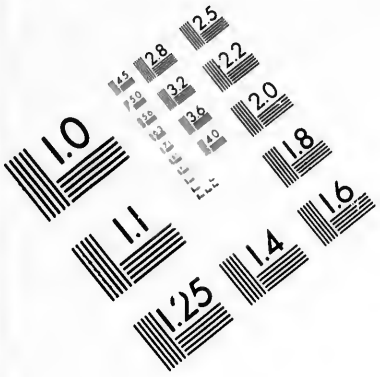

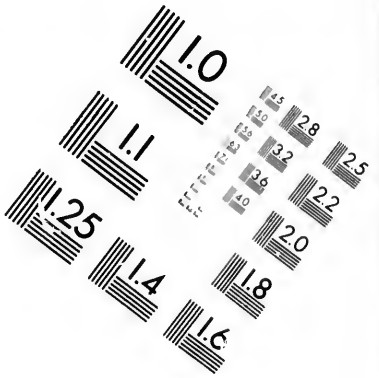

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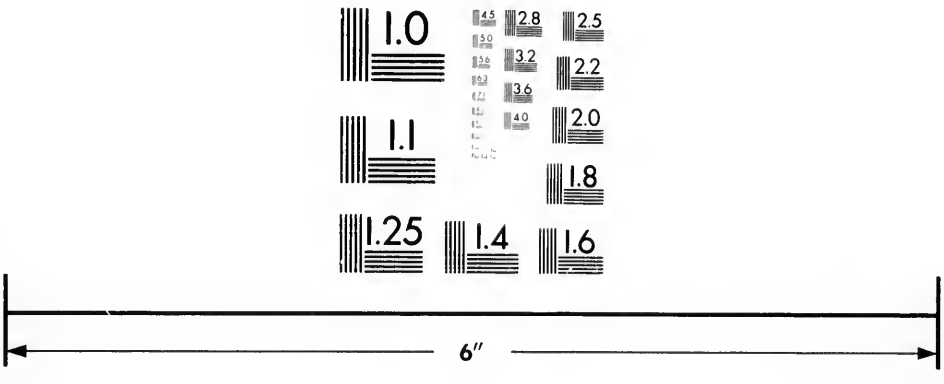

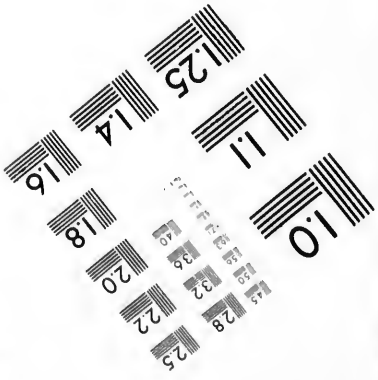

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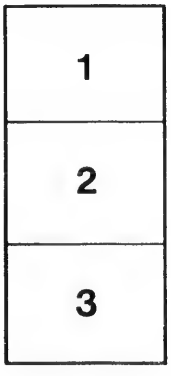

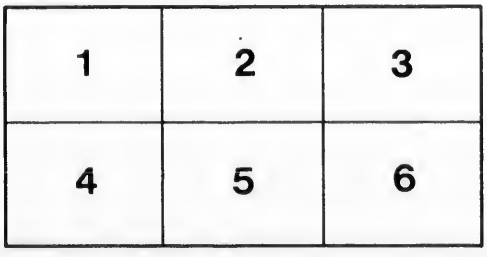

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Lem. Ward, U.S.

7

THE

SHAREHOLDERS' AND DIRECTORS' MANUAL

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 INCORPORATION 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.

FIFTH EDITION, REVISED AND ENLARGED.

PRICE $2.

TORONTO:

THE CANADA RAILWAY NEWS CO., LIMITED

1898.

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IS

BY KIND PERMISSION, RESPECTFULLY INSCRIBED

TO

THE HONOURABLE E. J. DAVIS, M.P.P.

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.

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 for those engaged either in the formation of new companies, or holding office in those already in existence, and that may be of assistance to the legal profession, containing, as it does, a complete set of forms approved of by the Departments charged with the issue of Letters Patent, etc.

J. D. WARDE.

TORONTO, JULY, 1892.

PREFACE TO FIFTH EDITION.

Since the Fourth Edition of this work was published the Ontario Acts relating to the Incorporation and Regulation of Joint Stock Companies and Mining Companies have been consolidated, amended and revised.

These Acts, together with the new comprehensive British Columbia Act respecting Companies, will be found in Part II.

The author's thanks are due those gentlemen who so kindly reviewed the chapters sent them, especially Mr. J. M. Clark, Barrister-at-Law, of Counsel for the Government of Ontario; Mr. Geo. E. Lumsden, Assistant Provincial Secretary, and Mr. George Edwards, F.C.A.

J. D. WARDE.

PARLIAMENT BUILDINGS,
TORONTO, 1ST DECEMBER, 1897.

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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, unless expressly made so, and their property is affected only to the extent of their interest in the company. This limited responsibility is one of the chief differences between an incorporated company and a partnership; in the latter, as a rule, the partners are always personally liable; in the former, it requires an express provision in the instrument of incorporation or in a governing statute to render the 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.
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10. Married Women as Subscribers.
11. Infant as a Subscriber.
12. Preliminary Expenses.
13. Recovery of Deposit.

1. Form of Prospectus.[1]

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

[1] See Form *infra*.

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, provided the proceedings to cancel such subscriptions are taken promptly upon discovery of the fraud, and before winding-up proceedings hav been commenced.

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. If the company is being incorporated under the Ontario Act, the prospectus should be framed with due regard to that Act (*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, or allow it to be issued in his name, 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.

In the Temperance Colonization Company against

(*a*) *Infra.*

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 amount of his shares. There was no allotment of stock to D., no entry of his name in any

(*a*) 16 Ontario Reports 544, C. P. D.
(*b*) 15 Ontario Reports 75, p. 248.

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 number of shares in the company, or such smaller number as may be allotted to him. The form is signed by the applicant, and he generally pays to the bankers of the company or projected company a small deposit on each share applied for, and obtains from the bankers a receipt for the payment. The payment is usually made before or at the time when the application is sent in.

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. Allotment of Shares.

The allotment of shares will be effected by a resolution or resolutions of the directors as follows:

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

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

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

7. 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.

8. 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 allottee in fact knew of it.

Persons named in the charter of a company as

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

9. 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 (*b*), 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 been 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.

10. 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, but that was a decision before the recent statutory changes.

(*a*) *In re* London Speaker Printing Co., 16 Appeal Reports 508, followed. *In re* Haggert Bros. Manufacturing Co., Peaker and Runions Case, 19 Appeal Reports, 582. Also Weddell's Case, 20 Ontario Reports 107.

(*b*) 10 Ontario Reports 264.

11. 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.

The Ontario Companies Act requires the applicants for incorporation to be of the full age of twenty-one years.

12. 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, or by acts which he authorizes. But where the subscriber had signed a deed authorizing the promoters to defray the expenses incidental to the undertaking out of the de-

posits 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 a 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.

13. 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. Use of the Word "Limited."
4. Objects.
5. Head Office or Chief Place of Business.
6. Residence of Company.
7. Amount of Capital, Nominal and Paid-up.
8. May be Reduced or Increased.
9. Division into Shares.
10. Amount of Each Share.
11. Formerly Only Petitioners Incorporated by Letters Patent.
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.

3. Use of the Word "Limited."

The Ontario Act directs that every company shall keep painted, or affixed, its name with the unabbreviated word "Limited" as the last word thereof 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 unabbreviated word in legible characters on its seal, and shall have its name with the said unabbreviated word 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. The word *unabbreviated* does not appear in the Dominion Act as qualifying Limited, but otherwise the sections are identical.

4. 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.

5. Head Office or Chief Place of Business.

The various Acts require that the head office or chief place of business of the proposed company should be stated. 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 headquarters 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*).

6. 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

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

countries, unless it is recognized by the proper authorities or by comity; and when so recognized, it holds its property under certain qualifications, in subjection to the law of the country where the property lies, and not to the law of the country where the company resides.

7. Amount of Capital, Nominal and Paid-up.

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 by responsible persons or actually paid in, and only then at the beginning of its career. It is not usual for the whole of the sum fixed upon as the capital of a company to be paid up at once by the subscribers or shareholders. The nominal capital, and the number and amount of the shares into which it is to be divided, having been determined upon, and such shares having been subscribed for, an instalment only of the money they represent is usually paid, and the rest of that money is left to be called and paid as occasion may require. Hence the distinction between *paid-up* and *nominal* capital. The former is the money which the company has or has had; the latter, except when the shares are issued at a discount, consists of the sum to which it is entitled by virtue of the contract entered into by its subscribers and shareholders, including the nominal value of any unissued shares. After a company has been in existence for a length of time a knowledge of the actual condition of its affairs is the only safe guide to its trustworthiness. Losses may have occurred in the course of its operations by which its capital has become seriously impaired, and as the 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 can 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 than the immediate necessities of the company require, as the balance remaining uncalled, will, if the shares are in the hands of substantial holders, be a sufficient security for the creditors. On the other hand, if the object of the company be to purchase a park, * * to make gas works, or to do any other work in which the current expenses will be small as compared with the cost of acquiring the property, the capital should be of adequate amount to make the proposed purchases, but need not leave a large reserve, as there will be no difficulty in raising money on the security of the property." And by another authority, it is said that "the amount of the capital stock of a corporation is not *per se* a limitation of the amount of property, real or personal, which it may own, or, by implication, of the amount of its liabilities or outstanding obligations, but is rather regarded as the sum upon which calls may be made upon subscribers, and dividends are to be paid to stockholders. Accordingly, where the capital stock of a building corporation was one million dollars, it was held, that this did not restrict the company from expending in their buildings two million dollars, and from incurring debts on bonds and mortgages for the excess of cost beyond their capital—their power to take and hold real estate, being in other respects unlimited by the terms of their charter" (*a*).

8. 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, which are set out in the Acts, must be strictly complied with.

9. 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.

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

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

10. Amount of Each Share.

"The amount of each share," says one writer, "is a matter for much consideration, and will differ according to the nature of the company." "If the objects of the company be popular," 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.

11. Formerly Only Petitioners Were Incorporated by the Letters Patent.

Formerly the petition had to 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 were those persons only who were named therein and to whom stock was allotted thereby; and it was those persons and others who might afterwards become shareholders who constituted 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

(*a*) 8 Ontario Reports 565, Q. B. D.

"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 (*a*), and in *re* London Speaker Printing Co.—Pearce's Case (*b*).

This difficulty has been dealt with by sec. 9 of the Ontario Companies' Act, which provides that the Lieutenant-Governor in Council may, by letters patent, grant a charter to any number of persons, not less than five, who shall petition therefor, creating and constituting such persons and any others who have become subscribers to the memorandum of agreement, a body corporate and politic for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends, except the construction and working of railways, the business of insurance and the business of loan and other companies under *The Loan Corporations Act.*

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

(*a*) 14 Supreme Court Reports 664.

