use in the incorporation and management of a company, together with copies of Letters Patent and Supplementary Letters Patent, has been added.

J. D. W.

Toronto, July, 1884.

PREFACE TO FOURTH EDITION.

On issuing the Fourth Edition of this work, the author begs to express his thanks for the favourable reception the former editions have met with. As he has before said, the book is not put forth as a legal text book, or as a competitor with those numerous and comprehensive volumes which deal with the law affecting Joint Stock Companies in all its various details. The aim of the author is to supply a useful, practical Manual, which may be of assistance to those engaged either in the formation of new Companies, or holding office in those already in existence—such as Managers, Directors, Secretaries and the like.

The author has for several years occupied the position of Secretary of a Joint Stock Company, and with the experience thus gained has, in the first part of the book, treated of some of the more important points occurring in the every day management of such a company. This portion of the work is compiled from the latest editions of the recognized authorities on Company Law, and from the Canadian Law Reports, to date.

In Part II. will be found the Acts of the Dominion of Canada, and of the Provinces thereof, relating to Joint Stock Companies, and many new forms for their use.

The author's thanks are due those gentlemen who so kindly reviewed the chapters sent them, especially Mr. J. S. Cartwright, Q.C., Deputy Attorney-General of Ontario; and also Mr. C. H. Stephens, of the Quebec Bar, for permission to make extracts from his exhaustive work on Joint Stock Companies.

This work does not deal with the laws relating to the winding up of companies, as directors, etc., are, as a rule, only interested in companies while they are going concerns.

J. D. WARDE.

Parliament Buildings,
Toronto, July, 1892.

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PART I.

COMPENDIUM OF THE LAWS RELATING TO JOINT STOCK COMPANIES.

THE SHAREHOLDERS' AND DIRECTORS' MANUAL.

INTRODUCTORY.

NATURE OF A COMPANY.

1. Definition of a Company.
2. How Formed.
3. Inducements to the Formation of a Company.

1. Definition of a 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.

A company which is incorporated, whether by charter, special Act of Parliament, or registration, 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, 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 act of incorporation to render the stockholders personally liable. The company forms a new artificial person and is 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.

2. How Formed.

Practically the great majority of companies are formed as follows: A few persons called *promoters* form a scheme by which they say money may be made, but requiring considerable funds for its realization. To make their scheme known and to raise the funds required, they publish a *prospectus*, setting forth the nature of the scheme and the amount of capital necessary to carry it out, and inviting persons to become subscribers. Sometimes the *prospectus* is issued before the company has any legal existence; at other times the promoters or their friends do what is necessary to create the company as a legal body and issue the *prospectus* after the company has been created. In either case the *prospectus* is a very important document; for on the faith of it persons are intended to apply, and do, in fact, apply for shares in the company to be formed or already formed, as the case may be.

3. Inducements to the Formation of a Company.

The great inducement to the formation of a company is the facility which it has for obtaining from the public the necessary capital for carrying its objects into effect. However large the capital required may be, shareholders will be found, provided the company appears to have a reasonable chance of success. The motive which impels persons to invest is the desire to share in the profits of a promising undertaking, coupled with the knowledge that the investor's *liability is limited.*

Working capital for a company is also, in many cases, obtained by the issue of *debentures* or debenture stock. There is no market for the debentures or debenture stock of an individual, or of a firm, but a company's debentures or debenture stock are well-known securities, and if the company has a sound business, can be placed without difficulty.

There are many other inducements to the formation of companies: *e. g.*, the rule that directors are limited agents of the company; the advantages of corporate existence as regards suing and being sued, holding property, death and bankruptcy of members, sale of shares, etc., etc.

CHAPTER I.

PROMOTION OF COMPANY.

1. Form of Prospectus.
2. Effect of Misrepresentation in.
3. Where Capital Varies from Amount Stated in Prospectus.
4. Application for Shares.
5. May be Revoked before allotment.
6. Letter of Allotment.
7. Agreement Complete by Allotment and Notice.
8. Subscribers to Stock Book Bound although no Stock Allotted Them.
9. Married Women as Subscribers.
10. Infant as a Subscriber.
11. Preliminary Expenses.
12. Recovery of Deposit.

1. Form of Prospectus.

A common, though not an essential preliminary to the promotion and formation of a company is the issue of a prospectus. This document is intended to set forth to the public such details of the proposed scheme as will enable them to judge of the advisability, or otherwise, of taking part in it. In form it should be short and pointed. It should contain, as a heading, the name and proposed capital of the company; then an account of its advantages and prospects, and an idea of the plan on which it is proposed to be worked. At the end is usually appended a short form of application for shares. The names of the directors always, in the interest of the company, itself, form part of

the prospectus and other public announcements, in order to enable the public to judge of the advisability of taking part in the scheme, and these names can always be verified by the books and records of the company.

2. Effect of Misrepresentation in.

The legal effect of such a circular has from time to time been much discussed, especially as regards the subscription of shares on the faith of it. Thus it has been held that a mere signing of the prospectus does not make one liable as a shareholder, and the rule has been broadly laid down that subscriptions induced by wilful misrepresentations in the prospectus or even by wilful concealment of material facts may be set aside as obtained by fraud.

A prospectus must (1) be free from misrepresentations and (2) disclose all material facts. If it is improperly framed, the company, and those who take part in its preparation and issue, may be involved in litigation and onerous liabilities. As to (1): The prospectus should tell the truth, the whole truth, and nothing but the truth. It should be framed with due regard to the Directors' Liability Act, 1891 (*a*), and the precautions there suggested should be adopted. As to (2): What facts are material to be disclosed, and how disclosure can best be made without unduly depreciating the undertaking, requires judgment and familiarity with the legal decisions. If the prospectus is not properly framed, shareholders who have been deceived can take proceedings against the company to get rid of their shares and recover their money, but not a day should be lost after discovering the facts. Moreover, in certain cases, they can bring actions for compensation against the directors and others. No prudent man will take part in the issue of a prospectus unless he is satisfied that the prospectus complies with the law, and that he will be able to defend himself in the event of proceedings being taken against him.

(*a*) *Infra.*

In the Temperance Colonization Company against Fairfield (*a*):—The plaintiffs, a company formed for the purpose of colonizing land in the North-West Territories, represented to defendant by means of an advertisement issued in a daily paper, that the Dominion Government had agreed to the selection by the company of a "compact choice tract of land" in the said Territories, "comprising 2,000,000 acres, for the purpose of settlement, free from the use of intoxicating liquors." The defendant, on the faith of these representations, desiring to send his son to a place where he would be precluded from the use of intoxicating liquors, entered into two agreements with the company, agreeing in each "to purchase and pay for 320 acres of land, in the order of choice from the odd numbered sections of our lands as procured or to be procured from the Dominion," and paid certain instalments thereon. It was proved that the company never had, and could not obtain, the choice compact tract stated, nor any special privileges as to the exclusion of liquors:—Held, that these were material misrepresentations, and the defendant having been induced to enter into the agreements thereby, was therefore entitled to have them rescinded, and to recover back the money paid by him.

3. Where Capital Varies from Amount Stated in Prospectus.

Where capital upon incorporation, varies from the amount stated in prospectus, a subscriber is not liable. In Stevens against The London Steel Works (*b*), one D. signed his name as subscriber for a certain number of shares at the foot of a prospectus of a proposed company, in which it was stated that the capital was to be $75,000. Without D.'s knowledge or acquiescence, the company, as afterwards incorporated, had a capital of $150,000. In accordance with the terms of the subscription, and before the incorporation of the company D. paid up half the

(*a*) 16 O. R. 544; C. P. D. (*b*) 15 O. R. 75, p. 248.

amount of his shares. There was no allotment of stock to D., no entry of his name in any stock-book, and no acting on his part as shareholder. The company being in process of liquidation, it was claimed that D. was a contributory :— Held, that the change made in the capital of the company was a material one, and there being no acquiescence or laches on D.'s part, he was not liable as a contributory.

4. 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 projectors, and expressing an agreement on the part of the applicant to take a certain numbers 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.

5. Application for Shares may be Revoked before Allotment.

The application for shares, in whatever form it is made, and whether accompanied by the payment of a deposit or not is only an offer to take the shares applied for, and may, like any other offer, be retracted before it has been accepted. Nor is this right to revoke excluded 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. But a revocation received after notice of acceptance has been posted is too late, even though the letter of revocation is written and posted before the letter of application is received.

6. Letter of Allotment.

If the application for shares is acceded to, a letter of allotment is usually sent to the applicant, informing him that so many shares have been [or will be] allotted to him, and that a certain sum, by way of deposit on each share, must be paid to the bankers of the company.

7. Agreement Complete by Allotment and Notice.

In order that the application and acceptance may constitute a binding agreement, the acceptance must be by persons who can bind the company, and must be notified to the applicant.

Unless under special circumstances, notice of allotment must be given to the applicant or his agent in order to bind the allottee. Notice by post is sufficient, even if the notice should fail to reach the allottee or his agent, either owing to the default of the allottee or to some casualty in the post office establishment. It is not, however, necessary to prove express formal notice of the allotment, it is sufficient to show that the allotee in fact knew of it.

8. Subscribers to a Company's Stock Book are Bound Although no Stock is Allotted to Them.

In the Queen City Refining Company of Toronto, (Limited), in the winding up proceedings (*a*), the Master placed the subscribers to the stock-book upon the list of contributories. The contributories appealed upon the ground that although they were subscribers for stock still

no stock had be allotted to them by the directors:—Held, that the Master was right that the contract signed was an unqualified taking of shares; and that the Act R. S. O. (1877) c. 150 contemplates two modes of acquiring stock, by subscription and by allotment.

9. Married Women as Subscribers.

At common law a married woman could not subscribe for stock, and any person subscribing in her name was himself personally liable on the subscription. But now, in Canada, England, and generally in the United States, by statute, a married woman may bind her separate estate by such a subscription; and when it appears that the contract was with the wife, having been made directly and solely with her, the husband is not bound. The recourse of the company or the corporate creditors is, in such a case, to her separate estate only.

In England a husband has been held liable on his wife's subscription to the capital stock of an incorporated company, the subscription having been made before marriage.

10. Infant as a Subscriber.

A subscription for stock by an infant is a contract to be governed by the general rules of law applicable to the contracts of infants generally. In general, the subscription of an infant is voidable rather than void. He may repudiate it at majority, and thereby entirely escape liability; or he may ratify it, and thereby become as fully bound as though the subscription had been made after majority. Accordingly it is a settled rule that, where one subscribes for shares in the name of an infant, he is liable personally to the company or the corporate creditors on the subscription.

An infant's subscription must be repudiated within a reasonable time after coming of age or he will be held to have ratified it.

(*a*) 10 O. R. 264.

11. Preliminary Expenses.

The expenses necessarily incurred in the promotion of the company, are usually paid by the company on its formation. But supposing that circumstances are adverse; the company fails in arriving at incorporation; considerable debts have been incurred in making surveys, printing prospectus, and otherwise getting up company, and the question arises, by whom are such expenses to be borne? Formerly it was supposed that all persons interested in the proposed company were partners and, therefore, according to the usual law of partnership, liable for the debts contracted by the managing committee; but it is now well settled that in the case of provisional committees, or the projectors of a company, there is no partnership between them, no common power of binding each other merely by such a relation; each binds himself by his own act only. But where the subscriber had signed a deed authorizing the promoters to defray the expenses incidental to the undertaking out of the deposits paid for shares, it was decided that, although the scheme proved abortive, the deposits were not returnable. And the result of a number of cases of a similar character is, that there must be something to show an undertaking that deposits on shares were to be liable for expenses, in order to hold them when the scheme is abandoned.

Where the formation of the company is completed, the expenses may be paid by the company in instalments spread over a number of years and dividends be paid in the meanwhile.

12. Recovery of Deposit.

The question of liability for the preliminary expenses of the company is akin to the general one of the right of the shareholders to get back their deposits, where the formation is not completed and the scheme falls through,

and the general rule is, deducible from a number of cases, that in the absence of any contract or agreement to the contrary the shareholders are, on the abandonment of the undertaking, released from liability, and have a right to recover the amounts paid by them as deposits on shares. And this even when the money has been expended by the managing committee, who must return to each subscriber the amount of his deposit, without any deduction.

But difficulties in this respect are now usually avoided by a statement in the form of a letter of application authorizing the deposit to be applied to the payment of the preliminary expenses of the company.

A short form given by Thring (*a*) is as follows: Gentlemen,—Having paid to your banker the sum of $, I request you to allot me shares in the company, and I agree to accept the same or any less number that you may allot me (subject to the articles of association), and I authorize you to apply the deposit of $ in the payment of the preliminary expenses of the company.

(*a*) Thring's Joint Stock Companies.

CHAPTER II.

FORMATION AND INCORPORATION OF COMPANIES.

1. Incorporation by Letters Patent.
2. Name of Company.
3. Objects.
4. Head Office or Chief Place of Business.
5. Residence of Company.
6. Amount of Capital.
7. May be Reduced or Increased.
8. Division into Shares.
9. Amount of Each Share.
10. Only Petitioners Incorporated by Letters Patent.
11. Federal or Provincial Charter.
12. Commencement of Business.

1. Incorporation by Letters Patent.

The legislatures of this country, with the exception of that of British Columbia, after a trial of the registration system, which exists in England and the United States, as well as in France, and other European countries, have returned to the more elaborate and formal method of issuing letters patent under the great seal. The object of this is, perhaps, to avoid 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 difference in method is to bring any proposed Joint Stock Company, for which incorporation is sought, more directly under the scrutiny of the authorities, and to give to the Governor or Lieutenant-Governor in Council an opportunity of refusing incorporation, should it seem to him expedient so to do.

2. 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. The name should be as short as possible consistent with expressing the nature of the company.

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.

The use of the word "Royal" is prohibited by the English Statutes without a special license from the Home Office. The word "Limited" must form part of the name of a company formed under either the Dominion or Ontario Act.

3. 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 notice or petition, and no change in or extension of such objects can be made by the members of the company, however desirous they may be of doing so, except subject to 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 members may be held personally liable.

4. Head Office or Chief Place of Business.

The various Acts require that the notice should also state the place which is to be the chief place of business of the proposed company. There are several reasons for this. A knowledge of 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 head quarters or home of the company.

Where the Act of Incorporation provides that the head office may be changed from one place to another, the directors acting under a resolution of the shareholders to that effect can effectually make such change (*a*).

5. Residence of Company.

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; and when so recognized, it holds its property in subjection to the law of the country where the property lies, and not to the law of the country where the company resides.

6. Amount of Capital.

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 its basis of credit. It only forms such basis when it is all subscribed and actually paid in, and only then at the beginning of its career. After a company has been in

(*a*) Union Fire Insurance Company against O'Gara, 4 O. R. 359.

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 members cannot be looked to, where the capital is all paid up, the actual means in the hands of the company are all that the public have to rely upon. "If the company," says Thring, "intend to conduct a business dependent in a great degree on credit, the nominal capital should be considerably greater then 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*).

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

7. May be Reduced or Increased.

The company's nominal capital may be reduced or increased from time to time as circumstances appear to warrant. The steps necessary for these purposes are set out in the Acts.

8. 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 partnership.

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 its chief advantage.

9. Amount of Each Share.

"The amount of each share," say 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," says Thring, "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, either by the Canadian or Imperial Statutes, though formerly, under the latter, the shares could not be less than £10.

10. Only Petitioners Incorporated by Letters Patent.

The petition should be signed by all the subscribers for stock prior to the incorporation, as the shareholders at the date of the issue of the letters patent are those persons only who are named therein and to whom stock is allotted thereby; and it is these persons and others who may afterwards become shareholders who constitute the company. This was decided in Tilsonburg Agricultural Manufacturing Company against Goodrich, tried in the

Court of Queen's Bench, Toronto, in 1885. (*a*) In that case the defendant with others agreed to apply for a patent for a company for manufacturing purposes, under R. S. O. (1877), c. 150, and signed a stock list subscribing for certain shares and agreeing to pay therefor as provided by the Act and the by-laws of the company. Subsequently a petition purporting to be by thirteen of the subscribers, but omitting the defendant's name, was presented to the Lieutenant-Governor of Ontario for a patent incorporating the petitioners and "such others as might become shareholders in the company thereby created a body corporate," etc. The stock list, however, subscribed by the defendant appeared to have been filed in the office of the Provincial Secretary. The petitioners were accordingly incorporated, "and each and all such other person or persons as now is, or are, or shall at any time hereafter become a shareholder or shareholders in the said company under the provisions of the said Act," etc. The defendant did not subsequently to the incorporation subscribe for stock, but on the contrary repudiated his former subscription:—Held, that the defendant was not a stockholder, and was, therefore, not liable for calls on the shares which he purported to have subscribed for.

Also in Magog Textile and Print Co. against Price (*b*), and in *re* London Speaker Printing Co.—Pearces' Case (*c*).

11. Federal or Provincial Charter.

The Dominion Parliament has power to legislate on all matters that have to do with the general interests of all the Canadian people, for instance, the regulation of Trade and Commerce; the incorporation of Banks and the issue of Paper money; Savings Banks; Ferries, except those altogether within one province; Fisheries, Navigation and Shipping; Patents and Copyrights. If the business is one for which branch offices or agencies are only to be

(*a*) 8 O. R. 565 Q. B. D. (*b*) 14 S. C. R. 664.
(*c*) 16 A. R. 508.

established in the Province where the head office is, then application should be made to the Provincial authorities for incorporation. If the corporation propose to have agencies or offices in more than one Province, a charter should be obtained from the Dominion.

12. Commencement of Business.

A charter having been obtained and other preliminary matters settled, it is competent to the company to commence business forthwith. Under the Dominion Act half of the total amount of the capital stock must be *bona fide* subscribed before applying for a charter and 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 the first half being themselves most interested and best capable of judging of the propriety of the step. But under the English system, which makes no such provision, 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 under the English Act of 1862, and amending Acts, there is no restriction of this kind.

And it is now 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 Dominion Act the intention doubtless is, that the company may commence their transactions and call upon the shareholders to contribute, as soon after the issue of the letters patent as the directors may deem expedient, whether or not a single share has been subscribed for beyond the number necessary to obtain the charter. And if no business is entered upon within three years the charter will be held forfeited by nonuser.

CHAPTER III.

DIRECTORS.

1. Introductory.
2. Acceptance of Office by Directors.
3. Power to Fill Vacancies.
4. Power to Remove Directors.
5. Provisional.
6. Number of Board.
7. Remuneration of.
8. Qualification of.
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10. Acts of *de facto* Directors Valid.
11. Retirement of.
12. Election of.
13. Term of Office of.
14. Powers of.
15. Status of.
16. Right of, to see Accounts, etc.
17. Contracts between Directors and Company.
18. General Remarks Concerning Directors.

1. 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 deed of settlement, and not only such of them as choose to act.

2. Acceptance of Office by Directors.

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 regulations of the company. A director who becomes bankrupt, lunatic, etc., or ceases to attend to his duties does not thereby necessarily vacate his office.

3. Power to Fill Vacancies.

The power to fill up casual vacancies is frequently given to the remaining directors; in such a case they can fill up a vacancy although a general meeting of shareholders has been held since the vacancy occurred, but if the number of continuing directors is less than the minimum number requisite for the transaction of any business, they can do no business and therefore they cannot fill up the vacancy. The rules of the company may, however, allow the continuing directors, however few, to fill up a vacancy, although not to transact any other business until the vacancy is filled up.

4. Power to Remove Directors.

Power to remove directors is often expressly conferred on the shareholders. It has not yet been decided whether in case there is no such express power there is an implied power in the shareholders to remove a director from office by a resolution duly passed at a meeting properly convened for the purpose, but the better opinion seems to be that there is such a power. If, however, 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.

5. Provisional.

Until the first general meeting of the company, the persons named in the letters-patent, 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 had, with due regard to the delays and other formalities precedent to such meeting. No period is fixed by the Act within which such first meeting must be held and up to the time of such meeting the provisional directors have the same powers as directors elected by the shareholders.

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

6. 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. "Five," says Cox (*a*), "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 Joint Stock Companies are so rarely enabled to compete successfully with individuals. They want unity of purpose and promptitude in action," etc. And another reason pointed out by the same writer arises from the question of remunefation. "The directors," he says, "are entitled to liberal

(*a*) Cox Joint Stock Companies, p. 56.

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," etc. And other writers agree in the advisability of small boards. "It is better to appoint," says Healey (*b*), "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."

7. Remuneration of.

Directors, in the absence of agreement, cannot, from the nature of their position alone, lay claim to 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 regulations of the company may provide.

In the United States it is said that directors are not usually compensated for their services as such. And in a number of leading cases it has been held that the law does not imply a promise on the part of corporations to pay their directors for services as such. There must be a by-law or resolution of the board to compensate them for their services before they can recover. But 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 against 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

(*b*) Chadwyck-Healey Joint Stock Companies, p. 131.

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 against the Ontario Canning Co. *et al.*, an action tried at Hamilton in 1889, 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 services 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

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

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 (*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."

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

8. Qualification of.

The rule is that a person to act as director in a joint stock 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,

(*a*) 18 O. R. 41.
(*b*) Harvey Lewis' case, 26 L. T. N. S. 673.
(*c*) 18 W. R. 180.

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.

9. Disqualification of.

The Canadian Acts make no provision for the disqualification of directors while holding office, though it may be presumed 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.

If a director become bankrupt or insolvent he is disqualified, as the result of such bankruptcy would be to deprive him, *pro tempore* at least, of the shares on which he qualified. But in Phelps against 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 articles against a director voting "as a director in respect of any matter in which

(*a*) 10 A. and E. 113.

he is personally interested" prevent him from voting as a shareholder at a general meeting in respect of such matter.

10. Acts of *de facto* Directors valid.

Another point worthy of remark is that, with respect to third parties at least, 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.

11. Retirement of.

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

Has a director or not the right to retire at will during the pendancy of such period? The cases give no definite or decisive answer to this. A consideration of the authorities and cases lead to the conclusion that each case depends upon the circumstances connected with it.

That is to say, that if a director wished to retire from his office during the term thereof, and there were 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 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.

12. Election of.

That the directors shall be elected by the shareholders is in accordance with one of the fundamental principles of Joint Stock 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.

Not so the members of a Joint Stock Company, who, as members 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 the agents of the others, who are to bind them by their acts, and to whom is intrusted the conduct of the company's affairs.

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*).

3. The plaintiffs were a company incorporated under The Canada Joint Stock Companies' Act, 40 Vict. c. 43. By section 29, the directors were to be elected by the shareholders in general meeting assembled, at such times as the by-laws of the company should prescribe; and by section 30, in default of other express provisions therefor in the letters patent or by-laws, such election should take place yearly, upon notice; that at all general meetings each shareholder who had paid all calls should be entitled to vote on each share held by him; and that all questions should be determined by the majority of votes. By section 31, the failure to elect directors at the proper time should not dissolve the company; but such election should take place at any general meeting of the company duly called for the purpose, the retiring directors to continue in office until the election of their successors. By section 32, power is given to the directors to pass by-laws for, amongst other things, the time, etc., of the holding of the annual meeting of the company, the calling of meetings, regular and special, of the directors and of the company, the quorum at such meetings; but every such by-law, unless confirmed at a general meeting of the company, should only be in force until the next annual meeting thereof;

(*a*) Dickson against McMurray, 28 Chy. 533.
(*b*) Toronto Brewing and Malting Co. against Blake, 2 O. R. 175.

one-fourth in value of the shareholders could at all times call a special meeting for the transaction of such business as might be specified in the notice given therefor. By a by-law, passed by the directors, the last Tuesday in September was fixed as the date of the annual general meeting, and the quorum for such meeting was to consist of five members; but at a special meeting they were required in addition to represent one-third of the capital stock. In 1884 there was no election of directors at the appointed time, owing to the office where the meeting was to have been held therefor being locked up and the defendant refusing to attend the meeting or give up the books, etc.; and in October a special general meeting of the shareholders was held, called on notice, stating the object thereof, on a requisition by one-fourth in value of the shareholders, and directors were elected, who appointed a new secretary. At the meeting there were present three-fourths of the qualified vote and one-third of the subscribed capital, but considerably less than that amount of the nominal capital. In an action by the company against defendant for the non-delivery of the books, etc., to the new secretary, the defendant set up as a defence that he was still secretary, because, as he alleged, the directors who appointed the new secretary were not duly elected, and that there was not a quorum at the meeting to transact business:—Held, under the circumstances, there was authority to call the special general meeting for the election of directors; and that it was duly called by the proper number of shareholders:—Held, also, that the directors could by by-law determine the quorum and all other formal proceedings for the control and conduct of the meetings of the board and shareholders; that there was a proper quorum present at the meeting under the by-law; and if the by-law had required such one-third to be of the whole capital stock it would have been *ultra vires* as opposed to section 32. Per Rose, J., the words of section 31, "any general meeting of the company duly called for the purpose," properly describe a special meeting which may be

called as provided by section 32 :—Held, also, that on the evidence the defendant must be deemed to have unlawfully detained the books, etc., that there was an election of directors *de facto*, and a suit in the company's name; and an officer of the company could not be permitted to withold what belonged to the company. In any event the defence set up was not the proper way of testing the election of directors, which should have been by motion to stay or set aside the proceedings (*a*).

13. 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 English Act the system is a different one. There one third only of the directors retire at the end of the year, and are replaced by the election of others. This retiring third is determined for the first two elections, before the system of rotation is established, by ballot, in the same manner as their successors are chosen. Though the object of this system is very good, being simply to provide that a majority of the directors shall remain from one year to another, so that the management of the company shall not at any time be thrown entirely into the hands of new directors, in practice it is found that without this provision, except in very unusual cases [when indeed the English system would necessarily be found an inconvenience rather than otherwise], the result is the same.

14. Powers of.

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

(*a*) Austin Mining Co. against Gemmell, 10 O. R. 696 C. P. D.

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 or otherwise, to confirmation by a general meeting of 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.

15. Status of a Director.

The position of directors of a public company is that of agents of the company, and in order to ascertain the extent of their authority it is necessary to consider the general law defining the relations of principal and agent.

The rules then 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.

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

17. Contracts Between Directors and Company.

In the case of Beatty against 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*).

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*).

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 (*c*).

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 (*d*).

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 (*e*).

A director of a joint stock 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

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

(*b*) Christopher against Noxon, 4 O. R. 672.

(*c*) *Ib.*

(*d*) *Ib.*

(*e*) *Ib.*

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, was guilty of a breach of trust within R. S. C. c. 129, s. 83 (*a*).

18. General Remarks concerning Directors.

Can a man holding a pluralty 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 was asked a few days since by a shareholder, and doubtless, many others of the same class 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 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 became 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

(*a*) *Re* Iron Clay Brick Manufacturing Co., Turner Case, 10 O. R. 113.

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.

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 trusts ought of all men to be the most strictly held to their duty.*"

CHAPTER IV.

MEETINGS.

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4. Where Meetings may be Held.
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1. Introductory.

The stockholders of a corporation constitute the origin, existence and continuance of the corporation itself.

They elect its officers, control its general policy, and within the charter limits may prolong or dissolve its existence at their pleasure. All these vital powers of the stockholders 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 to the stockholders and the various incidents relative to a proper convening of the members of the corporation, are of great importance. They constitute the subject of this chapter.

2. Scope of the Subject—Notice.

The business which the stockholders of a corporation in meeting assembled have the power to transact is not extensive, but it is of great importance. They elect the directors, pass upon amendments to the charter, check any *ultra vires* acts, determine whether any increase of the capital stock shall be made, make the by-laws and dissolve or continue the corporation. These constitute the chief functions of a stockholders' meeting. They are extraordinary in their character, and although they are exercised at long intervals, are of vital importance.

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

3. Ordinary and Extraordinary.

The general meetings of a company may be divided into two kinds, viz.: ordinary and extraordinary. 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.

4. Where Meetings may be Held.

By the common law of England it appears to have been taken for granted that the general meetings of a corporation 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. It may be that in that country no case has arisen in which a corporation has pretended to hold a regular meeting of all its members beyond the limits of such jurisdiction. Even the Companies' Acts are silent on the subject,

saying merely that "subsequent general meetings [*i.e.*, meetings 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, it is not hard to conceive of Joint Stock Companies, the greater part of whose stock is held in the United States, for instance, or *vice versa*, and by reason of which, it might be considered at some time desirable to hold general meetings in that jurisdiction in which the majority of the shareholders were found.

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

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

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, *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 against The Manufacturing Company, (*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 Canadian Acts usually 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 regulations of the company itself to prescribe the exact place at which they shall be held.

5. Quorum.

By Article 37 of Schedule 1 of the Imperial Statute of 1862 the quorum is to be ascertained as follows: "If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five 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." Another useful rule, provided by the following Article, viz. 38. is "If within one hour from the time appointed for the meeting, a quorum is not present, the meeting if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same

(*a*) 22 Vt. 274.

time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*."

6. 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 Joint Stock Companies' regulations, or all Joint Stock 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 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 articles [or by-laws] of the company, 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.

7. Who may Vote.

A lunatic or idiot may according to the English articles already referred to, vote by his guardian or trustee. And so with minors. But as between the shareholder 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 one or more persons are entitled to a share or shares the member whose name stands first in the register of members as one of the holders of such shares, shall be entitled to vote in respect of the same. But *in re* Wedgewood Coal and Iron Co. (*a*) it was *held* that holders of debentures which pass from hand to

(*a*) 6 Ch. D. 627.

hand by delivery, must produce them at or before a meeting called to vote upon a reconstruction scheme, in order to be entitled to vote at such meeting.

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. And a person, though not present, may vote by proxy, according to the universal practice of Joint Stock 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.

8. The Majority of Votes Cast Shall Elect.

It is the well-settled rule in corporations 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 stockholders have, but only the majority of the votes cast.

The question who is entitled to vote upon a particular share of stock is, as a general rule, answered by a reference to the corporate transfer book.

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

9. Procedure at General Meetings.

The regulations generally state that the chairman [if any] of the board of directors is to take the chair at every general meeting, whether ordinary or extraordinary.

In certain events, the regulations commonly leave the selection of the chairman to the shareholders present thereat.

At the time appointed for the meeting, the person [if any] who is entitled according to the regulations to preside should at once take the chair. If there is no such person present, the members after the lapse of a proper interval, usually fixed by the regulations, 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.

The chairman, having taken the chair, will ascertain that a proper quorum of members 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 an extraordinary meeting. In order to ascertain that a quorum is present, it may be necessary to refer to the register of members and stock ledger, and accordingly they should be at hand for reference.

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

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 of the last general meeting; 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. 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.

After these preliminaries, the meeting will proceed to transact the business for which it was convened.

At an ordinary meeting the first step will be for the chairman to refer to the directors' report, which will probably be taken as read, and make a speech in relation thereto, concluding with a motion, "That the report and accounts be adopted." This having been seconded, the chairman will put the question to the meeting as follows: The question is, "That the report and accounts be adopted." This is the stage for discussion, and members will probably rise and speak in support of or in opposition to the motion. The chairman should name those who rise to address the meeting.

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 hold up one hand—30, and the contrary—10. I declare this motion carried" (or "negatived").

The regulations 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 favour 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 favour 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 in accordance with the regulations.

A poll may, if the regulations allow, either be taken at once or at some future day, and the regulations generally vest in the chairman the right to determine when it shall be taken.

Generally speaking it is more convenient, if the regulations allow, to take the poll at once, but there may be cases in which an adjournment is desirable, *e.g.*, where it will require many hours to take the poll.

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.

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.

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 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.

If the poll is to be by ballot it is usual to prepare ballot papers beforehand. These after being initialled on the back by the chairman or scrutineer, are handed to the members, 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.

10. Adjourned Meetings.

An adjourned meeting is but a continuation of the meeting which has 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 stockholders from knowing of it, the proceedings are invalid. Where the original meeting was duly called and convened, the stockholders are not entitled to any other notice of the adjourned meeting than that which is implied in the adjournment.

11. Stockholders Can Act Only at Corporate Meetings.

Stockholders 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 stockholders assume to bind the company, are invalid and void.

12. 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 stockholders' 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.

Possibly these differences of opinion may be reconciled by the principle of law that the acts of a board of directors may be validated by acquiescence, even though the board was summoned irregularly or proceeded irregularly.

Directors, of course, cannot act or vote by proxy.

A majority of the whole board of directors constitute a quorum. 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.

In the case of the Toronto Brewing and Malting Company against Blake (*a*) 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.

13. Proceedings of Directors.

The regulations generally provide that the directors may meet for the despatch of business, adjourn, and otherwise regulate their meeting as they think fit, and determine the quorum necessary for the transaction of business, and that until otherwise determined, a specific number (*e.g.*, three) shall form a quorum.

(*a*) 2 O. R. 175, p. 263.

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

As to the chairman:—

The regulations generally provide for the election of a chairman of the board of directors. And whether this is

provided or not, the directors usually appoint one. In some cases, a deputy-chairman is appointed, and in the absence of the chairman he will preside. 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 (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.

CHAPTER V.

BY-LAWS, BOOKS, AUDITORS, CONTRACTS, SEAL.

1. By-laws, Effect of.
2. Difference Between a Resolution and a By-law.
3. Method of Drafting a By-law.
4. Books to be Kept.
    1. Record of Letters Patent, etc.
    2. Register of Shareholders.
    3. Register of Directors.
    4. Register of Transfers.
    5. Stock Ledger.
    6. Minute Books.
    7. Mode of Entering Minutes.
5. Inspection of Books.
6. Auditing of.
7. Vouchers.
8. The Duties of an Auditor.
9. Method of Drafting, Signing and Sealing Corporate Deed or Contract.
10. Necessity of Seal.
11. Seal.
12. Corporate Instruments Made in Name of Officer, Enforceable Against Company.

1. By-laws, Effect of.

A joint stock company, as we have seen, has power to make by-laws within the terms of their 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 by-law is a permanent rule of action, in accordance with which the corporate affairs are to be conducted.

2. Difference Between a Resolution and a By-Law.

A by-law differs from a resolution 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 b applied on all future occasions.

3. Method of Drafting a By-law.

It is desirable that every by-law should have a preamble in addition to the enacting clause—as given in the table of by-laws herein.

4. 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 joint stock enterprises, 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 members individually towards the creditors of the enterprise is limited to the amount unpaid on their shares.

These causes together render the keeping of books by Joint Stock 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 are so obvious that these or similar ones are now found in almost every Joint Stock Companies' Act.

These books are:—1. A blank book in which a copy of the letters patent and of any supplementary letters patent, must be written.

2. *Register of Shareholders.*—The Register of Shareholders gives 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.

3. *Register of Directors.*—Gives names and addresses of the directors with dates of election and retirement.

4. *Register of Transfers.*—The Register of Transfers, as its name implies, gives particulars of the changes which take place in the ownership of shares.

5. *Stock Ledger.*—In the Stock Ledger is shown the aggregate number of shares held by each shareholder, with all other particulars.

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 shares and members is small these five books may conveniently 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.

It need hardly be said that under any system the usual cash book, journal and ledger are indispensable. 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.

6. *Minute Books*—Every company should cause minutes of all resolutions and proceedings at general meetings, and at meetings of its directors or 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 receivable as evidence in all legal proceedings.

7. *Mode of Entering Minutes.*—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 initialled by him, and the minutes are then signed.

Every resolution should be in writing and marked by the chairman or secretary, with the result of the vote, and be initialled by him. These resolutions should be carefully filed and preserved for future reference.

It is sometimes advisable to have separate Minute Books for general and board meetings. The former may fairly be open to the inspection of members, 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.

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 and the accounts annexed thereto be taken as read.

Upon the motion of the chairman, seconded by Mr. , it was resolved, after discussion, (or *nem. con.*, 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.

5. Inspection of Books.

"Such books shall be kept open during reasonable business hours of every day, except Sundays and holidays." According to this section now found in nearly all our Joint Stock Acts the company may itself decide the hours during which those entitled to do so may inspect the books specified therein, and take extracts therefrom, provided they be not limited to less than two hours per day.

In the United States the same general rule holds good, viz., that a stockholder in any Joint Stock corporation is entitled, during the usual hours of business, not only to inspect the books but to take extracts therefrom: nor can the directors by resolution exclude one of the members 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 making the demand is entitled to an inspection, in order to warrant him in suing for a refusal. In a recent case (*b*) it was held that the corporation was compellable by mandamus to allow an inspection by the stockholder's agent as well as by himself.

(*a*) 45 Ind. 170 Su. Ct. 1873.
(*b*) State v. Bienville Oil Works, 28 La. Ann. 204.

Auditing.

In a treatise for Joint Stock Companies, it is not inappropriate that something should be said, and a few hints given, on the important and too often inefficiently performed work of auditing.

To audit, in the case of a Joint Stock Company, is to thoroughly examine and report upon the accounts, both as to form and matter. The value of an audit rests solely upon the competence, honesty and independence of the individuals who make it.

If they are not thorough accountants, it is unreasonable to expect that they will be able to detect accidentally or wilfully false entries, or form an intelligent opinion of the work they have undertaken; hence a report under such circumstances is the very opposite of the security desired, and which an audit by competent men would afford to a company or corporation.

That auditors should be men of established character for probity it is unnecessary to point out, and that the reliance to be placed upon the work they perform is largely reckoned by their independence and their being uninfluenced by interested parties, is plain. We argue, therefore, that companies or corporations are equally bound to employ competent accountants who possess the moral qualities indicated, as auditors, as they are to employ only such to keep their books.