(*b*) 16 Appeal Reports 508.

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 it has been settled that apart from express statutory provision there is no restriction of this kind.

It is no defence to an action for calls to say that all the shares have not been subscribed. Nor will a Court in such case interfere to prevent business from being commenced. And under the 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 under the Dominion Act, or within two years under the Ontario Act, 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 Directors.
6. Number of Board.
7. Preference Shareholders to Select Directors.
8. Remuneration of.
9. Qualification of.
10. Disqualification of.
11. Acts of *de facto* Directors Valid.
12. Retirement of.
13. Election of.
14. Term of Office of.
15. Powers of.
16. Status of.
17. Right of, to see Accounts, etc.
18. Contracts between Directors and Company.
19. 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 by-laws 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 recently been decided (*a*) that a Joint Stock Company, whose directors are appointed for a definite period, has no inherent power to remove them before the expiration of that period. If, therefore, a director is appointed for a definite period, he cannot be removed before that period has expired unless there is some special provision to that effect.

The shareholders of a company cannot usually exercise any control over the management of its affairs, except at meetings duly convened; for the directors of a

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

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.

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

5. Provisional Directors.

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

At this first general meeting, the 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 (*b*), "is ample for all purposes. The mistake of having large boards for the sake of names—for there can be no other

(*a*) Stephenson v. Vokes, 27 Ontario Reports 691.
(*b*) Cox Joint Stock Companies, p. 56.

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 remuneration. "The directors," he says "are entitled to liberal remuneration for the time and thought they devote to the affairs of the company. But the directors' fees are seldom proportioned to the number of directors. Whether the board be large or small, it is usual to vote the same fee," etc. And other writers agree in the advisability of small boards. "It is better to appoint," says Healy (*a*), "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. Preference Shareholders to Select Directors.

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

8. Remuneration of.

Directors, in the absence of agreement or by-law, 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

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

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 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

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

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

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

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

(*a*) 18 Ontario Reports 41.

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

order to avoid difficulty thereafter. And in *re* London Granite Co. (*a*), 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. (*b*), 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.

9. 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, 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.

(*a*) Harvey Lewis' Case, 26 Law Times, New Series, 673.
(*b*) 18 Weekly Reporter 180.

10. 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.

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

11. Acts of *de facto* Directors Valid.

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

12. Retirement of.

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

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

Has a director or not the right to retire at will during the pendency of such period? The cases give no definite or decisive answer to this. A consideration of the authorities and cases 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 was no objection to it on the part of his co-directors, his resignation would doubtless be accepted.

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

13. 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 chair-

man 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

(*a*) Dickson against McMurray, 28 Chy. 533.

(*b*) Toronto Brewing and Malting Co. against Blake, 2 Ontario Reports 175.

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; 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 withhold 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*).

14. 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

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

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.

15. 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 between the powers of the directors and the powers of the company itself. Though not exactly identical they are so merged in each other as to make a discussion of the one necessarily, a discussion of the other.

In a word, whatever the company can do the directors can do, subject to confirmation or otherwise, by a general meeting of the shareholders. The company, itself cannot act in its own person, for it has no visible personality. So that the only way in which it is possible to speak of the powers of directors as distinguished from those of the company, is in reference to the acts which they may or may not do, or contracts which they may or may not enter into without the previous authorization or subsequent approval of the shareholders. The powers of the company itself are, as we have seen, confined to the particular objects specified in its act or instrument of incorporation. Of the powers of the directors in their relations to the company, some idea may be obtained by considering first, the status of a director.

16. 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 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.

17. 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.

18. Contracts Between Directors and Company.

In the case of Beatty against North Western Trans-

portation 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*).

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

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

(*c*) *Ib.*

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 (*a*).

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 (*b*).

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 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 (*c*).

18. General Remarks Concerning Directors.

Can a man holding a plurality of responsible offices conscientiously discharge the proper duties devolving upon him from each position of trust, or does he nominally pretend to do so? This question has been asked 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

(*a*) Christopher against Noxon, 4 Ontario Reports, 672.

(*b*) *Ib.*

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

where large financial interests demand careful watching and management in every detail.

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

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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5. 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 through the election of directors 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 stockholder's 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 prescribed 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. First Meeting.

The Ontario Companies' Act directs that "the provisional directors of every company shall, by a registered letter addressed to each shareholder, call a general meeting of the company to be held within two months of the date of the letters patent, for the purpose of organizing the company for the commencement of business. This first general meeting shall be held at such convenient place as the directors may determine.

(*a*) If the said meeting is not called by the provisional directors within the time required by this section, any three or more shareholders in the company shall have power to call the meeting and to proceed to the organization of the company."

4. 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.

5. 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

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

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 (*a*) that, "Where according to the by-laws and usages of a society, their meetings for the transaction of business are opened by a presiding officer, who holds his office for a fixed term, and no meeting is considered duly organized unless opened by him, and such officer is prevented by the violence of members of the association from discharging his duty at the accustomed place of meeting, he and such of the society as think proper to accompany him, *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 (*b*), "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 or by-laws of the company itself to prescribe the exact place at which they shall be held.

6. Quorum.

The Canadian Acts empower the directors to make by-laws, subject to confirmation by the shareholders, fixing the quorum. The Ontario Act, sec. 56, provides

(*a*) Angell & Ames Corporations, sec. 497.
(*b*) 22 Vt. 274.

that at a special meeting called upon a requisition of the shareholders, the quorum shall be ascertained as follows:

"If the shareholders at the time of the meeting do not exceed ten in number, the quorum shall be three; if they exceed ten there shall be added to the above quorum one for every four additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty." Another useful rule, provided by the following section, is "If within one hour from the time appointed for such special general meeting, called upon, or pursuant to, requisition aforesaid, a quorum is not present, the meeting shall be dissolved."

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

The freedom of every shareholder to vote as he thinks best for his own interests is unrestricted, and in the absence of anything to the contrary in the 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*) Purdom v. Ontario Loan and Debenture Co., 22 Ontario Reports, 597.

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.

8. Who may Vote.

A lunatic or idiot may according to the English articles 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 stock be held jointly by two or more persons, any one of them present at a meeting may, in the absence of the other, or others, vote thereon; but if more than one joint-stockholder be present or be represented by proxy, they must vote together on the stock jointly held. But *in re* Wedgewood Coal and Iron Co (*a*), it was *held* that holders of debentures which pass from hand to 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.

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

9. 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.

10. Procedure at General Meetings.

The Ontario Companies' Act directs that the President of the Company shall preside as chairman at every general meeting of the company. It further provides, that if there is no president, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman.

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

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 (*a*) 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 acounts 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 received and 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,

(*a*) See proper mode of entering minutes *infra*.

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

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.

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

Generally speaking it is more convenient, 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 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 initialed

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.

If at a general meeting the chairman perceives that the time of the meeting is being wasted by a cantankerous shareholder, and that the meeting wants to vote, he may move, or get some one else to move, "That the question be now put," and if this is decided in the affirmative, will act accordingly. A meeting is not bound to hear a member, nor is the chairman bound to find him a hearing. A chairman should rule a meeting fairly and firmly. He should bear in mind that if the majority of the members of the company are with him, a minority will not be able to upset the proceedings merely because some slight irregularities have occurred at the meeting.

11. 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.

12. 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.

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

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.

14. 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.

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:

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

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 (*a*) (previously prepared by the secretary) is produced.

The chairman will refer successively to the different items of business, and they will be dealt with as the meeting thinks fit. If any difference of opinion exists, the chairman will put the question to the vote, and the decision of the majority will bind the meeting, unless the regulations otherwise provide. The regulations generally give the chairman a casting vote, in case of an equality of votes. In some companies the decisions of the meeting as to the several items of business are expressed in appropriate resolutions, duly proposed, seconded, and passed. In others a less formal procedure is adopted, and after a discussion of each item, the chairman gives directions to the secretary or manager in relation thereto, with the assent, expressed or implied, of the other directors who are present. In any case the proceedings are recorded by the secretary in the minute-book of the directors' proceedings.

(*a*) See form *infra*.

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.
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    5. Stock Ledger.
    6. Books of Account.
    7. Minute Books.
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5. Where Books are to be Kept.
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7. Inspection of Books.
8. Auditors.
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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 its instrument of incorporation, and of the Act under which it was formed, for its regulation and government; and, as every shareholder is a member of the company, he must be held to be conversant with all its rules and by-laws, or at least to have had notice thereof, and to be bound by them.

According to Blackstone, one of the important features of a corporation is the power to make by-laws. A 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 be 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 (*a*).

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 is so obvious that these, or similar ones, are now found in almost every Joint Stock Companies' Act.

(*a*) *Infra.*

These books are:—1. A blank book in which a copy of the letters patent and of any supplementary letters patent, must be written. If the company is incorporated by special Act, the chapter and year of such Act.

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.

6. *Books of Account.*—It need hardly be said that under any system the usual cash book, journal and ledger are indispensable. The Ontario Companies' Act requires the directors to have proper books of account kept, containing full and true statements

(*a*) Of the company's financial and trading transactions;

(*b*) Of the stock-in-trade of the company;

(*c*) Of the sums of money received and expended by the company, and the matters in respect of which such receipt or expenditure takes place, and,

(*d*) Of the credits and liabilities of the company;

(*c*) And also a book or books containing minutes of all the proceedings and votes of the company, or of the board of directors, respectively, and the by-laws of the company, duly authenticated, and such minutes shall be verified by the signature of the president, or other presiding officer of the company. As a good and simple system of accounts is extremely desirable, it will in any case of doubt be expedient to take the advice of a professional accountant as to what other books are requisite, and as to the mode of keeping them.

7. *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 admissible as evidence in all legal proceedings.

8. *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 generally 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. Where Books are to be Kept.

Section 10, s.-s. (*c*), of the Ontario Companies' Act directs that the principal books of account and the corporation records shall be kept at the head office of the company.

6. Statement of Income and Expenditure to be Made.

The Ontario Companies' Act directs that at each annual meeting, or, at least, once in every year, and at

intervals of not more than fifteen months, the directors shall, at a general meeting duly called, lay before the company a statement of the income and expenditure of the company for the past year, made up to a date not more than three months before such annual or general meeting, and shall also lay before the company such further information respecting the company's financial position and profit and loss account as the by-laws or the charter of the company may require.

7. Inspection of Books.

"Such books (*a*) 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 or agents at the head office, and every such shareholder, creditor, agent or representative, may make extracts therefrom."

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. (*b*) it was said that a demand for an opportunity to

(*a*) These books are those numbered from 1 to 5 inclusive only.
(*b*) 45 Ind. 170 Su. Ct. 1873.

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 (*a*) it was held that the corporation was compellable by mandamus to allow an inspection by the stockholder's agent as well as by himself.

8. Auditors.

In companies having a large number of shareholders it would be impossible for each shareholder to personally examine the accounts and books of the company and satisfy himself that they were correct. Agents or representatives are, therefore, either appointed or elected annually, to ascertain that the moneys have been accounted for, that the expenditures were warranted, that the unexpended portion of the funds is invested as stated in the accounts, and that these accounts are correct, and that the statement of assets and liabilities indicates the true position of the company. This agent or representative of the shareholders is called the auditor, and in a treatise for joint stock companies it is not inappropriate to point out the duties and responsibilities of those who have to investigate the books and affairs of a company before the statements prepared by the officers are presented to the shareholders for their approval.

1. *Duties of an Auditor.*—The duties of an auditor are onerous, responsible, and sometimes disagreeable. He may differ with the directors as to the proper manner of stating certain accounts, or he may be charged by them with interfering with what they may consider their particular duties; but if he is satisfied his suggestions would be beneficial to the company he should endeavour to have them carried out. Usually, however, he will find the directors prepared to give him every information and facilitate as far as possible the prosecution of his audit.

If, however, false accounts have been prepared, the

(*a*) State v. Bienville Oil Works, 28 La. Ann. 204.

auditor has a very unpleasant and difficult task. Obstacles are thrown in his way, and every means possible adopted to prevent the discovery of the fraud. Under such annoying circumstances the auditor should be firm; he should require satisfactory explanation of every objectionable item, and only after corrections necessary to make the accounts absolutely and entirely accurate are made should he affix his certificate to them.

In a recent English case (*a*), Lopes, L.J., gives the following definition of the duties of an auditor:—

"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend upon the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is a watch dog, not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom; but, in the absence of anything of that kind, he is only bound to be reasonably cautious and careful. . . . . It is not the duty of an auditor to take stock; he is not a stock expert; there are many matters in which he must rely on the honesty and accuracy of others. He does not guarantee the discovery of all fraud."

In another English case, cited in the law reports as the Leeds Estate, Building and Investment Co. against Shepherd (*b*), the defendant-auditor contended that his only duty was to see that the balance sheet represented and was a true result of what appeared in the books of the company; that behind the books he could not 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

(*a*) Kingston Cotton Mill Co. No. 2, (1896) 2 Ch. 288, 289.

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

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."

2. *First, how appointed.*—The first auditors are appointed usually by the directors, or they may be appointed by resolution of the shareholders. They hold office for a year and are eligible for re-election.

3. *Qualifications of.*—It is desirable that the auditor should be familiar with the Acts under which the company, of which he is the auditor, is incorporated, and special attention should be given to those sections relating to the Books, Accounts, and Annual Statements, and to the appointment and duties of the Auditor. Of course, the initial qualification of every auditor is a thorough knowledge of the theory and practice of commercial bookkeeping. So much depends upon the skill and judgment of an auditor in the infinite variety of circumstances with which he will be confronted, and there are so frequently occasions when he may be called upon to demonstrate his views, that a special training for such duties will be found invaluable. In a work of this nature no exhaustive treatment of the subject would be possible, and therefore only general principles are stated. There are, however, standard publications and works of reference easily procurable, which should form a part of the equipment of every auditor.

4. *Commencement of audit.*—Before entering upon his first audit it would be convenient for him to have a list of all books kept by the company, both financial and of

record, and the Ontario Act directs that such a list must be delivered to him.

At the first audit of the accounts of a company, the share capital should be investigated, and the auditor should ascertain that the shares issued are not in excess of the amounts authorized by the charter or the private Act by which the company has been incorporated.

The Applications for Shares and Letters of Allotment should be checked against the amounts shown in the cash book as having been received on Capital Account, and it should be ascertained that these amounts appear among the liabilities to shareholders in the Balance Sheet.

Sometimes in small companies the prospectus directs that the payments on application for shares are to be sent to the office of the company instead of to its bank. The auditor should then be particularly careful to ascertain that they have been properly accounted for. The Stock Ledger, the Transfer Book, the stubs in the Instalment Scrip and Stock Certificate Books should be examined. The auditor should also ascertain that all mortgages, or bonds issued of the nature of a mortgage, are duly recorded. Having satisfied himself as regards the share capital, he may then turn his attention to the Cash Book.

5. *The cash book.*—The debit or income side should be checked with the most independent source the auditor can find available, for example, the Counterfoils of Receipt Books, Collectors' Books, the Counter Cash Book, etc., etc.

The charges on the credit side of the Cash Book should be checked with the vouchers for their payment.

6. *Vouchers.*—The auditor will find it greatly facilitate his work if he makes it a rule not to accept any vouchers or other papers intended for his inspection which are not properly arranged beforehand. It sometimes happens, that on the auditor asking for the vouchers for the cash payments, he is handed a bundle of receipted accounts, and on attempting to check them

with the Cash Book he ascertains that many are missing. Much time is in consequence lost in looking for these, or in obtaining duplicates, while if the vouchers were previously arranged, missing ones would be found, or fresh ones obtained before the commencement of the audit.

A voucher, to be acceptable to an auditor, should not only be an acknowledgment of money paid, but there should be the proper authority for the payment, 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. In large companies where many hundreds of vouchers have to be checked, a rubber stamp with the word "audited" thereon is often used. The auditor should satisfy himself that the expenditure has been charged against the proper accounts. The balance, as shown in the Cash Book, should be checked with the balance in the Bank Pass Book.

7. *Reconciliation Statement.*—Where these do not agree, a Reconciliation Statement, which may be entered in the Cash Book, should be prepared for the auditor. This should commence with the balance as shown in the Cash Book, to which should be added the amounts of the cheques outstanding. From the total thus obtained should be deducted the amount of the cheques and deposits, if any, paid into the bank, not given credit for in the Pass Book, and the result should be a balance identical with that shown in the Pass Book. The auditor should ascertain at the bank if the book shown be the actual document.

8. *Cash in Hand.*—Under the heading "Cash in Hand," should be stated the amount of the balance of

the Petty Cash Book not accounted for by any expenditure, and which should, therefore, be in possession of the cashier. As the Auditor seldom commences his duties before at least several days have elapsed after the date on which the books are closed he can only check the correctness of this balance by ascertaining that the cashier has in hand the amount unaccounted for by him in the Petty Cash Book at some subsequent date.

It is the custom in many offices to require the cashier to pay into the bank on the day on which the books are closed the balance of cash in his hands. This not only proves that the cashier has the money in his possession, but also spares the auditor a somewhat disagreeable duty.

When a company has been formed for the purpose of acquiring and carrying on an established business, the consideration may be either money, shares (fully paid or otherwise) or partly money and partly shares. In any case the consideration can only be entered in the Books of Accounts as if it were paid for in cash, under some appropriate heading, such as "Purchase of Business," etc.

9. *Other Books.*— After the Cash Book has been finished, the Day Book and Journal entries should be compared and verified. Then the Ledger entries should be carefully checked with the books from which they are brought.

In regard to the liabilities in respect of purchases, the posting in the Ledger should be checked through the subsidiary books, so as to ascertain that the balances representing the accounts unpaid at the date at which the books are closed are all brought to the debit side of the balance sheet.

10. *The Balance Sheet.*—The balance sheet is the most important statement laid before the shareholders, as, if properly drawn up, it shows the exact financial position of the company.

On one side are placed the liabilities, not only to the creditors, but also to the Partners or Shareholders themselves, while on the other side are enumerated the assets and the property of the company.

Before giving his certificate to the correctness of this statement, the auditor must examine in detail, each item on both sides, and satisfy himself that the liabilities have not been understated, nor the assets overestimated, as, without intending to deceive the shareholders, or to act in any way dishonestly, it is quite possible for the directors and officials of a company to present the Balance Sheet in a more favorable light than is warranted by the facts.

The liabilities as shown in a company's Balance Sheet may be classed under two heads:

(1) Liabilities to the Shareholders.

(2) Liabilities to the Public.

The former consists of the capital represented by shares. The details showing the particulars of the capital should be clearly stated, and when it is divided into more than one class of shares this should be shown.

Any sums paid in advance of calls should also be stated.

The amount representing the Shareholders' Capital as before stated requires investigation. The capital paid in money will, of course, be standing at the credit of the Ledger Account posted from the Cash Book, but it must not be taken as necessarily correct by the auditor and passed without inquiry.

Sums due on mortgages and debentures, if any, should be kept distinct from the sums due to ordinary creditors.

Under "Sundry Creditors," or some similar heading, should be included all the sums due to those creditors of the company who are not mortgagees or debenture holders, and who do not hold security for payment of the same.

The auditor should then inspect the securities representing the assets, and ascertain that they are in the possession of the company, free and unencumbered by mortgages or any charges, unless their being so is clearly stated in the audit.

11. *Audit should be thorough.*—A thorough and efficient audit should embrace an examination of all the transactions of a company, and an auditor acting on this principle would ascertain that all had been duly entered and discharged. A purchase made, a sale effected, or any matter of business transacted, and once entered in one of the subsidiary books, becomes part of a system with which it is so incorporated, that it cannot be omitted, overlooked or cancelled without so disarranging the organization that an efficient auditor would at once detect either the carelessness or the fraud.

12. *Position of Auditor when accounts incorrect.*—Where from any cause an auditor cannot certify to the accounts he has audited, and differences have arisen between the directors and himself which he has been unable to remove, his best plan under these circumstances is to address to the members a full report on the accounts, setting forth clearly therein the points at issue between the directors and himself, and then sign the accounts as auditor in the usual manner, subject to this report.

13. *Suggestion of better methods.*—An auditor should be able not only to check and verify the accounts placed before him, but also, if he finds the books are kept in a careless manner or on a bad system, be able to suggest a better method, the adoption of which might not only save expense, but also ensure greater accuracy in recording the transactions of the company. In his anxiety to do his duty towards the shareholders, the auditor should be careful not to interfere in the management of the company by insisting on the adoption of any changes in the system of bookkeeping, the running of the office,

or in any other matter. He should endeavour to introduce his reforms by friendly suggestions, and by putting them forward gradually. The principal duty of the auditor is to ascertain that the accounts, as presented to the shareholders, show accurately the state of the company's affairs, and by performing this duty conscientiously and efficiently, he can best serve the interests of the shareholders whose servant he is.

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 in all cases where the inconvenience of so doing amounts to a practical necessity. Indeed, so far from requiring every such appointment, authority, or contract to be under seal at the present day, the rule is, that in a large number of cases such appointments are made without any writing at all. This does not apply however to municipal corporations.

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, but such signature is always advisable.

If an instrument or contract appears to be signed by the proper officer and the corporate seal appears to be affixed, 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 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.
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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 instrument 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 meet at stockholders' meetings, to require that the corporate property shall not be diverted from the original purpose, to participate according to the amount of his stock in the surplus profits of the corporation on a division, and ultimately on its dissolution, in the assets remaining after payment of debts."