Auditors for Joint Stock Companies are appointed by the shareholders at the annual general meeting. The reason why the shareholders and not the directors should make the appointments is very plain. The officers of the company are largely controlled by the directors, and the audit being, so far as this connection goes, an examination of the faithfulness, to the shareholders, of both the officers and directors, it is necessary that the shareholders themselves should appoint the auditors. The duty of auditors should be laid down in the company's by-laws (*a*). This

(*a*) See By-Laws.

by-law may be as follows: "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 the books and accounts of the company, and any and all documents having reference to the business of the company; they shall be supplied with a copy of the balance sheet and abstract of the company's affairs, and it shall be their duty to examine the same and make a report thereon to the Board of Directors on the last Monday in January, accompanied by any recommendations or suggestions they may deem proper."

The auditors, upon being duly appointed, should at once begin their duties, as a long delayed audit is far less effective than a prompt one.

The proper manner of conducting an audit is to begin at the books of original entry, at the same time using auxiliary books and examining vouchers. The Cash Book might be gone through for the first month and compared with the vouchers: then the Day Book and Journal entries for the same time should be compared, those of the Day Book being verified [as well as those in the Cash Book] from vouchers, documents, auxiliary books, drafts, notes, etc., etc., and proceed in this way from month to month with the books of original entry, checking each transaction thus √ and as the work progresses making such memoranda, on which to base the report, as may be deemed proper. Next the Ledger entries should be compared and carefully checked with the books from which they are brought and all additions verified. The Trial Balance should be then examined, and after that the Stock Ledger, the Transfer Book, the stubs in the Instalment Scrip and Stock Certificate Books, and any other auxiliary books, or forms not already gone through in connection with the Cash Book and Journal. Finally the balance sheet showing the company's losses and gains and its assets and liabilities should be carefully examined and a report prepared, for submission to the directors.

7. Vouchers.

To be acceptable to an auditor a voucher should not only be an acknowledgment of money paid, but there should be the proper authority for the payment, which is usually the vote of the directors. 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.

8. The Duties of an Auditor.

Public attention has of late been sharply drawn to the duties of persons entrusted with the care and management of the funds of shareholders, and we believe with beneficial effect. But of equal and weighty responsibility are the duties of official auditors. In England the extent of that responsibility has quite recently been discussed, and as one result the auditor of a building society has been made a defendant and held liable, in an action by a liquidator, for breach of duty. The position in law of an auditor is that of agent of the shareholders of a company, or of the beneficiaries of a trust. It is his duty, not merely to compare vouchers with alleged payments and certify that the books are correct, but to scrutinize and investigate every account, receipt and payment on behalf of his clients. He stands between the owners of the money and the disbursers of it, and he should, with careful thoroughness, examine as well as audit the manner and the purposes for which the owners' moneys have been paid and disbursed. He is also bound to investigate and satisfy himself of the actual and tangible existence of the securities which the directors and officers

hold for the shareholders or beneficiaries; and to require satisfactory evidence that they are actually of the value assigned to them in the statement of assets set forth in the balance sheet. An auditor who desires to do his duty efficiently, and according to law, must always remember that his functions are quasi-judicial; that he is invested, on behalf of shareholders and beneficiaries, with a portion of the trusts and responsibilities which are reposed in judges who have to decide questions of fact on the truth of the evidence produced before them.

In the English case referred to, cited in the law reports as the Leeds Estate, Building and Investment Co. against Shepherd (*a*), 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 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."

(*a*) 36 Chan. D. 787.

The case is one which is full of instruction and warning to persons whose duty it is to audit municipal as well as company and banking accounts, and we trust our reference to it will draw the attention of all concerned more sharply and pointedly to the functions and duty of auditors.

9. Method of Drafting, Signing and Sealing Corporate Deed or Contract.

A deed or contract of a corporation should be drawn so that the name of the corporation 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 corporation should be signed to the instrument, and then should follow the word "by" and the name of the officer or person who makes the signature.

10. 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. 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.

11. 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. 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.

If an instrument or contract appears to be signed by the proper officer and the corporate seal appears to be affixed, 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 corporation, 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.

12. Corporate Instruments Made Out 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.

CHAPTER VI.

STOCK, CALLS, ETC.

1. Definition of Capital Stock; of Corporator, Subscriber, Shareholder and Stockholder; of Share of Stock; of Debenture.
2. Price of Shares.
3. Classes of Stock, Common and Preferred; Deferred; Over-issued; Watered or Fictitious.
4. Methods of Issuing Watered or Fictitious Stock.
    1. Opinions as to Watered Stock.
    2. Is Fictitious Stock Void.
    3. Expressly Forbidden by Quebec Act.
    4. Stockholders May Complain of Issue of.
5. Certificate of Stock.
6. Company Should Require Surrender of the Outstanding Certificate.
7. Alleged Loss of the Old Certificate.
8. Allotment of Stock.
9. Methods of Issuing Stock.
10. Preferential Stock.
11. Dominion Act Requires Shares to be Paid in Cash, unless Contract Registered.
12. Paid up Shares.
13. Right of Transfer of Shares.
14. Precautions Respecting Transfers of Shares.
15. Transferrer Must have paid Calls.
16. Registry of Transfer, how made.
17. Definitions of Pledge, Mortgage and Lien.
18. Pledge of Stock how made.
19. Liability of Members on Stock.
20. How Liability may be Incurred.
21. How Repudiated.
22. Miscellaneous Cases of Liability or Non-liability.
23. The Liability of an Agent as Transferrer or Transferee.
24. Liability how Terminated: by Payment in full; by Surrender of Shares; by *bona fide* Sale.
25. The Various Remedies for Non-payment of Shares.
26. Forfeiture of Shares.
27. Notice in Case of.
28. Tender by Stockholder before Forfeiture.
29. Improper Cancellation of Stock.
30. Calls.
    1. Meaning of Term.
    2. What are.
    3. How made.
    4. Call is Generally Necessary.
    5. When a call is Unnecessary.
    6. Notice of call.
    7. Interest on Arrears.
    8. Calls must be Impartial and Uniform.

1. DEFINITION OF CAPITAL STOCK; OF CORPORATOR, SUBSCRIBER, SHAREHOLDER AND STOCKHOLDER; OF SHARE OF STOCK; OF DEBENTURE.

Capital Stock is the sum fixed by the charter or articles of incorporation as the amount paid in or to be paid in by the stockholders for the prosecution of the business of the corporation and for the benefit of corporate creditors.

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 on the original issue of such stock. 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 corporation and has been accepted as a stockholder by the corporation.

A Share of stock may be defined as a right which its owner has in the management, profits and ultimate assets of the corporation. It is said that "the right which a shareholder in a corporation has, by reason of his ownership of shares, is a right to participate according to the amount of his stock in the surplus profits of the corporation on a division, and ultimately on its dissolution, in the assets remaining after payment of debts." It is said that the rights which a share of stock secures to its owner are the rights "to meet at stockholders' meetings, to participate in the profits of the business, and to require that the corporate property shall not be diverted from the original purpose."

A Debenture is a written acknowledgment of debt, and is generally made by an issue of a certain number of Bonds 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 for the payment of the interest. The debentures 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 debenture holders in case default is made by the corporation in the payment of the debenture or of the interest thereon.

The Debentures are payable to bearer but provision is generally made for registration whereby the negotiability of the debenture may be restricted at the wish of the holder thereof.

2. Price of Shares.

Whether a company's shares are being sold at par, that is the full 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 always be at par; subsequent issues may be offered at a premium if the old stock is above par in the market. After the stock authorised 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, the 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 all been 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 or a bank, the stock will be quoted on the Stock Exchange, and you will be guided in your purchase by the latest quotations,

3. Classes of Stock.

The capital stock of a corporation may be either common or preferred. By Common Stock is meant that stock which entitles the owners of it to a *pro rata* division of pro-

fits, 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. By Preferred Stock is meant stock which entitles its owners to dividends out of the net profits before or in preference to the holders of the common stock. Common Stock entitles the owner to a *pro rata* share of dividends equally with all other holders of the stock except preferred stockholders; while Preferred stock entitles the owner to a priority in dividends.

By Deferred Stock or *bonds* is meant 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.

By Over-issued or Spurious Stock is meant stock issued in excess of the full amount of capital stock authorised by the charter of the corporation. Such stock is void even though issued in good faith.

By Watered or Fictitious Stock, is meant 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 any amount less than the whole face value of the stock has not 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 in to 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 corporation, certain shareholders or classes of shareholders, or the public.

4. Methods of Issuing Watered or Fictitious Stock.

There are the three different ways in which watered stock may be and is issued.

First: By discount in cash. Second: By taking property at an over valuation. 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 corporation 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 circumstances fraudulent.

1. 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 stockholders; 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 stock under an agreement that the full par value shall not be paid, is not necessarily a fraudulent transaction, but as between the parties thereto is a legal and valid agreement, and violates no principle of public policy.

2. Is fictitious 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.

3. While the Dominion and Ontario Acts declare that "No by-law for the allotment or sale of stock at any greater discount or at any less premium than what has been previously authorized at a general meeting, * * shall be valid or acted upon until the same has been confirmed at a general meeting," the Quebec Act expressly forbids "the practice, commonly known as watering of stock," and provides "that all stock so issued shall be null and void." It 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."

4. Stockholders, 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 stockholders' rights and remedies herein, in their scope and details are similar to the rights and remedies of stockholders in other cases of *ultra vires* acts or fraud to the injury of the company.

5. Certificate of Stock.

A certificate of stock is from one point of view a mere muniment of title, like a title deed. It is not the stock itself, but evidence of the ownership of the stock; 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 stock, but merely written evidence of the ownership of shares.

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. 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 corporation who is a shareholder, 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 stockholder.

A certificate of stock may be the subject of a legacy, a contract of sale, a pledge, or a gift. In New York making out and mailing the certificates has been held to constitute a due issuing thereof. And in Maryland, the stub of a book from which certificates have been detached is evidence of their regular issue.

6. Company Should Require a Surrender of the Outstanding Certificate.

If a company permits a registry of a transfer of stock, and issues new certificates to the transferrer without requiring a surrender of the old certificate, it assumes a dangerous 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 corporation liable for allowing a registry of transfer to another without requiring a delivery of the certificates. It is negligence and a breach of duty on the 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 purcha 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.

7. Alleged Loss of the Old Certificate.

According to the rule of nearly all the States a corporation 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 corporation a sufficient bond of idemnity 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.

8. Allotment of Stock.

A common method (and, indeed, the almost universal method in this country) of "taking shares" is by subscription of the company's stock-book, which, like the subscription of the memorandum of association under the English Act, of 1862, 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 so many shares which however, must be accepted before the applicant is bound. And this acceptance is not satisfied by the mere entry of the applicants 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 principles which govern ordinary contracts.

9. Methods of Issuing Stock.

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, labor or construction work. The issue of stock for labor, property, contract 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. If the property is taken at a valuation made without fraud, the payment is as effectual and valid as though made in cash to the same amount.

Performance of contract of payment in property. Subscriptions payable in property are not subject to calls, and a demand for the property must be made by the corporation. Upon failure of the subscriber to furnish the property, or upon insolvency of the corporation, 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.

Third method of issue: By stock dividend. The third method of issuing stock is by a 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 can never increase the capital stock beyond the amount limited by legislative enactment. In England it has been a question of doubt whether stockholders can be compelled to accept a dividend of stock.

10. Preferential Stock.

The various Joint Stock Acts give companies power to issue preferential stock and 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 17a 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 bonds so desire, the company binds itself to take the stock back during the 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*)

11. Dominion Act Requires Shares to be Paid in Cash.

By section 83 of the Dominion Act it is provided that all shares shall be held to be payable in cash, "unless otherwise determined by a contract duly made in writing, and filed with the Secretary of State at or before the issue of such shares." This provision, which is not found in the Act of 1865, nor in the Quebec Act, nor in the Ontario Act, is copied apparently from the Imperial Act of 1867, and has the effect of closing one avenue to fraud on the part of promoters and directors of companies incorporated thereunder. Under this section, it is no longer permissible to accept shares in a company in order to get rid of a property acquired for the purpose of making a large profit at the expense of the company, or in order to secure the custom of the company, on the understanding that they are to be paid for in goods as wanted. At least it is only permissible

(*a*) Long against Guelph Lumber Co., 31 C. P. 129., C. P. D.

to do so by a regular formal contract registered with the Secretary of State, in order that any one who may be interested may inquire into the nature and terms of such contract, and govern themselves accordingly. The object of the provision broadly stated is, to avoid bogus allotments, or, to speak more accurately, to put it out of the power of persons accepting such allotments, to avoid liability by pleading an agreement between themselves and the directors, that the shares so allotted were to be paid for otherwise, than in cash. On the other hand, it would necessarily be considered too great a restriction of the company's actions and transactions to prohibit that which might be for the benefit of all concerned, and to take away from it the right which exists between individuals of making any agreement consistent with public policy and good morals. Thus, it might be for the interest of all parties that shares should be allotted to an individual or a firm in consideration that they should be paid for in a certain manufacturing material, for instance, at a certain rate, to be delivered from time to time as required by the company.

This was the agreement in several cases recently reported and which, though regarded as perfectly right and proper as between the company and the parties, was held not to relieve the latter on a winding up, from liability in cash to the creditors for the total amount unpaid on their shares.

12. Paid Up Shares.

But where no consideration passes to the company, and the shares allotted purport to be paid up shares, there is of course nothing to set off, and there being no contract registered, the allottee will be held liable on them. Thus in a recent case, two persons in July, 1866, 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 in 1867, 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 valuation 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 registered 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, 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 against 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 alloted, 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,

(*a*) 1. Su. Ct. Can. 479.

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 also 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." 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 in the ordinary course of business, the burden of proving that he had notice will be on the person urging it against him.

13. Right of Transfer of Shares.

The right of transferring one's 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 Imperial Act, 1862, leaves the matter entirely in the hands of the company, merely saying, that the shares may be transferred "in manner provided by the regulations of the company." The words "in manner," however, may be presumed to refer to the form of transfer. But whatever it be, a form of some kind or other is recommended to be signed by the parties, particularly by the purchaser.

(*b*) L. R. 10. Ch. 614.

14. 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 evident moreover 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. For although no such liability is attached to the directors under the Imperial Statutes, the question has frequently arisen as against the transferrer. The result of the decisions under those Statutes 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 transferrer still held liable.

In *in re* the European Arbitration, (a leading case) it was held that if the transferrer, without having made any misrepresentation, knew in fact that his proposed transferee

was not a proper and solvent person, then the transfer would be set aside and the transferrer 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."

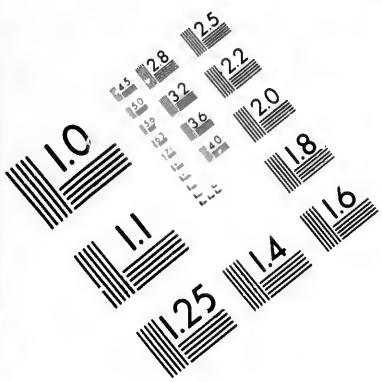
15. Transferrer Must Have Paid Calls.

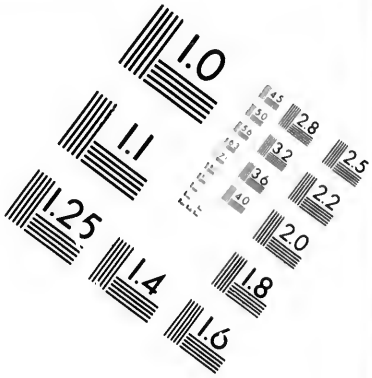
Under Canadian Acts every transfer made of shares in a company formed under them, while calls thereon remain unpaid, is absolutely without effect. The effect of this rule must be to avoid a good deal of doubt and difficulty as to the validity of such a transfer, and also to avoid temptation on the part of the directors to register transfers in order to avoid payment of calls which have been made. But as doubt may arise thereunder, as to when a call is made, or is payable, it may be of use to refer to some of the decisions which have been rendered on this point. In Dawe's case, (*b*) it was held that a call is owing from the day on which it is made, although it be payable on a subsequent day. And by Art. 5 of Schedule 1 attached to English Act of 1862, and also by sec. 53 of the Dominion Act, "A call shall be deemed to have been made from the time when the resolution of the directors authorizing such call was passed."

16. Registry of Transfer, How Made.

A registry of transfer is made by surrendering an old certificate of stock to the corporation, making an entry of

(*a*) Buckley, 3rd Ed. p. 20-26; and Healey, p. 54.
(*b*) *In re* China Steamship Co., 38 L. J. 512





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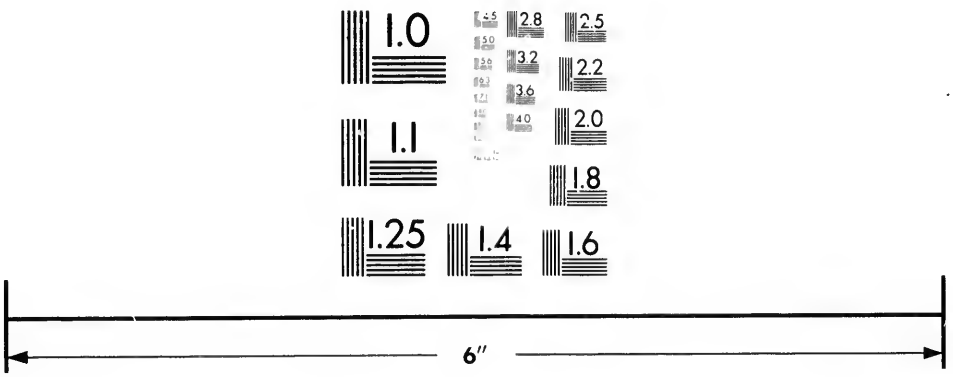

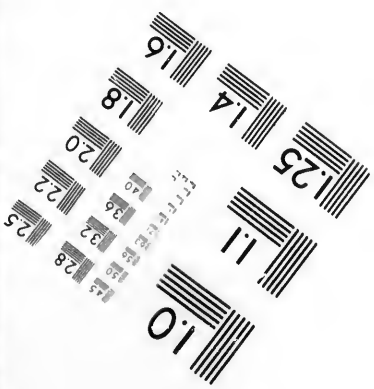

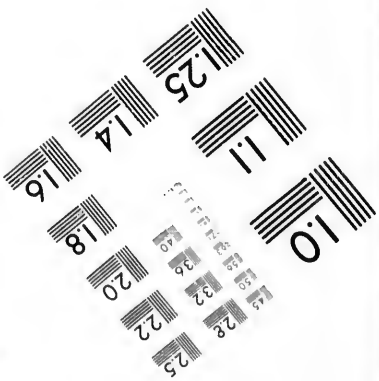

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the transfer on the corporate registry, and taking from the corporation a new certificate issued in the name of the transferee. The entry is generally made by a corporate officer, but he may insist on its being made by the person applying for transfer. The object of obtaining the registry is to obtain a right to vote, to receive dividends, and various other incidental stockholders' 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 corporation 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 corporation may interplead, provided there is a reasonable legal doubt as to who is entitled to the stock. If the corporation 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 Members against the names of the transferrers. They should be retained by the company as evidence of the transaction, and of the transferee having undertaken to be bound by the rules 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 transferrer, but of course the transferee will act on his own behalf.

17. 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 possession 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.

18. How a Pledge of Stock Arises or 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.

19. Liability of Members on Stock.

Under the Canadian Acts the principle of liability "limited by shares" has been adopted purely and simply, 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 members 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 thereof for the affairs of the company.

Neither, the directors nor all the other stockholders combined, in corporate meeting assembled or otherwise, can compel a dissenting stockholder to pay any more money into the corporation or subject him to further liability on his stock.

He is, as far at least as the outside world is concerned, as though he was a perfect stranger to it. A member 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 exigible, subject only to the formality on the part of the company to make what are known as "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 realised 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.

20. How Liability May be Incurred.

This liability may be incurred in several ways:

By subscription of the share list before incorporation, provided the subscriber has been made a corporator according to the terms of his subscription.

By subscription or allotment subsequent to incorporation.

By purchase.

21. How 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.

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 at the best advantage he can. And even though the company may have done acts amounting to, or rather which would authorize a forfeiture of its charter under the Act, or under its special Act, if created by special Act, without first taking proceedings to have such forfeiture pronounced.

But suppose the company had forfeited its charter by its acts, and the forfeiture had been pronounced, would that relieve the shareholder, even though a non-consenting member to the acts in question, from his liability? It does not appear that that could be, either. Indeed, such a pretension would be too absurd to be entertained for a moment. The liability of a shareholder for the balance unpaid on his shares is due really to the creditors of the company. It is a liability to contribute to the assets of the company, or, in other words, to the security which the creditors have for their claims. The shareholder is a guarantor of the undertaking of the company to the amount unpaid on his shares. And if, in consequence of irregularities on a part of a majority of the company, or rather of a majority of the members present at any regular meeting, he could repudiate his liability, then all those who did not consent to such irregularities might do so, and the creditors would find a great portion—perhaps the greatest portion—of their security suddenly wiped out. So that the most a plea of forfeiture could effect would be to defeat the right of the company to such action, (which it would undoubtedly do if the forfeiture had been pronounced) and to postpone the obligation to pay until the rights of the creditors could be enforced in a more regular manner.

22. Miscellaneous Cases of Liability or Non-liability.

It has been held, on grounds of public policy, that although a corporation is advertised as having a capital stock of a fixed amount, the shareholders and directors are not liable personally, even though subscriptions have not been taken to that amount. They are not liable either for the untaken stock, or on the ground of false representations, since the capital stock is understood to represent what the corporation hopes to obtain in subscriptions.

23. The Liability of an Agent as Transferrer 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 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 stockholder on the books of the corporation, he is, as between himself and creditors of the corporation a shareholder.

24. 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 regulations 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 a 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.

The right or power of a company to accept a surrender of its own shares is the same as a 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 individuals. 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, 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 upon the books of the company as a stockholder, 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 stockholder.

25. 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 corporation 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 corporation may sue on the subscription, obtain judgment, and then proceed to sell the stock under an execution levied to collect the judgment. Third, the corporation 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 stockholder's stock, that is, the taking of his stock by the corporation 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.

In addition to the remedy of an action at law to compel payment of a subscription for stock, there frequently is given to the corporation the right to sell the subscriber's stock for non-payment of his subscription and apply the proceeds to the payment of that subscription. This is what is generally known as a forfeiture of the stock.

26. Forfeiture of Shares.

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.

27. Notice in Case of Forfeiture.

A notice to the delinquent subscriber that his shares will be forfeited at a day named is generally requisite to effect a forfeiture (*a*). 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

(*a*) See form, *infra*.

the notice and the forfeiture, must all be strictly complied 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. 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.

28. Tender, by Stockholder, 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 corporation at any time before the sale actually takes place, the forfeiture is not valid. This rule is based on justice, and, while protecting the corporation and the public, it relieves the stockholder from the hardship of a harsh and summary remedy.

29. Improper Cancellation of Stock.

In Fuches against Hamilton Tribune Printing and Publishing Co. (*a*).

One C. subscribed for 160 shares in the H. company the subscription list being headed: "We subscribe for and agree . . ke 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

(*a*) Copp's Case, 10 O. R. 497

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 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 the 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.

30. Calls.

1. *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.

2. *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 companies, 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.

3. *How made*—A call is made upon resolution of the directors. 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.

4. *Call 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 corporation. A contract of subscription, unlike other contracts to pay money, is a promise to pay; but, by implication of law, the payment 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.

5. *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.

6. *Notice of call*—The length of notice required to be given of a call is generally provided for by the rules 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.

Where the charter of a company provided that one month's notice of calls "shall be given" it was held that sending such notice by post was not a compliance with this provision (*a*).

7. *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 of six per cent. per annum from the day appointed for payment.

8. *Calls must be impartial and uniform*—A call cannot be made so as to affect a part only of the subscribers. 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.

(*a*) Ross against Machar, 8 O. R. 418.

CHAPTER VII.

DIVIDENDS.

1. Regulations Respecting.
2. Nature of.
3. Cannot be Enforced Until Declared.
4. Stock Dividends.
5. Discretion of Directors as to Declaring Dividends.
6. To Whom the Corporation is to Pay the Dividends.
7. To Whom the Dividend Belongs.
8. Dividends Must be Equal and Without Preference.
9. When Declared is a Debt Due Absolutely to the Shareholders.
10. Right of Company to Apply Dividends to the Payments of Debts Due to it by the Shareholder.

1. Regulations Respecting Dividends.

The English Act leaves the question of dividends entirely to the regulations of the company. "The right," says Thring, "of a shareholder to dividends is, of course, governed by the regulations of the company." It is so in effect by all Canadian Acts; 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.

2. Nature Of.

The term "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 there 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.

The guarantee of a dividend by a corporation means nothing more than a pledge upon the funds applicable to the purposes of a dividend; and if in any case it appear that the dividend has not been earned, the holders of stock upon which a dividend is guaranteed cannot recover in a suit to enforce payment of such dividend. 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. 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 when paid to them until the company is wound up.

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

(*a*) Buckley on the Companies Acts, p. 414.

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 considered to have been paid out of profits, although the company had actually to borrow money to pay it (*a*).

3. Dividend Cannot be Enforced Till 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.

4. Stock Dividends.

A stock dividend, as the name imports, is a dividend of the stock of the corporation. 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 corporation. Corporations frequently

(*a*) L. R. 4. Ch 475.

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. In this country these dividends are frequently made and are constantly sustained by the courts. The shareholders, having voted to declare such a dividend, may, at any time before the certificates are issued, reconsider the matter and revoke the dividend.

Preferred shareholders are entitled to share equally with the common shareholders in the distribution of stock by a stock dividend.

5. Discretion of the 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 develope the business, or for the payment of probable future indebtness, though it is not yet due. The free exercise of their discretion cannot be interfered with by the contracts of promoters or orignal incorporators as to the disposition of corporate profits.

Nevertheless the discretion of the directors in the matter of declaring or refusing to declare a dividend is not absolute. The courts exercise a supervisory power in this matter, and where there is a clear abuse of power in refusing to declare the dividend, a court of equity will, at the instance of any shareholder, compel the proper authorities

to declare and pay the dividend. Laches on the part of the shareholders in failing to commence their suit to compel the payment of a dividend until the corporation becomes insolvent is fatal. And the court will also consider that the aggrieved shareholders may, if a majority, refuse to re-elect the directors at the next election, or may sell their shares.

6. To Whom the Corporation is to Pay the Dividend.

The question as to whom a dividend shall be paid to after it has been regularly declared is one which sometimes involves the corporation 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 corporation may pay the dividend to the person in whose name the stock stands registered upon the corporate stock-book. It may do so without inquiring whether he has transferred the stock, and without requiring the production of the certificate.

Moreover, it is a well-settled rule that the corporation is protected in paying dividends to a recorded shareholder, although he may have transferred his shares. But after notice of a transfer the corporation 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 corporation. The heirs of a stockholder 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 corporation 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 corporation, 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.

Even though the corporation closes its transfer-book several days before a dividend is declared, nevertheless those are entitled to the dividend who apply for registry on or before the day of the declaration of the dividend.

7. 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 transferrer. 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.

8. DIVIDENDS MUST BE EQUAL AND WITHOUT PREFERENCE.

Dividends among stockholders of the same class must be always equal and without preference. If the company has issued preferred stock, the holders thereof constititute 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 stockholders 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 stockholders of a company. After paying a dividend to a part of the shareholders the corporation 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.

9. A DIVIDEND WHEN DECLARED IS A DEBT DUE ABSOLUTELY TO THE SHAREHOLDER.

When a dividend out of the earnings of the company has been regularly declared and is due it becomes immediately the individual property of the shareholder.

10. RIGHT OF THE CORPORATION TO APPLY DIVIDENDS TO THE PAYMENT OF DEBTS DUE TO IT BY THE SHAREHOLDER.

It is well settled that if, at the time a dividend becomes payable, the stockholder owes the corporation any debt, the dividend due to that shareholder may be applied in liquidation of the indebtedness; and if the corporation 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 so far as dividends are concerned; and it is doubtful whether it could be upheld where the registered stockholder has sold and transferred his certificate of stock before the dividend is declared.

CHAPTER VIII.

THE STOCKHOLDERS RELATION TOWARDS THE CORPORATION AND HIS LIABILITY TO CORPORATE CREDITORS UPON UNPAID SUBSCRIPTIONS.

1. Relation of Stockholders Towards the Corporation.
2. The Expulsion of Stockholders.
3. Unpaid Subscriptions a Trust Fund for the Benefit of Creditors.
4. Unpaid Subscriptions can be reached only after Judgment Against the Company, and Execution returned Unsatisfied.

1. Relation of Stockholders Towards the Corporation.

A corporation may contract with its stockholders to the same extent and in the same manner that it may with any other persons.

A stockholder, as a creditor of the corporation, may obtain security for his debt in exclusion of other creditors.

A stockholder has no legal title to the property or profits of the corporation until a dividend is declared, or a division made on the dissolution of the corporation. He may sue the corporation or be sued by it. Moreover, he has a direct interest in the corporation, and at times may take the part of the corporation in prosecuting or defending its suits.

2. The Expulsion of Stockholders.

The law forbids the directors or stockholders of a corporation having a capital stock from depriving a stockholder of his rights as such stockholder. He certainly

cannot be deprived of his right to dividends equally with other stockholders. He cannot be deprived of his right to vote. And it is clear that his various rights as a stockholder cannot be taken from him by any or all of the other stockholders. In this respect a corporation having a capital stock is clearly different from a corporation 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 stockholder by expelling him from the corporation.

3. 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 corporation is enabled to act and transact 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 to protect corporate creditors, and in this country 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 stockholders 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.

4. Can be Reached Only After Judgment Against the Company and Execution Returned Unsatisfied.

Although it may be considered settled law, that unpaid subscriptions to the capital stock of companies constitute a trust fund for the benefit of corporate creditors, yet such 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 stockholders; 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 creditors's primary resource, even where the liability of the individual shareholder is declared to be primary, like that of an original contractor or partner. Where, however, the company has been adjudged a bankrupt, and a dissolution has in this way been brought about, the remedy against the company need not first be exhausted.

CHAPTER IX.

FRAUDS OF DIRECTORS, PROMOTERS, ETC.

1. CLASSES OF STOCKHOLDERS' WRONGS.
2. DIRECTOR OR OTHER CORPORATE OFFICER INTERESTED IN CONSTRUCTION COMPANY AND SECRET GIFTS TO.
3. FRAUDS BY PROMOTERS ON THE CORPORATION.
4. PURCHASES BY DIRECTORS FROM THE CORPORATION, AND PURCHASES AT FORECLOSURE SALES.
5. LOANS BY THE DIRECTORS TO THE CORPORATION, MORTGAGES BY THE CORPORATION TO DIRECTORS, AND THE RIGHT OF A CORPORATION—SOLVENT OR INSOLVENT—TO GIVE A MORTGAGE OR ASSIGNMENT OF ITS PROPERTY TO A DIRECTOR IN ORDER TO PREFER THE PAYMENT OF HIS DEBT.
6. FRAUDS BY A MAJORITY OF THE STOCKHOLDERS UPON THE MINORITY.
7. DIRECTORS MUST USE ORDINARY CARE AND DILIGENCE IN THE MANAGEMENT OF THE CORPORATION AND THE TRANSACTION OF ITS BUSINESS.

1. CLASSES OF STOCKHOLDERS WRONGS.

Stockholders' wrongs, arising from a breach of trust by directors, a majority of the stockholders 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 grievances—that of internal dissensions in the corporation and dissatisfaction with its policy and acts. These, however, are *intra vires* of the directors or majority of the stockholders. The law gives no remedy for such dissensions, since the stockholder 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 corporation.

2. Director or Other Corporate Officer Interested in Construction Company and Secret Gifts to.

The law is well settled that a director cannot become a contractor with the corporation, nor can he have any personal or pecuniary interest in a contract between a third person and the company of which he is a director. 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 corporation, and that the corporation 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 corporation through the director's influence, the latter may be compelled to pay over the commission to the corporation.

3. Frauds by Promoters on the Corporation.

A promoter is a person who brings about the incorporation and organisation of a corporation.

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 corporation itself.

A promoter is considered in law as occupying a fiduciary relation towards the corporation. He is an agent of the corporation, 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 corporation. 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 and impartial judges as to whether the purchase ought or ought not to be made.

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 corporation. 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 corporation and stockholders.

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.

4. Purchases by Directors from the Corporation and Purchases at foreclosure sales.

One of the most frequent frauds perpetrated upon a corporation and its stockholders is where one or more of the directors purchase property from the corporation 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 corporation is voidable at the option of the corporation, 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 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.

5. Loans by Directors to the Corporation; Mortgages by the Corporation to the Directors, and the Right of an Insolvent Corporation to give a Mortgage or Assignment of its Property to a Director in order to Prefer the Payment of his Debt.

There is no question that a corporation, while solvent, may borrow money of 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 corporation 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 corporation cannot pay a debt due to a director in preference to debts due others, either by turning out property to him or by giving him a mortgage on corporate assets.

6. Frauds by a Majority of the Stockholders upon the Minority.

In addition to frauds arising by the illegal purchase of the corporate property by a majority of the stockholders 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 corporation as regards the minority, and in this respect the majority stand in much the same attitude towards the minority that the directors sustain towards all the stockholders. Thus, where the majority are interested in another corporation, and the two corporations have contracts between them, it is fraudulent for that majority to manage the affairs of the first corporation for the benefit of the second. A court of equity will intervene and protect the minority upon an application by the latter.

7. Directors must use Ordinary Care and Diligence in the Management of the Corporation and the Transaction of its Business.

The directors of a corporation are not guarantors that no mistakes will be made in the management of the corporate business, nor do they insure the corporation 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 generally serve without pay, and usually by reason of their own interest in the stock of the company are directly interested in the welfare of the corporation. 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.

CHAPTER X.

CONVERSION OF BUSINESS CONCERNS INTO JOINT STOCK COMPANIES.

1. Inducements to Conversion.
2. Examples of Cases of Conversion.
3. Preliminary Steps Towards Conversion.

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 Joint Stock 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.

1. Inducements to Conversion.

Before describing the mode of conversion we shall proceed to point out some of the inducements which commonly lead to such conversions.

Limited Liability.—There can be no doubt that the great inducement to conversion is the power which the Acts give to a person or to a firm, converting his or their business into a company, of trading with limited liability.

It will be borne in mind that, at common law, a person who goes into business, whether on his own account or as partner in a firm becomes personally liable for all the debts incurred in the business. He is liable even for the fraud, negligence, or other wrongful act of his partner or clerk in connection with the business. "If," says the law, "you

want to trade you must risk all you have." The law will not allow such a person to fix a limit to his liability. For example—

(*a*) Suppose a man to have $20,000 invested in his business and $5,000 otherwise invested. He desires to limit his liability to the $20,000, so that if the business fails the $5,000 will not be liable to be taken to satisfy his business creditors, the law will not allow such a reservation.

(*b*) Suppose a man with a fortune of $50,000 be a partner in a concern in which he has invested $5,000. He desires to limit his liability to the $5,000. He cannot. If the firm fails, the whole of his fortune may be swept away to pay the creditors, even though the failure may have been caused by the dishonesty or imprudence of his partners, or of some person in the employment of the firm.

(*c*) Suppose A., B., and C. to enter into partnership upon an agreement that each shall contribute by way of capital $2,000, viz., $1,000 down and $1,000 when wanted, and that the liability of each to creditors shall be limited to the amount so agreed to be contributed. This attempt to limit their liability is void as to outsiders; and if debts are incurred, each partner will be liable "to his last dollar and his last acre" to pay the creditors in full.

But the rigor of the common law has been relaxed by the legislature, which has enabled persons at a trifling expense, to escape from the burden of unlimited liability. They have merely to convert their business into a limited company, under the Joint Stock Companies' Acts, and in exercise of the power given by those Acts, they can place such limit on their liability as the dictates of prudence may suggest.

These limited companies, in the words of the late Master of the Rolls (Sir G. Jessel), one of the ablest of English Judges, "are the offspring of a proved necessity, that is, that men should be entitled to engage in commercial pursuits without necessarily involving the whole

of their fortune in that particular pursuit in which they are engaged."

2. Examples of Cases of Conversion.

It may be convenient here to give a few examples of cases commonly occurring in which business concerns are converted into companies with a view to obtaining limited liability.

(*a*) A firm consists of several members, each of whom has accumulated some private means which he is desirious of freeing from the risk of trade. To effect this they convert the business into a company.

(*b*) An individual or a firm is engaged in a profitable but speculative business, out of the profits of which he or they are enabled to make savings. In order to preserve these savings from risk the business is converted into a company.

(*c*) A firm consists of several members, one of whom is entitled to the greater part of the capital, and also has private means. He is disposed to retire on the fortune he has accumulated. If his liability could be limited, he would be willing to leave part of his capital in the business, and to assume the position of a sleeping partner. The only way in which this can be effected is by converting the business into a company, and it is accordingly done.

(*d*) A man desires to leave his business after his death in the hands of trustees in order that it may be carried on for the benefit of his family until his sons attain the age of twenty one years. He finds that the persons whom he wishes to appoint trustees object to undertake a trust which will involve them in unlimited liability and may prove ruinous to them. Accordingly, he converts the concern into a company, and the difficulty is removed.

(*e*) The owner of a profitable business dies. There are competent managers, but the owner's sons are not inclined to devote themselves to the concern, or to incur the unlimited

liability involved in carrying it on through managers. Accordingly they convert it into a company.

(*f*) A capitalist is willing to supply a person or a firm engaged in trade with additional capital in consideration of a share of the profits, but does not wish to incur the liabilities of partnership. He therefore stipulates that the business shall be converted into a company. He will then bring in the additional capital by taking shares in the company to the amount agreed on, and paying for the same in cash. In such a case the capitalist very commonly stipulates that he or his nominee shall be one of the directors for a term of years. And sometimes that the shares shall be preference shares.

(*g*) The owner of a patented invention is endeavoring to develop it, but with insufficient means. He wants to retain the patent, or a large interest in it, and personally to work the concern. A capitalist is found, who is willing to provide the necessary capital in consideration of a share of profits, but he wants to have a voice in the management, and is not prepared to incur unlimited liability. Accordingly the concern is converted into a company, and the owner of the patent and the capitalist or his nominee become directors. The owner of the patent receives fully paid-up shares, conferring a right to the stipulated share of profits; and the capitalist takes and pays up shares to the extent of the capital which he is to bring in.

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. In the present case we will suppose that the partners come to the conclusion that the assets are worth $100,000, and that the debts and liabilities amount to $21,000; so that the net value of the business is $79,000.

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 2000 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 forms necessary for incorporation as set out in Part II. must be prepared.

PART II.

ACTS OF THE DOMINION OF CANADA AND OF THE PROVINCES THEREOF

RESPECTING THE

INCORPORATION OF JOINT STOCK COMPANIES; TOGETHER WITH INSTRUCTIONS FOR PROCURING LETTERS PATENT THEREUNDER.

ONTARIO LEGISLATION.

GENERAL REMARKS.

The Provincial Secretary's Department is designated by Order-in-Council under section 71, c. 157, R. S. O. as the Department through which the issue of Letters Patent 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 labor.

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 letter-cases.

The Joint Stock Companies' Act declares that no steps shall be taken in any Department towards the issue of any Letters Patent or Supplementary Letters Patent *until after 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 Secretary, Toronto, Ontario. Cheques not "marked" are liable to be returned.

The following rules are published for the guidance of advertisers, in *The Ontario Gazette*.

Notice to Advertisers.

Parties sending advertisements to be inserted in the *Ontario Gazette*, will please observe the following rules:—

1st. Address, The Business Manager, The *Ontario Gazette*, Toronto.

2nd. Write advertisement plainly and state number of times it is to be inserted.

3rd. Immediately on receipt of bill for charges, advertisers must remit amount. This rule must be strictly observed, otherwise the advertisement will be cancelled.

4th. No advertisement will be inserted while any portion of a previous one from the same party remains unpaid.

5th. 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.

6th. Subscription price of *Ontario Gazette* is $4.00 per annum, invariably in advance, and at expiration of time paid for, it will be stopped without notice.

7th. Extra copies, 10 cents each.

8th. One copy of the *Gazette* will be sent each week the advertisement appears, and will be included in bill of charges.

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.

CHAPTER I.

FORMATION AND INCORPORATION OF COMPANIES.

1. Citation.
2. Interpretation of Act.
3. Granting Powers to Companies Incorporated Under Imperial Acts.
4. How Incorporated.
5. Nature of Application.
6. Petition and Contents.
7. Evidence of Petition, Notices, &c.
8. The Letters Patent.
9. Notice of Granting Letters Patent.
10. Lieutenant Governor may change name.
11. Certain Informalities not to Invalidate Letters Patent.
12. General Powers.
13. Change of Name or Constitution.
14. Supplementary Letters Patent.
15. Powers to be Subject to Act.

An Act respecting the incorporation of Joint Stock Companies by Letters Patent.

(Cap. 157, Revised Statutes of Ontario.)

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Citation.

1. This Act may be cited as "*The Ontario Joint Stock Companies' Letters Patent Act.*"

2. Interpretation of Act.

2. Where the words following occur in this Act, and in all letters patent and supplementary letters patent issued under the same, they shall be construed in the manner hereinafter mentioned unless a contrary intention appears.

1. "The letters patent" shall mean the letters patent incorporating a company for any purpose contemplated by this Act;

2. "The supplementary letters patent" shall mean any letters patent granted to the company subsequent to the letters patent, incorporating the company;

3. "The company" shall mean the company so incorporated by letters patent;

4. "The undertaking" shall mean the whole of the works and business of every kind which the company is authorized to carry on;

5. "Real estate" or "land" shall include all immovable real property of every kind;

6. "Shareholder" shall mean every subscriber to, or holder of, stock in the company; and extend to, and include, the personal representatives of the shareholder.

3. GRANTING POWERS TO COMPANIES INCORPORATED UNDER IMPERIAL ACTS.

3.—1. In case a corporation, now or hereafter incorporated under the laws of the Imperial Parliament of Great Britain and Ireland, desires to carry on any of its business within the Province of Ontario, the Lieutenant-Governor in Council may, by letters patent under the Great Seal of the Province, grant to such company, and such company may thenceforth use, exercise and enjoy within the Province, any powers, privileges and rights set forth in the letters patent, as desired in or for carrying on the business of the company, and which it is within the authority of the Lieutenant-Governor in Council to grant to a company under this Act.

2. No such letters patent shall be issued until such corporation has deposited in the Office of the Provincial Secretary a true copy of the Act of Parliament, charter or other instrument incorporating the said company, verified in the manner which may be satisfactory to the Lieutenant-Governor in Council.

3. The letters patent referring to such Act, charter or other instrument as aforesaid, or a copy of such Act, charter or other instrument aforesaid, certified under the hand of the Provincial Secretary, shall be sufficient evidence, in any proceeding in any court in this Province, of the incorporation of the company.

4. This section shall not apply to matters provided for by chapter 168 of these Revised Statutes.

4. How Incorporated.

4. 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 Ontario extends, except the construction and working of Railways, and the business of Insurance, other than as provided by Section 4 of the *Ontario Insurance Act*.

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. 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, but in order to call the attention of the corporators more directly to the point, a clause is now introduced expressly stating this fact.

No conditions as to any of the applicants being residents of the Province of Ontario are imposed by this or any other section of the Act.

It is undesirable that the number of applicants be large, as this causes unnecessary expense in the publication of the notice, and difficulty in the preparation of the papers.

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;—

Sub-sec. 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 steam ships 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.

FORMS FOR OBTAINING INCORPORATION BY LETTERS PATENT.

Notice in the *Ontario Gazette* of intention to apply for letters patent	Form No. 5
Affidavit proving publication of notice in *Gazette*	" 6
Petition for letters patent	" 7
Power of Attorney to sign petition, etc., etc.	" 8
Affidavit verifying power of Attorney	" 9
Affidavit verifying signatures to petition	" 10
Affidavit verifying petition	" 6
Affidavit as to name of Company	" 6
Stock book	" 11
Affidavit verifying signatures to stock book	" 12
Affidavit verifying copy stock book	" 13

5. NATURE OF APPLICATION.

5. The name of the Province of Ontario or of some locality therein shall constitute part of the name of every company incorporated under this Act, except in cases where the Lieutenant-Governor in Council otherwise directs.

6. The applicants for the letters patent must, for at least four consecutive weeks, give notice in the *Ontario Gazette*, of their intention to apply for the same, stating therein:

(*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 unfairly confounded therewith, or otherwise on public grounds objectionable;

(*b*) The object for which its incorporation is sought;

(*c*) The place or places within the Province of Ontario, where its operations are to be carried on with special mention if there be two or more such places, of some one of them as the chief place of business;

(*d*) The amount of capital stock;

(*e*) The number of shares and amount of each share;

(*f*) The names in full and the address and calling of each of the applicants, with special mention of the names

of not less than three of their number, who are to be the first Directors of the Company.

Notice.—The notice must be inserted in at least four consecutive numbers of *The Ontario Gazette*. Where the amount of the capital stock does not exceed $3,000, or under the circumstances set forth in Section 8 (*a*), the notice may be dispensed with (*b*). This rule does not apply to Slide, Dam and Boom Companies (*c*). The object of the notice (*d*) is to afford interested parties an opportunity to notify the Provincial Secretary of the grounds, if any, upon which they object to the granting of a charter.

Name.—The name should be as short as possible consistent with expressing generally the nature of the company, and except in cases where the Lieutenant-Governor in Council otherwise directs (when it must be shown that it is not essential in the public interest), the name of the Province of Ontario, or of some locality therein, must constitute part of the name of every company; but the use of the word "Ontario" as part of the corporate name of a company, is, under the practice of the Department, becoming more and more restricted to corporations having objects of a provincial character as distinguished from those of a purely local character. In selecting the style and title for a company, it is, therefore, desirable that the name of that locality to which the exercise of its powers is to be limited, should form part of its name. This restriction, *especially when the distinguishing word was that of the company's post-office address*, has repeatedly proved, for obvious reasons, to have been adopted in the interest of all concerned.

The word (Limited) must be added to every corporate name.

The name of a company should indicate its object.

The name of a company must not include any word indicative of more than provincial objects. For this reason, such words as "Canada," "Canadian," "Dominion," "Nation," "National," "International," "Empire" "Imperial," and the like are objectionable. For the use of the words "Royal," or "The Queen's," the express consent of Her Majesty is requisite.

The proof as to the proposed corporate name not being that of any other company, ought to be stated on the knowledge and belief of one of the applicants, a resident of this Province, or by a resident attorney or agent. The statement should be verified.

Object.—This may be any object within the legislative authority of the Legislature of Ontario except the construction and working of railways and, within certain limits, the business of insurance. 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

(*a*) *Post.*
(*b*) *Vide* section 9, *post.*
(*c*) *Vide* sec. 7, cap. 160, R. S. O.
(*d*) Form No. 5, *post.*

Department so to limit them, unless a special case is shown for allowing a plurality of objects connected with one another.

Power to deal in real estate, as a land Company, is not given to a loan Company, nor are general loaning powers given to a land Company. Loan Companies are limited to the powers in that behalf expressed in cap. 38, 54 Vic. entitled "An Act respecting Loan Companies."

Operations of the Company.—These are usually limited to the municipality in which the chief place of business is to be situated; in cases where exceptions are desired, it must be shown that the extension asked for is necessary to the due carrying out of the Company's object and is otherwise proper.

Chief Place of Business.—This may, or may not, be at the same place as that at 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.

Names of Applicants.—Care should be taken to give the Christian names of the applicants, in full, with their residences, legal additions or occupations.

Directors.—These must be applicants and shareholders, owning stock absolutely in their own right, and not in arrear in respect of any call thereon.

6. Petition and Contents.

7. At any time, not more than one month after the last publication of the notice, the applicants may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of the letters patent;

2. The petition must state the facts required to be set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount, if any, paid in upon the stock of each applicant;

3. The petition must also state whether the amount is paid in cash or by transfer of property, or how otherwise;

4. In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the letters patent, it shall be accompanied by a memorandum of association signed by all the persons whose names are to be so inserted, or by their attorneys, lawfully authorized in writing, and such memorandum shall contain the particulars required by the next preceding section;

5. The petition may ask for the embodying in the letters patent of any provision which otherwise under this

Act might be embodied in any by-law of the company when incorporated.

The petition must reach the Provincial Secretary not later than one month after the last publication of the notice. If, through the absence of one of the petitioners or from some unavoidable cause, the whole of the papers cannot be completed within the month, the petition should be forwarded and the balance of the papers transmitted immediately upon completion. Where delay does occur, it is usual to require an explanation thereof, and in case more than a month elapses before the petition is presented, an additional insertion of the notice in the *Gazette* is ordinarily accepted. No person can be a petitioner unless his name appeared in the notice, and every petitioner must be a shareholder in the the proposed company. At least five shareholders must join in the petition.

The petition (*a*) should in every respect correspond with the notice in the *Gazette*. It should be legibly written, and should state (1) the names in full of the petitioners, with their residences, legal additions or occupations; (2) the proposed name of the Company to be incorporated; (3) its objects; (4) the place or places in Ontario where its operations are to be carried on; (5) its chief place of business; (6) the amount of its capital stock; (7) the number and amount of its shares; (8) the names of at least three directors who must all be shareholders; (9) the amount of stock taken by each of the petitioners, the amounts, if any, paid in thereon. Payments not actually made in cash, or secured by Trust Deed, or otherwise, cannot be recognized by the Department. The petition should be signed by each of the applicants personally, but if, in any case, it is signed by attorney, it should be accompanied by a duly authenticated copy of the Power of Attorney, which must be of a specific and not of a general character. Each signature must be witnessed and verified by an affidavit made by the witness thereto. Blank Forms of Petition may be obtained on application to the Secretary's Department.

The subscription of stock must be proved by production at the Secretary's Department of the stock book (*b*) with the signatures of the subscribers duly verified, (*c*) and a verified copy of such stock book must be transmitted therewith, to remain on file in the Department. After comparison, the original is returned to the applicants.

The stock book may, according to the nature of the company, be of any size, from a large volume, to a simple memorandum book. The copy should be made on foolscap paper.

8. Where a notice has been published according to the rules of the Legislative Assembly for an Act incorporating any company, the incorporation whereof is sought for objects for which incorporation is authorized by this Act,

(*a*) Form No. 7, *post*.
(*b*) Form No. 11, *post*.
(*c*) Form No. 12, *post*.

and a Bill has been introduced into the Assembly in accordance with such notice, and is subsequently thrown out or withdrawn, then in case a petition to the Lieutenant-Governor for the incorporation under this Act of the company is filed with the Provincial Secretary within one month from the day of the termination of the Session of the Assembly for which the notice was given, the notice may be accepted in lieu of the notice required by section six.

9. The Lieutenant-Governor may dispense with the publication of the notice mentioned in section six in any case in which the capital of the proposed company is three thousand dollars or under.

This is intended to facilitate the formation of companies requiring only a small capital, such as cheese, butter and dairy companies. For the latter, however, there is now a special Act under which the procedure is exceedingly simple and inexpensive. See 51 Vic. cap. 24.

7. Evidence of Petition, Notice, Etc.

10. Before the letters patent are issued, the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the sufficiency of their notice and petition, and that the proposed name is not the name of any other known incorporated or unincorporated company.

11.—1. 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 and keep of record any requisite 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 affidavit or deposition before the Provincial Secretary or Assistant Provincial Secretary, or before any Justice of the Peace or Commissioner for taking affidavits, or Notary Public, who are here-

by authorised and empowered to administer oaths for that purpose.

Proof as to the notice required having been given must be furnished by affidavit (*a*), setting forth dates of insertion of such notice, with copy thereof, cut from the *Gazette*, attached. Each signature to the petition must be verified by affidavit (*b*), made by the witness. The proof that the corporate name is not that of any other known incorporated or unincorporated company ought to be made by the affidavit of one of the applicants, a resident of this Province, or by a resident attorney or agent (*c*). 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 declarant.

8. The Letters Patent.

12. The letters patent shall recite such of the material averments of the notice and petition so established as the Lieutenant-Governor may find convenient to insert therein, and the Lieutenant-Governor, may, if he thinks fit, give to the company a corporate name different from the name proposed by the applicants in the published notice; and the objects of the company as stated in the letters patent may vary from the objects stated in the said notice, provided the objects of the company as stated in the letters patent, are of a similar character to those contained in the notice published as aforesaid.

In case a company has given notice under a name to which reasonable objection has been, or may be, taken, this clause provides for avoiding the delay that would be caused by giving a new notice.

A copy of the form of letters patent is given hereafter (*d*).

9. Notice of Granting Letters Patent.

13. Notice of the granting of the letters patent shall be forthwith given by the Provincial Secretary, in the *Ontario Gazette*, in the form of the schedule A to this Act; and from the date of the letters patent the persons therein

(*a*) Form 6, *post*. (*b*) Form 10, *post*. (*c*) Form 6, *post*.
(*d*) Form 42, *post*.

named and their successors shall be a body corporate and politic by the name mentioned therein.

This notice is inserted in the *Gazette* without charge to the applicants.

10. Lieutenant-Governor may Change Name.

14. In case it is made to appear that any company is incorporated under a name, the same as or similar to, that of an existing company, it shall be lawful for the Lieutenant-Governor in Council to direct the issue of Supplementary letters patent reciting the former letters, and changing the name of the company to some other name to be set forth in the Supplem ntary letters patent; and no such alteration of name shall affect the rights or obligations of the company; and all proceedings may be continued and commenced by or against the company by its new name, that might have been continued or commenced by or against the company by its former name.

2. The High Court may compel an application under this section whenever a company improperly assumes the name of, or a name similar to, that of an existing company.

11. Certain Informalities not to Invalidate Letters Patent.

15. The provisions of this Act relating to matter preliminary to the issue of the letters patent shall be deemed directory only; and nc letters patent or supplementary letters patent issued under this Act shall be held void or voidable, on account of any irregularity in any notice prescribed by this Act, or on account of insufficiency, absence of such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of the letters patent or supplementary letters patent.

12. General Powers.

16. Every company so incorporated may acquire, hold, alienate and convey real estate subject to any restrictions

or conditions in the letters patent set forth, and shall forthwith become and be invested with all rights, real and personal, heretofore held by or for the company under a trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite to the carrying on of its undertaking, as though the company had been incorporated by a special Act of the Legislature making the company a body politic and corporate and embodying all the provisions of this Act, and of the letters patent.

13. Change of Name or Constitution.

By Sec. 7 of Cap. 178, entitled an "Act respecting the Changing of the Names of Incorporated Companies," that Act is declared to apply to any company incorporated under the Joint Stock Act, if such company has made or makes an application thereunder. In such case the following steps are necessary:

The company should petition the Lieutenant-Governor in Council, setting forth the facts, and stating:

1. That the company is desirous of changing its name from . . . to . . .

2. That the proposed name is not the name of any other known incorporated or unincorporated company.

3. That the company is in a solvent condition.

4. That the change desired is not for any improper purpose. (Adding reason.)

If the applicants are a trading corporation or company carrying on a business for profit.

5. That notice (*a*) of the intention of the company to apply for a change of name has been inserted for four weeks in *The Ontario Gazette*, and in a newspaper published in the locality in which the operations of the company are carried on.

These facts should be verified by affidavit. The petition should be signed by the president and secretary, and sealed with the company's seal. Evidence of the solvency of the company should be furnished by a verified balance-sheet or other satisfactory statement of the affairs thereof.

The fee for the order and *Gazette* notice is $12, which must be remitted with application.

(*a*) Form 28, *post*.

FORMS FOR CHANGING THE NAME OF A COMPANY.

Notice in the *Ontario Gazette* of intention to apply for an Order-in-Council changing corporate name.	Form No. 28
Notice in local newspaper of same.	Form No. 28
Affidavit proving publication of notice in *Ontario Gazette*.	" 29
Affidavit proving publication of notice in local newspaper.	" 29
Petition for change of name	" 30
Affidavit verifying same.	" 31
Affidavit verifying signatures to petition	" 32
Evidence of company's solvency	" 33

17. The directors of the company may at any time make a by-law sub-dividing the existing shares into shares of smaller amount.

18. The directors of the company, at any time after nine-tenths of the capital stock of the company has been taken up, and ten per centum thereupon paid in, but not sooner, may 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.

The by-law (*a*) shall declare the number and value of the shares of the new stock, and may prescribe the manner in which the same are to be allotted, otherwise the control of such allotment shall be held to rest absolutely in the directors.

FORMS TO INCREASE THE CAPITAL STOCK.

By-law passed by the Directors	Form No. 14
Affidavit verifying same and proving sanctioning thereof	" 15
By-law of Company regulating calling of general meeting	" 16
Affidavit verifying by-law	" 17
Notice in local newspaper	" 18
Affidavit verifying same	" 19
Notice in *Ontario Gazette*	" 18
Affidavit verifying same	" 20
Affidavit proving due calling of meeting	" 19
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed	" 20
Petition for Supplementary Letters Patent	" 21

(*a*) Form 14, *post*.

Affidavit verifying signatures to petition . . .	Form No. 22
Notice in *Ontario Gazette* of application for Supplementary Letters Patent	" 23
Affidavit verifying same	" 24
Affidavit respecting *bona fide* character of increase . .	" 25

19. With regard to the increase of the capital stock of any company incorporated under the Act authorizing the granting of charters of incorporation to manufacturing, mining and other companies, passed in the 27th and 28th years of the reign of Her Majesty, chaptered 23, the incorporation of which is subject to the control of the Legislature of Ontario, the Provincial Secretary, or such other officer as may be named for the purpose, is not bound to sign the notice mentioned in sub-section 18 of section 5 of the said Act, and is to exercise his discretion in respect of the same in view of all the facts, and subject to the direction of the Lieutenant-Governor in Council. This section is to be construed as declaratory of the intent, meaning and effect of the said sub-section.

20. The directors of the company, if they see fit at any time, may make a by-law for decreasing the capital stock of the company to any amount which they may consider sufficient for the due carrying out of the undertaking of the company, and advisable;

To Decrease the Capital Stock.

The same forms are necessary as for increasing the capital, and those given for that purpose may be adapted.

2. The by-law shall declare the number and value of the shares of the stock as so decreased; and the allotment thereof, or the rule or rules by which the same is to be made;

3. The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain as though the capital had not been decreased.

21. No by-law for increasing or decreasing the capital stock of the company, or sub-dividing the shares, shall have any force or effect until after it has been 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, and afterwards confirmed by supplementary letters patent.

22. At any time not more than six months after the sanction of such by-law, the directors may petition (*a*) the Lieutenant-Governor, through the Provincial Secretary, for the issue of supplementary letters patent to confirm the same:

2. With the petition they shall produce the by-law, and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the due passage and sanction of the by-law, and if the petition is in respect of increase or decrease of capital, the *bona fide* character of the increase or decrease of capital thereby provided for, and except as herein otherwise provided that notice of the application for supplementary letters patent have been inserted for four consecutive weeks in the *Ontario Gazette*.

3. Where the capital of the company, or such capital as increased, does not exceed three thousand dollars, the Lieutenant-Governor may dispense with the insertion in the *Ontario Gazette* of a notice of the application.

Proof of the by-law having been duly passed by the directors and sanctioned by a vote of two-thirds in value of the shareholders, together with the dates of the making and sanctioning thereof, and of the meeting having been duly called, must be furnished by affidavit. The original by-law, signed and sealed, must be produced by the directors with their petition. When the capital is increased, the new shares must be of the same amount as the old. A copy of the company's by-law, if any, regulating the calling of general meetings and of the notice calling the meet-

(*a*) Form No. 21, *post*.

ing, duly verified, should be furnished. Care should be taken to show that all the Directors have been duly elected, as it frequently happens that investigation proves Boards of Directors to have been acting under By-laws altering their composition, which have not been duly validated and are therefore illegal.

In case of the increase or decrease of capital, the *bona fide* character of the same should also be proved by affidavit. Proof of the notice having been given in four issues of *The Ontario Gazette* must be furnished by affidavit setting forth the dates of such notice with a copy thereof, cut from the *Gazette*, attached.

The notice may be dispensed with in the case of a company whose capital, or such capital as increased, does not exceed $3,000.

35. A company incorporated under this Act may by by-law increase or decrease the number of its directors, or may change the company's chief place of business in Ontario.

2. No by-law for either of the said purposes shall be valid or acted upon unless it is sanctioned by a vote of not less than two-thirds in value of the shareholders present, in person or by proxy, at a general meeting duly called for considering the by-law, nor until a copy of the by-law has been certified under the seal of the company to the Provincial Secretary, and also has been published in the *Ontario Gazette*.

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 sanctioned and that the meeting was duly called must be given by affidavit. A copy of the by-law certified under the company's seal and duly verified must be transmitted to the Provincial Secretary, with proof that the by-law was published once in *The Ontario Gazette*. A copy of the notice, cut from the *Gazette*, must be attached thereto.

FORMS TO INCREASE THE NUMBER OF DIRECTORS.

By-law of directors increasing their number . . . Form No. 26
Affidavit verifying by-law, proving sanctioning of same and publication thereof in *Ontario Gazette* . . " 15

By-law of company regulating the calling of a general meeting	Form No. 16
Affidavit verifying same	" 17
Notice in local newspaper calling general meeting	" 18
Affidavit verifying same	" 19
Notice in *Ontario Gazette* calling meeting	" 18
Affidavit verifying same	" 20
Affidavit proving due calling of meeting	" 19
Notice publishing by-law in *Ontario Gazette*	" 27

To Decrease the Number of Directors.

The same forms are necessary as for increasing, and those given above may be adapted.

Forms for Removing Chief Place of Business.

By-law of directors for removal	Form No. 14
Affidavit verifying by-law, proving sanctioning of same and publication thereof in *Ontario Gazette*.	" 15
By-law of company regulating the calling of a general meeting	" 16
Affidavit verifying same	" 17
Notice in local newspaper calling general meeting	" 18
Affidavit verifying same	" 19
Notice in *Ontario Gazette* calling general meeting	" 18
Affidavit verifying same	" 20
Affidavit proving due calling of meeting	" 19
Notice publishing by-law in *Ontario Gazette*	" 27

26. In case a resolution, authorizing an application to the Lieutenant-Governor therefor, is passed 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 subject of such resolution, the Lieutenant-Governor in Council may from time to time direct the issue of supplementary letters patent to the company, embracing any or all of the following matters:—

1. Extending the powers of the company to any objects, within the scope of this Act, which the company may desire;

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.

2. Limiting or increasing the amount which the company may borrow upon debentures or otherwise;

3. Providing for the formation of a reserve fund;

4. Varying any provision contained in the letters patent, so long as the alteration desired is not contrary to the provisions of this Act;

5. Making provision for any other matter or thing in respect of which provision might have been made by the original letters patent.

27. The Lieutenant-Governor may, by Order in Council, to be notified in the *Ontario Gazette*, direct in what cases notice of application for supplementary letters patent shall be given in the *Gazette* or otherwise, and the nature of such notice, and he may in any case dispense with notice.

To re-incorporate a Company under the 72nd and 73rd sections; to subdivide the shares; extend powers; limit or increase the amount that may be borrowed on debentures or otherwise; or provide for the formation of a reserve fund, forms may be adapted from those already given.

14. Supplementary Letters Patent.

28. Upon due proof so made the Lieutenant-Governor in Council may grant such supplementary letters patent under the Great Seal; and notice thereof shall be forthwith given by the Provincial Secretary in the *Ontario Gazette*, in the form of the schedule B to this Act; and thereupon, from the date of the supplementary letters patent, the shares shall be sub-divided, or the capital stock of the

company shall be and remain increased, or decreased, as the case may be, to the amount, in the manner, and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions of this Act, in like manner (so far as may be) as though every part thereof had formed part of the stock of the company originally subscribed.

24. Sections 18 and 20 to 23 of this Act shall apply to every company which has been incorporated by a special Act for purposes or objects within the scope of this Act.

15. Powers to be Subject to Act.

28. All powers given to the company by the letters patent, or supplementary letters patent, shall be exercised subject to the provisions and restrictions contained in this Act.

CHAPTER II.

ORGANIZATION AND MANAGEMENT.

1. Directors.
2. Meetings.
3. Power of Directors.
4. By-Laws.
5. Books to be Kept.
6. Statement of Affairs to be made.

1. Directors.

29. The affairs of every such company shall be managed by a Board of not less than three directors.

30. The persons named as directors, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead.

31. No person shall be elected or appointed as a director thereafter, unless he is a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon.

32. The after directors of the company shall be elected by the shareholders in general meeting of the company assembled at some place within this province, at such times, in such wise, and for such term, not exceeding two years, as the letters patent, or (in default thereof) the by-laws of the company may prescribe.

33. In default only of other express provisions in such behalf, by the letters patent or by-laws of the company;

1. Such elections shall take place yearly, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election;

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 (*a*).

2. Meetings.

In default only of other express provisions in such behalf by the letters patent or by-laws of the company.

2. Notice of the time and place for holding general meetings of the company shall be given at least ten days previously thereto, in some newspaper published at or as near as may be to the office or chief place of business of the company, and also in the case of companies having a capital exceeding $3,000, either by publishing the same in the *Ontario Gazette*, or by mailing the same as a registered letter, duly addressed to each shareholder, at least ten days previous to such meeting;

3. At all 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;

4. Elections of directors shall be by ballot;

5. 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;

6. The directors shall, from time to time, elect from among themselves, a president of the company; and shall also name, and may remove at pleasure, all other officers thereof.

34. 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 retiring directors shall continue in office until their successors are elected.

(*a*) *Vide* sec. 43, *post*.

39. One-fourth part in value of the shareholders of the company shall at all times have the right to call a special meeting thereof, for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

49. No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the company.

3. Powers of Directors.

36. The directors of the company shall have full power in all things to administer the affairs of the company; and may make or cause to be made, for the company, any description of contract which the company may by law enter into.

37. 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—

(*a*) 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; the transfer of stock;

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

(*c*) The number of directors, their term of service, the amount of their stock qualification;

(*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;

(*e*) The time at which, and place where, the annual meetings of the company shall be held; 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;

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

(*g*) The conduct in all other particulars of the affairs of the company;

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 like effect, shall have any force, until confirmed at a general meeting of the company.

38. In case a by-law, authorising the same, is sanctioned by a vote of not less than two-thirds in value, of the said shareholders, then present in person or by proxy, at a general meeting duly called for considering the by-law, the directors may borrow money upon the credit of the company, and issue the bonds, debentures, or other securities of the company, and may sell the said bonds, debentures or other securities at such prices as may be deemed expedient or be necessary; but no such debenture shall be for a less sum than one hundred dollars;

2. The directors may, under the like sanction, hypothecate, mortgage, or pledge the real or personal property of the company, to secure any sum or sums borrowed for the purposes thereof.

4. By-laws. (*a*)

40. 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 *prima facie* evidence of such by-law in all Courts in Ontario.

See also sec. 37, for powers of directors to make by-laws.

5. Books to be Kept.

50. The company shall cause a book or books to be kept by the secretary, or by some other officer especially charged with that duty, wherein shall be kept recorded:

(*a*) For set of by-laws suitable for company's use see *infra*.

(*a*) A copy of the letters patent incorporating the company, and of any supplementary letters patent issued to the company, and of all by-laws thereof;

(*b*) The names, alphabetically arranged, of all persons who are, or have been shareholders;

(*c*) The address and calling of every such person while such shareholder;

(*d*) The number of shares of stock held by each shareholder;

(*e*) The amounts paid in, and remaining unpaid, respectively on the stock of each shareholder;

(*f*) All transfers of stock, in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and—

(*g*) The names, addresses and calling of all persons who are or have been directors of the company; with the several dates at which each person became or ceased to be such director.

53. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company, and their personal representatives, at the office or chief place of business of the company; and every such shareholder, creditor, or representative, may take extracts therefrom.

54. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any action or proceeding against the company or against any shareholder.

55. No director, officer or servant of the company, shall knowingly make or assist to make any untrue entry in any such book, or shall refuse or neglect to make any proper entry therein; and any persons violating 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.

56. Any director or officer who refuses to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall forfeit and pay to the party aggrieved the sum of one hundred dollars; and in case the amount is not paid within seven days after the recovery of judgment, the court in which the judgment is recovered, or a judge thereof, may direct the imprisonment of the offender for any period not exceeding three months, unless the amount with costs is sooner paid.

6. Statement of Affairs to be made.

57. Every company incorporated under this Act shall, on or before the first day of February, in every year, make a list in duplicate verified as is hereinafter required of all persons who on the thirty-first day of December previously, were shareholders of the company; and such list shall state the names alphabetically arranged, and the addresses and callings of all such persons, the amount of stock held by them, and the amount unpaid thereon; and shall also make out a summary in duplicate verified as hereinafter required, of the state of the affairs of the company, on the thirty-first day of December preceding. 2. The summary shall contain the following particulars:

Firstly, The names and residences and post office addresses of the directors, secretary, and treasurer of the company;

Secondly, The amount of the capital of the company and the number of shares into which it is divided;

Thirdly, The number of shares taken from the commencement of the company up to the thirty-first day of December preceding the date of the summary;

Fourthly, The amount of stock (if any) issued free from call; if none is so issued, this fact to be stated;

Fifthly, The amount issued subject to call;

Sixthly, The amount of calls made on each share;

Seventhly, The total amount of calls received;

Eighthly, The total amount of calls unpaid;

Ninthly, The total amount of shares forfeited;

Tenthly, The total amount of shares which have never been allotted or taken up;

Eleventhly, The total amount for which shareholders of the company are liable in respect of unpaid stock held by them;

Twelfthly, The said summary may also, after giving the information hereinbefore required, give in a concise form, such further information respecting the affairs of the company, as the directors may consider expedient;

(3) Every company so long as it carries on the business of warehousing crude petroleum shall add the following additional particulars in the summary:—

(*a*) The total quantity of crude petroleum actually held by the company for the purpose of answering transportation and warehouse receipts, accepted orders, and certificates of crude petroleum.

(*b*) The total quantity of crude petroleum in respect of which the company as warehousemen or carriers are liable to make delivery to other persons.

4. The list and summary, and every duplicate thereof required by this Act, shall be written or printed on only one side of the sheet or sheets of paper containing the same;

5. The list and summary 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;

6. One of the duplicate lists and summaries, with the affidavit of verification, shall be posted in the head office of the company in Ontario, on or before the second day of February; and the company shall keep the same so posted, until another list and summary are posted, under the provisions of this Act; and the other duplicate list and summary, verified as aforesaid, shall be deposited with the Provincial Secretary, on or before the eighth day of February next, after the time hereinbefore fixed for making the summary.

7. If a company makes default in complying with the provisions of this section, the company shall incur a penalty of twenty dollars for every day during which the default continues, and every director, manager or secretary of the company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

8. This section shall not apply to any company until the first day of February next after the thirty-first day of December, after the company has been organized, or has gone into actual operation, whichever shall first happen, and shall not be held to apply to any company which has ceased to carry on business; and upon its being proved that any company to which this Act applies did not transact any business (other than the payment of taxes or the making of a return, or the furnishing of any list, statement, or other information to the Government of Ontario, or to any officer or department thereof) during the year for which it is alleged a return in accordance with the requirements of law has not been made, such company shall be deemed to have ceased to carry on business within the meaning of this sub-section.

Blank forms of summaries, lists and affidavits are forwarded annually to companies by the Secretary's Department in ample time for making the return. The sheets should be fastened with a clip, or pin, not gummed together. Chapter 180 provides that no action for default in making return shall be maintained after receipt of return by proper officer, and also limits the amount of the penalty that may be recovered for default.

CHAPTER III.

STOCK, CALLS, ETC.

1. Nature of Stock.
2. Allotment of Stock.
3. Creation of Preference Stock.
4. Sale and Transfer of Stock.
5. Liability of Company in Respect of Trusts.
6. Liability of Shareholders on Stock.
7. Liability of Executors.
8. Rights of Executors.
9. Calls.
10. Action for Calls.
11. Forfeiture of Shares.
12. Dividends.

1. Nature of Stock.

41. The stock of the company shall be deemed personal estate, and shall be transferable in such manner only, and subject to all such conditions and restrictions as by this Act, or by the letters patent, or by-laws of the company may be prescribed.

2. Allotment of Stock.

42. If the letters patent make no other definite provision, the stock of the company so far as it is not allotted thereby, shall be allotted when and as the directors by by-law or otherwise ordain.

43. No by-law for the allotment or sale of stock at any greater discount or at any less premium than what has been previously authorized at a general meeting, or 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.

3. Creation of Preference Stock.

25. The directors of any company incorporated under this Act or any other general Act of this province, for the incorporation of companies by letters patent, may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and

priority, as respects dividends and otherwise, over ordinary stock, as may be declared by the by-law;

(2) The by-law may provide that the holders of such preference shares 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;

(3) No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by the vote of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, or unanimously sanctioned in writing by the shareholders of the company;

(4) Holders of such preference stock shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Act, provided, however, that in respect of dividends and otherwise they shall, as against the original or ordinary shareholders, be entitled to the preference given by any by-law as aforesaid;

(5) Nothing in this section shall affect or impair the rights of creditors of any company.

4. Sale and Transfer of Stock.

48. No share shall be transferable until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon.

51. The directors may refuse to allow the entry, into any such book (*a*) of any transfer of stock whereon any call has been made which has not been paid in.

52. No transfer of stock, unless made by sale under execution, or under the order or judgment of some competent court in that behalf, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties

(*a*) The books here alluded to are those mentioned in sec. 50.

thereto towards 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 duly been made in the books of the company.

5. Liability of Company in Respect of Trusts.

58. 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 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 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.

6. Liability of Shareholders on Stock.

61. Each shareholder, until the whole amount of his stock 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 of his said stock, shall be the amount recoverable with costs, against such shareholder.

2. 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 dividends, or a salary, or allowance as a president or a director of the company.

62. The shareholders of the company 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 whatso-

ever, relating to or connected with the company, beyond the unpaid amount of their respective shares in the capital stock thereof.

7. Liability of Executors, etc.

63. No person holding stock in the company 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 stock in his own name.

64. No person holding stock as collateral security, shall be personally subject to liability as a shareholder, but the person pledging such stock as such collateral security shall be considered as holding the same, and shall be liable as a shareholder in respect thereof.

8. Rights of Executors, etc.

65. Every executor, administrator, guardian, or trustee, shall represent the stock in his hands, at all meetings of the company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder.

9. Calls.

44. The directors of the company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed, 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 and fall due at the legal rate for the time being upon the amount of any unpaid call, from the day appointed for payment of such call.

45. Not less than ten per centum upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; the residue, when and as the By-laws of the company direct.

10. Action for Calls.

46. The company may enforce payment of all calls and interest thereon, by action in any Court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to state 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, whereby an action has accrued to the company under this Act; and a certificate under the seal, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts as *prima facie* evidence to that effect.