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 (*a*).

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, except possibly a mining 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 authorized by the charter has been taken by subscribers, a company's shares are no longer within its own control. It has none to sell, and their real value will be the investing public's estimation of them, based upon the efficiency of the company's management, 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 profits, if any there be; one shareholder or class of shareholders having no advantage, priority or preference over any other shareholder or class of shareholders

(*a*) Johnson's Joint Stock Company Book-keeping.

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 authorized 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 three different ways in which watered stock may be and is issued.

First: By discount in cash. Second: By taking property at an overvaluation. Third: By means of an invalid stock dividend.

An issue of paid-up stock for cash, upon payment of only part of the par value of the stock, is not often made, inasmuch as the real nature of the transaction is readily discovered and easily remedied.

A second method of issuing stock as paid up when it is not actually paid up, is by its issue for property taken at an overvaluation. This method is the most frequently employed, the most difficult to prove, and the least easy to remedy.

The third method of issuing fictitiously paid-up stock is by a wrongful use of the power to issue stock dividends. It seems to be generally conceded that if the capital stock and the actual property of the 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 that under an Act such as The Ontario Companies' Act, the person taking the stock is liable on it for the full amount both to the company and its creditors, notwithstanding the agreement that it is to be considered fully paid up.

2. Is fictitious paid-up stock void? Is stock void when fictitiously issued as paid up? It is settled that it is not; and it may be stated, as a well-established rule, that stock issued as paid up, when it has not been fully and fairly paid up, is not absolutely void, unless it is declared to be void by constitutional or statutory provisions, but may involve the parties concerned in serious liabilities.

3. The Dominion Act declares 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." This provision is now omitted from the Ontario Companies' Act, while 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 Shares.

A certificate of shares is from one point of view a mere muniment of title, like a title deed. It is not the share itself, but evidence of the ownership of the share; that is to say, it is a written acknowledgment by the corporation of the interest of the shareholder in the corporate property and franchise; it operates to transfer nothing from the corporation to the shareholder, but merely affords to the latter evidence of his rights. It should be clearly apprehended that the certificate is not the share, but merely written evidence of the ownership of shares. Accordingly, it follows that shares have no "ear-marks"—that one share cannot be distinguished

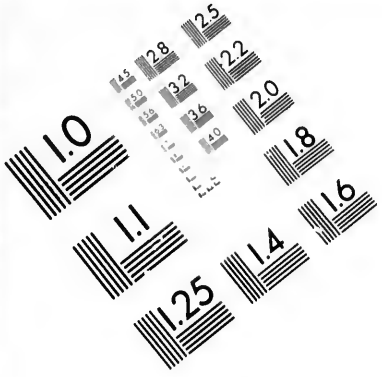
from another share—but that it is only the certificates which are distinguishable one from the other by their numbers and in other ways. The certificate, therefore, has value in itself only as evidence, and, apart from the shares which it represents, it is utterly worthless. And even as evidence it is 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.

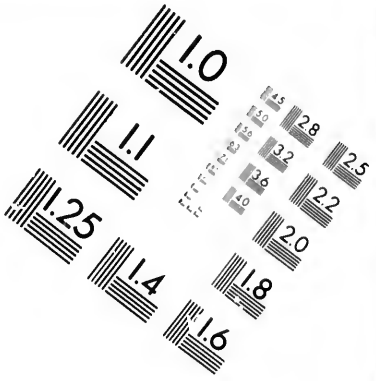
The right of every shareholder to demand and receive from the company a certificate is generally conceded. When certificates are executed by a part only of the officers required by law to sign them, they may be void. But a certificate issued to an officer of the corporation who is a shareholder, although 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 transferor 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





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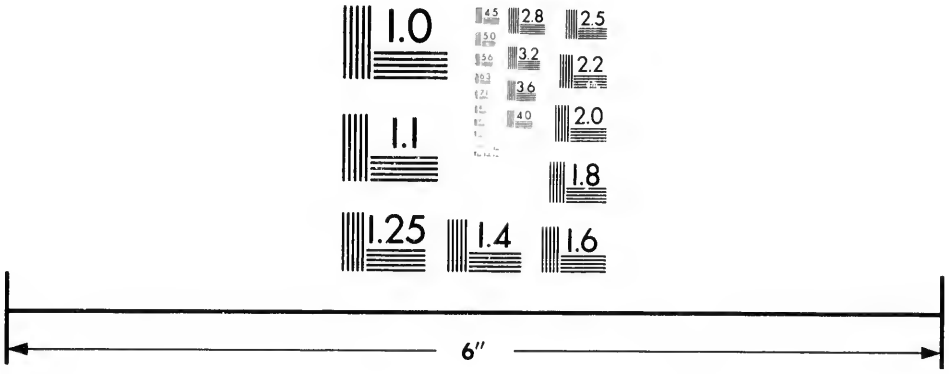

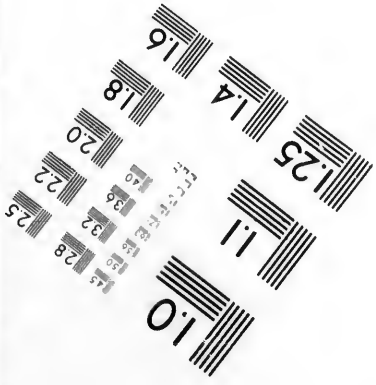

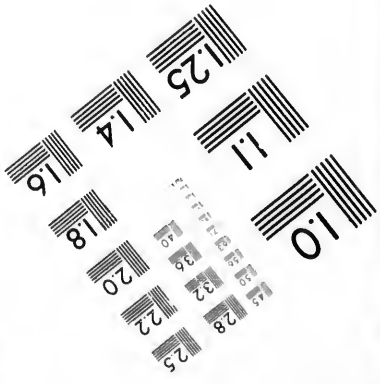

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and a breach of duty on the part of the company to allow a registry without a surrender of the old certificate. It generally refuses to do so, as is its duty, and is sustained by the law in its refusal. There are occasions, however, where the law compels the company to register the transfer without a surrender of the old certificate. When so compelled, the company cannot be held liable by the purchaser of the outstanding certificate, but he must seek his remedy against others. Such compulsory registry, excusing the company, may exist in cases of alleged loss of the old certificate, a decree of a court compelling the registry, and, under the latter, an attachment or execution against the stock.

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 indemnity to protect it against liability in case it turns out that the old certificate was not lost, but was sold and passed into *bona fide* hands.

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

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. All the provisions of the law must be strictly complied with.

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. When Shares are not Paid in Cash.

By section 27 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." The Ontario Companies' Act also requires that where shares have been paid for by transfer of property, evidence of the said transfer must be furnished the Provincial Secretary. These provisions have the effect of closing one avenue to fraud on the part of promoters and directors of companies incorporated thereunder. Under the former 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 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

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

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 certain case (*a*), 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.

(*a*) Esparto Trading Co., 28 W. R. 146.

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 allotted, by a resolution passed at a special general meeting of the shareholders, to themselves in proportion to the number of shares held by them at that time, at forty per cent. discount, deducted from their nominal value, and scrip issued for them as fully paid up. G., under this arrangement, was allotted nine shares, which were subsequently assigned to the appellant for value as fully paid up. Appellant enquired of the secretary of the company, who 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, "£—$300, $600." Held, reversing the judgment of the

(*a*) 1 Supreme Court of Canada, 479.

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 (*a*), held, that if the transferee take the shares with notice of the facts, he is liable; but if he take them for value in the ordinary course of business, the burden of proving that he had notice will be on the person urging it against him.

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.

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

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

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 transferor. 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 transferor still held liable.

In *in re* the European Arbitration (a leading case), it was held that if the transferor, without having made any misrepresentation, knew in fact that his proposed transferee was not a proper and solvent person, then the transfer would be set aside and the transferor rendered liable (*a*).

In this case Lord Westbury said very forcibly:—"I do not care a rush whether the directors inquired or not, or whether there was misrepresentation or not: but if I find the man who desires to dispose of his shares in favor of A. B. knows very well in his mind at that time that A. B. was an insolvent man, or a dishonest man, or an improper man, to introduce into the partnership, I shall

(*a* Buckley, 3rd ed., pp. 20-26; and Healey, p. 54.

hold that the personal knowledge on the part of the individual disposing of his shares forbade him to do what he desired to do, and that his persisting in doing it, relying on the ignorance of the directors, and concealing what he knew, was a fraud upon the directors." The above, it must be observed, refers to a case where the directors had power to control the transfer.

15. Transferor 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 (*a*), 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."

An otherwise valid transfer of shares allotted to the transferor upon which he has not paid anything, no calls having been made at the time of transfer, is not invalid, because the ten per centum upon allotted stock directed by section 45 of the Act to be "called in and made payable within one year from the incorporation of the company has not been paid."

The last mentioned section is directory merely (*b*).

16. Registry of Transfer, How Made.

A registry of transfer is made by surrendering an

(*a*) *In re* China Steamship Co., 38 L. J. 512.

(*b*) Ontario Investment Association v. Sippi, 20 Ontario Reports, 440.

old certificate of stock to the corporation, making an entry of 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 transferors. 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 transferor, 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, whose stock is fully paid up, 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 realized from the assets of the company, or might, under the Acts providing for such a case, cause proceedings to be taken with a view of winding up the company, when all amounts unpaid on stock may be called in by the Liquidator, Receiver or Assignee.

After the issue of Letters Patent in 1880, incorporating the company and naming certain persons as shareholders, these persons stated to certain of the directors of the company that they would not accept their stock, and would have nothing more to do with the company, but no proceedings were taken by them to relieve themselves from liability, and no proceedings were taken against them until the company was wound up in 1891.

Held, distinguishing Nicol's Case, 29 Ch. D. 421, that as these persons had not a mere inchoate right to receive shares, but were actually shareholders and members of the company by virtue of the charter, mere statements of this kind, and the lapse of time, and the failure of the directors to enforce payment of the shares, did not relieve them from their liability as shareholders.

In *re* Haggert Bros. Manufacturing Co., Peaker and Runions' Case, 19 A. R. 582.

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, provided always that the proper proceedings are promptly taken.

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 the 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. The Liability of an Agent as Transferor or Transferee.

Sometimes a subscription for stock is made by one person as the agent of another, and the stock is entered on the corporate books in the name of the agent. In such a case it is the rule that corporate creditors may hold either the principal or the agent responsible on the stock. But an agent who is compelled to assume and pay charges on the stock may recover from his principal the amount so paid. Where a transfer is made, not to the principal himself, but to an agent, the latter is but a nominal holder, and is subject to the rules applicable to such. The transferee of an 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.