11. Forfeiture of Shares.

47. If, after such demand or notice as by the letters patent or By-laws of the company is prescribed, any call made upon any share or shares is not paid within such time as by such letters patent or By-laws may be limited in that behalf, the directors in their discretion, by vote 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.

12. Dividends.

66. 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 stock 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 on the minutes of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper published at or as near as may be possible to the office or chief place of business of the company, such Director may thereby, and not otherwise, exonerate himself from liability.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

1. Contracts, etc., when Binding on Company.
2. Company not to buy Stock in other Corporations.
3. Loans to Shareholders.
4. Liability of Directors for Wages.
5. Actions p and against Company.
6. Forfeiture of Charter.
7. Fees.
8. Provincial Secretary's Department charged with the issue of Letters Patent, etc., etc.
9. Subsisting Companies may obtain Charter with Extended Powers.
10. Appointment of Companies to act as Trustees, etc.
11. Letters Patent for certain purposes may be granted to Companies incorporated under Special Acts.
12. Winding-up Acts to Apply.

1. Contracts, etc., when Binding on Company.

59. 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; and 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; nor shall the party so acting as agent, officer or servant of the company, be thereby subjected individually to any liability whatsoever to any third party therefor.

2. Nothing in this Act shall be construed to authorize the 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.

2. Company not to Buy Stock in other Corporations.

60. No company shall use any of its funds in the purchase of stock in any other corporation, unless expressly authorized by by-law confirmed at a general meeting.

3. Loans to Shareholders.

67. 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 anywise 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: but this section shall not apply to a building society, or to a company incorporated for the lending of money.

4. Liability of Directors for Wages.

68. 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 yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet 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.

5. Actions By and Against Company.

69. In an action or other 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 Act; and the letters patent or supplementary letters patent themselves, or any exemplification or copy thereof, under the Great Seal, shall be conclusive proof of every matter and thing therein set forth.

6. Forfeiture of Charter.

70. The charter of the company shall be forfeited by non-user during three consecutive years at any one time, or if the company does not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such charter.

7. Fees.

71. The Lieutenant-Governor in Council may from time to time establish, alter, and regulate the tariff of the fees to be paid on applications under this Act; may designate the Department or Departments through which the issue of letters patent or supplementary letters shall be made; and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the objects of this Act.

2. Such fees may be made to vary in amount, under any rule or rules—as to nature of company, amount of capital, and otherwise—that may be deemed expedient.

3. No steps shall be taken in any Department towards the issue of any letters patent or supplementary letters patent under this Act, until after all fees therefor have been duly paid.

The following is a schedule of the fees payable upon the issue of charters:—(*a*)

For charter when proposed capital is $200,000 or upwards	$60 00
When it is $100,00, but is less than $200,000	50 00
When it is $50,000, but is less than $100,000	40 00
When it is less than $50,000, but more than $3,000	30 00
When it is $3,000 or less	10 00
When the charter is for an Educational Institution	10 00

The fee must be remitted with each application, else it will not be considered. Cheques must be "marked."

Upon Supplementary Letters Patent for (a) *increasing or* (b) *decreasing the capital stock of a Company;* (c) *subdividing its shares;* (d) *extending its powers;* (e) *limiting or increasing the amount it may borrow upon its debentures, or otherwise;* (f) *providing for the formation of a reserve fund;* (g) *varying any provision, or* (h) *providing for any matter or thing in respect of which provision might have been made by the original letters patent, if the capital of the Company is* $3,000 *or less, and is not increased, the fee is* $5. *If the capital of the Company is more than* $3,000, *a fee of* $25 *is charged, unless the capital stock of the Company is increased, when the same fee is payable as would be charged if the Company was being incorporated, but only with reference to the increased capital. The fee to be paid by a company, whose capital is over* $3,000, *for the Notice in the "Gazette," required by sec. 5 of cap,* 178 *R. S. O., respecting the changing of the names of companies, is* $12; *if the capital is* $3,000, *or less,* $5. *The fee upon a License, authorizing a loan Company incorporated out of Ontario, to lend and invest moneys therein is* $100 (*b*).

8. Provincial Secretary's Department, Charged with Issue of Letters Patent, etc., etc.

The Provincial Secretary's Department is designated by Order in Council under section 71, as the department through which the issue of letters patent shall take place.

9. Subsisting Companies may Obtain Charter with Extended Powers.

72. Any company incorporated for purposes or objects within the scope of this Act, or within the scope of this Act as it may be hereafter amended, whether under a Special or a General Act, and being at the time of its appli-

(*a*) *Vide* Orders in Council, dated 2nd June, 1874, 16th Sept., 1874, and 16th March, 1877.

(*b*) *Vide* Order in Council, dated 10th January, 1890.

FEES FOR LETTERS PATENT.

COPY OF AN ORDER-IN-COUNCIL APPROVED BY HIS HONOUR THE LIEUTENANT-GOVERNOR, THE 28TH DAY OF DECEMBER, A.D. 1892.

UPON consideration of the report of the Honourable the Provincial Secretary, dated 22nd December, instant, the Committee of Council advise that the following table of fees for Letters Patent be approved of by Your Honour, to take effect on and from the first day of January, 1893, but only in respect of applications of which notice shall first be given in THE ONTARIO GAZETTE for 1893.

Schedule of fees payable prior to the issue of charters :—

When the Charter is for an Educational Institution	$10 00
When the Charter is for a Cheese or Butter Company	10 00
For a Charter when the proposed capital of the Company is $1,000,000 or upwards	250 00
When it is $500,000 but is less than $1,000,000	200 00
When it is $200,000 but is less than $500,000	150 00
When it is $100,000 but is less than $200,000	100 00
When it is $50,000 but is less than $100,000	50 00
When it is $25,000 but is less than $50,000	40 00
When it is less than $25,000 but is more than $2,000	30 00
When it is $2,000 or less	20 00

Fees for all Supplementary Letters Patent to be $25, unless the capital stock of the Company is increased, when the same fee shall be payable as would be charged if the Company was being incorporated, but only with reference to the increased capital.

The Committee further advise that, in future, applications for a License to enable a Company incorporated out of Ontario to hold lands therein, be granted only when it shall be made to appear that the objects of the applicant Company are such as would not enable it to become incorporated under sub-section 11 of section 92 of The British North America Act, and that the fee for a License be charged according to the capital of the Company, and be the same in amount as if the Company was being incorporated.

And the Committee further advise that the fee to be charged for a License granted under R. S. O. 1887, Cap. 168, authorizing Corporations and Institions incorporated out of Ontario to lend and invest moneys therein, be according to the capital of the Company, and be the same in amount as if the Company was being incorporated.

And the Committee further advise that all Orders-in-Council at variance with the above be rescinded.

Certified,

J. LONSDALE CAPREOL,
Assistant-Clerk, Executive Council.

[OVER.]

Suggestions and comments that have been sent the author by those using prior editions of this work have been very helpful to him.

A line from you, as to your own experience and judgment, would be much appreciated by the author.

cation a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor in Council, upon proof that the notice of the application has been inserted for four weeks in the *Ontario Gazette*, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Act, and thereupon all the rights or obligations of the former company shall be transferred to the new company, and all proceedings may be continued and commenced by or against the new company, that might have been continued or commenced by or against the old company, and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent, the company shall be governed in all respects by the provisions of this Act, 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.

(2) Where a company is re-incorporated under the preceding sub-section the Lieutenant-Governor may, by the letters patent, increase the capital stock of the company to any amount which the shareholders of the company applying for re-incorporation may, by a resolution passed by a vote of not less than two-thirds in value of those present in person or by proxy at a general meeting of the company duly called for considering the same, have declared to be requisite for the due carrying out of the objects of the company.

(3) The resolution may prescribe the manner in which the new stock is to be allotted; and in default of its so doing, the control of the allotment shall vest absolutely in the directors of the new company.

73. Where an existing company applies for the issue of letters patent under the provisions of the preceding section the Lieutenant-Governor may by the letters patent extend the powers of the company to such other objects within the scope of this Act as the applicants desire, and

as the Lieutenant-Governor thinks fit to include in the letters patent, and may by the said letters patent, name the first directors of the new company, and the letters patent may be to the new company by the name of the old company or by any other name.

10. Appointment of Companies to act as Trustees, etc.

74.—1. Where a company incorporated under a special Act or under this Act is authorized to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor, or committee of a lunatic, then in case the Lieutenant-Governor in Council shall approve of such company being accepted by the High Court as a Trusts Company for the purposes of such court, the said court, or any judge thereof, and every other court or judge having authority to appoint such an officer, may, with the consent of the company, appoint such company to exercise any of the said offices in respect of any estate, or person, under the authority of such court or judge, or may grant to such company probate of any will in which such company is named an executor; but no company which has issued, or has authority to issue, debentures shall be approved as aforesaid.

2. Notwithstanding any rule of practice, or any provision of any Act requiring security, it shall not be necessary for the said company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, assignee, guardian or committee, unless otherwise ordered.

3. The Lieutenant-Governor in Council may revoke the approval given under this section, and no court, or judge, after notice of such revocation, shall appoint any such company to be an administrator, trustee, receiver, assignee, guardian or committee, unless such company gives the like security for the due performance of its duty as would be required from a private person.

75. The liability of the company to persons interested in an estate held by the said 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 such capacities respectively, and its powers shall be the same.

76.—1. The High Court, if it deems necessary, may from time to time appoint a suitable person to investigate the affairs and management of the company who shall report thereon to the court, and regarding the security afforded to those by or for whom its engagements are held, and the expense of such investigations shall be defrayed by the company; or the court may, if it deems necessary, examine the officers or directors of the company under oath as to the security aforesaid.

2. The Lieutenant-Governor may also from time to time, when he deems it expedient, appoint an inspector to examine the affairs of the company and report to him on the security afforded to those by and for whom its engagements are held as aforesaid; and the expense of the investigation shall be borne by the company.

77.—1. Every Court into which money is paid by parties, or is brought by order or judgment, may by order direct the same to be deposited with any such company that may agree to accept the same, and the company may pay any lawful rate of interest on such moneys as may be agreed upon, and when no special arrangement is made, interest shall be allowed by the company at the rate of not less than three per centum annually.

2. Every such company may invest any trust moneys in its hands in any securities in which private trustees may by law invest trust moneys, and may also invest such moneys (*a*) in the public stock funds or Government securities of any of the Provinces of the Dominion, or in any securities guaranteed by the United Kingdom of Great Britain and Ireland, or by the Dominion, or by any of the said Provinces;

(*b*) or in the bonds or debentures of any municipal corporation in any of the said Provinces.

Provided that such company shall not in any case invest the moneys of any trust in securities prohibited by the trust, and shall not invest moneys entrusted to it by any Court in a class of securities disapproved of by the Court.

11. Letters Patent for Certain Purposes may be Granted to Companies Incorporated under Special Acts.

78.—1. Where any company has been incorporated by a special Act, before the 10th day of March, 1882, for purposes or objects within the scope of this Act, then, in case a resolution authorizing an application to the Lieutenant-Governor therefor is passed 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 subject of such resolution, the Lieutenant-Governor in Council may from time to time direct the issue of letters patent to the company, embracing any or all of the following matters:

(*a*) Extending the powers of the company to any objects within the scope of this Act, which the company may desire;

(*b*) Limiting or increasing the amount which the company may borrow upon debentures or otherwise;

(*c*) Providing for the formation of a reserve fund;

(*d*) Varying any provision contained in the special Act, so long as the alteration is not contrary to the provisions of this Act;

(*e*) Making provision for any other matter or thing in respect of which provision might have been made had the company been incorporated under this Act;

2. No power to execute the office of executor, administrator, trustee, receiver, assignee, guardian of a minor, or commitee of a lunatic, shall be conferred under this section upon any company which has authority to issue debentures; and no company incorporated under this Act, with power to execute such office, shall issue debentures.

12. Winding-up Acts to Apply.

79. The company shall be subject to the provisions of any Act of the Legislature for the Winding-up of Joint Stock Companies.

SCHEDULE "A."

(*Section* 13).

Notice of Granting Letters Patent.

Public notice is hereby given, that under "*The Ontario Joint Stock Companies' Letters Patent Act,*" letters patent have been issued under the Great Seal of the Province of Ontario, 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 in the letters patent*], with a total capital stock of dollars, divided into shares of dollars each.

Dated at the office of the Provincial Secretary of Ontario, the day of

A.B.,

Provincial Secretary.

SCHEDULE "B."

(*Section* 23.)

NOTICE OF GRANTING SUPPLEMENTARY LETTERS PATENT.

Public notice is hereby given, that under "*The Ontario Joint Stock Companies' Letters Patent Act*," supplementary letters patent have been this day issued under the Great Seal of the Province of Ontario, bearing date the day whereby the total capital stock of [*here state the name of the company*], is increased [*or* decreased, *as the case may be*] from dollars to dollars [*or* whereby the capital stock of the company of shares of dollars each, is sub-divided into shares of dollars each.]

Dated at the office of the Provincial Secretary of Ontario, this day of

A.B.,

Provincial Secretary.

FORMS.

NOTE—The following Forms are drawn so as to actually represent all the steps taken in the formation of a company by the name of The Hamilton Stove Company, (Limited), and also all matters which may arise subsequent thereto.

The Forms are to be changed to suit the circumstances in each case but must be substantially as those given hereunder.

FORM NO 1.

PROSPECTUS OF THE HAMILTON STOVE COMPANY, (LIMITED).

Capital $200,000, in 4,000 Shares of $50 each.

Provisional Directors:

WILLIAM JOHN THOMAS, Esq., Hamilton; THOMAS TAYLOR, Esq., Hamilton; and THOMAS BRIGHT TAYLOR, Esq., Hamilton.

Secretary:

THOMAS TAYLOR.

Bankers:

THE BANK OF HAMILTON.

The Hamilton Stove Company, (Limited) is being formed for the purpose of carrying on the business of manufacturing stoves of all descriptions.

Owing to the largely increased demand for these articles, as compared with any previous period, and the facilities which this city affords for their manufacture, a profit of at least 20 per cent. is assured.

For this purpose, the company propose to erect on Main street, in Hamilton, a building suitable for carrying on its business, the maximum cost of said building to be $10,000, and be furnished with all the latest and most important improvements in use in this manufacture.

In order to push sales, it is proposed to establish agencies in every county of the Province. A Charter to be applied for, and the Company to commence business as soon as one-half of the proposed capital stock is subscribed.

It is proposed to make calls upon the subscribers for stock as follows: 25 per cent. when the Charter is obtained; 25 per cent. about one month thereafter, and the balance as the Directors may deem advisable.

Application for Shares may be addressed in the following form, and accompanied by a deposit of 10 per cent., to the Secretary, at the Company's Office, No. 100 King street:

To the Directors of the Hamilton Stove Company, (Limited).

GENTLEMEN,—

Please allot me Two Hundred Shares in this company, on account of which I have deposited the sum of $1,000 to the account of the Company, at the Bank of Hamilton.

.....

Signature of Applicant.

Hamilton,.....1892.

FORM NO. 2.

THE HAMILTON STOVE COMPANY, (LIMITED.)

Office No. 100 King street,
Hamilton, 10th January, 1892.

SIR,—The Directors have this day allotted to you Two Hundred Shares in the above Company, in accordance with your application.

THOMAS TAYLOR,
Secretary.

To.....
Hamilton.

FORM NO. 3.

INSTALMENT SCRIP

(Issued to Shareholders as receipts for payments of calls on Stock.)

Stub.

THE
HAMILTON STOVE COMPANY,
(LIMITED.)

Instalment Scrip.

No. 1.

Dated 18th February, 1892.

1198 Shares of $50 each.

1st Instalment 10 per cent.
$5,990.

Received receipt for same,

THOMAS BRIGHT TAYLOR.

Scrip.

No. 1. THE 1198 Shares
$5,590. of $50 each.

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 18th February, 1892.

THOMAS TAYLOR, *Secretary.* {Seal.} WILLIAM JOHN THOMAS, *President.*

FORM NO. 4.

STOCK CERTIFICATE BOOK.

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.)

THE
HAMILTON STOVE COMPANY,
(LIMITED.)

Hamilton, 1st March, 1892.

Certificate No. 1.

Granted to Samuel Andrew Thomson, of the City of Hamilton, for Two Shares, paid one hundred per cent. Amount $100.

Received this certificate,

S. A. THOMSON.

Transfer No.....

Transferred to.....

Date of Transfer,

Hamilton 18

.....

.....

SHARES $50 EACH.

THE

No. 1. TWO SHARES.

HAMILTON STOVE COMPANY, (LIMITED.)

Incorporated by Ontario Government

THIS CERTIFIES *that Samuel Andrew Thomson of the City of Hamilton, is the owner of Two Shares of Fifty Dollars each, in the Capital Stock of The Hamilton Stove Company (Limited), on which Shares one hundred per cent. has been paid, and which Shares are transferable only on the books of the Company by the said Samuel Andrew Thomson or his attorney on surrender of this Certificate.*

Dated, Hamilton, 1st March, 1892.

THOMAS TAYLOR,
Secretary.

Seal.

WILLIAM JOHN THOMAS,
President.

FORM NO. 5.

NOTICE OF INTENTION TO APPLY FOR LETTERS PATENT.

Public notice is hereby given that, within one month after the last publication hereof in *The Ontario Gazette*, the persons hereinafter mentioned will apply to His Honour the Lieutenant-Governor of Ontario in Council for the grant of a charter of incorporation under the provisions of "The Ontario Joint Stock Companies' Letters Patent Act."

1. That the name of the Company is to be THE HAMILTON STOVE COMPANY, (LIMITED.)

2. That the object for which incorporation is sought is to manufacture and sell stoves.

3. That the operations of the said Company are to be carried on in the City of Hamilton, which is also to be its chief place of business.

4. That the amount of capital stock of the Company is to be two hundred thousand dollars.

5. That the number of shares is to be four thousand, and the amount of each share fifty dollars.

6. That the names in full, and the address and calling of each of the applicants, are as follows: William John Thomas, Foundryman; Samuel Andrew Thomson, Machinist; Thomas Taylor, Gentleman; Thomas Bright Taylor, Stove Manufacturer; Henry Victor Taylor, Moulder, all of the City of Hamilton, in the County of Wentworth, and Province of Ontario; and George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, Capitalist.

7. That the said William John Thomas, Thomas Taylor, and Thomas Bright Taylor, are to be the first Directors of the Company.

JOHN ROE,
Solicitor for the Applicants.

First inserted in the issue of *The Gazette*, dated 7th January, 1892.

FORM NO. 6.

AFFIDAVIT PROVING PUBLICATION OF NOTICE IN *GAZETTE*; 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 incorporation by the issue of Letters Patent, as 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 the allegations in the within petition contained especially as to payments in stock subscribed, are, to the best of my knowledge and belief, true in substance and in fact.

3. That the proposed corporate name of the said Company is not the name of any other known company incorporated or unincorporated, or liable to be unfairly confounded therewith, or otherwise on public grounds objectionable.

* 4. That notice of the intention of the applicants herein to apply for the grant of Letters Patent as aforesaid, was duly given in the four consecutive issues of *The Ontario Gazette* published on the 7th, 14th, 21st and 28th January, A.D. 1892.

* 5. That the clipping from the said *The Ontario Gazette*, attached to this my affidavit, and now shown to me marked "A," 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 seventeenth day of February, A.D. 1892.

W. J. THOMAS.

JOHN ROE,
A Justice of the Peace, (or a Commissioner for taking Affidavits as the case may be).

* NOTE.—If notice was not given, strike out paragraphs 4 and 5.

FORM NO. 7.

PETITION FOR LETTERS PATENT.

TO HIS HONOUR THE LIEUTENANT-GOVERNOR OF THE PROVINCE OF ONTARIO, IN COUNCIL.

The Petition of *(a)* William John Thomas, Foundryman; Samuel Andrew Thomson, Machinist; Thomas Taylor, Gentleman; Thomas Bright Taylor, Stove Manufacturer; and Henry Victor Taylor, Moulder, all of the City of Hamilton, in the County of Wentworth, and Province of Ontario; 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:—

(a) Here set out in full, *legibly written*, the *names*, *residences*, and *legal additions or occupations* of the petitioners, who must be shareholders in the proposed Company, and *not less than five in number.*

1. That your Petitioners are desirous of obtaining by Letters Patent under the Great Seal, a Charter, under the provisions of the Revised Statute of Ontario, Chapter 157, entitled "The Ontario Joint Stock Companies' Letters Patent Act," *(a)* 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 Hamilton Stove Company (Limited).

2. That your Petitioners, in accordance with the provisions of Section 6 of the said Revised Statute, have given at least four consecutive weeks' notice (*b*) in *The Ontario Gazette*, of your Petitioners' intention to apply for Letters Patent as aforesaid.

3. That the object for which incorporation is sought by your Petitioners is to manufacture and sell stoves.

4. That the operations of the said Company are to be carried on at the said City of Hamilton, which is within the Province of Ontario.

5. That the chief place of business of the said Company is to be at the City of Hamilton aforesaid.

6. That the amount of the capital stock of the said Company is to be two hundred thousand dollars.

7. That the said stock is to be divided into four thousand shares of fifty dollars each.

8. That the said William John Thomas, Thomas Taylor and Thomas Bright Taylor are to be the first Directors of the said Company (*c*).

9. That by subscribing therefor in the Company's stock book, your Petitioners have taken the amounts of stock set opposite their respective names as follows:

(*a*) If incorporation is sought under any other Act as well, its title should be interlined here as, for instance, "The Timber Slide Companies' Act," or "The Street Railway Act," or "The Act respecting Companies for Steam and Heating, or for supplying Electricity for Light, Heat or Power, etc."

(*b*) If the capital of the proposed Company *is $3,000 or under*, notice may be dispensed with. If this is desired, Paragraph No. 2 should be struck out, and the following words should be added to the prayer of the Petition on page 166, after the words "objects aforesaid"—*and your petitioners further pray that inasmuch as the capital stock of the said Company is to be.....dollars, Your Honour may also be pleased to dispense with the notice mentioned in Section 6 of the said Act.*

(*c*) The Directors, who must be at least three in number, must be petitioners and shareholders. *Each Director must hold his stock absolutely in his own right.*

PETITIONERS.	Amount.	*Amount paid thereon.	*How paid.
William John Thomas.....	$59,900	$5,990	In cash.
Samuel Andrew Thomson	100	10	do.
Thomas Taylor	60,000	6,000	By transfer of property.
Thomas Bright Taylor	59,900	5,990	do.
Henry Victor Taylor	100	Nothing.	
George Peter Sharpe	20,000	2,000	In cash.

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 may become shareholders in the Company thereby created, a body corporate and politic under the name and for the purposes and objects aforesaid..

And your Petitioners, as in duty bound, will ever pray.

Signatures of Witnesses.	*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.
JOHN G. GIBSON, as to	G. P. SHARPE, By his Attorney, HERBERT MASON.

Dated at Toronto, this 15th day of February, 1892.

* In these columns be particular to specify the amount, if any, paid in by each Petitioner upon his stock, and show whether it was paid in cash, by transfer of property, or how otherwise. *If nothing has been paid, state the fact.* ☞ *Payments not actually made in cash, or absolutely secured by Trust Deed, or otherwise, or payments in full, or otherwise, of large sums by the transfer of mining or other property, alleged to represent values of a speculative character, cannot be recognized by the Department.*

FORM NO. 8.

POWER OF ATTORNEY TO SIGN PETITION AND STOCK BOOK (*a*).

KNOW all men by these Presents that I, the undersigned, 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,

(*a*) The power of Attorney should in every case be given for a specific purpose, as shewn above, and not in general terms, or for general purposes.

Each signature must be verified by affidavit, to be made by the witness thereto. Signatures by Attorney must be made under *a specific*, not general, power, duly witnessed, a notarial copy of which must accompany this application.

This Rule also applies to the Stock-Book.

Esquire, my true and lawful Attorney, for me and in my name and stead to sign the Petition of The Hamilton Stove Company (Limited), for the incorporation under The Ontario Joint Stock Companies' Letters Patent Act, and also in my name and as my act and deed to sign the 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.

In witness whereof, I have hereunto set my hand and seal at Edinburgh, this second day of January, A.D. 1892.

Signed and sealed in the presence of GEORGE INGLIS. } GEORGE PETER SHARPE.

{Seal.}

FORM NO. 9.

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, to Herbert Mason, of the City of Toronto, in the Province of Ontario.

I, George Inglis, of the City of Edinburgh, Student-at-law, make oath and say:—

1. That I was personally present and did see George Peter Sharpe sign the said Power of Attorney hereunto annexed.

2. That I know the said party.

3. That the signature "George Peter Sharpe" is of the proper handwriting of the said party.

4. That the signature "George Inglis," attesting the signature aforesaid, is the true signature of me, this deponent.

Sworn before me at the City of Edinburgh, this second day of January, 1892. } GEORGE INGLIS.

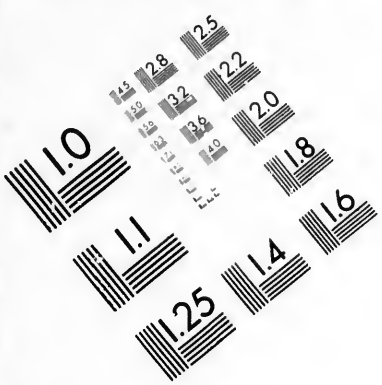
(L.S.) PETER ROWE,
Notary Public.

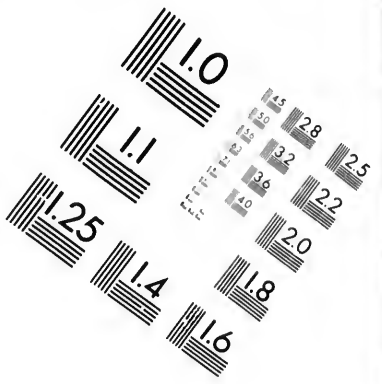
FORM NO. 10.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION.

PROVINCE OF ONTARIO, County of Wentworth, To Wit. } In the matter of the application, under the Ontario Joint Stock Companies' Letters Patent Act, of William John Thomas and others for incorporation as The Hamilton Stove Company (Limited).

I, Arthur Freeman Lobb, of the City of Hamilton, in the County of Wentworth, Student-at-law, make oath and say:





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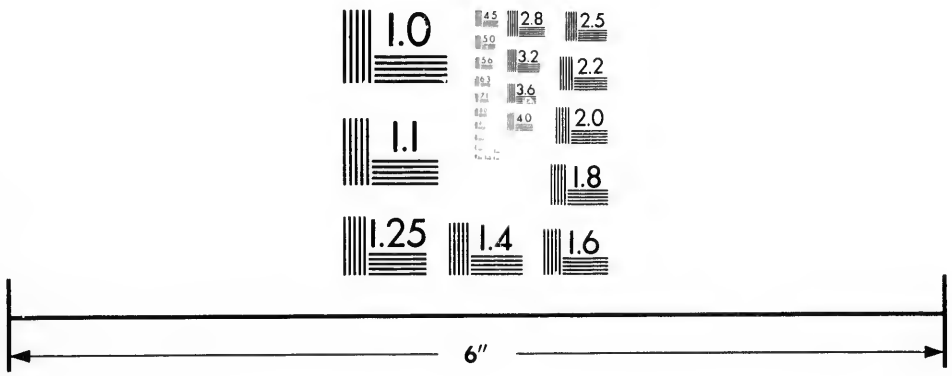
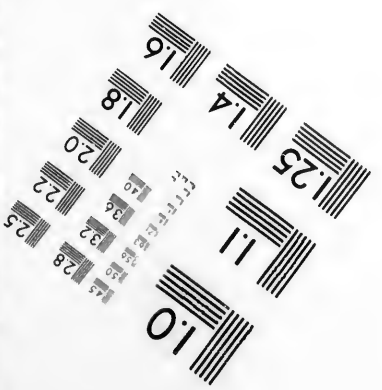
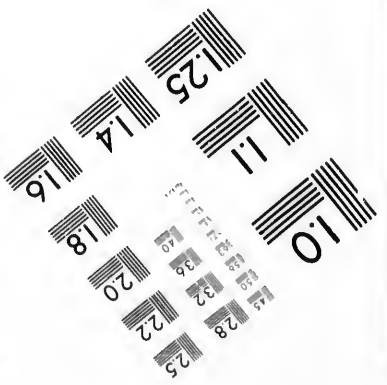






Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1. That I was personally present and did see William John Thomas, Thomas Taylor and Thomas Bright Taylor, applicants for incorporation by Letters Patent of the said Company, sign the petition hereunto annexed, and marked as Exhibit "A" to this my affidavit.

2. That I know the said parties.

3. That the signatures "W. J. Thomas," "Thos. Taylor," and "Thos. B. Taylor," are of the proper hand-writing of the said parties.

4. That the signatures "A. F. Lobb," attesting the signatures hereinbefore mentioned, are the true signatures of me, this deponent.

Sworn before me at Hamilton, in the County of Wentworth, this seventeenth day of February, A.D. 1892.

JOHN ROE,
A Commissioner, etc.

A. F. LOBB.

A similar affidavit by Mr. Gibson should be furnished, verifying the other signatures.

FORM NO. 11.

STOCK BOOK.

OF

THE HAMILTON STOVE COMPANY (LIMITED).

To be incorporated under "The Ontario Joint Stock Companies' Letters Patent Act,"

CAPITAL $200,000, in 4,000 SHARES OF $50 EACH.

We, the undersigned, do hereby severally, and not one for the other, subscribe for and agree to take the respective amount of the capital stock of The Hamilton Stove Company (Limited), set opposite our names as hereunder and hereafter written, and we do covenant and agree each with the other to pay the amount so subscribed, as the same may be called in by the Directors of the Company.

And we do further covenant and agree to abide by and observe the provisions of the Lettters Patent of Incorporation and the By-laws, Rules and Regulations of the said Company, to be made in pursuance of its Charter or of the said Act.

Witness.	Date.	Name.	Seal.	Residence.	No. of Shares.	Amount.
	1892					
A. F. Lobb.....	15 Feb.	W. J. Thomas	L.S.	22 River st ...	Elev'n h ndred & nin'ty-eig't	$59,900 00
A. F. Lobb.....	15 Feb.	Thos. Taylor,	L S.	180 Front E,	Tw'lve h'ndred	60,000 00
A. F. Lobb.....	15 Feb.	Ths. B. Taylor	L.S.	180 Front E.	Elev'n h'ndred & nin'ty-eig't	59,900 00
Jno. G. Gibson	17 Feb.	S A. Thomson	L.S.	22 River st ...	Two	100 00
Jno. G. Gibson	17 Feb.	H. V. Taylor..	L.S.	180 Sherb'rne	Two	100 00
Jno. G. Gibson	17 Feb.	G. P. Sharpe.. (by his Attorney, H. Mason)	L S.	Edinburgh ...	Four Hundred.	20,000 00

FORM NO. 12.

AFFIDAVIT VERIFYING SIGNATURES TO STOCK-BOOK.

Province of Ontario, County of Wentworth, To Wit. } In the matter of the application under the Ontario Joint Stock Companies' Letters Patent Act of William John Thomas and others, for incorporation as The Hamilton Stove Company (Limited.)

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, Thomas Taylor, and Thomas Bright Taylor, therein named, sign the Stock-Book of the said proposed Company, marked as exhibit "A."

2. That I know the said parties.

3. That the signatures "W. J. Thomas," "Thos. Taylor," and "Thos. B. Taylor," are of the proper handwriting of the said parties.

4. That the signatures "A. F. Lobb," 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 seventeeth day of February, A.D. 1892. } A. F. LOBB.

John Roe,
A Commissioner, etc.

A similar affidavit should be made by Mr. Gibson for the purpose of verifying the other signatures.

FORM NO. 13.

AFFIDAVIT VERIFYING COPY STOCK-BOOK.

Province of Ontario, County of Wentworth, To Wit. } In the matter of the application under the Ontario Joint Stock Companies' Letter Patent Act of William John Thomas and others, for incorporation, as The Hamilton Stove Company (Limited).

I, Arthur Freeman Lobb, of the City of Hamilton, in the County of Wentworth, Student-at-Law, make oath and say:

That the paper writing hereunto annexed, marked as exhibit "A," to this my Affidavit, has been carefully compared by me with the

original Stock Book of The Hamilton Stove Company (Limited), and that I find the same to be a true and correct copy thereof.

Sworn before me at the City of Hamilton, in the County of Wentworth, this seventeenth day of February, A.D. 1892.

A. F. LOBB.

JOHN ROE,
A Commissi... , etc.

FORM NO. 14.

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, in 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 said Company, the Directors of the said Company consider 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 said Directors of The Hamilton Stove Company (Limited), enact 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 of 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.

3. That this By-law be submitted with all due despatch for the confirmation of the Shareholders of the Company at a General Meeting to be called for considering the same.

Passed this 3rd day of April, A.D. 1892

W. J. THOMAS,
President.

Seal.

THOS. TAYLOR,
Secretary.

Hamilton, 3rd April, 1892.

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 Honorable the Provincial Secretary."

W. J. THOMAS,
President.

Seal.

THOS. TAYLOR,
Secretary.

This by-law may be adapted for use in case of the removal of the chief place of business of the company.

FORM NO. 15.

AFFIDAVIT VERIFYING BY-LAW FOR INCREASE OF CAPITAL STOCK AND PROVING DUE SANCTION OF SAME.

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 said 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 annexed paper writing marked "A" to this my affidavit' is a true and correct copy of By-law Number 29, passed on the 3rd April, 1892, by the Directors of 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 May, 1892.

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 12th day of May, 1892.

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.

FORM NO. 16.

BY-LAWS OF COMPANY REGULATING THE CALLING OF A GENERAL MEETING.

"C"

By-Laws No. 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,

1. That a general meeting of the Shareholders may be called at any time by the Directors, when they may deem the same necessary or advisable for any purpose, not contrary to law, or the letters patent of the Company, or the Statute, 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.

2. That notice of the time and place for holding the annual or a general meeting of the Company, must be given at least ten days previously thereto in *The Hamilton Times*, and also by mailing the same as a registered letter, duly addressed to each shareholder at least ten days previous to such meeting.

FORM NO. 17.

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), regulating the calling of meetings.

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 No. 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 April, 1892. } THOS. TAYLOR.

John Roe,
A Commissioner, etc.

FORM NO. 18.

NOTICE IN LOCAL NEWSPAPER OF A SPECIAL GENERAL MEETING.

"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 Directors, 3rd of April, 1892), 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, in the City of Hamilton, on Wednesday, the 11th day of May 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.

FORM NO. 19.

AFFIDAVIT PROVING DUE CALLING OF A GENERAL MEETING AND VERIFYING NOTICE IN LOCAL NEWSPAPER.

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 May, A.D. 1892.

3. That the said meeting was duly called pursuant to the By-laws (*a*) of the Company, by giving notice thereof on the 1st May, 1892, in *The Hamilton Times*, a newspaper published at the said City of Hamilton, and by mailing the same as a registered letter, duly addressed to each shareholder, at least ten days prior to such meeting.

4. That the clipping from the said *The Hamilton Times*, attached to this my affidavit, and now shown to me marked "A" is a true and correct copy of the said notice given as aforesaid.

(*a*) Provisions of the Statute, *or* of the Letters Patent, *or* of a By-law of the Company made for the purpose, *as the case may be.*

5. That said meeting was called for considering 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 May, A.D. 1892. } THOS. TAYLOR.

JOHN ROE,
A Commissioner.

FORM NO. 20.

AFFIDAVIT PROVING DUE CALLING OF GENERAL MEETING WHERE NO BY-LAW FOR THE PURPOSE HAS BEEN PASSED, (*a*) AND VERIFYING NOTICE IN LOCAL NEWSPAPER AND ONTARIO GAZETTE.

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 May, 1892, at the Company's office, in the City of Hamilton, for the purpose of considering and sanctioning By-law No. 29 (made by the Directors 3rd April, 1892), 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 chief place of business of the Company, on the 1st day of May, 1892.

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) (*b*).

(*a*) If the meeting was called under special provisions in the Charter, the affidavit must be drawn to suit the circumstances.

(*b*) Clause 4 does not apply to companies whose capital is $3,000 or less.

5. That the clipping from the said *The Ontario Gazette*, attached to this my affidavit, and now shewn 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 May, A.D. 1892. } THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM NO. 21.

PETITION FOR SUPPLEMENTARY LETTERS PATENT INCREASING CAPITAL STOCK.

To His Honour the Lieutenant-Governor of the Province of Ontario in Council :

The petition of the Directors of The Hamilton Stove Company (Limited.)

Humbly sheweth :

1. That your petitioners are the Directors of The Hamilton Stove Company (Limited).

2. That the said company was incorporated under "The Ontario Joint Stock Companies Letters Patent Act," by Letters Patent, dated 21st February, A.D. 1892.

3. That the capital stock of the said 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.

4. That the said capital is insufficient for the purposes of the said Company.

5. That your Petitioners made on the third day of April, A.D. 1892, a By-law increasing the capital stock of the said 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.

6. 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 eleventh day of May, A.D. 1892.

7. That your Petitioners, in accordance with the provisions of the said Act, have given four week's notice in *The Ontario Gazette*, of their intention to apply for Supplementary Letters Patent confirming the said by-law.

Your Petitioners therefore pray that your Honour may be pleased to grant under the Great Seal, Supplementary Letters Patent confirming the said By-law.

And your petitioners, as in duty bound, will ever pray.

Witness:
JOHN ROE,

Seal.

W. J. THOMAS,
THOS. TAYLOR,
THOS. B. TAYLOR.

Dated at Hamilton,
this sixth day of June, A.D. 1892.