23. 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 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 involves the power to deal in them. And as such power, if it exist at all, can exist

only for the benefit of the company, any acceptance of a surrender of shares not wholly paid up would simply be a matter of bargain as for a transfer between two 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.

24. 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.

25. 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, and must be strictly pursued.

26. 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 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.

(*a*) See form *infra*.

27. 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.

28. 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 to take the number of shares of the capital stock of the H. company set opposite our signatures, and to pay on account thereof 50 per cent. to the secretary-treasurer of the company in quarterly payments of 12½ per cent. each, of the amounts subscribed for by us respectively, the first of such payments to be made on February 1st, 1882." C. was at the first shareholders' meeting elected a director, and remained so until the final winding up of the company. One of the by-laws of the company provided for the calling of the second 50 per cent. of the stock subscribed at any time after November 1st, 1882, on thirty days' notice. In August, 1883, the president of the company arranged with C. that he should sign for eighty shares on the terms of a new stock-book which had been opened, and that C.'s original stock was to be treated as cancelled.

C. accordingly signed the new book. This arrangement with C. was never communicated to the shareholders of the company. In January, 1884, a winding-up order was made, and C. was subsequently declared a contributory to 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,

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

1883, was a valid compromise, entered into with him because he subscribed originally on the understanding, (1st) that the company was not to go into operation before all stock was subscribed for; (2nd) that only 50 per cent. of his subscription would have to be paid:—Held, that whether directors have inherent power to compromise with shareholders or not, there was nothing to support the compromise here set up. As to (1st) C.'s actions as director were totally at variance with this contention; and as to (2nd) the subscription was unconditional, and though expressly providing for payment of 50 per cent., it was not inconsistent with the balance being paid when required. Moreover, the by-laws, at the adoption of which C. was present, recognized the right to call up the whole stock, and C. appeared to have made no dissent.

29. 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 by the directors passing a resolution "That a call of $ per share, payable to Mr. , the treasurer of the company, at the company's office, street, etc., on the day of , 189 , be and the same is hereby made." The by-laws of the company should prescribe whether such resolution can be passed at an ordinary meeting of the directors, or whether a meeting should be called for the purpose. This resolution should be duly entered in the minutes of the meeting.

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 by-laws of the company, but the call itself dates from the passing of the resolution, and not from the time the notice is given or received. And if a certain time must elapse between two successive calls, that time must be reckoned

exclusive of the day on which the resolutions were passed.

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.

9. *When no call has been made.*—Under ordinary circumstances there is no liability to pay for shares until a call is made, and notice thereof given to the shareholder, and until that time the Statute of Limitations does not begin to run against the company. Therefore persons named in the charter issued in 1880 as shareholders were in 1891 held liable to pay the amount of their shares, no formal call having in the meantime been made. Haggert Bros. Mfg. Co., Peaker and Runions' Case, 19 A. R. 582.

(*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 Shareholder.
10. Right of Company to Apply Dividends to the Payment 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, *i.e.*, out of capital.

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.

As long as the company is earning sufficient to pay a satisfactory dividend, there is no temptation to draw upon the capital for that purpose; but as soon as it falls below that, the interest of all, but especially of the large shareholders, creates a strong temptation to pay *bogus profits* out of capital in order to maintain the credit of the company and the price of its shares. And it is this temptation, clearly, which has caused the Legislatures to remove the question out of the domain of company regulation, and, by one short provision, make every payment of dividends out of anything but the actual profits of the company illegal, involving serious liabilities on all concerned. The capital should be kept intact in the interest both of the creditors and shareholders of the company, and the net profits only are all that the shareholders can claim 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 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

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

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. Dividends Cannot be Enforced Until Declared.

The declaration of dividends is part of the internal management of the company, which is governed in its ultimate arrangement by the will of a majority of the shareholders. And, therefore, it has been said that "till a dividend is declared, a shareholder has no legal title, nor even an equitable right thereto, which can be enforced by suit."

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 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*) L. R. 4 Ch. 475.

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

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 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 enquiring 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 transferor. The law, moreover, refuses to investigate the question when the dividend was earned. In contemplation of law the net profits are earned at the instant the dividend is declared. But of course any agreement between vendor and vendee, modifying or changing this rule, will be upheld. It is a proper subject for a contract, and a valid contract may be made in reference to it. When a dividend is made payable on a day subsequent to the day on which it is formally declared, it belongs to the stockholder who owns the shares on the day the dividend is declared, and not to the owner at the time it is payable. A dividend declared but payable at a future day may be assigned apart from the stock itself. A transfer of stock passes all dividends declared subsequently to the transfer, although the dividend was earned before the transfer was made.

A legatee of shares takes the stock as it was at the time of the testator's death. All dividends declared previous to that event go to the administrator. Where stock is bought deliverable at the seller's option, the dividends declared between the day of the purchase and the delivery belong to the purchaser. So also an offer to sell shares, which is subsequently accepted, entitles the purchaser to dividends received by the owner while the offer was open. But a contract to sell on demand entitles the vendor to dividends declared before the demand is made.

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 constitute a class by themselves, and shareholders of that class will be entitled, as a class, to dividends in preference to holders of the common stock. But as between

shareholders of the same class there can be no discrimination, and profits set aside for dividends must be evenly divided among the 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 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 STOCKHOLDER'S 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. In the United States 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 corporat. 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. In the United States 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 the United States it is a well-settled doctrine that capital stock, and especially unpaid subscriptions to the capital stock, constitute a trust fund for the benefit of the creditors of the company. There are three methods by which 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, though the directors are not trustees for the creditors of the company.

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

The unpaid balances of subscription are not the primary or regular fund for the payment of corporate debts. Credit is given to the company, not to the stock-

holders; and it is the natural order of business that the creditors of the company are to be paid by the company from funds in the corporate treasury. Ordinarily, corporate creditors have no knowledge or concern about the subscription list, and unpaid or partially paid subscriptions are a matter entirely between the company and the subscribers. So long as the company meets its obligations in the ordinary course of business, corporate creditors have no need to concern themselves about unpaid subscriptions to the stock. But when the company is in default and embarrassed, or for any reason fails to pay its debts, then its creditors have rights with reference to such unpaid subscriptions. They then have the right to know whether all the subscriptions for stock have been fully paid in, and, if not, they have the right to compel such payment.

It accordingly becomes important to know at what point, in their efforts to collect what is due them, corporate creditors may cease to pursue the company and proceed directly against its delinquent members. The well-established rule upon this point is that a corporate creditor's suit to enforce payment of unpaid subscriptions can be properly brought only after a judgment at law has been obtained against the company and an execution returned unsatisfied. This rule is of such importance that, by statute, a creditor's right to proceed against a stockholder on his unpaid subscription is allowed only after the remedy against the company itself has been exhausted. By this is meant that judgment shall have been duly recovered against the company, and execution issued and regularly returned unsatisfied. Nothing short of that exhausts the remedy against the company.

This rule is founded in reason and a wise public policy relative to the transaction of business, since the corporate funds are the corporate creditor's primary resource, even where the liability of the individual shareholder is declared to be primary, like that of an original contractor or partner. When a company is ordered to be wound up, all proceedings by creditors may be stayed.

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 'ass 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 organization 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, independent, 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 (*a*).

1. Inducements to Conversion.
2. Examples of Cases of Conversion.
3. "One Man" Company.
4. 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.

(*a*) Parker's Shareholders' Manual.

"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 desirous 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. This can be effected 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.

(*h*) Take the case of a manufacturer. By industry and attention, for many years of his life, he has established a successful business. The greater part, if not the whole, of his means is invested in his business. He has become advanced in years, and has a family for whom he must make provision after his death. To withdraw any substantial portion of his capital from the business would be fatal to its success. To keep it as a going concern is essential, as, once a manufacturing business be stopped, the value of its plant and machinery, as well as of its connection and good-will, is practically lost. If the business be carried on by a partnership, this partnership, upon the death of a partner, becomes

dissolved, and the capital of the deceased must eventually be withdrawn; and, unless the surviving partner can procure some other person with capital to take the deceased's place, the business must be sold out at a ruinous sacrifice. In any case the continuity is broken; the bankers and other creditors of the business will not generally continue the credit as before; and, for this reason alone, many businesses have to be wound up which are really in a healthy and prosperous state.

All this can be avoided if the business be transferred to a joint stock company. The capital in such a company remains fixed, and cannot be withdrawn. The unbroken continuity of the company continues, notwithstanding death or other changes among the shareholders. The good-will, which in many cases is a valuable asset, is not interfered with, and each share in the company benefits thereby. The individual's former capital in his business is now represented by shares in the joint stock company. These shares can be disposed of during his lifetime, or by his will, and his family provided for without injury to his business.

The same considerations apply to all kinds of mercantile business as well as to that of manufacturers; and men of advanced years, who, after a long, hard-working and useful life, are entitled to retire from active pursuits, are enabled by means of a joint stock company to give up business and be freed from liability and worry; something which they could not, in the majority of cases, otherwise do.

3. "One Man" Company.

In a recent English case, Vaughan Williams, J., and the Court of Appeal held, that where one man had an overwhelming proportion of the shares of a company, and the transaction was in other respects tainted with bad faith, the individual shareholder might be personally liable for the debts of the company (*a*). But the House of Lords has overruled this decision, and has held

(*a*) Brodery v. Saloman, (1895) 2 Chancery Appeals, 323.

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

4. 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

(*a*) Saloman v. Saloman & Co., (1897) A. C. 22.

of conversion the owners of business concerns, whether sole or in partnership, desire to incur no personal liability to the creditors of the company; they are willing to hand over the business with its assets and liabilities to the company, but desire, if the company should be unsuccessful, not to be under any personal liability to pay its debts; they wish the remedy of the creditors of the company to be exclusively against the assets of the company. Where this is the desire of the parties, the conversion must be effected on the footing that the owner or owners shall receive the value of the business in fully paid-up shares. Upon such shares there is no personal liability. They entitle the holder to votes and dividends, but no call can be made on him. Sometimes, however, a person may be willing, besides making over his business or his share of a business to a company, to incur a personal liability to a limited extent, *e.g.*, suppose a man desires to convert his business, valued at $50,000, into a company, and is willing to incur a liability to supply $10,000 additional working capital if required; in such case the conversion will be effected on the footing that he shall receive 2,000 shares of $30 each, with $25 per share credited as paid up: he will thus be liable to pay up the balance of $5 per share—$10,000—when required, but will be under no further liability.

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

These important points having been settled, the 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.

By sections 4, 5, 6 and 7 of the new Ontario Companies' Act, R. S. O., 1897, cap. 191, that Act is made to apply to every company heretofore or hereafter incorporated by special Act of the Legislature of Ontario for purposes or objects within the scope of the Act. The provisions of the new Act affect a very large number of companies hitherto exempt from certain requirements made upon companies incorporated under the general Act, such as the fyling of by-laws increasing or decreasing the number of directors, the making of annual returns, etc., etc., and brings them more directly under the control of the Lieutenant-Governor in Council.

A further important change is made in dispensing with the giving of notice in the Ontario Gazette of application for incorporation, except in cases where the Lieutenant-Governor in Council directs that it be given.

The Provincial Secretary's Department is designated by Order in Council under section 95 as the Department through which the issue of letters patent, supplementary letters patent and licenses under the Act shall take place.

Parties having business to transact with that Department will save time and trouble by paying attention to the following directions.

All communications on official business should be addressed to

The Honourable
The Provincial Secretary,
Toronto,

and the postage must be prepaid. Letters marked O. H. M. S. are usually sent to the Dead Letter Office.

The forwarding of any paper should always be accompanied by a letter, each letter should be confined to one subject, the post office address and date should be given, and the signature distinctly written.

It is particularly recommended that reference should be made to the law, where accessible, before writing on any subject to the Department, in order to avoid unnecessary explanations and useless loss of time and labour.

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 filed away in the Departmental letter cases.

The Ontario 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 Treasurer, Toronto, Ontario. Cheques not "marked" are liable to be returned.

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

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

1st. Address 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 191.

REVISED STATUTES OF ONTARIO, 1897.

An Act respecting the Incorporation and Regulation of Joint Stock Companies.

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

Short title.

1. This Act may be cited as "*The Ontario Companies' Act.*"

Interpretation.

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

"Judge."

(*a*) "Judge" shall mean one of the Judges of the High Court of Justice.

"Letters patent;"

(*b*) "Letters patent" shall mean the letters patent, under the Great Seal of Ontario, incorporating or re-incorporating a company, as the case may be; for any purpose within the scope of this Act.

"Proxy."

(*c*) "Proxy" shall mean any person representing an absent shareholder and duly authorized, in writing, to act for him at a meeting of the company.

"Real estate," "Land;"

(*d*) "Real estate" or "land" shall include all messuages, lands, tenements, leaseholds and hereditaments of any tenure and all immovable real property of every kind.

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

(*f*) "Supplementary letters patent" shall mean any letters patent, under the Great Seal of Ontario, granted to a company subsequent to the letters patent incorporating or re-incorporating the company; "Supplementary letters patent;"

(*g*) "*The Gazette*" shall mean *The Ontario Gazette*. "*The Gazette*."

APPLICATION OF ACT.

3. No company shall hereafter be incorporated under *The Ontario Joint Stock Companies' Letters Patent Act*, and the amendments thereto, being chapter 157 of the Revised Statutes of Ontario, 1887, and chapter 190 of these Revised Statutes. Incorporation of companies by letters patent.

4. The incorporation of every company hereafter by letters patent shall be governed by this Act, and all the provisions of this Act shall apply to every such company, subject to the provisions of any general Act applying to the company. Act to apply to companies hereafter incorporated by letters patent.

5. The provisions of sections 17 to 105, inclusive, shall apply to every company incorporated before the 13th day of April, 1897, by letters patent issued under the authority of an Act of the Legislature of Ontario, subject to the provisions of any special Act or general Act applying to the company, other than said chapter 157 of the Revised Statutes of Ontario, 1887, and the amendments thereto. Sections which apply to companies incorporated by letters patent before 13th April, 1897.

6. The provisions of section 17 to 97, inclusive, and sections 103 to 106, inclusive, shall apply to every company incorporated on or before the 13th day of April, 1897, by special Act of the Legislature of Ontario for purposes or objects within the scope of this Act, except such provisions as are inconsistent with the provisions of the special Act or amending Acts, or other special Acts relating to the company. Sections which apply to companies incorporated on or before 13th April, 1897, by special Act.

Sections which apply to companies incorporated after 13th April, 1897, by special Act.

7. The provisions of sections 17 to 97, inclusive, and sections 103 to 106, inclusive, shall, subject to any variations and exceptions by the special Act, apply to every company incorporated after the 13th day of April, 1897, by special Act of the Legislature of Ontario for purposes or objects within the scope of this Act, and the said provisions, subject as aforesaid, shall form part of the special Act and be construed together therewith as one Act.

Rev. Stat., 1887, c. 156, not to apply to companies incorporated after 13th April, 1897, by special Act.

8. The provisions of *The Ontario Joint Stock Companies' General Clauses Act*, being chapter 156 of the Revised Statutes of Ontario, 1887, and chapter 189 of these Revised Statutes, shall not apply to any company incorporated after the 13th day of April, 1897, by special Act of the Legislature of Ontario for any of the purposes or objects within the scope of this Act.

Incorporation by Letters Patent.

Companies formed for certain purposes may be incorporated by letters patent.

9. The Lieutenant-Governor in Council may, by letters patent, grant a charter to any number of persons, not less than five, who petition therefor, creating and constituting such persons and any others who have become subscribers to the memorandum of agreement, a body corporate and politic for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends, except the construction and working of railways, the business of insurance and the business of a loan corporation within the meaning of *The Loan Corporations Act*.

Rev. Stat., s. 205.

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 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:

Sec. 92, 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.

Petition for letters patent - - - - - -	Form No.	5.
Affidavit verifying petition and as to name of Company	"	6.
Power of Attorney to sign petition, etc., etc. - -	"	7.
Affidavit verifying power of Attorney - - -	"	8.
Affidavit verifying signatures to petition - - -	"	9.
Affidavit verifying signatures to petition when signed under a Power of Attorney - - - -	"	10.
Memorandum of Agreement and Stock Book - -	"	11.
Affidavit verifying signatures to Memorandum of Agreement and Stock Book - - - - - - -	"	12.

Petition.

10. (1) The applicants for incorporation, who must be of the full age of twenty-one years, may petition [1] the Lieutenant-Governor, through the Provincial Secretary, for the issue of letters patent. The petition of the applicants shall show:

Name to be free from objection.

(*a*) The proposed corporate name of the company with the word "Limited" as the last word thereof; and such name shall not on any public ground be objectionable, and shall not be that of any known company, incorporated or unincorporated, or of any partnership, or

[1] See Form No. 5, *post*.

individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive; provided, however, that a subsisting company, or partnership, or individual, or the person carrying on such business may consent that such name, in whole or in part, be granted to the new company.

Name.—The name should be as short as possible consistent with expressing generally the nature of the company. The name of the Province of Ontario, or of some locality therein, should constitute part of the name of every company. In selecting the style and title for a company, it is desirable that the name of the place where its head office is located should form part of its name. This provision has repeatedly proved, for obvious reasons, to have been adopted in the interest of all concerned.

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," the express consent of Her Majesty is requisite.

The proof as to the proposed corporate name not being open to objection nor 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.[1]

Object.

(*b*) The objects, simply stated, for which the company is to be incorporated.

Object.—This may be any object within the legislative authority of the Legislature of Ontario except the construction and working of railways, the business of insurance and the business of loan and other companies under the Loan Corporations Act. The definition of the powers sought should be clear and concise. It is now contrary to the policy of the government to grant a company power to carry on more than one business under one charter; it is therefore the practice of the Department so to limit them, unless a special case is shown for allowing a plurality of objects connected with one another.

Head-office and place of service.

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

[1] See Form No. 6, *post*.

Head Office.—This may, or may not, be at the same place as that at, or from, which the operations of the Company are to be carried on, thus, a company carrying on its operations in the District of Algoma may have its *chief place of business* (*i.e.*, head office) in the City of Toronto.

(*d*) The amount of capital stock of the company; Capital.

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

(*f*) The name in full, the place of residence and the calling of each of the applicants. Names of applicants.

(*g*) The number, not less than three, of the board of directors, and the names of the applicants, not less than three, who are to be the provisional directors of the company. Directors.

The directors must be shareholders, owning stock absolutely in their own right. The petition should state the intended number of the directors of the Company *after* it has been organized, and the names of the directors who are to be mentioned in the Letters Patent and to act until the permanent board, according to such intended number, has been elected.

This sub-section contemplates the addition up to the number mentioned in the letters patent, if such be thought necessary or advisable, of desirable persons to the board, *after* the company has been organized, without the delay and formality required by section 45, sub-section 1.

(2) The petition may be similar to, but in its essential features shall comply with, Schedule "B" to this Act, and shall be accompanied by a memorandum of agreement, executed in duplicate, which may be similar to, but which shall in its essential features comply with Schedule "A" to this Act. Petition. Memo. of agreement.

The petition, which may under ordinary circumstances be put in at any time without notice, must state:—

The amount each applicant has subscribed in the Memorandum of Agreement and Stock-Book.

The petition must further show:—

That no public or private interest will be prejudicially affected by incorporation, if such be the fact.

It should be signed by each of the applicants personally, but if, in any case, it is signed by attorney, it should be accompanied by the Power of Attorney, which must be of a specific and not of a general character and duly executed and verified. Petitioners will use their ordinary signatures. 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, Toronto.

Payments on shares.

(3) In case any amount has been paid in, on shares taken, by transfer of property to a trustee, the Provincial Secretary may require such evidence as shall be satisfactory to him of such transfer and of the kind, nature and value of the property and the manner in which, and the person or persons or corporate body by whom the property transferred, or any other payment, is held in trust for the company with a view to its incorporation.

Petitioners to be *bona fide* subscribers for shares.

(4) Each petitioner shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the memorandum of agreement.

(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.

Power to make general regulations as to notice, etc.

11. The Lieutenant-Governor in Council may, from time to time, make regulations with respect to the following matters, viz.:

(*a*) The cases in which notice of application for letters patent or supplementary letters patent under this Act must be given;

Under the practice of the Department no notice is now required if the applicants are able to swear that no public or private interest will be prejudicially affected by their incorporation.

(*b*) The granting to one company power to carry on more than one kind of undertaking;

(*c*) The forms of letters patent, supplementary letters patent, licenses, notices and other instruments and documents relating to applications and other proceedings under this Act;

(*d*) The form and manner of the giving of any notice required by this Act;

and such regulations shall be published in *The Gazette*.

Preliminary conditions to be established

12. Before the letters patent are issued, the applicants shall establish to the satisfaction of the Provincial

Secretary, or such other officer as may be charged by him to report thereon, the sufficiency of their memorandum of agreement and petition, and show that the proposed name is not open to objection under section 10 of this Act.

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. 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.

Proof of matters under this Act.

13. (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 any requisite evidence in writing under oath, or affirmation.

(*a*) Proof of any matter which may be necessary to be made under this Act, may be made by statutory declaration, or by affidavit, or by deposition before the Provincial Secretary, or Assistant Provincial Secretary, or other officer as aforesaid, or before any justice of the peace or commissioner for taking affidavits or notary public, who, for this purpose, are hereby authorized and empowered to administer oaths or to take affirmations.

See *ante* for fees allowed Justices, etc., etc.

Name and incidental powers of company may be varied.