FORM NO. 22.

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, Thomas Taylor and Thomas Bright Taylor, the Directors of the said Company, sign the Petition for Supplementary Letters Patent, marked as exhibit "A."

2. That I know the said parties.

3. That the signatures "W. J. Thomas," "Thos. Taylor," and "Thos. B. Taylor," are of the proper handwriting 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 sixth day of June, 1892.
R. W. EVERETT,
A Commissioner, etc.

JOHN ROE.

FORM NO. 23.

NOTICE IN *ONTARIO GAZETTE*, OF APPLICATION FOR SUPPLEMENTARY LETTERS PATENT.

NOTICE is hereby given that, within six months from the eleventh day of May, A.D. 1892, the date of the sanction thereof by the Shareholders of the Company, application under "The Ontario Joint Stock Companies Letters Patent Act," will be made by the Directors of The

Hamilton Stove Company (Limited), to the Lieutenant-Governor of the Province of Ontario in Council, for the grant of Supplementary Letters Patent, to confirm a By-law for increasing the capital stock of the said The Hamilton Stove Company (Limited), from two hundred thousand dollars to two hundred and fifty thousand dollars, by the issue of one thousand shares of new stock of fifty dollars each.

JOHN ROE,
Solicitor for Applicants.

First inserted in the issue of *The Ontario Gazette*,
dated, 14th day of May, 1892.

FORM NO. 24.

AFFIDAVIT VERIFYING NOTICE IN *ONTARIO GAZETTE* OF APPLICATION FOR SUPPLEMENTARY LETTERS PATENT.

PROVINCE OF ONTARIO,
County of Wentworth,
to Wit:

In the matter of the application of The Hamilton Stove Company (Limited), for Supplementary Letters Patent, confirming a By-law increasing the capital stock.

I, John Roe, of the City of Hamilton, in the County of Wentworth, Solicitor, make oath and say:

1. That notice has been given in *The Ontario Gazette*, of the application for Supplementary Letters Patent, confirming the said By-law, a copy of which notice marked "D" is hereunto annexed.

2. That the said notice was published in the issues of the said Gazette of the fourteenth, twenty-first and twenty-eighth days of May, and the 4th day of June, A.D. 1892.

Sworn before me at the City of Hamilton, in the County of Wentworth, this sixth day of June, A.D. 1892.

JOHN ROE.

R. W. EVERETT,
A Commissioner, etc.

FORM NO. 25.

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, 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 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 Directors 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.

6. That the petition in this behalf is signed by all the Directors of the Company, and that they have been duly elected as such.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 6th day of June, A.D. 1892.

W. J. THOMAS.

JOHN ROE,
A Commissioner, etc.

FORM NO. 26.

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 Directors of the said The Hamilton Stove Company (Limited), enact 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. 1892.

W. J. THOMAS,
President.

Seal.

THOMAS TAYLOR,
Secretary.

FORM NO. 27.

NOTICE PUBLISHING BY-LAW IN *ONTARIO GAZETTE*, CHANGING NUMBER OF DIRECTORS.

Under the provisions of R. S. O. 1887, Chap. 157, Sec. 35, the Directors of The Hamilton Stove Company (Limited), hereby give public notice that they have passed the following By-law:

"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 Directors of the said The Hamilton Stove Company (Limited), enact as follows:

"That the number of Directors of the said Company be and the same is hereby increased to five."

W. J. THOMAS,
President.

{Seal.}

THOMAS TAYLOR,
Secretary.

Dated at Hamilton,
this seventh day of June, A.D. 1892.

FORM NO. 28.

NOTICE OF APPLICATION FOR CHANGE OF CORPORATE NAME.

NOTICE.

Public notice is hereby given that (1) The Hamilton Stove Company (Limited), a Company incorporated under the Ontario Joint Stock Companies' Letters Patent Act, will, after four weeks from the first publication hereof, in *The Ontario Gazette*, and in *The Hamilton Times*, a newspaper published in the locality in which the operations of the said Company are carried on, apply under the "Act respecting the Changing of the names of Incorporated Companies," to His Honor the Lieutenant-Governor of Ontario in Council, for an Order changing its corporate name to that of The Toronto Stove Company (Limited).

2. That the said Company is in a solvent condition.

3. That the change desired is not for any improper purpose, it being the intention of the said Company to remove its works to the said City of Toronto.

4. That the name desired is not the name of any other Company, incorporated or unincorporated, or liable to be unfairly confounded therewith, or otherwise on public grounds objectionable.

JOHN ROE,
Solicitor for the Company.

First inserted in issue of *Gazette*,
dated 2nd day of July, 1892.

A similar form may be used for notice in local newspaper.

FORM NO. 29.

AFFIDAVIT PROVING PUBLICATION OF NOTICE OF APPLICATION FOR CHANGE OF NAME.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit:

In the matter of the application under the "Act respecting the Changing of the names of Incorporated Companies," of The Hamilton Stove Company (Limited), a Company carrying on business in the City of Hamilton, for an Order in Council changing its name.

I, Richard Doe, of the City of Hamilton, in the County of Wentworth, Student-at-Law, make oath and say:

1. That four weeks previous notice of the intention of The Hamilton Stove Company (Limited), to apply for an Order of His Honour the Lieutenant-Governor in Council, changing its corporate name to that of The Toronto Stove Company (Limited), was inserted in the *Ontario Gazette*, on the following dates, viz: July 2nd, 9th, 16th and 23rd, A.D. 1892, and that the cutting from the said *Ontario Gazette* hereto annexed and marked as exhibit "A" to this my affidavit is a true copy of the said notice.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 25th day of July, A.D. 1892.

RICHARD DOE.

JOHN ROE,
A Commissioner, etc.

A similar affidavit is required verifying the notice in the local newspaper, with this addition:

2. That the said (name of newspaper referred to) is a newspaper published in the locality in which the operations of the said Company are carried on.

FORM NO. 30.

PETITION FOR ORDER IN COUNCIL CHANGING NAME OF COMPANY.

To His Honour the Lieutenant-Governor of the Province of Ontario in Council.

The petition of The Hamilton Stove Company (Limited.)

Humbly sheweth:

1. That the above named Company was incorporated under a general Act, viz., "The Ontario Joint Stock Companies' Letters Patent Act," by Letters Patent under the Great Seal, bearing date the twenty-first day of February, A.D. 1892.

2. That your petitioners are desirous of changing their corporate name to that of The Toronto Stove Company (Limited.)

3. That your petitioners are 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 by your petitioners is not for any improper purpose, and is not otherwise objectionable, the object of your petitioners being to remove the works of the said Company to the City of Toronto.

5. That the name desired is not the name of any other known Company, incorporated or unincorporated, or liable to be unfairly confounded therewith.

Your petitioners therefore pray that your Honour will be pleased by Order in Council to change their corporate name from that of "The Hamilton Stove Company (Limited)," to that of "The Toronto Stove Company, Limited.)"

And your Petitioners, as in duty bound, will ever pray.

W. J. THOMAS,
President.

{Seal.}

THOMAS TAYLOR,
Secretary.

Dated at Hamilton,
25th July, A.D. 1892.

FORM NO. 31.

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 in Council, changing its corporate name to that of The Toronto Stove Company (Limited.)

I, William John Thomas, of the City of Hamilton, in the County of Wentworth, President of the Company, 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, A.D. 1892

W. J. THOMAS.

JOHN ROE,
A Commissioner, etc.

FORM NO. 32.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit.

In the matter of the application under the Act, "An Act respecting the changing of the names of Incorporated Companies" of The Hamilton Stove Company (Limited), a Company carrying on business at the City of Toronto, for an Order in Council 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"; that I know the said parties, and that the signatures "W. J. Thomas" and "Thos. Taylor" are of the proper handwriting of the said parties.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 25th day of July, A.D. 1892.

A. F. LOBB.

J. ROE,
A Commissioner, etc.

FORM NO. 33.

EVIDENCE OF THE COMPANY'S SOLVENCY.

This should consist of a Balance Sheet or of a Statement specially prepared for the purpose, setting out the Company's affairs in detail, sufficient to satisfy the Lieutenant-Governor in Council.

As the Act under which the change of name is to be granted, makes proof of the solvency of the applicants, a *sine qua non*, the Provincial

Secretary requires that the evidence to be given on that head shall be clear and convincing. Such evidence may consist of (1) The last Balance Sheet of the Company if of sufficiently recent date, or (2) of a General Statement of the Company's affairs, specially made by competent authority, and setting forth the material facts. The Balance Sheet or the Statement, as the case may be, must be verified by the affidavit of some one conversant with the affairs of the applicants.

FORM NO. 34.

POWER OF ATTORNEY TO SUBSCRIBE FOR STOCK AND TO SIGN PETITION FOR INCORPORATION OF PROPOSED COMPANY.

Know all men by these presents that I, of the of in the County of and Province of , do hereby nominate, constitute, and appoint , of the of in the County of and Province of , my true and lawful attorney for me and in my name to subscribe for shares of the value of dollars each in "The Company, (Limited,)" and also to sign my name to any petition or other paper or document required to be signed by me as such stockholder in making application for grant of Letters Patent incorporating said company under "The Joint Stock Companies' Letters Patent Act," hereby ratifying and agreeing to ratify and confirm all and whatsoever my said attorney shall lawfully do in these premises.

As witness my hand and seal this day of A.D. 18 .

Signed and sealed in the presence of

Seal.

This Power of Attorney must be verified by a similar affidavit to that given in Form No. 9.

FORM NO. 35.

ANOTHER FORM OF POWER OF ATTORNEY.

Know all men by these presents that I, of the of in the County of and Province of do hereby nominate, constitute

and appoint of the
of in the county of
in the Province of my true and lawful attorney for me and in my name, place and stead, and for my sole use and benefit to execute and sign a petition to His Honor the Lieutenant-Governor in Council for the incorporation by Letters Patent, under the Great Seal of Ontario, of "The Company, Limited," and to sign and execute all such papers and documents as are requisite and necessary for procuring such incorporation, and to do for me and in my name and stead, all and every such thing which may be necessary and requisite for procuring such incorporation.

And for all and every of the purposes aforesaid, do hereby give and grant to , my said attorney, full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done in and about the premises, and also full power and authority for , my said attorney, to appoint a substitute or substitutes, and such substitution at pleasure to revoke; I hereby ratifying and confirming and agreeing to ratify, confirm and allow all and whatsoever my said attorney shall lawfully do or cause to be done in the premises by virtue hereof.

In witness whereof, I have hereunto set my hand and seal at , this day of , one thousand eight hundred and

Signed, sealed and delivered in presence of

Seal.

Verify in same manner as Form No. 9.

FORM NO. 38.

ANOTHER FORM OF POWER OF ATTORNEY.

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 my hand and seal this day of A. D. 18

Signed, sealed and delivered in presence of } { Seal. }

Verify in same manner as Form No. 9.

FORM NO. 37.

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 transfer 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 eight hundred and

Signed and sealed in the presence of {

Verify in same manner as Form No. 9.

FORM NO. 38.

PROXY.

HAMILTON STOVE COMPANY, LIMITED.

I, George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, being a holder of 400 shares in the stock of the Company, hereby appoint and authorize Herbert Mason, of Hamilton, Esquire, to vote for me and on my behalf at the ordinary (*or* extraordinary, *as the case may be*) general meeting of this Company, to be held on day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held within the present year.)

Witness my hand and seal this day of 189 .

Signed in presence of

J. JONES.

[Seal.] G. P. SHARPE.

FORM NO. 39.

AGREEMENT FOR SALE TO PROPOSED COMPANY OF STOCK IN TRADE, ETC., TO FORM PART OF ASSETS OF COMPANY, AND AS TO ACCEPTANCE IN PAYMENT THEREOF, OF SHARES IN THE COMPANY, WHICH ARE TO BE CONSIDERED AS PAID UP SHARES.

This agreement made this day of A.D. 18
Between

of the first part, and

as Trustees, of the second part.

Whereas are desirous of forming and incorporating a Joint Stock Company under the provisions of "The Ontario Joint Stock Companies' Letters Patent Act" for the purposes of

And whereas the said

are Trustees 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 parties of the first part hereto have for some years past been engaged in a business somewhat similar to that which the

proposed incorporated Company is to engage in, and are the owners of which are suitable to the objects of the said Company, and it is proposed that the said parties of the first part hereto shall become shareholders in the said Joint Stock Company, and shall transfer to the said Company, as soon as the same is incorporated, the said and shall receive paid up stock in the said Company as the consideration.

Now this agreement witnesseth that the parties of the first part have agreed and do agree with the parties of the second part to become Shareholders in the said Company, and to take stock therein to the amount of dollars, that is to say, the said

is to take shares; the said
is to take shares; the said
is to take shares; the said
is to take shares; being of the value of
dollars each,

And in consideration of the issue of such shares as aforesaid to them the parties of the first part, they hereby agree with the parties of the second part to sell, convey, transfer and make over to the said proposed Company 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) by such assurance as may vest the full and absolute title thereto in said Company.

And the said parties of the first part further agree with the parties of the second part, that in case upon a valuation and appraisement of said (lands, plant and machinery), they are not found to amount in value to the sum of dollars, then the said parties of the first part shall and will pay in cash to the said parties of the second part, or to the Company when incorporated, the difference between such valuation and said sum of dollars so that the whole consideration paid for said shares in (land, plant and machinery), and in cash shall amount to dollars.

And it is agreed that the shares that shall be allotted to the parties of the first part, in pursuance of this agreement shall be fully paid up shares of the stock of the said company.

And the parties of the second part covenant and agree with the parties of the first part to use their best endeavors to procure the issue and allotment of such shares as hereinbefore mentioned to the parties of the first part as soon as possible after the incorporation of said Company, and upon the conveyance and transfer of the said lands, plant and machinery as above mentioned.

In witness whereof, etc.

FORM NO. 40.

ANOTHER FORM OF AGREEMENT.

Memorandum of agreement made this day of A.D., 18

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, so 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. 18 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 herein before mentioned and set forth.

In witness whereof, the said parties hereto have herewith set their hands and seals at the of in the of this day of A. D., 18

Signed, sealed and delivered in the presence of } Seal.

FORM NO. 41.

ANOTHER FORM OF AGREEMENT.

Memorandum of agreement made this day of A.D. 18

Between

of the first part and

The Company (Limited), a Company proposed to be formed under the provisions of "The Ontario Joint Stock Companies Letters Patent 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 price sum 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. 18

Signed sealed and delivered in presence of

FORM NO. 42.

LETTERS PATENT.

{ L.S. }

ALEXANDER CAMPBELL.

O. MOWAT,
Attorney-General.

LETTERS PATENT

INCORPORATING.

The

Hamilton Stove

Company, Ltd.

Recorded 21st February, 1892.
As No. 62.

J. F. C. USSHER,
Deputy Reg.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, etc., etc., etc.*

To all to whom these Presents shall come—

GREETING—

WHEREAS by the Revised Statute of the Legislature of Our Province of Ontario, entitled "An Act respecting the Incorporation of Joint Stock Companies by Letters Patent," it is provided that the Lieutenant-Governor of Our said Province in Council may by Letters Patent, under the Great Seal of Our said 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 said Legislature extends, except the construction and working of Railways and the business of Insurance, other than provided by Section 4 of "The Ontario Insurance Act," being Chapter 167 of "The Revised Statutes of Ontario, 1887.

AND WHEREAS, by Petition addressed to our Lieutenant-Governor of Ontario in Council, William John Thomas, Foundryman; Samuel Andrew Thomson, Machinist; Thomas Taylor, Gentleman; Thomas Bright Taylor, Stove Manufacturer; and Henry Victor Taylor, Moulder, all of the City of Hamilton, in the County of Wentworth, in the said Province of Ontario, and George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom, of Great Britain and Ireland called Scotland, Capitalist, have prayed that a Charter may be granted to them, constituting them, and such other persons as are or may become shareholders in the proposed Company, a body corporate and politic for the purposes and objects following, that is to say: The manufacture of stoves under the name of The Hamilton Stove Company (Limited.)

AND WHEREAS it is further stated by the said Petition that the amount of the said stock taken by each of the applicants is as follows:—By the said William John Thomas and Thomas Bright Taylor each fifty-nine thousand nine hundred dollars; by the said Thomas Taylor, sixty

thousand dollars; by the said Samuel Andrew Thomson and Henry Victor Taylor, each one hundred dollars, and by the said George Peter Sharpe, twenty thousand dollars.

AND WHEREAS it has been proved to the satisfaction of our Lieutenant-Governor in Council, that the said applicants have complied with all the requirements of the said Act, as to matters preliminary to the issue of Letters Patent, and that a notice of the said application containing the particulars required by the sixth section of the said Act has been duly given in *The Ontario Gazette*, in accordance with the provisions of the said Act.

NOW KNOW YE, that by and with the advice of Our Executive Council of Our Province of Ontario, and under the authority of the hereinbefore in part recited Statute, and of any other power or authority whatsoever in us vested in this behalf. We do by these Our Letters Patent constitute the said William John Thomas, Samuel Andrew Thomson, Thomas Taylor, Thomas Bright Taylor, Henry Victor Taylor and George Peter Sharpe, and all such other persons as shall at any time hereafter become shareholders in the Company hereby created under the provisions of the said Act, a body corporate and politic, with perpetual succession, and a common seal, by the name of THE HAMILTON STOVE COMPANY (LIMITED), and capable forthwith of exercising all the functions of an incorporated Company for the purposes and objects aforesaid, as if incorporated by a special Act of the Legislature of Ontario, and by their corporate name, of suing and being sued, pleading and being impleaded in all Courts, whether of Law or Equity, and with the powers in the said Act, more particularly set forth: And we direct that the capital stock of the said Company be two hundred thousand dollars, and be divided into four thousand shares of fifty dollars each, and that the operations of the said Company are to be carried on at the said City of Hamilton; that the chief place of business of the said Company is to be at the said City of Hamilton; and that the said William John Thomas, Thomas Taylor, and Thomas Bright Taylor, be the first Directors of the said Company.

And we further direct that no parcel of lands or interest therein at any time acquired by the said Company, 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 in the said Province, shall be held by the said Company or by any trustee on their behalf for a longer period than seven years after the acquisition thereof, but shall be absolutely sold and disposed of, so that the Company shall no longer retain any interest therein unless by way of security.

And we further direct that any such parcel of land or any interest therein, not within the exceptions hereinbefore mentioned which shall

be held by the said Company for a longer period than seven years, without being disposed of, shall be forfeited to Her Majesty for the uses of the said Province.

And we further direct 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 said Company of the intention of the Government to claim such forfeiture, and it shall be the duty of the Company to give to the Lieutenant-Governor, when required, a full and correct statement of all lands at the date of such statement held by the Company, or in trust for the Company, and subject to this Proviso.

And we further direct that the Company shall be subject to the provisions of said Act, being Chapter 157 of the Revised Statutes of Ontario, 1887, intituled "An Act respecting the incorporation of Joint Stock Companies by Letters Patent," and to such further and other provisions as the Legislature of Ontario may hereafter deem expedient in order to secure the due management of its affairs and the protection of its shareholders and creditors.

The Charter of the Company shall be forfeited by non-user during three consecutive years, at any one time, or if the Company does not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such Charter.

The Charter of the Company may at any time be declared to be forfeited and may be revoked and made void by Order of our Executive Council for our Province of Ontario, on sufficient cause being shown to us in that behalf, and such forfeiture, revocation and making void may be upon such conditions and subject to such provisions as to us may seem proper.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province of Ontario to be hereunto affixed:

WITNESS, the HONOURABLE SIR ALEXANDER CAMPBELL, Knight Commander of Our Most Distinguished Order of St. Michael and St. George, Member of Our Privy Council for Canada, etc., etc., LIEUTENANT-GOVERNOR of Our Province of Ontario, at Our Government House, in Our City of Toronto, in Our said Province, this twenty-first day of February, in the year of our Lord one thousand eight hundred and ninety-two, and in the fifty-fifth year of Our Reign.

By Command,

J. M. GIBSON,

Secretary.

FORM NO. 43.

LIST OF SHAREHOLDERS.

List, in duplicate, of all persons who, on the 31st December, 189— were shareholders in the as required by Sec. 57, Cap. 157, R. S. O.

Names of Shareholders alphabetically arranged.	Address.	Calling.	Amount of Stock held.		Amount unpaid on Stock.	
			$	cts.	$	cts.

FORM NO. 44.

AFFIDAVIT VERIFYING THE ABOVE LIST, AND THE ATTACHED SUMMARY OF THE AFFAIRS OF THE COMPANY.

PROVINCE OF ONTARIO, County of To Wit: } In the matter of the Annual returns of the
We , and
of , President and Secretary, of the above named Company, respectively make oath and say:—

1. That the above list of the Shareholders, and the Summary of the affairs of the said Company hereto attached, are, to the best of our knowledge, information and belief, true and correct in every particular.

Sworn before me at
in the of
this day of } (*For Signature of Deponent.*)

, a J. P. in and for the County of

FORM NO. 45. (*a*)

Specimen page—REGISTER OF SHAREHOLDERS.

DATE.		NAME.	CALLING.	ADDRESS.	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 columns necessary to give all the particulars required by the Act inserted in the Index to Share Ledger.

FORM NO. 46.

REGISTER OF DIRECTORS.

ELECTED.		NAME.	CALLING.	ADDRESS.	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. 47. (*a*)

REGISTER OF TRANSFERS.

TO WHOM.			DATE.		No. OF SHARES.	Margin for binding, say 2 inches.	PAID IN.		UN-PAID.		FROM WHOM.		REMARKS.
NAME.	CALLING.	ADDRESS.									NAME.	ADDRESS.	
5	2	2			$1\frac{1}{8}$						$2\frac{1}{2}$	$2\frac{1}{2}$	$3\frac{1}{2}$

NOTE.—The figures in each column denote the proper breadth in inches or fractions of an inch of such column.

(*a*) If thought desirable, this book may be omitted, as all the information contained therein may be found in the Transfer Book a specimen page of which is given as Form 48.

FORM NO. 48.

TRANSFER OF SHARES.

THE HAMILTON STOVE COMPANY (LIMITED.)

TRANSFER No. 1.

FOR VALUE RECEIVED, I, ...of.....

Folio..... in the County of.....do hereby assign and transfer unto.....

of the.....of..... in the County of .....

.....Shares in the Capital Stock of

Power of Attorney THE HAMILTON STOVE COMPANY (LIMITED), (on which has been paid the

No..... sum of.....Dollars

subject to the By-laws, Rules and Regulations of the Company already passed or hereafter to be passed of the said THE HAMILTON STOVE COMPANY (LI' ').

WITNESS my hand, at the office of t.. ompany, in the City of Hamilton, this.....day of

.....in the year of our Lord, 189.....

Folio..... *WITNESS:* .....

I HEREBY ACCEPT the foregoing transfer of..... .....Shares of the Capital Stock of THE HAMILTON STOVE COMPANY (LIMITED), as above mentioned.

Power of Attorney Dated this.....day of.....189.....

No..... *WITNESS:* .....

No..... WITNESS: .....

FORM NO. 49.

Specimen Page. STOCK LEDGER.

Name..... .....

Occupation..... ..... *Address*.....

Date.			Call or Transfer.	C. B. Fol.	Transfer No.	Dr.			Cr.			Balance.		
						Shares.	Paid on.		Shares.	Paid on.		Shares.	Paid on.	
Jan.	4	1892	Call No. 1, 10 %.....	5					100	1000				
Feb.	5	"	" No. 2, 20 %.....	16					"	2000		100	3000	
July	13	"	" No. 3, 10 %.....	84					"	1000		"	4000	
Aug.	23	"	Transfer		5	40	1600					60	2400	
Jan.	5	1893	Call No. 4, 20 %.....	147					60	1200		"	3600	
"	10	"	Transfer		18				30	1800		90	5400	
"	15	"	Call No. 5, 5 %—on account	151					90	450		90	5850	
Mar.	1	"	Transfer		21				10	500		100	6350	
"	2	"	Call No. 5 (arrears).....	160					10	150		"	6500	
July	15	1894	Transfer		38	100	6500							
(a)	$\frac{3}{8}$	$\frac{4}{8}$	$1\frac{1}{2}$	$\frac{4}{8}$	$\frac{4}{8}$	$\frac{4}{8}$	$\frac{8}{8}$	$\frac{8}{8}$	$\frac{4}{8}$	$\frac{8}{8}$	$\frac{8}{8}$	$\frac{4}{8}$	$\frac{8}{8}$	$\frac{8}{8}$

(a) NOTE.—These figures in each column denote the proper breadth in inches or fractions of an inch of such column.

FORM NO. 50.

NOTICE OF CALL.

I beg to give you notice that the directors of The Co. (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 , 189 .

The amount payable by you upon the shares held by you, in respect of such call is $.

Your obedient servant,

Secretary.

Hamilton..... 189

FORM NO. 51.

NOTICE BEFORE FORFEITURE.

THE Co. (LIMITED).

No. , Street, , 189 .

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. 52.

INDEMNITY ON ISSUE OF NEW CERTIFICATE.

To The Co. (Limited), and A., B., and C., the Directors thereof.

GENTLEMEN,—I have lost the certificate of title, dated the day of , relating to the shares of each, in the above-named company, of which I am the proprietor, and I request you to issue to me a fresh certificate of title to such shares, and in consideration thereof I undertake to indemnify you against all actions, proceedings, claims, and demands which may be brought or made against you, or any of you, in consequence of your having issued such fresh certificate, or in consequence of your permitting at any time hereafter a transfer of the above shares, or any of them, without the production of the original certificate above referred to.

(Signature).....

And I of concur in the above request, and guarantee the performance by the said of the above undertaking.

(Signature)

Dated the day of , 189

FORM NO. 53.

AGREEMENT APPOINTING SECRETARY OR MANAGER.

This agreement, made the day of , between The Co. (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.

BY-LAWS.

The following are given as examples of by-laws in general, which companies can alter to suit their respective circumstances and requirements, but every by-law must have the preamble and enacting clause as given herewith:—

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 on the first Monday in 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 may deem the same necessary or advisable for any purposes not contrary to law, or the Letters Patent of the company or the Statute, 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 or a general meeting of the company must be given at least ten days previously thereto in the *Evening Times* (*a*), and also by mailing the same as a registered letter (*b*) duly addressed to each shareholder at least ten day previous to such meeting.

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.

(*a*) *Or* in some newspaper published at or near as may be to the office or chief place of business of the company, *or* by publishing the same in the *Ontario Gazette*.

(*b*) The publishing of the notice of meeting in the *Gazette*, or the mailing the same as a registered letter, does not apply to companies having a capital not exceeding three thousand dollars.

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 five Directors, of whom three 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.

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 the Company shall have a corporate seal of such design as the Board may determine, which seal shall whenever used be authenticated by the signatures of the President and Secretary.

16. That the Board shall from time to time fix the salary or wages to be paid officers of the Company.

STOCK.

17. 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.

18. 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.

19. 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 forfeit 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.

20. That receipts for payments 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 signature of the President and Secretary, and sealed with the Company's seal.

21. 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 him 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.

22. 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.

23. 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*).

24. 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.

BANK ACCOUNT.

25. That a bank account shall be kept in the name of the Company at a bank to be selected by the Board, and all cheques shall be signed by the Secretary and Treasurer.

(*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*) Restriction as to the time and manner of inspecting the books may be imposed by the Company in general meeting, or it may, in certain cases, be well to strike this by-law out altogether.

SOLICITOR.

26. 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.

27. That one or more Auditors shall be appointed annually by the Shareholders at the annual general meeting, whose duty it shall be to examine all books, vouchers and accounts of the Company and all documents having reference to the business thereof. They shall be supplied with a copy of the balance sheet and abstract of the affairs of the Company 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.

CHANGING BY-LAWS.

28. 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.

CHAPTER 178.

R. S. O. 1887.

An Act respecting the Changing of the Names of Incorporated Companies.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Where an incorporated company within the legislative authority of the Legislature of this Province, whether incorporated under a special or general Act, is desirous of changing its name, the Lieutenant-Governor, upon being satisfied that the company is in a solvent condition, that the change desired is not for any improper purpose, and is not otherwise objectionable, and that the notice hereinafter provided for has been duly given, may, by Order in Council, change the name of the company to some other name set forth in the said order.

2. When the applicants are a trading corporation or a company carrying on business for profit, the company shall give at least four weeks' previous notice in the *Ontario Gazette* and in some newspaper published in the locality in which the operations of the company are carried on, of the intention to apply for the change of name, and shall state the name proposed to be adopted.

3. In case the proposed new name is considered objectionable, the Lieutenant-Governor in Council may, if he thinks fit, change the name of the company to some other unobjectionable name without requiring any further notice to be given.

4. Where the name of some locality in the Province of Ontario constitutes part of the name of any company incorporated by letters patent before the 30th day of March, 1885, such company may apply to the Lieutenant-

Governor in Council to amend their name by striking out the name of such locality, and such amendment may be made without the publication of any notice in all cases where the name of such locality does not form an essential part of the name of the company.

5. The change of name shall be conclusively established by the insertion in the *Ontario Gazette* of a notice thereof by the Provincial Secretary.

6. No contract or engagement entered into by or with the company, and no liability incurred by it shall be affected by the change of name; and all actions commenced by or against the company prior to the change of name may be proceeded with against or by the company under its former name.

7. This Act shall extend to any company incorporated under *The Ontario Joint Stock Companies' Letters Patent Act*, if such company has made or makes an application hereunder, and shall also extend to every corporation aggregate within the legislative authority of the Legislature of this Province, except a municipal corporation or other corporation of a like nature.

52 VIC., CHAPTER 26.

An Act respecting the limited liability of Incorporated Companies.

[*Assented to 23rd Marc , 1889.*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act applies to companies incorporated under *The Ontario Joint Stock Companies' Letters Patent Act*, subsequently to the passing of this Act, and shall also be deemed to be incorporated with and added to *The Ontario Joint Stock Companies' General Clauses Act* as regards any company incorporated by any special Act passed after the present Session of this Legislature.

2. The directors of every such company shall be jointly and severally liable upon every written contract or undertaking of the company on the face whereof the word "limited" or the words "limited liability" are not distinctly written or printed after the name of the company where it first occurs in such contract or undertaking.

3. The 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.

4. Every such company which does not keep painted or affixed its name, with the word "limited" after it, in manner directed by this Act, shall incur a penalty of $20 for every day during which such name is not so kept painted or affixed.

5. Every director and manager of the company who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty.

6. Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company whereon its name, with the said word "limited" after it, is not so engraved as aforesaid, or who issues or authorizes the issue of any notice, advertisement or other official publication of such company, or who signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or who issues or authorizes to be issued any bill of parcels, invoice or receipt of the company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, shall incur a penalty of $200 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.

54 VIC., CHAPTER 34.

An Act respecting the Liability of Directors.

[*Assented to 4th May, 1891.*

HER 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 "*Directors' Liability Act, 1891.*"

2. In this Act, unless the context otherwise requires:—

(1) "Untrue statement" includes a concealment of intentional non-disclosure of a material fact known to the director or promoter which might reasonably influence a person in determining whether to apply or not to apply for shares, debenture stock, annuities on lives, or other securities of the company for which application is invited.

(2) "Securities" includes bonds, debentures, investment bonds; also policies, certificates, or other instruments of insurance, suretyship, or guarantee, or instruments evidencing contracts in the nature thereof.

(3) "Company" includes any joint stock or other private corporation which issues, or is authorized to issue, shares, debenture stock, annuities on lives, or other securities as hereinbefore defined.

(4) "Directors" includes the officers, by whatever name known, appointed to manage the affairs of the corporation.

(5) "Promoter" 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 in a professional capacity for persons engaged in procuring the formation of the company.

(6) "Expert" includes any person whose profession gives authority to a statement made by him.

3. This Act shall apply to all companies where or by what authority soever incorporated; and, in respect of Provincial companies, shall be construed as one with the several Acts of Ontario, incorporating or providing for the incorporation of companies by letters patent or otherwise.

4. (1) Where after the passing of this Act, a prospectus or notice invites persons to subscribe or apply for shares, debenture stock, annuities on lives, or other securities 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 authorised 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 authorised the issue of the prospectus or notice, shall be liable to pay to all persons so subscribing or applying on the faith of such prospectus or notice, compensation 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—

(*a*) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and up to the time of the allotment or issue of the shares, debenture stock, annuities and lives, or other securities, as the case may be, did believe that the statement was true; and

(*b*) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from

a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

(*c*) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or 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 or issue of the shares, debenture stock, annuities on lives or other securities thereunder, he, on becoming aware of any untrue statement therein, withdrew his con-

sent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2) Where any company existing at the passing of this Act, shall be desirous of obtaining further capital by subscriptions for shares, bonds, debentures, debenture stock 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 authorised the issue of such prospectus or notice, or have adopted or ratified the same.

5. 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 authorised 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 authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a 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.

6. 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 authorised 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.

CHAPTER 38.

An Act respecting Loan Companies.

Assented to 4th May, 1891.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act applies to all companies which may hereafter be incorporated for the purpose of lending money on real estate or other securities hereinafter mentioned, and the expression "loan company in this Province" herein means a company incorporated for the said purpose.

(2) This Act does not apply to companies incorporated under the *Act respecting Building Societies* save and except where such companies or societies are herein expressly mentioned.

2. Every loan company hereafter incorporated save as aforesaid may from, time to time,—

(*a*) Lend and advance money, by way of loan or otherwise, for such periods as it deems expedient, on the security of real estate, or on the public securities of Canada, or of any of the Provinces thereof, or on the security of debentures of any municipal or public school corporation, and upon such terms and conditions as to the Company seem satisfactory or expedient;

(*b*) Acquire, by purchase or otherwise, any security upon which it is authorized to lend or advance money, and re-sell the same as it deems advisable;

(*c*) Do all acts that are necessary for advancing such sums of money, and for receiving and obtaining repayment thereof, and for compelling the payment of all interest accruing from such

sums so advanced, and the observance and fulfilment of any conditions annexed to such advance, and for enforcing the forfeiture of any term or property consequent on the non-fulfilment of such conditions, or of conditions entered into, for delay of payment;

(*d*) Give receipts, acquittances and discharges, either absolutely and wholly or partially, and execute such deeds, assignments or other instruments as are necessary for carrying any such purchase or re-sale into effect;

And for every and any of the foregoing purposes, and for every and any other purpose in this Act mentioned or referred to, the company may lay out, and apply the capital and property, for the time being, of the company, or any part thereof, or any of the moneys authorized to be hereafter raised or received by the company in addition to its capital for the time being, and may authorize and exercise all acts and powers whatsoever, in the opinion of the directors of the company requisite or expedient to be done or exercised in relation therete.

3. (1) The company may act as an agency association for the interest and on behalf of others who entrust it with money for that purpose, and may, either in the name of the company or of such others, lend and advance money to any person upon such securities as are mentioned in the next preceding section, or to any body corporate, or to any municipal or other authority, or to any board or body of trustees or commissioners, upon such terms and upon such security as to the company appear satisfactory, and may purchase and acquire any securities on which they are authorized to advance money, and again re-sell the same.

(2) The conditions and terms of such loans and advances, and of such purchases and re-sales may be enforced by the company for its benefit, and for the benefit of the person or persons or corporation for whom such

money has been lent and advanced, or such purchase and re-sale made; and the company shall have the same power in respect of such loans, advances, purchases and sales as are conferred upon it in respect of loans, advances, purchases and sales made from its own capital.

(3) The company may also guarantee the repayment of the principal or the payment of the interest, or both, of any moneys entrusted to the company for investment.

(4) The company may, for every or any of the foregoing purposes, lay out and employ the capital and property, for the time being of the company, or any part of the moneys authorized to be raised by the company in addition to its capital for the time being, or any moneys so entrusted to it as aforesaid, and may do, assent to, and exercise all acts whatsoever in the opinion of the directors of the company for the time being requisite or expedient to be done in regard thereto.

(5) All moneys of which the repayment of the principal or payment of interest is guaranteed by the company, shall, for the purposes of this Act, be deemed to be money borrowed by the company.

4. The directors may, from time to time, with the consent of the shareholders, obtained at any general meeting, borrow money on behalf of the company, at such lawful rates of interest and upon such terms as they from time to time think proper; and the directors may for that purpose execute any debentures, mortgages, bonds or other instruments, under the seal of the company, for sums of not less than $100 each, or may assign, transfer or deposit, by way of equitable mortgage or otherwise, for the sums so borrowed, any of the documents of title, deeds, muniments, securities or property of the company, and either with or without power of sale or other special provisions, as the directors deem expedient.

5. The directors, may, from time to time, with the consent of a majority of the shareholders, present in person or represented by proxy at a meeting called for such pur-

pose, issue debenture stock, which shall be treated and considered as a part of the regular debenture debt, authorized by section 4 of this Act, in such amounts and manner, on such terms and bearing such rate of interest as the directors from time to time think proper, but subject to the limitations in this Act provided, so that the amount received as money deposits and borrowed on the security of debentures, mortgages, bonds or other instruments or debenture stock, shall not in the whole exceed the aggregate amount fixed by this Act as the authorised limit of the borrowing powers of the company.

6. The debenture stock to be issued under the authority of this Act shall rank equally with the debentures issued, or to be issued, by the company, and the holders thereof shall not be liable or answerable for any debts or liabilities of the company.

7. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose at their head office, wherein they shall enter the names and addresses of the several persons and co-partners from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every debenture holder; mortgagee, bondholder, debenture stockholder and shareholder of the company, without the payment of any fee or charge.