14. The Lieutenant-Governor may give to the company a corporate name wholly or partially different from the name proposed by the applicants in their petition, and may in the letters patent vary the powers of the company from the powers stated in the petition.

Notice of issuing letters patent.

15. Notice of the granting of the letters patent shall be given forthwith by the Provincial Secretary in *The Gazette*, and from the date of the letters patent the petitioners and the persons who signed the memorandum of agreement and their successors, respectively, shall be a corporation by the name mentioned in the letters patent and shall be invested with all the powers, privileges and immunities which are incident to such corpora-

tion, or expressed or included in the letters patent and Rev. Stat., c. 1. *The Interpretation Act*, and which are necessary to carry into effect the intention and objects of the letters patent and such of the provisions of this Act as are applicable to the company.

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

First Meeting *(a)*.

Meeting of company for organization.

16. (1) The provisional directors of the company shall, by a registered letter addressed to each shareholder, call a general meeting of the company to be held within two months of the date of the letters patent, for the purpose of organizing the company for the commencement of business. Such first general meeting shall be held at such convenient place as the directors may determine.

(2) If the said meeting is not called by the provisional directors within the time required by this section, any three or more shareholders in the company shall have power to call the meeting and to proceed to the organization of the company.

Capital, Shares, Etc.

Increase of capital.

17. (1) The company at any time after nine-tenths of the capital stock of the company has been subscribed and ten per centum thereon paid in, but not sooner, may, by by-law (*b*), provide for the increase of the capital stock of the company to any amount which it considers requisite for the due carrying out of the undertaking of the company.

(2) The by-law 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 vest absolutely in the directors.

(*a*) See section 50 for Annual and other Meetings.
(*b*) Form 13, *post*.

FORMS TO INCREASE THE CAPITAL STOCK.

By-law providing for increase	Form	No. 13.
Affidavit verifying same and proving sanctioning thereof	"	14.
By-laws of company regulating calling of general meetings	"	15.
Affidavit verifying by-laws as to calling of general meetings	"	16.
Notice in local newspaper calling a general meeting	"	17.
Affidavit proving due calling of meeting and verifying notice in local paper	"	18.
Notice in *Ontario Gazette* calling a general meeting	"	17.
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed and verifying notice in local paper and *Ontario Gazette*	"	19.
Petition for Supplementary Letters Patent	"	20.
Affidavit verifying signatures to petition	"	21.
Affidavit respecting *bona fide* character of increase	"	22.

Reduction of capital.

18. (1) The company, if it sees fit at any time, may by by-law provide for the decrease of the capital stock of the company to any amount which it may consider sufficient for the due carrying out of the undertaking of the company and advisable.

By-law for that purpose.

(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.

Liability of shareholders on decrease.

(3) The liability of shareholders to persons who are, at the time the stock is decreased, creditors of the company, shall remain as though the stock had not been decreased.

TO DECREASE THE CAPITAL STOCK.

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

Re-division f shares.

19. The company may at any time, by by-law, provide for the re-division of the existing shares into shares of smaller or larger amount.

By-laws to be confirmed by supplementary letters patent.

20. No by-law for increasing or decreasing the capital stock of the company, or re-dividing the shares, shall have any force or effect whatever unless and until 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 by-law, and has afterwards been confirmed by supplementary letters patent.

Petition for supplementary letters patent.

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

By-law, etc., to be produced with petition.

(2) With the petition the company shall produce the by-law and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by him to report thereon, the due passage and sanction of the by-law, and if the petition is in respect of the increase or decrease of capital, the *bona fide* character of the increase or decrease of capital thereby provided for.

Granting of supplementary letters patent.

(3) Upon due proof so made, the Lieutenant-Governor in Council may by supplementary letters patent confirm the by-law, and, with respect to an increase or decrease in capital, may, with the consent of the company, by the supplementary letters patent, fix the amount of such increase or decrease at such sum as to him may seem proper; and notice thereof shall be given forthwith by the Provincial Secretary in *The Gazette*; and thereupon, from the date of the supplementary letters patent, the shares shall be re-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 supplementary letters patent; 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 originally formed part of the stock of the company.

Notice thereof.

Effect of such letters patent.

Proof of the by-law having been duly passed by the company 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 company with its 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 meeting, duly verified, should be furnished.

In case of the increase or decrease of capital, the *bona fide* character of the same should also be proved by affidavit.

Preferential stock.

22. (1) The directors 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.

Special rights of preference shareholders.

(2) The by-law may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as may be considered expedient.

Unanimous sanction required.

(3) No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a 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; provided, however, that if the by-law be sanctioned by three-fourths in value of the shareholders of the company, the company may, through the Provincial Secretary, petition the Lieutenant-Governor in Council for an order approving the said by-law, and the Lieutenant-Governor may, if he sees fit, approve thereof, and from the date of such approval the by-law shall be valid and may be acted upon.

Special proviso.

Rights and liabilities of holders of preference stock.

(4) Holders of shares 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 ordinary shareholders, be entitled to the preferences and rights given by such by-law.

Rights of creditors not impaired.

(5) Nothing in this section contained or done in pursuance thereof, shall affect or impair the rights of creditors of the company.

USE OF THE WORD "LIMITED."

Unabbreviated word "limited

23. (1) The company shall keep painted, or affixed, its name with the unabbreviated word "Limited" as the

to be inserted in all notices, etc.

last word thereof, 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 unabbreviated word in legible characters on its seal, and shall have its name with the said unabbreviated word 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.

Directors liable on written contracts, which do not show limited liability.

(2) The directors of the company shall be jointly and severally liable upon every written contract or undertaking of the company on the face whereof the unabbreviated word "Limited" is not distinctly written or printed as the last word in the name of the company, where it first occurs in such contract or undertaking.

Penalty for violation of preceding section.

(3) Every company which does not keep painted or affixed its name, with the unabbreviated word "Limited" as the last word thereof, in the manner directed by this section, 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.

(4) Every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

Penalty for using or authorizing use of seal without word "limited" it.

(5) 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 unabbreviated word "Limited" as the last word thereof, does not appear, 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 as the last word thereof, 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.

(6) This section shall not apply to any company not incorporated for commercial, mercantile, manufacturing, trading or business purposes or objects, where such company by its charter of incorporation is declared to be exempt from the provisions thereof, or to any company not incorporated for any of the said purposes, which, on proof thereof being shown to the Lieutenant-Governor in Council, is, on, from and after a date to be set forth in the order of the Lieutenant-Governor in Council in that behalf, declared to be exempt. Proviso.

CHANGE OF NAME.[1]

24. In case it is made to appear to the satisfaction of the Lieutenant-Governor in Council that any company is incorporated under a name the same as, or so similar to that of an existing company, partnership, individual, or to any name under which any existing business is being carried on, as to deceive, it shall be lawful for the Lieutenant-Governor by an Order in Council to change the name of the company to some other name to be set forth in the order; 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. Change of name if objectionable.

INCIDENTAL POWERS OF COMPANIES.

25. The company shall, in addition to its other powers, possess power: Powers incident to incorporation.

(*a*) To alter or change its common seal at pleasure; Seal.

[1] Name of any company may be changed under the Act entitled "An Act respecting the changing of the names of Incorporated Companies," *post*.

Personal property.

(*b*) To take over, acquire, hold, use, sell and convey such personal property and movables, machinery, trademarks, patents, licenses, and franchises or rights thereunder as may be deemed necessary or expedient for the purposes for which the company is incorporated;

Buildings.

(*c*) To erect on its property such works, shops, mills, buildings, houses and structures, and to make such improvements of what kind soever as may be convenient or necessary for the due carrying out of its undertaking;

Construction and maintenance of useful works.

(*d*) To construct and maintain, or aid in the construction and maintenance of such works and improvements as may be deemed necessary, or advantageous to the due carrying out of its undertaking;

General powers.

(*e*) To exercise and enjoy all the privileges and immunities, and to do all acts requisite, or incidental to the due carrying on of its undertaking;

Branches of business.

(*f*) To carry on any branch or branches of business incidental to the due carrying out of the objects for which the company was incorporated, and subsidiary thereto, and necessary to enable the company profitably to carry on its undertaking;

Real estate.

(*g*) To acquire by purchase, lease, or other title, and to hold, use, sell, alienate and convey any real estate necessary for the carrying on of its undertaking, and the company shall upon its incorporation become and be invested with all the property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation.

Restrictions as to holding real estate.

Provided, however, that, unless other special statutory enactments apply, no parcel of land, or interest therein at any time acquired by the 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 this province, shall be held by the company or by any trustee on its 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 further provided, that any such parcel of land, or any interest therein not within the exceptions hereinbefore mentioned, held by the company for a longer period than seven years, without being disposed of, shall be forfeited to Her Majesty for the use of this Province; provided, also, that the Lieutenant-Governor in Council may extend the same period from time to time not exceeding in the whole twelve years; and further provided, that no such forfeiture shall take effect, or be enforced until the expiration of at least six calendar months after notice in writing to the company of the intention of Her Majesty to claim such forfeiture; and it shall be the duty of the company to give the Lieutenant-Governor in Council, 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 these provisos. Forfeiture.

STOCK, CALLS, ETC.

26. If the letters patent or special Act make no other definite provision, the shares of stock of the company, so far as they are not allotted thereby, shall be allotted when and as the directors by by-law or otherwise ordain. Allotment of stock.

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

28. The directors may refuse to allow the entry, in any such book, of any transfer of shares of stock whereof the whole amount has not been paid in; and whenever entry is made in such book of any transfer of stock, not fully paid in, to a person not being of apparently sufficient means, the directors present when such entry is authorized shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for Directors may refuse transfer of stock in certain cases.

Their liability if they allow transfers to persons without means.

How director may exonerate himself.

such entry, would have been; but if any director present when such entry is allowed, forthwith, enters a written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from such liability.

Transfer valid only after entry.

29. No transfer of shares 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 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 been duly made in the books of the company.

Restriction as to transfers.

30. 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.

Company not to be liable in respect of trusts, etc.

31. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

Calling in instalments.

32. The directors of the company may call in and demand from the shareholders thereof, respectively, the amount unpaid on shares of stock by them subscribed or held, at such times and places and in such payments or instalments as the letters patent, or this Act, or the by-laws of the company require or allow; and interest shall accrue at the legal rate for the time being, upon the amount of any unpaid call, from the day appointed for payment of such call.

Calls.

Ten per cent. within first year.

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

Enforcement of payment of calls by action.

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 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.

Forfeiture of shares.

35. If after such demand or notice as by the special Act, or 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 Act or by such letters patent or by-laws may be limited in that behalf, the directors in their discretion by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of as, by by-law or otherwise, the company may ordain.

Trustees, etc., may vote.

Mortgagor of stock may vote.

36. (1) 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.

Joint holders of stock.

(2) If stock be held jointly by two or more persons, any one of them present at a meeting may in the absence of the other, or others, vote thereon, but if more than one joint stockholder be present or be represented by proxy, they shall vote together on the stock jointly held.