8. All transfers of the debenture stock of the company shall be registered at the head office of the company in this Province, but the company may have transfer books of such debenture stock in Great Britain and Ireland, in which transfers of the said stock may be made; but all such transfers shall be entered in the book to be kept at the head office.

9. The company shall deliver to every holder of debenture stock a certificate stating the amount of the debenture stock held by him, the rate of interest payable thereon;

and all regulations and provisions for the time being applicable to certificates of shares in the capital stock of the company shall apply, *mutatis mutandis*, to certificates of debenture stock.

10. Debenture stock shall not entitle the holders thereof to be present or to vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking, except the right to require repayment of the principal money paid up in respect of the debenture stock.

11. The company may from time t... e purchase in the open market and redeem any portion or portions of the debenture stock representing moneys, which the directors, by resolution duly made, determine not to be required for the business of the company; but such purchase, paying off or redemption shall not in any way extend, limit or prejudice the exercise of the borrowing powers of the company under this Act.

12. The company shall not, without the express consent of the shareholders given at a general meeting, receive money on deposit; and when money is received on deposit, the same shall, for the purposes of this Act, be deemed to be money borrowed of the company.

13. (1) The company shall not borrow money unless at least $100,000 of its subscribed capital stock has been paid up.

(2) The company shall not borrow money unless at least twenty per cent. of its subscribed capital stock has been paid up.

(3) If the company borrows money by way of deposit, under the next preceding section, the aggregate amount of the sums so borrowed, by way of deposit, shall not at any time, whether the company borrows solely by way of deposit or also in other ways, exceed the aggregate amount of its

paid-up capital, and of its other cash actually in hand or deposited by it in any chartered bank or banks in Canada.

(4) If the company borrows money solely on debentures or other securities, and by guarantee as hereinbefore authorised, and not by way of deposit, under the next preceeding section the aggregate amount of the sums so borrowed shall not, at any time exceed four times the amount of its paid-up and unimpaired capital, or the amount of its subscribed capital, at the option of the company.

(5) If the company borrows money both by way of debentures or other securities, or by guarantee, as aforesaid, and also by way of deposit, the aggregate amount of money so borrowed shall not, at any time, exceed the amount of the principal moneys remaining unpaid on securities then held by the company, nor shall it exceed double the amount of the then actually paid up and unimpaired capital of the company; but the amount of cash then actually in the hands of the company, or deposited by it in any chartered bank, or both, shall be deducted from the aggregate amount of the liabilities which the company has then incurred, as above mentioned, in calculating aggregate amount for the purposes of this sub-section.

(6) In the event of any company now incorporated, availing itself of the provisions of this Act for the purpose of enlarging its powers to borrow money by debentures, nothing herein contained shall be construed as affecting or in any wise impairing the right of the holders of debentures issued by such company.

14. The company may hold such real estate as is necessary for the transaction of its business, not exceeding in yearly value the sum of $10,000, or such real estate as, being mortgaged or hypothecated to it, is acquired by it for the protection of its investments, and may, from time to time, sell, mortgage, lease or otherwise dispose of the same; but the company shall sell any real estate acquired in satisfaction of any debt within seven years after it has

been so acquired, otherwise it shall be forfeited to Her Majesty for the uses of the Province.

15. The company when acting as an agency association, may charge such commission to the lender or borrower, or both, upon the moneys invested, as is agreed upon, or as is reasonable in that behalf.

16. The company may stipulate for, take, reserve, and exact any rate of interest or discount that may be lawfully taken by individuals, and may also receive an annual payment on any loan by way of a sinking fund for the gradual extinction of such loan, upon such terms and in such manner as are regulated by the by-laws of the company: Provided always that no fine or penalty shall be stipulated for, taken, reserved or exacted in respect of arrears of principal or interest which has the effect of increasing the charge in respect of arrears beyond the rate of interest or discount on the loan.

17. A register of all securities held by the company shall be kept; and within fourteen days after the taking of any security, an entry or memorandum specifying the nature and amount of such security, and the names of the parties thereto, with their proper additions, shall be made in such register.

18. The company may unite, amalgamate and consolidate its stock, property, business, and franchises with those of any other company or society incorporated or chartered to transact a like business, and any other business in connection with such business, or with those of any building, savings or loan company or society heretofore or hereafter incorporated or chartered, or may sell its assets to any such other company or society, which is hereby authorized to purchase the same, or may purchase the assets of any other such company or society, which is hereby authorized to sell the same, and for the purpose of carrying out such purchase or sale, the company so purchasing, may assume the liabilities of the company so selling, and may enter into such bond or agreement of

indemnity with the company or the individual shareholders thereof or both, as may be necessary, and may enter into all contracts and agreements necessary to such union, amalgamation, consolidation, sale, purchase or acquisition.

19. The directors of the company and of any other such company or society may enter into a joint agreement under the corporate seals of each of the said corporations for the union, amalgamation or consolidation of the said corporations, or for the sale by the company of its assets to any other such company or society, or for the purchase and acquisition by the company of the assets of any such company or society prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors and other officers thereof, and who shall be the first directors and officers thereof, the manner of converting the capital stock of each of the said corporations into that of the new corporation, with such other details as they deem necessary to perfect such new organization, and the union, amalgamation and consolidation of the said corporations and the after management and working thereof, or the terms and mode of payment for the assets of the company by any other such company or society purchasing the same, or for the assets of any other such company or society purchased or acquired by the company.

20. (1) Such agreement, or if no agreement has been entered into, but an offer has been made by another company or society under its corporate seal for the purchase of the assets of the company, or if the company has made any offer under its corporate seal for the purchase of the assets of another company or society, then such offer shall be submitted to the shareholders of each of the said corporations, at a meeting thereof, to be held separately for the purpose of taking the same into consideration.

(2) Notice of the time and place of such meetings and the objects thereof, shall be given by written or printed notices addressed to each shareholder of the said corpora-

tions respectively, at his last known post office address or place of residence, and also by a general notice inserted in a newspaper published at the chief place of business of such corporations once a week for six successive weeks.

(3) At such meetings of shareholders such agreement or offer shall be considered, and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, unless otherwise provided by the by-laws of the said respective corporations, and the said ballots being cast in person or by proxy, and if two-thirds of the votes of all the shareholders of such corporations representing not less than two-thirds in value of the paid up capital stock of each, shall be for the adoption of such agreement or the adoption and acceptance of such offer, then that fact shall be certified upon the said agreement or offer by the secretary or manager of each of such corporations, under the corporate seals thereof.

(4) The shareholders who may vote at such meetings shall be those only whose names are duly entered in the books of the respective corporations at the date of the first publication of the notices calling such meetings, and they shall vote upon the shares, only then standing in their respective names.

(5) If the said agreement is so adopted or the said offer so adopted and accepted at the respective meetings of the shareholders of each of the said corporations, the agreement so adopted or the offer so adopted and accepted, and the said certificates thereon shall be filed in the office of the Provincial Secretary, and the said agreement or offer shall thenceforth be taken and deemed to be the agreement and act of union, amalgamation and consolidation of the said corporations, or the agreement and deed of purchase and acquisition of the assets of the company by such other company or society so purchasing, or by the company of the assets of the company or society so selling, as the case may be; and the assets of the company selling shall thereupon, without any further conveyance, become absolutely

vested in the company purchasing, and the company purchasing shall thereupon become and be responsible for the liabilities of the company or society so selling, the whole as fully and effectually to all intents and purposes as if a special Act were passed with that object; and in dealing with the assets of the company selling, it shall be sufficient for the company purchasing to recite the said agreement and the filing thereof in the office of the Provincial Secretary.

(6) A copy of such agreement or offer so filed and of the certificates thereon properly certified shall be evidence of the existence of such new corporation or of such purchase and acquisition.

(7) Due proof of the foregoing facts shall be laid before the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may issue letters patent to the new corporations, and notice thereof shall be duly published by the Provincial Secretary in the *Ontario Gazette* after which the new corporation may transact business.

21. Upon the completion and perfection of said agreement and act of consolidation, as provided in the next preceding section, the several corporations or societies, parties thereto, shall be deemed and taken to be consolidated, and to form one corporation by the name in the said agreement provided, with a common seal, and shall possess all the rights, privileges and franchises of each of such corporations.

22. Upon the consummation of such consolidation as aforesaid, all and singular the business, property, real and personal, and all rights and incidents appurtenant thereto, all stock, mortgages or other securities, subscriptions and other debts due on whatever account, and other things in action belonging to such corporations or either of them, shall be taken and deemed to be transferred to, and vested in such new corporation without further act or deed: Provided however that all rights of creditors and liens upon

the property of either of such corporations shall be unimpaired by such consolidation, and that all debts, liabilities and duties of either of the said corporations shall thenceforth attach to the new corporation, and may be enforced against it to the same extent as if the said debts, liabilities and duties had been incurred or contracted by it; and that no action or proceeding, legal or equitable, by or against the said corporations so consolidated, or either of them, shall abate or be affected by such consolidation 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.

23. The sections numbered from 83 to 90 inclusive of the *Act respecting Building Societies*, being enactments with respect to annual statements of the assets and liabilities of a society, shall apply to every company which shall be incorporated under this Act or have its powers extended under this Act, and to every other incorporated company or society which has been or shall hereafter be authorised by competent authority to lend money on mortgages of real estate in this Province or for that purpose and other purposes.

24. The 78th section of *The Ontario Joint Stock Companies' Letters Patent Act*, shall apply for the purposes of this Act to any company heretofore incorporated, whether by special Act or otherwise.

25. As respects that class of Loan Companies commonly called Building Societies, and incorporated under the *Act respecting Building Societies*, it shall be necessary to file with the declaration mentioned in the 2nd section of the said Act a certificate of the Provincial Secretary that the proposed name does not appear to be the name of any other company incorporated or unincorporated, nor a name liable to be fairly confounded therewith, nor otherwise on public grounds objectionable.

55 VIC. CHAPTER. 35

[*Assented to 14th April, 1892.*

An Act to amend The Ontario Joint Stock Companies' Letters Patent Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. A company incorporated by letters patent under the provisions of *The Ontario Joint Stock Companies' Letters Patent Act* or under the provisions of any Act of the Legislature of the former province of Canada for the manufacture of cheese, may without obtaining supplementary letters patent carry on the business of manufacturing and selling butter, provided the shareholders shall by a vote of not less than two-thirds in value of those present in person or by proxy at a general meeting of the company duly called for considering the subject, determine to extend its business so as to include the manufacture and sale of butter.

2. A manufacturing association formed under the provisions of the Act passed in the 51st year of Her Majesty's reign intituled *An Act for the incorporation of Cheese and Butter Manufacturing Associations*, for the manufacture of cheese may on and subject to the making of a rule for that purpose in accordance with the provisions of the said last mentioned Act extend its business so as to include the manufacture and sale of butter.

THE FOLLOWING STATUTES RESPECTING

COMPANIES AND CORPORATIONS,

HAVE BEEN PASSED BY THE

ONTARIO LEGISLATURE.

1. *Companies for Trade, Manufacture, etc.*

R. S. O. CHAP. 156.—Joint Stock Companies, General Clauses, p. 1433.
" " 157.— do do by Letters Patent, p. 1443.
" " 158.—Telegraph Companies, p. 1465.
" " 159.—Joint Stock Companies for Roads, p. 1467
" " 160.— do do for Transmission of Timber, p. 1507.
" " 161.—Joint Stock Companies for Piers and Wharves, p. 1521.
" " 162.— do do for Exhibition Buildings, etc., p. 1527.
" " 163.—Mining Companies, p. 1533.
" " 164.—Joint Stock Companies for Gas and Water, p. 1535.
" " 165.— do do for Steam and Heating, etc., p. 1555.
" " 166.—Co-operative Associations, p. 1557.

2. *Insurance Companies.*

R. S. O. CHAP. 167.—Ontario Insurance Act, p. 1563.
55 VIC. CHAP. 39.—An Act respecting Insurance Corporations.

3. *Loan Societies and Companies.*

R. S. O. CHAP. 168.—Investment of Money in Ontario by Companies out of the Province, p. 1607.
" " 169.—Building Societies, p. 1609.
55 VIC. CHAP. 40.—An Act to amend the Act respecting Building Societies.
54 VIC. CHAP. 38.—Respecting Loan Companies.

4. *Railway Companies.*

R. S. O. CHAP. 170.—General Railway Act, p. 1633.
" " 171.—Street Railway Act, p. 1685.

5. *Miscellaneous Associations.*

R. S. O. CHAP. 172.—Benevolent and Provident Societies, p. 1692.
" " 173.—Mechanics' Institutes and Art Schools, p. 1700,
" " 174.—Immigration Aid Societies, p. 1708.

R. S. O. CHAP. 175.—Cemetery Companies, p. 1714.
" " 176.—Incorporation of Cemetery Companies by Letters Patent, p. 1721.
" " 177.—Conveyances to Trustees for Burial Grounds, p. 1723.

6. *Changing Names of Companies.*

R. S. O. CHAP. 178.—Changing names of Incorporated Companies, p. 1724.

7. *Fees Payable by Companies.*

R. S. O. CHAP. 179.—Fees payable by Incorporated Companies, etc., p. 1726.

8. *Returns from Companies.*

R. S. O. CHAP. 180.—Returns from Incorporated Companies, p. 1726.

9. *Suretyship of Companies.*

R. S. O. CHAP. 181.—Guarantee Companies as securities, p. 1728.

10. *Investments by Corporations.*

R. S. O. CHAP. 182.—Investments by Corporations, p. 1729.

11. *Winding up of Companies.*

R. S. O. CHAP. 183.—Winding up of Joint Stock Companies, p. 1730.

12. *Limited Liabilities of Companies.*

52 VIC. CHAP. 26.—Respecting the limited liability of Incorporated Companies.

13. *Liability of Directors.*

54 VIC. CHAP. 34.—Respecting the Liability of Directors.

14. *Electricity and Natural Gas Companies.*

R. S. O. CHAP. 165, amended by Chap. 36, 54 Vic., Provides for the incorporation of Companies for supplying Electricity or Natural Gas for Light, Heat and Power.

Miscellaneous Acts.

55 VIC. CHAP. 36.—An Act to amend the General Road Companies Act.
55 VIC. CHAP. 37.—An Act to amend the Timber Slide Companies Act.
55 VIC. CHAP. 38.—An Act to amend the Act respecting Joint Stock Companies for supplying cities, towns and villages with gas and water.
55 VIC. CHAP. 85.—An Act to amend the Ontario Joint Stock Companies L. P. Act, by authorising cheese companies to manufacture and sell butter.

DOMINION LEGISLATION.

Instructions for Forming a Company under the Dominion Act.

EXTRACTS from the Act, Cap. 119 Revised Statutes of Canada, 1886, containing the forms of proceeding and record prescribed by the said Act, in reference to the issuing of Letters Patent.

Notice to be given in the "Canada Gazette," and what it shall contain.—1. The applicants for such letters patent must give at least one month's previous notice* in the *Canada Gazette*, of their intention to apply for the same, stating therein:

Name.—(*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;

Purposes.—(*b*) The purposes within the purview of this Act, for which its incorporation is sought;

Chief Place of Business.—(*c*) The place within the Dominion of Canada, which is to be its chief place of business;

Capital.—(*d*) The intended amount of its capital stock, which, in the case of a Loan Company, shall not be less than one hundred thousand dollars;

Shares.—(*e*) The number of shares and amount of each share.

Names, etc., of applicants.—(*f*) The names in full and the address and calling of each of the applicants, with special mention of the names of not less than three nor more than

*By settled or understood practice notices of applications for Letters Patent receive 6 insertions.

fifteen of their number, who are to be the first or Provisional Directors of the Company, and the major part of whom must be resident in Canada.

Petition for letters patent.—**5.** At any time, not more than one month after the last publication of such notice, the applicants may petition the Governor-General, through the Secretary of State of Canada, for the issue of such letters patent;

What it shall contain.—(2.) Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in, and is held for the Company;

A certain amount of stock must be taken.—(3.) The aggregate of the stock so taken must be at least the one half of the total amount of the stock of the Company;

And a certain amount paid up thereon.—(4.) The aggregate so paid in thereon must, if the Company be not a Loan Company, be at least ten per cent. thereof; if the Company be a Loan Company the aggregate so paid in thereon must be at least ten per cent. thereof, and must not be less than one hundred thousand dollars.

Disposal of amount paid up.—(5.) Such aggregate must have been paid in to the credit of the Company, or of trustees therefor, and must be standing at such credit in some chartered bank or banks in Canada, unless the object of the Company is one requiring that it should own real estate,—in which case any part not more than one-half of such aggregate may be taken as being paid in, if *bona fide* invested in real estate suitable to such object, duly held by trustees for the Company, and being of the required value over and above all incumbrances thereon.

Certain provisions may be inserted in patent.—(6.) The petition 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 incorporated; and such provision so embodied shall not, unless provision to the contrary be made in the letters patent, be subject to repeal or alteration by by-law.

Preliminary conditions to be established—Proof of facts asserted.—**6.** Before the letters patent are issued, the applicants must establish to the satisfaction of the Secretary of State, or of such

other officer as may be charged by the Governor in Council to report thereon, the sufficiency of their notice and petition, 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; and to that end, the Secretary of State, or such other officer, shall take and keep of record any requisite evidence in writing, by solemn declaration under the Act, 37 Vic. (1874) c. 37, entitled an Act for the suppression of voluntary and extra judicial oaths or by oath or affirmation.

Fees must be paid before action taken.—(3.) No step shall be taken in any department towards the issue of any letters patent or supplementary letters patent under this Act, until after the amount of all fees therefor shall have been duly paid.

Copies of certain notices to be published by the Company in local paper.—A copy of every notice of issue of letters patent or supplementary letters patent which, under the provisions of this Act, the Secretary of State is required to insert in the *Canada Gazette*, shall forthwith, after such insertion, be, by the Company to which such notice relates, inserted on four several occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

The following is the schedule of Fees payable under the 84th section of the said Act:

1. "When the proposed Capital Stock of the company is $500,000 or upwards, the fee to be $200.

2. When the proposed Capital Stock is $200.000 or upwards and less than $500,000, $150.

3. When the proposed Capital Stock is $100,000 or upwards and less than $200,000, $100.

4. When the proposed Capital Stock is less than $100,000, $50.

5. When the proposed Capital Stock is $40,000 or less than $40,000, $30.

On application for Supplementary Letters Patent the fee to be one half of that charged on the Original Letters Patent, except "When an increase of capital stock is applied for, in which case the fee thereon shall be based upon the actual increase of the capital stock, and the fee payable shall be the

same as is payable upon Letters Patent for the incorporation of a company whose capital stock is of the same amount as such increase."

All fees must be paid in cash or by an accepted cheque made payable to the order of the Honorable the Secretary of State, and must be transmitted to him by Registered Letter.

L. A. CATELLIER.
Under Secretary of State.

LIST OF PAPERS AND FORMS WHICH SHOULD BE FURNISHED WHEN MAKING APPLICATION FOR LETTERS PATENT OF INCORPORATION OR SUPPLEMENTARY LETTERS PATENT AND WHICH MAY BE ADAPTED FROM THOSE ALREADY GIVEN UNDER THE HEADING ONTARIO LEGISLATION.

A.—LETTERS PATENT OF INCORPORATION.

1. Notice in *Gazette* of intention to apply.
2. Affidavit or declaration verifying insertion of same in *Gazette*.
3. Petition for incorporation.
4. Affidavit or declaration verifying signatures of petitioners.
5. Affidavit or declaration verifying truth of facts set out in petition.
6. Affidavit or declaration as to proposed corporate name.
7. Bank manager's certificate with respect to deposit paid in—see page 232.
8. Affidavit or declaration verifying bank manager's signature to certificate—see page 232.

B.—SUPPLEMENTARY LETTERS PATENT.

1. Change of Corporate Name.

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 authorising change of name, and the application for same.
4. Certificate, affidavit, or declaration verifying same.

2. Obtaining of Further Powers.

1. Notice in *Gazette* of intention to apply.
2. Affidavit or declaration verifying insertion of same in *Gazette*.
3. Petition by directors for supplementary letters patent.
4. Affidavit or declaration verifying signatures of petitioners.
5. Affidavit or declaration verifying truth of facts set out in petition.
6. Verified copy of notice calling special or general meeting.
7. Copy of by-law or resolution passed by shareholders.
8. Certificate, affidavit or declaration verifying same.

3. Increasing the Capital Stock

1. Petition of directors for supplementary letters patent.
2. Affidavit or declaration verifying truth of facts set out in 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-law.
7. Affidavit or declaration verifying truth of such minutes.

4. Decreasing the Capital Stock.

1. Petition of directors for supplementary letters patent.
2. Affidavit or declaration verifying truth of facts set out in 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-law.
7. Affidavit or declaration verifying truth of same.

5. Sub-dividing the Existing Shares.

1. Petition from directors applying for supplementary letters patent.
2. Affidavit or declaration verifying truth of facts set out therein.
3. Affidavit or declaration verifying signatures of petitioners.
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 truth of same.

6 & 7. Increase or Decrease in Number of Directors.

1. Certified copy of by-law under seal of company.
2. Verified copy of notice calling special or general meeting.
3. Verified copy of proceedings at special or general meeting, with respect to passage of by-law.

8. Changing the Chief Place of Business in Canada.

1. Certified copy of by-law under seal of company.
2. Verified copy of notice calling special or general meeting.
3. Verified copy of proceedings at special or general meeting relating to passage of by-law

These forms should, of course, where necessary be altered to suit the circumstances of each case.

BANK MANAGER'S CERTIFICATE.

In the matter of the application of
and others, for letters patent of incorporation, as "The
Company" Limited. I, of the of
in the of and province of do hereby certify.
That there is deposited in this Bank to the credit of (*a*) "The
Company" Limited, the sum of dollars, and said sum is
now remaining at such credit.

Dated at aforesaid this day of
A.D. 18

Witness:

Manager (or agent.)

(*a*) Here state if amount be deposited to the credit of the company or of trustees therefor.

AFFIDAVIT VERIFYING SIGNATURE OF BANK MANAGER TO CERTIFICATE OF DEPOSIT.

Canada
Province of
County of
To wit:

In the matter of the application of
and others, for letters patent of incorporation as "The
Company" Limited.

I, of the of
in the County of and Province of
make oath and say.

1. That I was personally present, and did see the annexed certificate of deposit duly signed by who is the manager (agent or cashier) of the Bank of at the of aforesaid.
2. That I know the said
3. That I am the subscribing witness to the said document.

Sworn before me at the
of in the
of this day of
A.D. 18

CHAPTER 119.

REVISED STATUTES OF CANADA, 1886.

An Act respecting the incorporation of Joint Stock Companies by Letters Patent. A. D. 1886.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Short title. **1.** This act may be cited as "*The Companies Act.*"

Interpretation. **2.** In this Act, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,—

"Company." (*a*) The expression "the company" means the company incorporated by letters patent under this Act;

"Undertaking." (*b*) The expression "the undertaking" means the business of every kind which the company is authorized to carry on;

"Loan company." (*c*) The expression "loan company" means a company incorporated for any of the purposes to which the powers of loan companies extend, as hereinafter provided;

"Real estate." "Land." (*d*) The expression "real estate" or "land," includes messuages, lands, tenements and hereditaments of any tenure, and all immovable property of any kind;

"Shareholder." (*e*) The expression "shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder;

"Manager." (*f*) The expression "manager" includes the cashier and secretary.

Companies formed for certain purposes may be incorporated by letters patent. **3.** The Governor in Council may, by letters patent under the Great Seal, grant a charter to any number of persons, not less than five, who petition therefor, constituting such persons, and others 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 the business of banking and the issue of paper money, or the business of insurance.

Exception.

Notice to be given, and what it shall contain.

4. The applicants for such letters patent shall give at least one month's previous notice, in the *Canada Gazette*, of their intention to apply for the same, stating therein,—

Name.

(*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;

Purposes.

(*b*) The purposes for which its incorporation is sought;

Chief place of business.

(*c*) The place within Canada which is to be its chief place of business;

Capital.

(*d*) The proposed amount of its capital stock —which, in the case of a loan company, shall not be less than one hundred thousand dollars;

Shares.

(*e*) the number of shares and the amount of each share;

Names, &c. of 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, and the majority of whom shall be residents of Canada.

Petition for letters patent.

5. At any time, not more than one month after the last publication of such notice, the applicants may petition the Governor in Council, through the Secretary of State, for the issue of such letters patent:

What it shall contain.

2. Such petition shall state the facts set forth in the notice, the amount of stock taken by each applicant, the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in, and is held for the company:

A certain amount of stock must be taken.

3. The aggregate of the stock so taken shall be at least the one half of the total amount of the proposed capital stock of the company:

And a certain amount paid up thereon.

4. The aggregate so paid in thereon shall, if the company is not a loan company, be at least ten per cent. of the stock so taken; if the company is a loan company the aggregate so paid in of the stock so taken shall be at least ten per cent. thereof, and shall not be less than one hundred thousand dollars:

Disposal of amount paid up.

5. Such aggregate shall be paid in to the credit of the company, or of trustees therefor, and shall be standing at such credit in some chartered bank or banks in Canada, unless the object of the company is one requiring that it should own real estate—in which case any portion not exceeding one half of such aggregate may be taken as paid in, if it is *bona fide* invested in real estate suitable to such object, which is duly held by trustees for the company, and is of the required value, over and above all incumbrances thereon:

Certain provisions may be inserted in letters patent.

6. The petition 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; 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.

Preliminary matters to be established.

6. Before the letters patent are issued, the applicants shall establish, to the satisfaction of the Secretary of State, or of such other officer as is charged by the Governor in Council to report thereon, the sufficiency of their notice and petition, 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; and for that purpose, the Secretary of State, or such other officer, shall take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration.

Proof of facts asserted.

Facts to be recited in letters patent.

7. The letters patent shall recite such of the established averments of the notice and petition as to the Governor in Council seems expedient.

Governor may give another corporate name.

8. The Governor in Council may give to the company a corporate name, different from that proposed by the applicants in their published notice, if the proposed name is objectionable.

Notice of issuing letters patent.

9. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State, in the *Canada Gazette*, in the form A in the schedule to this Act; and thereupon, from the date of the letters patent, the persons therein named, and their successors, shall be a body corporate and politic, by the name mentioned therein; 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.

Governor may change name by supplementary patent.

10. If it is made to appear, to the satisfaction of the Governor in Council that the name of any company (whether given by the original or by supplementary letters patent, or on amalgamation) incorporated under this Act, 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 Governor in Council 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.

Company may obtain change of name.

11. When a company incorporated under this Act is desirous of adopting another name, the Governor in Council, 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.

Change not to affect rights or obligations.

12. No alteration of its name under the two sections next 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.

Company may authorize directors to apply for extension of powers.

13. 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 other purposes or objects, for which a company may be incorporated under this Act, as are defined in the resolution.

Application by directors.

14. The directors may, at any time within six months after the passing of any such resolution, petition the Governor in Council, through the Secretary of State, for the issue of such supplementary letters patent:

Notice of application to be given.

2. The applicants for such supplementary letters patent shall give at least one month's notice in the *Canada Gazette* of their intention to apply for the same, stating therein the purposes or objects to which it is desired to extend the powers of the company.

Proof to be furnished to Secretary of State.

15. Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State or of such other officer as is charged by the Governor in Council to report thereon, the due passing of the resolution authorizing the application and the sufficiency of their notice and petition; and for that purpose the Secretary of State, or such other officer, shall take and keep of record any requisite evidence in writing, by oath or affirmation, or by solemn declaration.

Grant of supplementary letters patent.

16. Upon due proof so made, the Governor in Council may grant supplementary letters patent under the Great Seal, 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 B in the schedule to this Act; and thereupon, from the date of the supplementary letters patent, the undertaking of the company shall extend to and include the other purposes or objects set out in the supplementary letter patent as fully as if such other purposes or objects were mentioned in the original letters patent; and 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.

Notice of issue thereof.

Subdivision of shares.

17. The directors of the company, other than a loan company, may, at any time, make a by-law subdividing the existing shares into shares of a smaller amount.

Increase of capital.

18. The directors of the company may, at any time after the whole capital stock of the company has been taken up and fifty per cent. 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:

By-law for that purpose.

2. 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; and in default of its so doing, the control of such allotment shall vest absolutely in the directors.

Reduction of capital.

19. 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; but the capital stock of a loan company shall never be reduced to less than one hundred thousand dollars:

Proviso; as to loan companies.

By-law for that purpose.

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:

3. The liability of 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.

20. No by-law for increasing or reducing the capital stock of the company, for or sub-dividing 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 all 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. Such by-law to be approved by shareholders and confirmed by supplementary letters patent.

21. At any time, not more than six months after such sanction of such by-law, the directors may petition the Governor in Council, through the Secretary of State, for the issue of supplementary letters patent to confirm the same: Petition for supplementary letters patent to confirm by-law.

2. The directors shall, with such petition, produce a copy of such by-law, under the seal of the company, and signed by the president, vice-president or secretary, and established to the satisfaction of the Secretary of State, or of such other officer as is charged by the Governor in Council to report thereon, 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: By-law, etc., to be produced with petition.

3. The Secretary of State or such officer shall, for that purpose, take and keep of record any requisite evidence in writing, by oath or affirmation or by solemn declaration, as above mentioned. Evidence may be taken and kept by Secretary of State.

22. Upon due proof so made, the Governor in Council may grant such supplementary letters patent under the Great Seal; and notice thereof shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form C, in the schedule to this Act; and thereupon, from the Granting of supplementary letters patent; —notice;— effect of such letters patent.

date of the supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares shall be subdivided, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or reduced, shall become subject to the provisions of this Act, 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.

Powers given to be subject to this Act.

23. All powers given to the company by the letters patent or supplementary letters patent shall be exercised, subject to the provisions and restrictions contained in this Act.

General corporate powers.

24. Every company incorporated under this Act may acquire, hold, sell and convey any real estate requisite for the carrying on of the undertaking of such company, and shall forthwith become and be invested with all property and rights, real and personal, theretofore held by 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 Act and of the letters patent: Provided always, that the exercise by loan companies of the powers conferred by this section shall be subject to the special provisions respecting such companies hereinafter contained.

Proviso; as to loan companies.

Stock to be personal estate.

25. 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 Act or by the letters patent or by by-laws of the company.

Allotment of stock.

26. If the letters patent, or the supplementary letters patent, make no other definite provision, the stock of the company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted at such times and in such manner as the directors prescribe by by-law.

Shares to be paid in cash, subject to certain exceptions.

27. Every share in the company shall, subject to the provisions of sub-section five of section five of this Act, be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise agreed upon or determined by a contract duly made in writing and filed with the Secretary of State at or before the issue of such shares.

Board of directors.

28. The affairs of the company shall be managed by a board of not more than fifteen and not less than three directors.

Provisional directors.

29. 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.

Qualifications of subsequent directors.

Residence.

30. No person shall be elected or appointed as a director thereafter 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; and at all times the majority of the directors of the company shall be persons resident in Canada.

By-law for increase or decrease of number of directors.

When to be valid.

31. 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; but 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 deposited with the Secretary of State, and has also been published in the *Canada Gazette*.

Election of directors.

32. 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.

Mode and times of election.

33. In the absence of other provisions in such behalf, in the letters patent or by-laws of the company,—

Yearly.

(*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;

Notice.

(*b*) Notice of the time and place for holding general meetings of the company shall be given at least twenty-one days previously thereto, 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.

(*c*) At all general meetings of the company, every shareholder shall be entitled to give one vote for each share then held by him: such votes may be given in person or by proxy—the holder of any such proxy being himself a shareholder; but 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; all questions proposed for the consideration of the shareholders shall be determined by the majority of votes—the chairman presiding at such meeting having the casting vote in case of an equality of votes;

Proxies.

All calls must have been paid.

Majority to decide.

Casting vote.

Ballot.

(*d*) Every election of directors shall be by ballot;

Vacancies, how filled.

(*e*) Vacancies 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.

President, vice-president and officers.

(*f*) 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.

Failure to elect directors, how remedied.

34. 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 general meeting of the company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

Powers and duties of directors.

35. 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 Act, for the following purposes:—

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;

Number, etc., of directors.

(*c*) The number of the directors, their term of service, the amount of their stock qualification, 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 which admit of regulation by by-law;

General powers.

(*g*) The conduct, in all other particulars, of the affairs of the company;

Confirmation of by-laws.

And the directors 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;

Confirmation of by-laws for sale of stock below previous rate, etc.

2. No by-law for the issue, allotment or sale of any portion of the unissued stock at any greater discount or at any less premium than that which has been previously authorized at a general meeting, and no by-law for the remuneration of the president or any director, shall be valid or acted upon until the same has been confirmed at a general meeting.

Debts to company may be deducted from dividends.

36. 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.

Issue of bonds etc., by company.

37. The directors may, when authorized by a by-law for that purpose, passed and approved of by the votes of shareholders, representing at least two-thirds in value of the subscribed stock of the company, represented at a special general meeting duly called for considering the by-law,—

Borrowing powers.

(*a*) Borrow money upon the credit of the company and issue bonds, debentures or other securities for any sums borrowed, at such prices as are deemed necessary or expedient; but no such debentures shall be for a less sum than one hundred dollars;

Charging property.

(*b*) Hypothecate or pledge the real or personal property of the company to secure any sums borrowed by the company;

Limitation of amount to be borrowed.

But the amount borrowed shall not, at any time, be greater than seventy-five per cent. of the actual paid-up stock of the company; but

Exception.

the limitation made by this section shall not apply to commercial paper discounted by the company.

Calling in of moneys unpaid on shares.

38. The directors may, from time to time, make such calls upon the shareholders in respect of all moneys unpaid upon their respective

shares, as they think fit, 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.

Interest on calls overdue.

39. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed; and 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 cent. per annum, from the day appointed for payment to the time of actual payment thereof.

Payment in advance on shares.

Interest may be allowed.

40. The directors may, if they think fit, receive from any shareholder willing to advance the same, all or any part of the amounts due on the shares held by such shareholder, beyond the sums then actually called for; and upon the moneys 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 cent. per annum, as the shareholder who pays such sum in advance, and the directors agree upon.

Forfeiture of shares for non-payment of calls.

Proviso: liability of holders continued.

41. If, after such demand or notice as is prescribed by the letters patent 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 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 payment is not made; and the same shall thereupon become the property of the company, and may be disposed of as, by the by-laws of the company or otherwise, they prescribe; but, notwithstanding such forfeiture, the holder of such shares at the time of forfeiture, shall continue liable to the then creditors of the company 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.

Enforcement of payment of calls by action.

42. 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; and 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 Act; and a certificate under their seal, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all courts as *prima facie* evidence thereof.

What only need be alleged and proven.

Certificate to be evidence.

Book to be kept and what to contain.

43. 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,—

Copy of letters patent, by-laws, etc.

(*a*) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of all by-laws thereof;

Names of shareholders.

(*b*) The names, alphabetically arranged, of all persons who are or have been shareholders;

Addresses.

(*c*) The address and calling of every such person, while such shareholder;

Number of shares.

(*d*) the number of shares of stock held by each shareholder;

Amounts paid, etc.

(*e*) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder;

Names, etc., of directors.

(*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:

Register of transfers.

2. 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.

Books to be open for inspection and taking extracts therefrom.

44. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company, and their personal representatives, at the head office or chief place of business of the company; and every such shareholder, creditor or personal representative may make extracts therefrom.

Penalty for false entries.

45. Every director, officer or servant of the company, who knowingly makes or assists in making any untrue entry in any such book, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of a misdemeanor.

Forfeiture for neglect.

46. Every company which neglects to keep such book or books as aforesaid, shall forfeit its corporate rights.

Books to be *prima facie* evidence.

47. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any action, suit or proceeding against the company, or against any shareholder.

Transfer of shares valid only after entry.

48. 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 thereof is duly made in the register of transfers, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally, with the transferrer, to the company and its creditors.

Liabilities of directors as regards transfers of shares in certain cases.

49. No transfer of shares, whereof the whole amount has not been paid in, shall be made without the consent of the directors; and whenever any transfer of shares not fully paid in has been made with such consent, 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; but 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 thereof 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 thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

How only a director may avoid liability.

Provision when shares are transmitted otherwise than by transfer.

50. 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 or legal right of possession in any shares changes by any lawful means, other than by transfer according to the provisions of this Act, 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 one of the superior courts in the Province 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,—by which order or judgment the company shall be guided and held fully harmless and indemnified and released from every other claim to the said shares or arising in respect thereof;

Order of court may be obtained on application.

Notice of application.

2. 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 the said superior courts; Provided always, that the costs and expenses of procuring such order or judgment shall be paid by the person or persons to whom such shares are declared lawfully to belong; and that such shares shall not be transferred in the books of the company until such costs and expenses are paid,—saving the recourse of such person against any person contesting his right to such shares.

Proviso: as to costs.

51. No share shall be transferable until all previous calls thereon are fully paid in.

Restriction as to transfer.

52. The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company.

As to transfer by debtor to the company.

53. 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, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer.

Transfer by personal representative.

54. 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 limited to amount unpaid on stock.

55. 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;

Liability of shareholders.

When accrue.

and 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; and any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares.

Trustees, etc., not personally liable.

56. No person, holding stock in the company as an executor, administrator, tutor, curator, guardian or trustee, 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, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

But entitled to vote.

57. 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.

Liability of directors declaring a dividend when company is insolvent, etc.

58. 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 stock 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 thereafter contracted during their continuance in office, respectively; but 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 thereof and able so to do, enter on the

How directors may avoid such liability.

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 there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability.

No loan by company to shareholders, except by loan companies; liability of directors.

59. No loan shall be made by the company to any shareholder; if such loan is made, 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; but the provisions of this section shall not apply to loan companies.

Liability of directors for wages.

60. The directors of the company shall be jointly and severally liable to the clerks, laborers, 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; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.

Limitation of suits, etc.

Offices and agencies of the company in Canada.

61. The company shall, at all times, have an office in the city or town in which its chief place of business is situate, which shall be the legal domicile of the company in Canada; and notice of the situation of such office and of any change therein shall be published in the *Canada*

Gazette: and the company may establish such other offices and agencies elsewhere in Canada, as it deems expedient.

Service of process on the company.

62. 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 said office in the city or town in which its chief place of business is situate, with any adult person in the employ of the company, or on the president or secretary of the company, or by leaving the same at the domicile of either of them, or with any adult person of his family or in his employ; or 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 held to be due service upon the company.

Use of common seal dispensed with in certain cases.

63. 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 upon members.

64. 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.

Service of notice by post.

65. 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 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.

Evidence of by-laws.

66. 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.

Actions between company and shareholders.

67. Any description of action may be prosecuted and maintained betweeen the company and any shareholder thereof; and no shareholder shall, by reason of being a shareholder, be incompetent as a witness therein.

Mode of incorporation, etc., how to be set forth in legal proceedings.

68. 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 Act; and the notice in the *Canada Gazette*, of the issue of such letters patent or supplementary letters patent, shall be *prima facie* proof of all things therein contained; and on production of the letters patent or supplementary letters patent, or of any exemplification or copy thereof under the Great Seal, the fact of such notice shall be presumed; and, except in any proceeding by *scire facias* or otherwise for the purpose of rescinding or annulling the same, the letters patent or supplementary letters patent, or any exemplification or copy thereof under the Great Seal, shall be conclusive proof of every matter and thing therein set forth.

Proof of incorporation.

Existing companies may apply for charters under this Act.

69. Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this Act, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for letters patent under this Act, and the Governor in Council, upon proof that notice of the application has been inserted for four weeks in the *Canada Gazette*, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Act; and thereupon all the rights or

Effect of such charters.

obligations of the former company shall be 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; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent, the company shall be governed in all respects by the provisions of this Act, 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.

Subsisting companies may apply for charters with extended powers.

70. If a subsisting company applies for the issue of letters patent under this Act, the Governor in Council may, by the letters patent, extend the powers of the company to such other objects for which letters patent may be issued under this Act as the applicant desires, and as the Governor in Council thinks fit to include in the letters patent, and which have been mentioned in the notice of the application for the same, in the *Canada Gazette;* and the Governor in Council may, in the said letters patent, 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.

Provisions touching supplementary letters patent to apply.

71. All the provisions of this Act in relation to the obtaining of supplementary letters patent by companies incorporated hereunder shall, so far as applicable, apply and extend to applications for letters patent under the two sections next preceding.

Agencies in United Kingdom.

72. The company may have an agency or agencies in any city or town in the United Kingdom.

Dividend not to impair capital.

73. No dividend shall be declared which will impair the capital of the company.

Special general meetings.

74. Shareholders who hold one-fourth part in value of the subscribed stock of the company may, at any time, call a special meeting thereof

for the transaction of any business specified in such written requisition and notice as they make and issue to that effect.

Acts of company's attorney valid.

75. 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, etc., when to be binding on company.

76. 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; and 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 indorsed, as the case may be, in pursuance of any by-law or special vote or order; and the person so acting as agent, officer or servant of the company, shall not be thereby subjected individually to any liability whatsoever to any third person therefor; Provided always, that nothing in this Act shall be construed to authorize the 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 individual liability.

Proviso: as to bank notes.

Proof may be by declaration or affidavit.

77. Proof of any matter which is necessary to be made under this Act 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.

Certain informalities not to invalidate letters patent.

78. The provisions of this Act 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 Act shall be held void or voidable on account of any irregularity in any notice prescribed by this Act, or on account of the insufficiency or absence of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of the letters patent or supplementary letters patent.

Word "limited" to be inserted after name of company on all notices, etc.

79. The 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:

Penalty for violation of preceding section.

2. Every company which does not keep painted or affixed its name, with the word "limited" after it, in manner directed by this Act, shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed:

Penalty for permitting violation.

3. Every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty:

Penalty on directors or officers using or authorizing use of seal without "limited" on it.

4. Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its

name, with the said word "limited" after it, is not so engraven as aforesaid, or who issues or authorizes the issue of any notice, advertisement or other official publication of such company, or who signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or who issues or authorizes to be issued any bill of parcels, invoice or receipt of the company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, 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.

Liability in addition.

80. Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates and the names of the persons 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; and every prospectus or notice which does not specify the same shall, with respect to any person who takes shares in the company on the faith of such prospectus or notice, and who has not had notice of such contract, be deemed fraudulent on the part of the promoters, directors and officers of the company who knowingly issue such prospectus or notice.

Prospectus, etc., to specify certain contracts entered into by company, or be deemed fraudulent.

81. 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 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, and whether or

Company not to be liable in respect of trusts.

not notice of such 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.

Directors indemnified in suits, etc., against the company.

82. 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 he 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.

Except by their own neglect or default.

Forfeiture of charter for non-user.

83. The charter of the company shall be forfeited by non-user during three consecutive years, or if the company does not go into actual operation within three years after it is granted.

Fees on letters patent, etc., to be fixed by Governor in Council.

84. The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this Act, may designate the department or departments through which the issue thereof shall take place, and may prescribe the forms of proceeding and registration in respect thereof, and all other matters requisite for carrying out the objects of this Act:

2. The amount of the fees may be varied according to the nature of the company, the amount of the capital stock and other particulars as the Governor in Council thinks fit: Amount of fees may be varied.

3. No steps shall be taken in any department towards the issue of any letters patent or supplementary letters patent under this Act, until after all fees therefor are duly paid. Must be paid before action is taken.

85. The directors of every company shall lay before its shareholders a full printed statement of the affairs and financial position of the company at or before each general meeting of the company for the election of directors. Full statement of affairs at each meeting for elections.

SCHEDULE.

FORM A.

Public notice is hereby given that under "*The Companies Act*" letters patent have been issued under the Great Seal of Canada 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 18

A.B.
Secretary.

FORM B.

Public notice is hereby given, that under "*The Companies Act*" supplementary letters patent have been issued under the Great Seal of Canada, 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 18

A.B.
Secretary.

FORM C.

Public notice is hereby given, that under "*The Companies Act*" supplementary letters patent have been issued under the Great Seal of Canada, 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 18

A.B.
Secretary.

QUEBEC ACT.

REVISED STATUTES QUEBEC, 1887.

SECTION II.

INCORPORATION OF JOINT STOCK COMPANIES.

§ 1. *Declaratory and Interpretative.*

4694. This section may be cited as "the Joint Stock Companies' Incorporation Act."

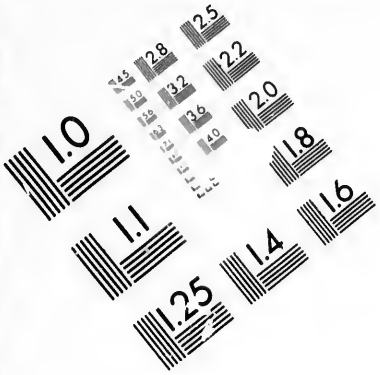
4695. The following expressions, in this section and in all letters-patent and supplementary letters-patent issued under the same, have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction:

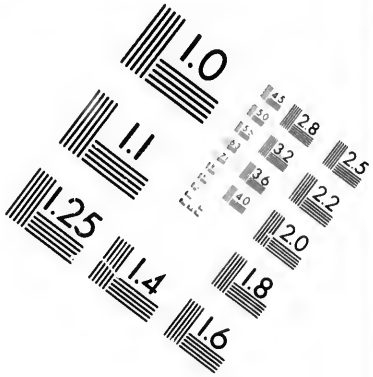
1. The expression "letters-patent" means the letters-patent incorporating a company for any purpose contemplated by this section;

2. The expression "supplementary letters-patent" means any letters-patent granted for the increasing or reducing of the capital stock of such company, or for changing its name;

3. The expression "company" means the company so incorporated by letters-patent;

4. The expression "the undertaking" means the whole of the works and business of every kind, which the company is authorized to carry on;





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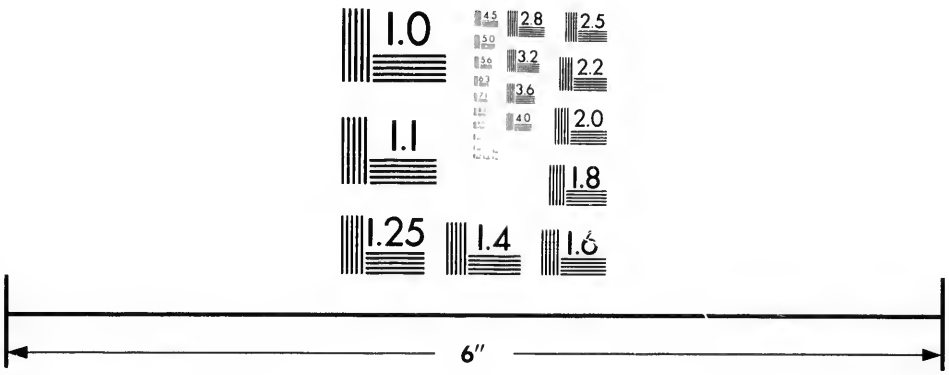

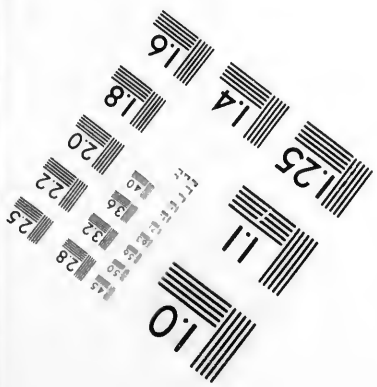

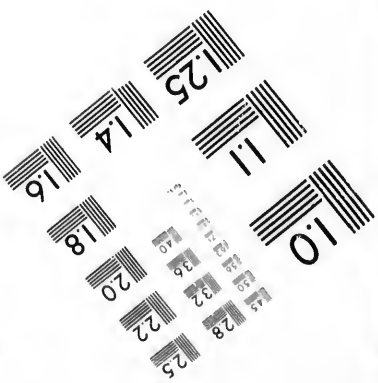

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5. The expression "real estate" or "land" includes all immoveable property of every kind;

6. The expression "shareholder" or "stockholder," means every subscriber to or holder of stock in the company, and extends to and comprises the personal representatives of the shareholder.

§ 2. *Granting of the Charter.*

4696. The Lieutenant-Governor may, by letters-patent under the Great Seal, grant a charter to any number of persons, not less than five, who petition therefor.

Such charter constitutes the petitioners and all others who may become shareholders in the company thereby created a body politic and corporate for any of the purposes within the jurisdiction of this Legislature, except for the construction and working of railways and the business of insurance.

2. It is not necessary that an order in council be passed for granting any such charter, but the Lieutenant-Governor may grant any charter upon a favorable report from the Attorney-General.

4697. The applicants for such letters-patent shall previously give notice of their intention to make such application.

Such notice shall be published during four consecutive weeks in the Quebec Official Gazette and contain:

1. The corporate name of the proposed company, which shall not be that of any other company, or any name liable to be confounded therewith or otherwise on public grounds objectionable;

2. The object for which the incorporation is sought;

3. The place, within the limits of the Province, selected as its chief place of business;

4. The proposed amount of its capital stock;

5. The number of shares and amount of each share;

6. The name in full and the address and calling of each of the applicants, with special mention of the names of not less than three or more than nine of their number who are to be the first directors of the company.

The major part of such directors shall be resident in Canada and be subjects of Her Majesty.

4698. At any time not more than one month after the last publication of such notice, the applicants may petition the Lieutenant-Governor through the Provincial Secretary for the issue of such letters-patent.

2. Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and by all other persons therein named, and also the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in, and is held for the company.

3. The aggregate of the stock so taken must be at least one half of the total amount of the stock of the company.

4. The aggregate so paid in thereon must be at least ten per cent. thereof, or five per cent. of the total capital; unless such total exceed five hundred thousand dollars, in which case the aggregate paid in upon such excess must be at least two per cent. thereof.

5. Such aggregate must have been paid in to the credit of the company or of trustees therefor, and must be standing at such credit, in some chartered bank within the Province, unless the object of the company is one requiring that it should own real estate, in which case, not more than one half thereof may be taken as invested in real estate suitable to such object, duly held by trustees therefor, and being fully of the required value over and above all incumbrances thereon.

6. The petition may ask the embodying in the letters-patent of any provision which otherwise under this section might be embodied in any by-law of the company when incorporated.

4699. Before the letters-patent are issued, the applicants must establish to the satisfaction of the Provincial Secretary or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the sufficiency of their notice and petition, the truth and sufficiency of the facts therein set forth, and further that the applicants, and more especially the provisional directors named are persons of sufficiently reputed means to warrant the application.

2. To that end, the secretary or such other officer may take and keep of record any requisite evidence in writing under oath or affirmation, and may administer every requisite oath or affirmation.

4700. The letters-patent shall recite all the material averments of the notice and petition, as so established.

4701. The Lieutenant-Governor may, if he deem it expedient, give to the company a name different to that chosen for it by the applicants, if such name be objectionable, and may prescribe that the objects for which the company is constituted be changed, provided that they be of the same nature as that given in the notice.

4702. If it happens that the name of a company, constituted as aforesaid, is the same as that of any other existing company, or so nearly resembles it as to be liable to create confusion, the Lieutenant-Governor may order the issue of supplementary letters-patent to change the name to another to be chosen.

Such supplementary letters-patent shall refer to the former letters-patent.

Such change of name shall not affect the rights or obligations of the company.

4703. Whenever a company, incorporated under this section, desires to have its name changed for another, the Lieutenant-Governor may, on petition to that effect, grant supplementary letters-patent, if he deem that such change

of name is not made for some unavowed or illegitimate purpose; which letters-patent shall be made in the manner provided in the preceding article and shall have the same effect to all intents and purposes.

4704. Notice of the granting of the letters-patent shall be forthwith given by the Provincial Secretary, in the Quebec Official Gazette, in the form of the schedule A of this section; and thereupon, from the date of the letters-patent, the persons therein named and their successors, shall be a body corporate and politic by the name mentioned therein.

§ 3. *General Powers.*

4705. Every company so incorporated may acquire, hold, alienate and convey, any real estate, requisite for the carrying on of its undertaking, and shall forthwith become and be invested with all rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite to the carrying on of its undertaking, as though incorporated by a charter from the Legislature, making it by that name a body politic and corporate, and embodying all the provisions of this section and of the letters-patent.

4706. The directors of the company may, if they see fit, at any time after the whole capital stock of the company has been allotted and paid in, but not sooner, make a by-law for increasing the capital stock of the company to any amount which they may consider requisite in order to the due carrying out of the objects of the company.

2. Such by-law shall declare the number and value of the shares of the new stock, and prescribe the manner in which the same shall be allotted; in default of its so doing, the control of such allotment shall be held to vest absolutely in the directors.

4707. The directors of the company, if they see fit at any time, may make a by-law for decreasing the capital stock of the company to any amount which they may consider sufficient in order to the due carrying out of the undertaking of the company, and advisable.

2. Such by-law shall declare the number and value of the shares of the stock as so decreased, and the allotment thereof or the rules by which the same shall be made.

4708. But no by-law, for increasing or decreasing the capital stock of the company, shall have any force or effect whatever, until after it has been sanctioned by a vote of not less than two-thirds in amount of the shareholders at a general meeting of the company duly called for considering the same, and has afterwards been confirmed by supplementary letters-patent.

4709. At any time, not more than six months after such sanction of such by-law, the directors may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of supplementary letters-patent, to confirm the same.

2. With such petition they must produce such by-law, and establish, to the satisfaction of the Secretary or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the due passage and sanction of such by-law, and the *bona fide* character of the increase or decrease of capital thereby provided for.

3. To that end the Secretary or such officer may take and keep of record any requisite evidence in writing under oath or affirmation, and may administer every requisite oath or affirmation.

4710. Upon due proof so made, the Lieutenant-Governor in Council may grant such supplementary letters-patent under the Great Seal; and notice thereof shall be forthwith given by the Provincial Secretary in the Quebec Official Gazette, in the form of the schedule B of this section.

2. From the date of the supplementary letters-patent, the capital stock of the company shall be and remain increased, or decreased as the case may be, to the amount, in the manner, and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions of this section, in like manner (so far as may be) as though every part thereof had formed part of the stock of the company originally subscribed.

4711. All powers given to the company by the letters-patent and supplementary letters-patent granted in its behalf shall be exercised subject to the provisions and restrictions contained in this section.

§ 4. *Directors.*

4712. The affairs of the company shall be managed by a board of not less than three, or more than nine directors.

The persons named as such in the letters-patent shall be the directors of the company, until replaced by others duly named in their stead.

4713. No person shall be elected or named as a director thereafter, unless he be a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon.

The major part of the after-directors of the company shall further, at all times, be persons resident in Canada and subjects of Her Majesty by birth or naturalization.

4714. The after directors shall be elected by the shareholders, in general meeting of the company assembled, at such times, in such wise, and for such term, not exceeding two years, as the letters-patent, or, in default thereof, the by-laws of the company may prescribe.

4715. In default only of other express provisions in such behalf, by the letters-patent or by-laws of the company:

1. Such election shall take place yearly, all the members of the board retiring, and, if otherwise qualified, being eligible for re-election;

2. Notice of the time and place for holding general meetings shall be given at least ten days previously thereto, in some newspaper published at or as near as may be to the office or chief place of business of the company;

3. At all general meetings, every shareholder shall be entitled to as many votes as he owns shares in the company, and may vote by proxy;

4. Elections of directors shall be by ballot;

5. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term, by the board, from among the qualified shareholders;

6. The directors shall from time to time elect from among themselves a president; and shall also name, and may remove at pleasure, all other officers of the company.

4716. If at any time an election of directors be not made or do 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 duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

4717. The directors have full power in all things to administer the affairs of the company, and may make or cause to be made for it any description of contract which the company may lawfully enter into; and may from time to time make by-laws not contrary to law, or to the letters-patent of the company, to regulate:

1. The allotment of stock;

2. The making of calls thereon;

3. The payment of calls;

4. The issue and registration of certificates of stock;

5. The forfeiture of stock for non-payment;

6. The disposal of forfeited stock and of the proceeds thereof;

7. The transfer of stock;

8. The declaration and payment of dividends;

9. The number of directors and their term of office;

10. The amount of their stock qualification;

11. The appointment, functions, duties and removal of all agents, officers and servants of the company;

12. The security to be given by them to the company;

13. Their remuneration and that of the directors if they have a right thereto;

14. The time at which and the place within this Province where the annual meetings of the company shall be held, and the places where its business shall be conducted;

15. The calling of meetings, regular and special, of the board of directors and of the company;

16. The quorum;

17. The requirement as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the company.

They may also, from time to time, repeal, amend or re-enact such by-laws.

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, from that time only, cease to have force.

4718. 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 *prima facie* evidence of such by-law in all courts of justice in this Province.

4719. No loan shall be made by the company to any shareholder, and if such be made, all directors and other officers of the company making the same, or in any wise assenting thereto, shall be jointly and severally liable for all debts of the company contracted from the time of the making of such loan to that of the repayment thereof, towards the company for the amount of such loan, and also towards third parties, to the extent of such loan with legal interest.

4720. The directors shall be jointly and severally liable to the laborers, servants and apprentices of the company for all debts, not exceeding one year's wages, due for services performed for the company whilst 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 yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the company has been returned unsatisfied in whole or part.

The amount due on such execution shall be the amount recoverable with costs against the directors.

§ 5. *Shareholders, Shares and Calls.*

4721. One fourth part in value of the shareholders of the company has, at all times, the right to call a special meeting thereof, for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

4722. The capital stock of all joint stock companies 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.

The amount of paid up capital, from year to year, shall be published annually in a report to the shareholders of the company.

2. The property accounts of a company shall represent only the amount of the actual *bona fide* outlay necessary for the undertaking.

No stock shall be issued to represent the increased value of any property.

Any such issue shall be null and void.

3. The practice, commonly known as watering of stock, is prohibited, and all stock so issued shall be null and void.

4. The capitalization of surplus earnings, and the issue of stock to represent such capitalized surplus are also prohibited, and all stock so issued shall be null and void, and the directors consenting to such issue of stock shall be jointly and severally liable to the holders thereof for the reimbursement of the amount paid for such stock.

5. 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.

4723. The stock of the company is deemed to be personal estate, and shall be transferable, in such manner only, and subject to all such conditions and restrictions, as by this section or by the letters-patent, or the by-laws of the company shall be prescribed.

4724. If the letters-patent make no other definite provisions, the stock of the company, so far as the same is not allotted thereby, shall be allotted when and as the directors, by by-law or otherwise, may ordain.

4725. The directors may call in and demand from the shareholders, all sums of money by them subscribed, at such times and places, and in such payments or instalments, as the letters-patent, or this section, or the by-laws of the company may require or allow.

Interest shall accrue and fall due, at the rate of six per cent. per annum, upon the amount of any unpaid call, from the day appointed for the payment of such call.

4726. Not less than ten per cent. upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company.

For every year thereafter, at least a further five per cent. shall in like manner be called in and made payable, until one half has been so called in.

4727. The company may enforce payment of all calls and interest thereon, by action in any competent court; and 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, whereby an action has accrued to the company.

A certificate under the seal of the company, and purporting to be signed by any of its officers, to the effect that the defendant is a shareholder, that such calls have been made, and that so much is due by him thereon, shall be received in all courts as *prima facie* evidence to that effect.

4728. If, after such demand or notice as by the letters-patent or by-laws of the company may be prescribed, any call made upon any share or shares be not paid within the time prescribed by the letters-patent or by-laws, the directors, in their discretion, by vote to that effect, reciting

the facts and duly recorded in their minutes, may summarily declare forfeited 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 they shall ordain.

4729. No share shall be transferable, until the previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon, or sold under execution.

4730. No shareholder in arrear in respect of any call shall be entitled to vote at any meeting of the company.

4731. Each shareholder, until the whole amount of his stock has been paid up, shall be personally 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 creditors, 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 such shareholder.

4732. The shareholders shall not as such be held responsible for any act, default or liability whatever, of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatever, relating to or connected with the company, beyond the amount of their respective shares in the capital stock thereof.

4733. No person holding stock in the company in the name of another shall be personally subject to liability as a shareholder, but the estates and funds in the hands of such person, belonging to the person he represents, shall be liable in like manner, and to the same extent, as the person represented would be, if holding such stock in his own name.

4734. No person holding stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

4735. Every person holding and possessing shares in the name of another shall represent the stock in his hands, at all meetings of the company, and may vote accordingly as a shareholder; and so with every person who pledges his stock.

§ 6. *Dividends.*

4736. No company shall declare a dividend, the payment of which infringes upon or lessens the capital of the company.

No dividend shall be declared or paid, which has not been actually earned by the company.

2. The annual dividend may, however, be supplemented or paid entirely out of the reserve fund; but payment of the dividend in this way must be publicly announced to the shareholders, at the annual meeting, and duly authorized by a resolution of the company.

In default of such resolution, the directors of the company, voting for or consenting to such increase, shall be jointly and severally liable to the creditors of the company for the amount of dividend paid in excess of that actually earned.

3. Should any dividend be so declared or paid, the directors voting for or consenting to the payment of such dividend shall be jointly and severally liable to the creditors of such company for the amounts so paid.

4737. The directors, who declare and pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital stock thereof, shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the then existing debts of the company, and for all thereafter contracted during their continuance in office.

But if any director present when such dividend is declared do forthwith, or if any director then absent do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the company, such director may thereby, and not otherwise, exonerate himself from such liability.

§ 7. *Books to be kept.*

4738. The company shall cause a book or books to be kept by its secretary or by some other officer specially charged with that duty, wherein shall be kept correctly recorded:

1. A copy of the letters-patent incorporating the company, of any supplementary letters-patent and of all the by-laws thereof;

2. The names, alphabetically arranged, of all persons who are or have been shareholders;

3. The address and calling of every such person while such shareholder;

4. The number of shares of stock held by each shareholder;

5. The amounts paid in, and remaining unpaid on the stock of each shareholder;

6. All transfers of stock, in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and

7. 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.

4739. The directors may refuse to allow the entry, into any such book, of any transfer, not made by sale under execution, of stock whereof the whole amount has not been paid in; and whenever an entry is made in such book of any such transfer of stock not fully paid in, to a person not being of apparently sufficient means, the directors jointly and severally shall be liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder would have been, but for such entry.

But if any director, present when such entry is allowed, do forthwith, or if any director then absent do, within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minute-book of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the office or chief place of business of the company, such director may thereby, and not otherwise, exonerate himself from such liability.

4740. No transfer of stock, unless made by sale under execution, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor, to the company and their creditors, until entry thereof has been duly made in such books.

4741. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company, and their representatives, at the office or chief place of business of the company.

Every such shareholder and creditor, or their representatives, may make extracts therefrom.

4742. In any suit or proceeding against the company or against any shareholder, such books shall be *prima facie* evidence of all facts purporting to be thereby stated.

4743. Every director, officer or servant of the company who knowingly makes or assists in making any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, shall be liable to a penalty of one hundred dollars for every such untrue entry and for every such refusal or neglect, and also in damages for all loss or injury which any party interested may have sustained thereby.

4744. Every company neglecting to keep such books open for inspection shall forfeit its corporate rights.

§ 8. *Trusts, Contracts, etc.*

4745. The company is not bound to see to the execution of any trust, whether express, implied or constructive, in respect of any shares.

The receipt of the shareholder in whose name the same may stand in the books of the company, is a valid and binding discharge to the company for any dividend or money payable in respect of such shares, and whether or not notice of such trust has been given to the company.

The company is not bound to see to the application of the money paid upon such receipt.

4746. 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, shall be binding upon the company.

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.

The party so acting as agent, officer or servant of the company, shall not thereby be subjected personally to any liability whatever to any third party therefor.

Provided always, that nothing in this article shall be construed to authorize the 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.

4747. No company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase may be specially authorized by its charter and also by the charter of such other corporation.

§ 9. *Suits.*

4748. Any description of action may be prosecuted and maintained between the company and any shareholder thereof.

2. No shareholder, not being himself a party to such suit, shall be incompetent as a witness therein.

3. Service of all manner of summons or proceedings whatever upon the company may be made by leaving a copy thereof at the office or chief place of business of the company, with any grown person in charge thereof, or elsewhere with the president and secretary thereof; or if the company have no known office or chief place of business, or have no known president or secretary, then, upon return to that effect duly made, the court or judge orders such publication as it may deem requisite to be made in the premises, for at least one month, in at least one newspaper.

Such publication shall be held to be due service upon the company.

4749. In any action or any 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 section; and the notice in the Quebec Official Gazette of the issue thereof shall be *prima facie* proof of all things thereby declared.

On production of the letters-patent or supplementary letters-patent themselves, or of any exemplification or copy thereof under the Great Seal, the fact of such notice shall be presumed; and, save only in any proceeding, by *scire facias* or otherwise, for direct impeachment thereof, the letters-patent or supplementary letters-patent themselves, or any exemplification or copy thereof under the Great Seal, shall be conclusive proof of every matter and thing therein set forth.

§ 10. *Miscellaneous.*

4750. The charter of the company shall be forfeited by non-user during three consecutive years at any one time, or if the company do not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any act of the Legislature shall be deemed an infringement of such charter.

4751. The company shall be subject to such further and other provisions as the Legislature may hereafter deem expedient to enact.

4752. The Lieutenant-Governor in Council may from time to time establish, alter, and regulate the tariff of fees to be paid on applications for letters-patent and supplementary letters-patent under this section, may designate the department or departments through which the issue thereof shall take place, and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the objects of this section.

2. Such fees may be made to vary in amount, under any rule or rules as to the nature of the company, amount of capital, and otherwise, that may be deemed expedient.

3. No step shall be taken in any department towards the issue of any letters-patent or supplementary letters-patent under this section, until after the amount of all fees therefor shall have been duly paid.

4753. No bill for incorporating a company for any of the purposes set forth in article 4696, or for increasing or decreasing the capital stock of any such company, or for changing its name, shall be introduced or proceeded with, either in the Legislative Council or in the Legislative Assembly until there has been paid in, to the credit of the Treasurer, for the public uses of the Province, over and above whatever may be required to be paid by way of fee or for printing or otherwise, under the rules of the Legislative Council or Legislative Assembly, a sum equal to what would have to be paid under the order or orders in council in force upon letters-patent or supplementary letters-patent, as the case may be, if the privileges sought by means of such bill were sought by means of letters-patent or supplementary letters-patent under this section.

2. Should such bill fail to become law, so much only of such amount, not exceeding one-third thereof, as may be remitted by joint resolution of the Legislative Council and Legislative Assembly, may be repaid to the depositor.

3. Should such bill be so amended as to make the amount payable therefor as amended, other than what was so payable therefor as introduced, any excess of payment shall be repaid or any required further payment made good, as the case may be.

4. No such bill shall be presented for sanction to the Lieutenant-Governor, unless there is endorsed thereon a certificate by the clerks of the Legislative Council and Legislative Assembly respectively, that they are officially assured of the fact that all payments hereby exigible have been duly made upon the bill.

FORM A.

Public notice is hereby given that, under the Joint Stock Companies' Incorporation Act, letters-patent have been issued under the Great Seal of the Province of Quebec, 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 name of the company, as in the letters-patent*] with a total capital stock of dollars divided into shares of dollars each.

Dated at the office of the Secretary of the Province of Quebec, this day of

A. B.,
Provincial Secretary.

FORM B.

Public notice is hereby given that, under the Joint Stock Companies' Incorporation Act, supplementary letters-patent have been this day issued under the Great Seal of the Province of Quebec, bearing date the day of , whereby the total capital stock of (*here state the name of the company*) is increased (*or* decreased, *as the case may be*) from dollars to dollars (*or* whereby the name of the said company has been changed to that of)

Dated at the office of the Secretary of the Province of Quebec, this day of

A. B.,
Provincial Secretary.

SECTION III.

DECLARATION TO BE MADE BY INCORPORATED COMPANIES.

4754. Every incorporated company, carrying on any labor, trade or business in this Province, (except banks) shall cause to be delivered to the prothonotary of the Superior Court in each district, or to the registrar of each registration division in which it carries on or intends to carry on its operations or business, a declaration in writing to the effect hereinafter provided, made and signed by the president, when its chief office or principal place of business is in this Province, or by the principal manager or chief agent in the Province, when it has only branches or agencies therein.

2. Such declaration shall state the name of the company, where and how it was incorporated, the date of its incorporation, and where its principal place of business within the Province is situated.

3. Such declaration shall be in the form or to the effect of form A of this section, and shall be produced by the president or the principal manager or chief agent, as the case may be, of every such incorporated company, and filed within sixty days after commencing operations and business.

4. When and so often as any change takes place in the name of the company, or in its principal place of business in the Province, a declaration thereof shall in like manner be made, within sixty days from such change.

4755. The prothonotary and the registrar shall enter such declaration in the books kept by them respectively for the registration of declarations of partnerships.

4756. The prothonotary and the registrar shall be entitled to a fee of one dollar for the entry of every declaration made under the authority of this section.

4757. A failure to make and file the declarations required by article 4754 renders each of the incorporated companies above mentioned liable to a fine of four hundred dollars, and the president, principal manager, or chief agent, as the case may be, to a fine of two hundred dollars.

4758. Should the declaration be made and filed after the expiration of the sixty days above mentioned and before any suit for a contravention of this section has been instituted, then the company making and filing such declaration, its president, principal manager or chief agent, as the case may be, shall no longer be deemed to have been in default.

4759. The fines imposed by this section are recoverable, before any court having jurisdiction in civil cases to the amount of such fine, by any persons suing as well in his own name as in the name of Her Majesty or by the Attorney-General in the name of Her Majesty.

4760. One-half of all fines recovered belongs to the party suing for the same, and the other half to the Crown, and forms part of the consolidated revenue fund of the Province, unless the suit be brought on behalf of the Crown only, in which case the whole of the fine shall belong to the Crown for the uses aforesaid.

FORM A.

Province of Quebec, }
District of }

The—(*name*)—Company.

The (*name*) Company was incorporated in (*name of the country, province, &c.,*) by (*Letters-Patent or Statute, giving title, &c.,*) granted, (*or* sanctioned *or* registered, *as the case may be,*) on the (*date*)

Its principal place of business in the Province of Quebec is at (*name of town, &c.*)

In testimony whereof, this declaration in duplicate is made and signed by me, (*name, address and calling*) the (*president, principal manager, chief agent, as the case may be*) of the said company, at (*name of place*) on the (*date*)

SECTION IV.

SPECIAL PROVISIONS RESPECTING CERTAIN COMPANIES AND CORPORATIONS.

§ 1. *Powers of certain companies to divide their capital stock and to acquire and hold real estate.*

4761. It is lawful for the directors of any company, of which the capital stock is divided into shares being a multiple of one hundred, to pass a by-law declaring that the capital stock of such company shall be divided into shares of one hundred dollars each, and, from and after the passing of such by-law, such capital stock shall be divided into shares of one hundred dollars each.

4762. Every company incorporated and existing in Great Britain, in the United States of America, or in Canada, has the right to acquire and hold any lands and real estate in this Province, for its occupation or the prosecution of its business only, any law to the contrary notwithstanding.

4763. No such corporation formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the corporation or by the individual members thereof, shall, without the sanction of the Lieutenant-Governor in Council, hold more than ten acres of land; but the Lieutenant-Governor in Council may, by license under the hand of the Provincial Secretary, empower any such corporation to hold lands in such quantity and subject to such conditions as he shall think fit.

BRITISH COLUMBIA.

Prior to 26th April, 1890, the incorporation of Joint Stock Companies was regulated by chapter 21 of the Consolidated Acts, (1888), of British Columbia, but by the "Companies Act, 1890," 53 Vic. chap. 6, the stockholders of Corporations formed under the provisions of the latter Act, are to be subject to the conditions and liabilities of the Act of 1890 only. The Act of 1888 has not been repealed, and as incorporation under the Act of 1890 does not appear to be obligatory, it is apprehended a charter may still be obtained under the provisions of the Act of 1888. There is no doubt, at all events, that the provisions of the Act in respect to foreign corporations being admitted to do business in the Province are still in force.

CHAPTER 6.

The "Companies Act, 1890."

[*26th April, 1890.*]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

1. This Act may be cited as the "Companies Act, 1890."

Incorporation and Powers.

2. Corporations for any lawful purpose may be formed according to the provisions of this Act, if the purpose comes within any of the classes of subjects in respect of which the Legislature of the Province has the power of

legislation; and any such corporation, the members and stockholders thereof, shall be subject to the conditions and liabilities in this Act imposed, and to none others, anything contained in any law to the contrary notwithstanding.

3. Any three or more persons who may desire to form a company under this Act may make, sign and acknowledge before some person competent to take the acknowledgment of deeds, a memorandum of association, in duplicate, in which shall be stated the corporate name of the company, with the addition of the words "limited liability," the object for which the company shall be formed, the amount of its capital stock, and into how many shares (which must each be for the same amount) divided, the time of its existence (not to exceed fifty years) the number of shares of which the stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first three months, and the name of the city, town, or electoral district in which the principal place of business of the company is to be located.

4. The Registrar of Joint Stock Companies shall receive and file such memorandum, and shall, upon receipt of the proper fees provided in Schedule A hereto for filing and publication of such memorandum, forthwith enclose the duplicate of such memorandum of association to the Provincial Secretary, who shall cause the same to be published in the next issue of the British Columbia Gazette, and for at least one month thereafter.

5. When the memorandum of association referred to in section 3 of this Act shall have been filed with the Registrar of Joint Stock Companies, the same shall be the constitution of and binding upon the company, and the Registrar of Joint Stock Companies shall issue, under his hand and seal, a certificate of incorporation, stating that the company so applying for incorporation is incorporated as a company under this Act, and thereupon the persons

who shall have signed and acknowledged the memorandum of association, and their successors, shall be, for the term mentioned in the memorandum of association, a body politic and corporate, in fact and in name, by the name stated in the memorandum of association, of which the trustees mentioned in the memorandum of association, who are to manage the concerns of the company, for the first three months, are to be the trustees for the first three months, and shall, by their corporate name, have succession for the period limited, and shall have power—

(*a*) To issue shares, limited to the number stated in their memorandum of association:

(*b*) To sue and be sued in any Court:

(*c*) To make and use a common seal, and alter the same at pleasure:

(*d*) To purchase, hold, sell, and convey such real and personal estate as the purposes of the Corporation shall require:

(*e*) To appoint such officers, agents, and servants as the business of the Corporation shall require: to define the powers, prescribe the duties, and fix the compensation (if any) of such officers, agents, and servants from time to time, as occasion may justify:

(*f*) To require of such officers, agents, and servants such security as may be thought proper for the fulfilment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees, upon a written request signed by holders of two-thirds of the capital stock of the company actually subscribed:

(*g*) To make by-laws, not inconsistent with this Act, for the organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

6. No shareholder in any such company shall be individually liable for the debts or liabilities of the company; but the liability of each shareholder shall be limited to the calls and assessments to be legally levied upon the shares held by him.

7. A Certificate of Incorporation given at any time to any company registered or incorporated under this Act shall be conclusive evidence that all the requirements in respect to registration or incorporation in this Act contained have been complied with, and that the company is duly registered under this Act, and the date mentioned in such certificate as the date of the filing the memorandum of association shall be deemed to be the date at which such company is incorporated under this Act.

8. All companies incorporated or registered under this Act shall have, in addition to the powers conferred on them by section 5, the following powers, namely:

(*a*) The power, subject to the provisions of this Act, to borrow money, for the purpose of carrying out the objects of their respective incorporations, but the total amount of money so borrowed, together with all the other debts of the corporation, shall not at any time exceed the amount of its capital stock:

(*b*) The power, subject to the provisions of this Act, to execute mortgages of their real and personal property, to issue debentures secured by mortgage or otherwise, to sign bills, notes, contracts, and other evidences of, or securities for, money

borrowed, or to be borrowed, by them for the purpose aforesaid, and to pledge debentures as security for temporary loans.

These powers shall not be exercised except with the consent of the shareholders representing two-thirds in value of the capital stock of the company actually paid in.

9. No corporation incorporated or registered under this Act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money, or to enable a corporation, by any device, to carry on the business of banking or insurance; but nothing in this section shall be construed into preventing a corporation from issuing bills, notes, or other evidences of debt for its obligations.

10. It shall be lawful for a company incorporated or registered under this Act to stipulate in any or all of its contracts, mortgages, bills, notes or other evidences of debt, that the property of the company only shall be responsible for the obligation, and that the uncalled up stock or assessments shall not be applied thereto to any extent, and in any such case the creditor, or other person entitled to the benefit of any such contract or obligation, shall be deemed to have waived the liability of the individual stockholders to assessment.

Trustees.

11. The corporate powers of the corporation shall be exercised by a board of not less than three trustees, who shall be stockholders in the company and residents of this Province, and who shall, after the expiration of the terms of the trustees first selected, be annually elected by the stockholders at such time and place, and upon such notice, and in such mode, as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy,

shall be entitled to as many votes as he owns shares of stock, and the persons receiving the greatest number of votes shall be trustees. When any vacancy shall happen among the trustees by death, resignation, or otherwise, it shall be filled, for the remainder of the year, in such manner as may be provided by the by-laws of the company.

12. If it should happen, at any time, that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not, for that reason, be dissolved; but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the by-laws of the company; and the trustees shall continue in office until new trustees are elected; and all acts of trustees in accordance with this Act shall be valid and binding upon the company until their successors shall be elected.

13. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of the majority of the persons duly assembled as a board shall be valid as a corporate act.

14. The first meeting of the trustees shall be called by a notice, signed by one or more of the persons named as trustees in the memorandum of association, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least ten days in some daily newspaper published in the electoral district in which is situate the principal place of business of the corporation; or if no daily newspaper is published in such electoral district, then for two weeks in a semi-weekly or weekly newspaper published in the said district; or if no semi-weekly or weekly newspaper is published in the said district, then, for at least one month previous to the day of meeting, in some daily newspaper published in the City of Victoria, and by advertisement posted up for thirty days in three of the most public places

in the electoral district, and in the vicinity of the principal place of business of the corporation and also the place of meeting.

Stock and Stockholders.

15. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

16. A stockholder may transfer his shares whenever all previous assessments and charges thereon shall have been paid; and upon such transfer and entry thereof in the books of the company, his liability for further calls or assessments shall absolutely cease, saving always the rights of creditors of the company or obligations incurred before the transfer.

17. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may, nevertheless, represent the same at all meetings and vote accordingly as a stockholder.

18. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

19. Stockholders' 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, but no particular

form of proxy shall be necessary, and no person shall be appointed a proxy who is not a stockholder in the company. Proxies shall be either special or general; if special, such proxy shall only be valid for the time stated therein; if general, then such proxy shall be valid until cancelled.

The instrument appointing a proxy shall be delivered to the secretary twenty-four hours before the hour named for calling the meeting to order at which the person named in such instrument proposes to vote.

20. (1.) Each shareholder, until the whole amount of his stock 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 shall, subject to the provisions of the next section, be the amount recoverable with costs against such shareholder.

2. 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 dividends, or a salary, or allowance as a trustee.

21. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the Company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund, would have been if he had been living and competent to act and hold the stock in his own name.

22. The shareholders of the company 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 of their respective shares in the capital stock thereof.

23. Any company incorporated under this Act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, the amount of such debts and liabilities shall be satisfied and reduced so as not to exceed the diminished amount of capital.

24. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least once a week for four weeks in some newspaper published in the electoral district where the principal place of business of the company is located, or if no newspaper is published in the district, by advertisement posted up for thirty days in three of the most public places in the district; such notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock will be necessary to an increase or diminution of the amount of the capital stock.

25. If at any meeting so called a sufficient number of votes has been given in favour of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with the provisions of this Act with respect to the increasing or diminishing of the amount of

capital, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed in the same manner as the memorandum of association is required by the third section of this Act to be filed, and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate, and the Registrar of Joint Stock Companies shall amend the certificate of incorporation accordingly.

26. The trustees 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 stock thereof, but if any trustee present when such dividend is declared, forthwith, or if any trustee then absent, within twenty-four hours after he has become aware thereof and able so to do, enters on the minutes of the board of trustees his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the company, such trustee may thereby, and not otherwise, exonerate himself from liability.

27. No loan shall be made by the company to any shareholder, and if such is made, all trustees and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable to the company for the amount of such loan, 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 such loan to that of the repayment thereof: But this section shall not apply to a building society, or to a company incorporated for the loan of money, in any manner to which the authority of this Legislature or the meaning of this Act applies.

28. The trustees of the company shall be jointly and severally liable to the labourers, servants, and apprentices thereof, for all debts not exceeding three months' wages due for services performed for the company while they are such trustees respectively; but no trustee shall be liable to an action therefor, unless the company has been sued therefor within three months after the debt became due, nor yet unless such trustee is sued therefor within one year from the time when he ceased to be such trustee, nor yet 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 trustees.

Assessment, Delinquency, and Sale of Stock.

29. The trustees of any corporatian incorporated under this Act shall have power to levy and collect, for the purpose of paying the proper and legal expenses of such corporation and the obligations thereof, assessments upon the capital stock thereof (the aggregate amount of which, however, is not to exceed the amount of capital stock), in the manner and form and to the extent hereinafter provided, and not otherwise.

30. The total amount of assessments levied upon each share shall not exceed in the aggregate the value at which it was issued.

31. No one assessment, except hereinafter provided, shall exceed ten per cent. of the amount of the capital stock of the company named in the memorandum of association actually subscribed, and no assessment shall be levied while any portion exceeding twenty-five per cent. of any previous assessment shall remain unpaid or uncollected, except in cases (*a*) where all the powers vested in the company by this Act, for the purpose of collecting such previous assessments, shall have been exhausted; or (*b*)

where the collection of a previous assessment upon one or more stockholders shall have been restrained by injunction or otherwise.

(1) The trustees of any company incorporated or registered under this Act may, with the consent of its shareholders representing at least two-thirds in value of the capital stock of the company actually paid in, levy an assessment not exceeding twenty-five per cent. of the amount of capital stock of the company actually subscribed but not previously called up at the time of such consent being given, and any assessment so levied shall be subject, except as to amount, to all the provisions of this Act relating to the levying and collecting of assessments.

32. No assessment shall be levied except by order of the board of trustees, concurred in by a majority of said board, and entered upon the records of the corporation, and notice thereof may be in manner prescribed by the by-laws of the company.

33. Every order levying an assessment shall specify the amount thereof, and the time when, the person or persons to whom, and the place or places where, the same is payable. It shall also appoint a day subsequent to the full term of publication of the assessment notice, on which the stock upon which assessments remaining unpaid shall be deemed delinquent, which said day shall not be less than thirty nor more than sixty days from the time of the making of the said order levying the assessment, and a day for the sale of delinquent stock, which shall not be less than fifteen nor more than sixty days from the time appointed for declaring said stock delinquent.

34. The company may enforce payment of all calls, and interest thereon by action in any Court of competent jurisdiction; and 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 arrears amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the company under this Act; and a certificate under the seal, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts as *prima facie* evidence to that effect.

35. If, after such demand and notice as by the letters patent or by-laws of the company is prescribed, any call made upon any share or shares is not paid within such time as by such letters patent or by-laws may be limited in that behalf, the trustees, in their discretion, by vote 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-laws or otherwise the company may ordain.

36. No assessment, duly levied, shall be rendered invalid by a failure to make a proper publication of the notices hereinbefore provided for, nor by the non-performance of any act required to be performed in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, shall be void and the publication shall be begun anew.

37. No action shall be sustained to recover any stock or invalidate the sale of any stock for delinquent assessments upon the ground of any irregularity in making the assessment, or for any irregularity in or defect of the notice of such sale, or for any defect or irregularity in the

sale, unless the party seeking to maintain such action shall first pay or tender to the corporation or the party holding such stock so sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest at the rate of one per cent. per month on such sums from the time they were paid; and no such action shall be sustained unless the same shall be commenced within six months after such sale shall have been made.

Register Book.

38. It shall be the duty of the trustees of every company incorporated under this Act to cause a register book to be kept containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively and the time when they respectively became the owners of such shares; which book, during the usual banking hours of the day, on every day except Sundays and any legal holiday (except when closed as hereinafter mentioned), shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company, but subject to such reasonable restrictions as the company at a meeting may impose, so that not less than two hours in every day be appointed for inspection; and every stockholder or creditor shall have the right to make extracts from such book, or to demand and receive, upon payment of the fee of twenty-five cents for every one hundred words or fraction thereof required to be copied, from the clerk or other officer having charge of such book, a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated in any action or proceeding against the company or against any one or more stockholders.

39. If the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit

the same, or to allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided in the preceding section, he shall be liable on summary conviction before a Justice of the Peace to imprisonment for a term not exceeding two months, and shall forfeit and pay to the party injured a penalty of twenty-five dollars, and all damages resulting therefrom, or in default thereof he shall be liable to imprisonment for a term not exceeding six months; and for neglecting to keep such books for inspection as aforesaid, the corporation shall forfeit to Her Majesty the sum of five dollars for every day it shall so neglect, to be sued for and recovered in the name of Her Majesty's Attorney-General for the Province.

40. The trustees of every company incorporated or registered under this Act may, upon giving notice in manner prescribed by by-law of such company, close the register book of stockholders referred to in section 38 of this Act, for any time or times not exceeding on the whole twenty-one days in each year—Sundays and legal holidays excepted.

Office.

41. Any company incorporated or registered under this Act may change its office or principal place of business by first obtaining the consent in writing of the stockholders representing two-thirds of all the capital stock of the company: Provided that the change or removal shall not be made until notice of such intended change shall be inserted, after such consent shall have been obtained, for thirty days previous to actual removal, in the British Columbia Gazette and in some newspaper published at or near the principal place of business of said corporation, designating the place to which it is intended to remove.

42. This Act shall not be so construed as to authorize any corporation to establish or remove its office or principal place of business out of this Province.

Dissolution.

43. Any corporation registered or incorporated under this Act may dissolve and disincorporate itself by presenting to the Judge of the County Court of the district in which the meetings of the trustees are usually held a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a general meeting, or special meeting, of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation; public notice of the application shall then be given by the Judge, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the district once a week for four weeks, or if no newspaper is published in the district, by advertisement posted up for thirty days in three of the most public places in the district; at the time and place appointed, or at any other to which it may be postponed by the Judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall make an order declaring it dissolved, a copy of which shall be published in the *British Columbia Gazette*.

44. The provisions of any Act for the time being in force in this Province relating to the winding up of Companies shall apply to all Companies and Associations which shall be incorporated under this Act, or which have been or hereafter shall be incorporated by or under any Act or Ordinance of or in force in this Province, or of or in the late Colonies of Vancouver Island and British Columbia, or either of them, except to Companies registered and incorporated under the "Companies Act, 1878," or Part II., "Companies Act, 1878" (Provincial).

45. Upon the dissolution of any corporation registered or incorporated under this Act the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to levy and collect assessments and calls on shares, to the amount payable and unpaid thereon respectively, and to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

46. Every company which, before the passage of this Act, shall have filed, under section 13 of the "Companies Act," a certificate, declaration, memorandum, or other document, by whatsoever other name the same may be called, containing or setting forth therein those matters and things required by the said section to be stated in the certificate in the said section mentioned, and which shall express its desire to be governed by the provisions of this Act by a notice in writing under its official seal, and by the consent of a two-thirds majority vote of its stockholders, passed at any meeting called for the purpose of expressing such desire, shall be deemed and taken to have been duly incorporated under Part II. of the said Act, and shall be deemed to be duly incorporated under this Act, notwithstanding that the document filed is not, technically speaking, a certificate, and the Registrar of Joint Stock Companies shall, upon the request of any such company, and without payment of any fee, issue, under his hand and seal, to such company a certificate of incorporation, as described in section 5 of this Act, certifying that such company was incorporated on the day when such certificate, declaration, memorandum, or other document as aforesaid was filed, and such certificate of incorporation, when issued, shall be conclusive evidence that all the statutory requirements with respect to registration or incorporation, in force prior to the passage of this Act, have been complied with,

and that the company was duly registered and incorporated under the "Companies Act, 1878," or Part II. of the "Companies Act, 1878," (Provincial) as the case may be, as and from the day of the filing of such certificate, declaration, memorandum, or other document, and every company to which this section applies shall be and be deemed to be, as and from the date of its registration, entitled to all the benefits and subject to all the duties imposed by this Act.

47. Whenever any company, other than a company referred to in the preceding section, heretofore incorporated, or purported or expressed to have been incorporated, under any Act of this Province, or either of the late Colonies of Vancouver Island and British Columbia, shall have delivered to the Registrar of Joint Stock Companies of this Province an official copy of the Act, charter or other document by or under which such company was or was intended to have been incorporated, certified under the hand and seal of a person duly authorized for the purpose, and the certificate (if any) of the incorporation of such company, or an official copy thereof certified as aforesaid, and shall have paid to such Registrar the sum of $100, such company shall be entitled to receive from such Registrar a certificate of the registration of the company under this Act.

48. When such certificate as aforesaid shall have been delivered to such company, such company shall be deemed to have been incorporated under this Act, and to have been duly incorporated as from the date at which it was theretofore incorporated, or expressed or intended to have been incorporated; and such certificate shall be conclusive evidence that all the statutory requirements with respect to registration or incorporation in force prior to the passage of this Act have been complied with, and that the company was and is duly incorporated.

49. The expressions "calls" and "assessments" wherever mentioned in this Act shall be construed as controvertible terms.

SCHEDULE A.

Table of Fees to be paid to the Registrar of Joint Stock Companies by persons forming themselves into a company under this Act:—

Filing Certificate	$20 00
Publication in the British Columbia Gazette, according to the scale of charges as defined in Schedule A of the "Statutes and Journals Act."	
Every search	50

CHAPTER 3.

An Act to Amend the "Companies Act, 1890."

[*20th April, 1891.*]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. On the formation of a Company under the provisions set forth in the "Companies Act, 1890," the promoters thereof may state in the memorandum of association, in addition to the other matters required by the said Act, that a portion (not exceeding one-half) of the stock of the proposed Company shall be preference stock, either of one class with the same privileges, or of several classes with different privileges, with any fixed, fluctuating, contingent, preferential, cumulative, perpetual, terminable, deferred or other dividend or interest, and subject to the payment of calls of such amounts and at such times as the Company from time to time shall think fit.

2. The directors of any Company already incorporated under the "Companies Act, 1890," or hereafter to be incorporated thereunder, may make a by-law authorizing the division of the existing capital stock into ordinary and preferential stock, thereby changing any part, not exceeding one-half of the capital stock, into preference stock, giving the same such preference and priority as respects dividends and otherwise over the remaining ordinary stock as may be declared by such by-law.

3. Upon the issue by any such Company of any new stock under the provisions of section 23 of the said "Companies Act, 1890," the same may be issued as ordinary and preference stock in like manner, and so that the amount of the said preference stock does not exceed that of the ordinary stock.

4. The preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto out of the profits of each year in priority to the ordinary stock of the Company; but if at the end of any year there are not profits available for the payment of the full amount of preferential dividend or interest for that year, then, if it be so stated in the memorandum of association or in the said by-law, such deficiency shall be made good out of the profits of the first subsequent year in which there shall be a surplus after paying the annual dividend or interest accruing due in respect of such preference stock in such subsequent year:

(*a*) Should the surplus in any such subsequent year be insufficient to make good the deficiency or deficiencies of any former year or years, then such deficiency or deficiencies shall be a first charge upon the surplus of any subsequent year until such deficiency or deficiencies shall be fully made good.

5. In case the memorandum of association authorizes the creation of preference stock, it may provide that the holders of such preference stock shall have the right to

select a 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, and any by-law of a company originally incorporated without the power of issuing preference stock may make the same provisions.

6. No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by the vote of the shareholders present in person or by proxy at a general meeting of the company duly called for the consideration of the same, or unanimously sanctioned in writing by the shareholders of the Company.

7. Holders of preference stock, whether original or created by by-law, shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Act: Provided, however, that in respect of dividends and otherwise they shall, as against the original or ordinary shareholders, be entitled to the preference given by any by-law as aforesaid.

8. Nothing in this Act shall affect or impair the rights of creditors of any company.

9. Any company heretofore or which may hereafter be incorporated under any public Act for the time being in force in this Province, may acquire and hold lands in British Columbia by gift, purchase or as mortgagees, or otherwise, as fully and freely as private individuals, and may sell, lease, mortgage or otherwise alienate the same.

10. This Act shall be read with and form part of the "Companies Act, 1890."

11. This Act may be cited as the "Companies Act Amendment Act, 1891."

CONSOLIDATED ACTS OF 1888. CHAP 21.

As already stated, the Companies' Act of 1878, in the Consolidated Acts of 1888, chapter 21, appears to be still in force, and, for the purpose of reference, a brief abstract is given :—

Sec. 2.—The Imperial Act, "The Companies' Act, 1862," has, as far as practicable, and save as altered and modified by Provincial statutes, the force of law in the Province.

Purposes.—Sec. 12.—Corporations for any lawful purposes may be formed if the purpose comes within the class of subjects in respect of which the Legislature of the Province has the power of legislation.

Mode of Incorporation.—Sec. 13.—Similar to sec. 3 of the "Companies Act of 1890."

Powers of Corporations.—Sec. 16.—Similar to sec. 5 of the "Companies' Act of 1890."

Borrowing Powers.—Sec. 17.—Similar to sec. 8 of the "Companies Act of 1890."

Number of Trustees.—Sec. 21.—Similar to sec. 11 of the "Companies Act of 1890."

Debts not to Exceed Assets.—Sec. 26.—If the debts of the corporation exceed the amount of the capital stock paid in, the trustees shall, in their individual and private capacity, be liable, jointly and severally, for the same to the corporation.

Assessments.—Sec. 37.—The trustees have power to levy and collect, for the purpose of paying the proper and legal expenses of the corporation, assessments upon the capital stock thereof.

Total Assessments.—Sec. 38.—The total amount of assessments levied upon each share shall not exceed in the aggregate the par or face value of each share issued.

Limit of Assessments.—Sec. 39.—No one assessment shall exceed 5 per cent. of the stated amount of the capital stock of the corporation named in the articles of incorporation.

Table of Fees Payable under the Foregoing Sections.

Filing certificate	$20 00
Publication in the B. C. *Gazette*	5 00
Every search	50

FOREIGN COMPANIES.

Sec. 65.—Any company having seven or more members incorporated in any foreign state may register itself and the members thereof in British Columbia as a company formed on the principle of having no limit placed on the liability of its members subject to the proviso: That no company shall be so registered unless an assent to its being so registered has been given by three-fourths in number and value of its shareholders at some general meeting summoned for that purpose, nor until a copy of the resolution giving the assent, together with the memorandum of association and a copy of the Act or charter of incorporation, or of the articles of association or deed of settlement shall have been deposited with the Registrar of Joint Stock Companies of British Columbia.

Sec. 66.—The memorandum of association shall have the corporate seal of the company affixed thereto, and shall contain the following things:—

(1) The name of the company, with the addition of the word "foreign" at the end thereof, which word shall thenceforth form part of such name.

(2) The name of the foreign state in which the company was incorporated, and the place in such foreign state in which the head office is situated.

(3) The objects for which the company has been established.

(4) The amount of the capital of the company, and the number of shares into which it is divided and the amount of each share.

(5) The name, address and addition of each shareholder, and the number of shares held by him.

Sec. 72.—Any company or association which has been, or shall hereafter be incorporated, in any foreign state or country for the purpose of carrying on any business that has for its object the acquisition of gain, and permitted by its charter and Act of incorporation and articles of association to operate in British Columbia, may register itself and the members thereof under this Act by depositing for registration with the Registrar of Joint Stock Companies of this Province a copy of its Act, certificate and charter of incorporation and articles of association, certified as being a true copy of the same, under the hand of the officer of such foreign country with whom the same is registered and deposited, and having his official seal (if any) attached thereto, and also the written petition of the president and secretary of the said company, signed by them as such, and having attached thereto the corporate seal of the said company, and acknowledged by such president and secretary before a notary public of such foreign country, praying for registration of the said company under this Act; and thereupon the said Registrar shall issue his certificate of registration, and thenceforth the said foreign company shall be known in this Province by its corporate name with the addition thereto of the word "foreign."

Secs. 73 and 74.—Any such foreign company may sue and be sued in its corporate name, and, if authorized so to do by its Act, charter, certificate of incorporation, or memorandum of association, may acquire and hold lands in British Columbia by gift, purchase, or as mortgagees or otherwise, as fully and freely as private individuals, and

may sell, lease, mortgage or otherwise alienate the same, and may locate, procure, hold, buy, sell and operate mineral claims pursuant to the provisions of the "Mineral Act" or any amendments thereto that may hereafter be made, and may carry on the business of milling, smelting, reducing and working its ores, or of obtaining from ores all that they may contain by means of any process, and of purchasing ores for that purpose, and generally have all the rights, powers and privileges of a company, incorporated under the laws of the Province of British Columbia, not inconsistent with its Act, charter, certificate of incoration, or memorandum of association.

Sec. 79.—Every foreign mining company thus registered shall take out annually a miner's license in the following form; but a company thus registered, its members or shareholders shall not be entitled to take out a free miner's certificate as provided by the "Mineral Act" for the purposes of the company:—

MINER'S LICENSE.

Not transferable.

This is to certify that the . company has paid me the sum of $5, as a foreign mining company registered under Part IV. of the "Companies' Act," 1888, chap. 12, sec. 8.

Sec. 80.—The fees payable under this part of this Act to the Consolidated Revenue Fund of the Province shall be as follows:—

For registering copy of Act, certificate or charter of incorporation, and articles of association, and issuing certificate	$50
For registering company's office and name, and address of its agent or manager ...	10
For every miner's license	5

THE MINERAL ACT, 1891.

CHAP. 25.

PART I. Relates to Free Miners and their Privileges.
PART II. Mineral Claims and Mines.
PART III. Mining Partnerships.
PART IV. Mining Recorders, Duties, etc.
PART V. Gold Commissioner's Ministerial Powers.
PART VI. County Courts.
PART VII. Penal and Miscellaneous.

NOVA SCOTIA.

Under the Provisions of the "Nova Scotia Joint Stock Companies' Act," Revised Statutes of Nova Scotia, 1884, cap. 79, 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 capital stock is $10,000 and under	$20 00
When the capital stock is up to $50,000	30 00
When the capital stock is up to $100,000.....	40 00
When the capital stock is up to $250,000.....	50 00
When the capital stock is up to $500,000.....	60 00
When the capital stock is over $500,000	70 00

NEW BRUNSWICK.

Under the Provisions of the New Brunswick Joint Stock Companies Letters Patent Act, 48 Vic. (1885), cap. 9.

Purposes.—Sec. 3.—The Lieutenant-Governor in Council may 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 the management of trades unions, friendly societies, building societies or other associations of like character.

Notice to be Given.—Sec. 4.—Two weeks' previous notice must be given in the *Royal Gazette* of intention to apply, and the notice must state:

(*a*) Proposed corporate name of the company;

(*b*) The object for which its incorporation is sought;

(*c*) The town in New Brunswick in which the chief place of business is to be;

(*d*) The amount of capital stock, which shall not be less than $2,000 actually subscribed;

(*e*) The number of shares and amount of each share;

(*f*) The names, address and calling of each of the applicants with special mention of not less than three of their number who are to be the first or provisional directors of the company.

Petition.—Sec. 5.—Within a month applicants may petition Lieut.-Governor, through the Provincial Secretary, for issue of such letters patent.

(*a*) Such petition must recite the facts set forth in the notice and must further state the amount of stock taken by each applicant and the amount, if any, paid in upon the stock of each applicant;

(*b*) The aggregate of the stock so taken must be at least one half of the total stock of the company.

(*c*) The petition must also state whether such amount is paid in cash, or by transfer of property or how otherwise.

(*d*) In case the petition is not signed by all the shareholders whose names are proposed to be inserted in letters patent, it shall be accompanied by a memorandum of association, signed by all the persons whose names are to be so inserted, or by their attorneys, duly authorized in writing, and such memorandum shall contain the particulars required by the next preceding section and may be in the Form A in the schedule of this Act.

(*e*) Any payments which shall have been made in cash on account of the stock must have been paid in to the credit of the company, or of trustees therefor, and must be standing at such credit in some chartered bank in the Province.

When Publication not Necessary.—Sec. 7.—Publication of notice is not necessary when capital stock does not exceed $5,000.

Directors.—Sec. 19.—The affairs of every company shall be managed by a board of not less than three directors.

Directors' Qualification.—Sec. 21.—A Director must be a shareholder owning stock in his own right to the amount required by the by-laws of the company, and not in arrear in respect of calls.

First Call.—Sec. 43.—Not less than ten per cent. upon the allotted stock of the company shall by means of one or more calls be made payable and called in within one year from the incorporation of the company.

Restriction.—Sec. 69.—No company shall issue stock to represent the increased value of any property of the company, nor shall the watering of stock be allowed. The issue of stock prohibited is null and void.

Issue of Shares.—Sec. 83.—Every share in the company shall be deemed and taken to have been issued, and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Provincial Secretary at or before the issue of the shares.

What Prospectus must Contain.—Sec. 84.—Every prospectus of the company and every notice inviting persons to subscribe for shares in the company shall specify the date and names of the parties to any contract entered into by the company or the promoters, directors or trustees thereof, whether subject to adoption by the directors of the company or otherwise; and any prospectus or notice specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract.

Borrowing Powers.—Sec. 85.—In case a by-law authorizing the same is sanctioned by a vote of not less than two-thirds in value of the shareholders then present in person or represented by proxy at a special general meeting duly called for considering the by-law, the directors may borrow money upon the credit of the company and issue the bonds, debentures or other securities for any sums borrowed at such prices as may be deemed expedient or necessary, but no such debentures or bonds shall be for a less sum than one hundred dollars, and the directors may, under the like sanction, hypothecate or pledge the real or personal property of the company to secure any sums borrowed for the company, provided that the amount borrowed shall

not at any time be greater than seventy-five per cent. of the actual paid up stock of the company. This limitation does not apply to the commercial paper discounted by the company.

Tariff of Fees.

1. When the proposed capital stock of the company is $10,000 or less, the fee to be.....$20 00
2. When the proposed capital stock of the company is $10,000 and less than $25,000, the fee to be..... 25 00
3. When the proposed capital stock of the company is $25,000 and less than $50,000, the fee to be..... 30 00
4. When the proposed capital stock of the company is $50,000 and less than $100,000, the fee to be..... 40 00
5. When the proposed capital stock of the company is $100,000 and less than $200,000, the fee to be..... 60 00
6. When the proposed capital stock of the company is $200,000 and less than $300,000, the fee to be..... 80 00
7. When the proposed capital stock of the company is $300,000 and less than $500,000, the fee to be.....100 00
8. When the proposed capital stock of the company is $500,000 and less than $1,000,000, the fee to be.....125 00
9. For every $500,000 in excess of $1,000,000, an additional fee of 25 00

SCHEDULE.—FORM A.

SECTION 5, SUB-SECTION 4.

Memorandum of Association of the Company, a company for which incorporation by letters patent is sought under the provisions of the New Brunswick Joint Stock Companies Letters Patent Act and a petition for which incorporation accompanies the memorandum agreeably to the Act.

1st. The proposed corporate name of the company is "The Company."

2nd. The object for which the incorporation of the company is sought is (here state the object of the company) with such other things as are incident thereto.

3rd. The office or principal place of business is to be at in the County of

4th. The nominal capital of the company is (here state the total capital) to be divided into (here state the number of shares) shares of (here state the amount of each share) dollars each.

5th. The names of the provisional directors of the company are:

of	in the County of	Farmer,
of	in the County of	Merchant,
of	in the County of	Banker.

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and the petition herewith presented, under the New Brunswick Joint Stock Companies Letters Patent Act, and we hereby respectively

agree to take the number of shares in the capital of the company set forth opposite our names :

NAME.	ADDRESS.	OCCUPATION.	NO. OF SHARES.

Dated the day of A.D.

MANITOBA.

Under the provisions of the Consolidated Statutes of Manitoba (1880-81), p. 218.

Purposes.—Sec. 226.—The Lieut.-Governor may grant a charter to any number of persons, not less than five, who shall petition therefor, and same may be created a body corporate and politic for any of the 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 and the buying and selling of land. The capital stock of a company incorporated under the Act can not at any time exceed $500,000.

Notice.—Sec. 227.—A month's notice of intention to apply to be given in the *Manitoba Gazette*. The notice should give information similar to that required under sec. 4 of the Dominion Act.

Petition.—Sec. 226.—Within a month after the last publication the applicants may petition for the issue of Letters Patent:

(1) Such petition must state the facts required to be set forth in the notice, and must first further state the amount of stock taken by such applicant, and also the amount, if any, paid in upon the stock of each applicant;

(2) The petition shall also state whether the amount is paid in cash or transfer of property or how otherwise;

(3) In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the letters patent it shall be accompanied by a memorandum of association, signed by all the parties whose names are to be inserted, or by their attorneys duly authorized in writing, and such memorandum shall contain the particulars required by the next preceding sub-section.

There is no requirement as to subscription of stock or the payment of a percentage of the stock at the time of the application for incorporation.

Directors.—Sec. 243.—The board of directors shall not be less than three nor more than nine directors.

Borrowing Powers.—Sec. 250.—Similar to Ontario Joint Stock Company.

Calls.—Sec. 255.—Not less than ten per cent. upon the allotted stock of the company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the company; the residue when and as the by-laws of the company shall direct.

TARIFF OF FEES.

$500,000 and upwards	$150 00
$200,000 and less than $500,000	100 00
$100,000 and less than $200,000	75 00
$50,000 and less than $100,000	50 00
Less than $50,000	30 00

NORTH-WEST TERRITORIES.

UNDER THE PROVISIONS OF "THE COMPANIES' ORDINANCE," REVISED ORDINANCES OF THE N.-W. T., 1888, CHAPTER 30.

Purposes.—Sec. 3.—A charter of incorporation may be granted by the Lieutenant-Governor to any number of persons, not less than three, for any of the purposes or objects to which the legislative authority of the Legislative Assembly of the Territories extends.

Notice to be Given.—Sec. 4.—The applicants must advertise by notice published at least once in the *Official Gazette* of the Territories, and in three consecutive weekly issues of any newspaper published at or nearest the place which is to be the chief place of business of the company, their intention to apply for the same:—

(1) Proposed corporate name of the company.

(2) The object of the incorporation.

(3) Place which is to be its chief place of business.

(4) Proposed amount of its Capital Stock.

(5) The number of shares and amount of each share.

(6) Names in full and address and calling of each applicant with special mention of the names of not less than three nor more than nine of their number who are to be the first directors of the company, the majority of whom shall be residents of Canada.

Petition.—Sec. 5.—Within two months after the last publication of such notice the applicants may petition the Lieutenant-Governor for the issue of such Letters Patent.

Contents of Petition.—Sec. 6.—The petition shall set forth:—

(1) The facts contained in the notice.

(2) The amount of stock taken by each applicant and the amount paid in upon the stock of each applicant, as also the manner in which the same has been paid in, and is held for the company.

Sec. 7.—The aggregate of the stock so taken shall be at least the one-half of the total amount of the proposed Capital Stock of the company.

Sec. 8.—The aggregate paid in on the aggregate stock so taken shall be at least ten per cent., and shall be paid in to the credit of the company or trustees therefor, and shall be standing at such credit in some chartered Bank in Canada, unless the object of the company is one requiring that it should own real estate, in which case such aggregate may be taken as paid in if it is *bona fide* invested in real estate suitable to such object which is held by trustees for the company and is of the required value, over and above all incumbrances thereon.

General Powers of Company.—Sec. 30.—Are similar to those under Sec. 24 of the Dominion Act.

Number of Directors.—Sec. 34.—Not more than nine and not less than three.

Qualification.—Sec. 36.—Same as in the Dominion Act.

Borrowing, etc.—Sec. 44.—Same as in the Dominion Act.

Calls.—Sec. 45.—May be made as the directors think fit.

Tariff of Fees.

Sec. 113—

(1) When the Capital Stock of the Company is $400,000 and upwards the fee to be...	$200 00
(2) When the Capital Stock of the company is $200,000 or upwards, and under $400,000.....	150 00
(3) When the Capital Stock of the company is $100,000 and upwards, and under $200,000.....	100 00
(4) When the Capital Stock of the company is $50,000 and upwards, and under $100,000.....	50 00
(5) When the Capital Stock of the company is $40,000 and upwards, and under $50,000.....	40 00
(6) When the Capital Stock of the company is over $10,000 and under $40,000.....	30 00
(7) When the Capital Stock of the company is $10,000 or under	20 00

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THE TORONTO GENERAL TRUSTS CO.

OFFICES & SAFE DEPOSIT VAULTS,

SOUTH EAST COR. YONGE & COLBORNE STS.

CAPITAL, - - - $1,000,000.
GUARANTEE & RESERVE FUNDS, $206,000.

DIRECTORS:

President—HON. EDWARD BLAKE, LL.D., Q.C.
Vice-Presidents—E. A. MEREDITH, ESQ., LL.D.
JOHN HOSKIN, ESQ., Q.C., LL.D.

W. H. Beatty, Esq., V.-Pres. Bk. of Toronto.
W. R. Brock, Esq., Merchant.
Geo. A. Cox, Esq., Pres. Canadian Bank of Commerce.
B. Homer Dixon, Esq., Consul General for the Netherlands.
Wm. Elliott, Esq., Pres. People's Loan and Deposit Co.
James J. Foy, Esq. Q.C.
Geo. Gooderham, Pres. Bank of Toronto.
H.S. Howland, Esq., Pres. Imperial Bank of Canada.
Robert Jaffray, Esq., Vice-Pres. Land Security Co.
Æmilius Irving, Esq., Q.C.
A. B. Lee, Esq., of Rice Lewis & Son.
Wm. Mulock, Esq., M.P., Pres. Farmers' Loan & Savings Co.
J. G. Scott, Esq., Q.C., Master of Titles.
Hon. Senator Frank Smith, P.C.
T. Sutherland Stayner, Esq., President Bristol and West of England Co.

TRUST AND AGENCY DEPARTMENT,

Under the approval of the Ontario Government the Company is accepted by the High Court of Justice as a Trusts Company, and from its organization has been employed by the Court for the Investment of Court Funds. The Company acts as Executor, Administrator, Receiver, Committee of Lunatics, Guardian of Children, Assignee of Estates, Agents, etc., and as Trustee under Deeds, Wills, or Court Appointments or Substitutions, and also as Agents for Executors, Trustees and others, thus relieving them from onerous and disagreeable duties. Under Sec. 3, 35 Vic., cap. 83, the Company may be appointed Administrator without any security being required other than the responsibility of the Company. The appointment of the Company in this capacity has been found in many cases a great convenience to the next of kin, where the extent of the personal estate made it difficult for them to furnish the necessary security, a difficulty which has been increased by the recent legislation, under which the real estate, as well as the personality, devolves upon the administrator, and the value of both together has to be taken into consideration, in fixing the security required by the Administrator. The Company invests money, at best rates, in first mortgages or other securities; Collects Rents, Interest, Dividends, and acts as agent in all kinds of financial business. It also Countersigns Corporate Securities.

The Company has always a large amount of Trust and Agency Funds for investment, at lowest rates, in first mortgages on Real Estate and Municipal Debentures.

SAFE DEPOSIT DEPARTMENT.

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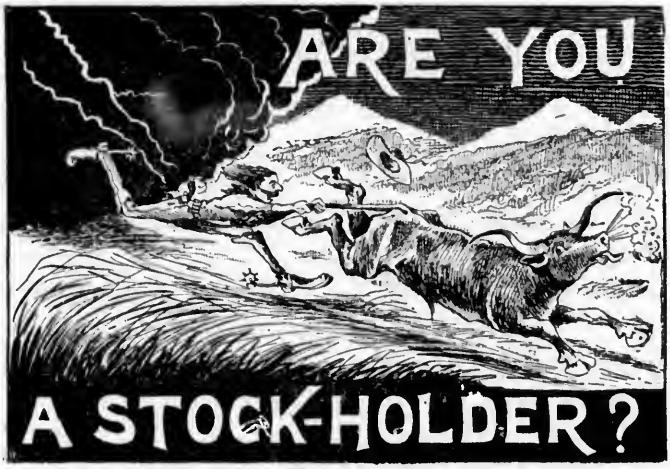

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