LIABILITIES, ETC., OF SHAREHOLDERS.

Liability of shareholders.

37. (1) Each shareholder, until the whole amount of his shares of 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 shares of stock, shall be the amount recoverable with costs, against such shareholder.

Set-off.

(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.

Shareholders not liable beyond amount unpaid on shares.

(3) 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.

Trustees, etc., not personally liable.

38 No person holding shares of 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.

Mortgagees

39. No person holding shares of stock as collateral security, shall be personally subject to liability as a

shareholder; but the person transferring such shares as such collateral security shall be considered as holding the same, and shall be liable as a shareholder in respect thereof.

DIRECTORS AND THEIR POWERS, ETC.

Board of directors.

40. The affairs of the company shall be managed by a board of not less than three directors, who shall be elected by the shareholders in general meeting of the company assembled at some place within this province.

Provisional directors.

41. The persons named as provisional directors in the special Act or in the letters patent shall be the directors of the company, until replaced by others duly elected in their stead.

Qualification of directors.

42. No person shall hold office as a director unless he is a shareholder owning stock absolutely in his own right, and not in arrear in respect of any call thereon, and where any person who is a director ceases to be a *bona fide* holder of stock in the company, he shall thereupon cease to be a director.

Yearly elections.

43. (1) The election of directors shall take place at the annual meeting, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election.

Ballot.

(2) Elections of directors shall be by ballot;

Vacancies.

(3) 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;

President and officers

(4) 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.

Failure to elect directors, how remedied.

44. 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 directors shall continue in office until their successors are duly elected.

Change by by-law of number of directors or of head office in Ontario.

45. (1) A company may by by-law increase or decrease the number of its directors, or may change the company's head office in Ontario.

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

Validation of by-law.

Notice.

(3) In case the head office of the company is being changed as aforesaid, then the company shall forthwith give notice of the fact in such newspapers and for such time as the regulations made under section 11 of this Act may prescribe.

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. Proof that the by-law was published once in *The Ontario Gazette* should, in the interest of the company and to avoid future question as to due compliance with the provision of the Act, also be furnished. A copy of the notice, cut from the *Gazette*, ought to be attached thereto.

FORMS TO INCREASE THE NUMBER OF DIRECTORS.

By-law increasing the number of directors	Form No. 23.
Affidavit verifying by-law, and proving sanctioning of same	" 14.
Notice publishing by-law in *Ontario Gazette*	" 24.
Affidavit verifying same	" 25.
By-laws of company regulating the calling of a general meeting	" 15.
Affidavit verifying same	" 16.
Notice in local newspaper calling general meeting	" 17.
Affidavit proving due calling of meeting and verifying notice in local paper	" 18.

Notice in *Ontario Gazette* calling general meeting.....Form No. 17.
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed and verifying notice in local paper and *Ontario Gazette* ..... " 19.

To Decrease the Number of Directors.

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

Forms for Changing the Head Office.

By-law changing .....Form No. 26.
Affidavit verifying by-law, and proving sanctioning of same " 14.
Notice publishing by-law in *Ontario Gazette*..... " 24.
Affidavit verifying same..... " 25.
By-laws of company regulating the calling of a general meeting ..... " 15.
Affidavit verifying same..... " 16.
Notice in local newspaper calling general meeting..... " 17.
Affidavit proving due calling of meeting and verifying notice in local paper ..... " 18.
Notice in *Ontario Gazette* calling general meeting..... " 17.
Affidavit proving due calling of general meeting where no by-law for the purpose has been passed, and verifying notice in local paper and *Ontario Gazette*..... " 19.

Powers and duties of directors.

46. 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.

By-laws.

47. 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:

Stock.

(*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;

Dividends.

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

Directors, service, etc.

(*c*) The term of service not exceeding two years, and the amount of the stock qualification of the directors;

Officers.

(*d*) The appointment, functions, duties and removal of all officers, agents and servants of the company; the

security to be given by them to the company; and their remuneration;

Meetings.

(*e*) The time at which, and place where the general 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;

Fines.

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

Conduct of affairs generally.

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

Confirmation of by-laws.

and may from time to time repeal, amend, or re-enact the same; but every such by-law, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, shall only have force until the next annual meeting of the company; and in default of confirmation thereat, shall, at and from that time only, cease to have force; and in that case no new by-law to the same or the like effect shall have any force until confirmed at a general meeting of the company; provided,

By-laws may be varied.

however, that the company shall have power either at the general meeting, called as aforesaid, or at the annual meeting of the company, to repeal, amend, vary or otherwise deal with any by-laws which have been passed by the directors, but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation or other dealing.

Payment to president or directors.

48. 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.

Borrowing powers.

49. If authorized by by-law, passed by the directors and 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 of the company duly called for considering the subject of such by-law, the directors of the company may:

(*a*) Borrow money upon the credit of the company;

(*b*) Limit or increase the amount to be borrowed;

(*c*) Issue the bonds, debentures, or other securities of the company for the lawful purposes of the company, and no other, and may pledge or sell the same for such sums and at such prices as may be deemed expedient or be necessary; but no such bonds, debentures, or other securities shall be for a less sum than one hundred dollars each, and Power to issue bonds or debentures, and

(*d*) Hypothecate, mortgage or pledge all or any of the real or personal property, rights and powers of the company to secure any such bonds, debentures or other securities and any indebtedness or sum or sums so borrowed for the purposes of the company. to grant mortgages.

ANNUAL, GENERAL AND SPECIAL MEETINGS.[1]

50. In default only of other express provisions in such behalf, by the special Act, or by the letters patent or by-laws of the company, notice of the time and place for holding general, including the annual, 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 head-office, and to the chief place of business of the company, if these differ; and also, in the case of companies having a capital exceeding $3,000, either by publishing the same in *The Gazette*, or by mailing the same as a registered letter duly addressed to each shareholder at his last known post-office address at least ten days previous to such meeting. Mode of election. Notice.

51. A general meeting, to be known as the annual meeting of the company, shall be held at such time and place in each year as the letters patent or by-laws of the company may provide, and in default of such provisions in that behalf the annual meeting shall be held on the fourth Wednesday in January in every year, at such place as may be determined by the directors. Annual meeting.

52. The directors may, whenever they think fit, and they shall upon a requisition[2] made in writing by the Special meetings.

[1] See section 16 for first meeting.

[2] See Form *post*.

holders of not less than one-tenth of the subscribed capital stock of the company convene a special general meeting of the company.

Object.

53. Any requisition made by the shareholders shall express the object of the special general meeting proposed to be called, and shall be left at the head-office of the company.

Duty of directors.

54. Upon the receipt of such requisition the directors shall forthwith proceed to convene a special general meeting. If they do not proceed to cause the same to be held within twenty-one days from the date upon which the requisition was left at the head office of the company the requisitionists, or any other shareholders amounting to the required one-tenth of the subscribed capital stock of the company, may themselves convene such special general meeting.

Notice for special meetings.

55. Ten days' notice at the least, specifying the place, the day and the hour of meeting, and the general nature of the business to be considered, shall be given to the shareholders by the directors, or by the requisitionists, as the case may be, in manner mentioned in section 50 of this Act, or in such other manner, if any, as the by-laws of the company may prescribe.

Quorum.

56. No business shall be transacted at any such special general meeting called upon, or pursuant to requisition as aforesaid, unless a quorum of shareholders is present in person, or by proxy, at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say, if the shareholders at the time of the meeting do not exceed ten in number, the quorum shall be three, if they exceed ten there shall be added to the above quorum one for every four additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that no quorum in any case shall exceed twenty.

Dissolution of meeting.

57. If within one hour from the time appointed for such special general meeting, called upon or pursuant to requisition aforesaid, a quorum is not present, the meeting shall be dissolved.

Presiding officer.

58. The president of the company shall preside as chairman at every general meeting of the company.

Chairman to be elected when necessary.

59. If there is no president, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose some one of their number to be chairman.

Adjournment by consent.

60. The chairman may, with the consent of the meeting, and subject to such conditions and restrictions as the meeting may decide, adjourn any meeting from time to time, and from place to place.

Procedure as to resolutions.

61. At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried and an entry to that effect in the proceedings of the company, shall be *prima facie* evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

When poll is demanded.

62. If a poll is demanded it shall be taken in such manner as the by-laws prescribe, and in default thereof, then as the chairman may direct. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes.

63. At all general meetings of the company, every shareholder shall be entitled to as many votes as he holds shares in the company, and may vote by proxy.

Shareholders in arrear not to vote.

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

NOTICES, ACTIONS, ETC.

Mode of incorporation, etc., how to be set forth in legal proceedings.

65. In any 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 a special Act, or of letters patent, or of letters patent and supplementary letters patent, as the case may be; and the letters patent or supplementary letters patent them-

selves, or any exemplification, or copy thereof under the Great Seal, shall be conclusive proof of every matter and thing therein set forth.

Evidence of by-laws.

66. A copy of any by-law[1] 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 the by-law in all Courts in Ontario.

Authentication of summons and notices.

67. Any writ, 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.

68. A notice to be served by the company upon a shareholder may be served either personally or by sending it through the post, in a registered letter, addressed to the shareholder at his place of abode as it last appeared on the books of the company.

Time of service.

Proof of service.

69. 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.

Actions between company and shareholders.

70. Any description of action may be prosecuted and maintained between the company and any shareholder thereof, and no shareholder shall, by reason of being a shareholder, be incompetent as a witness therein.

Books to be Kept and What to Contain.

Record books to be kept and what to contain.

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

(*a*) A copy of the letters patent incorporating the company and of any supplementary letters patent issued

[1] For set of by-laws suitable for company's use see *post*.

to the company; and if incorporated by special Act, the chapter and year of such Act;

(*b*) The names, alphabetically arranged, of all persons who are or have been shareholders in the company;[1]

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

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

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

(*f*) The date and other particulars of all transfers of stock in their order; and

(*g*) The names, post-office addresses, and callings 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.

Penalty for false entries.

72. 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 person violating wilfully the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby.

Powers of judge as to entries in, omissions from, and rectification of books.

73. (1) If the name of any person is, without sufficient cause, entered in or omitted from such book or books of the company, or if default is made or unnecessary delay takes place in entering in said books the fact of any person having ceased to be a shareholder of the company, the person or shareholder aggrieved, or any shareholder of the company, or the company itself may by application to a Judge apply for an order that the book or books be rectified, and the Judge may either refuse such application with or without costs to be paid by the applicant, or he may, if satisfied of the justice of

Costs.

[1] For rulings of these and following books see Forms *post*.

the case, make an order for the rectification of the said book or books, and may direct the company to pay the costs of such motion or application and any damages the party aggrieved may have sustained. The Judge may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the said books of the company, whether such question arises between two or more shareholders, or alleged shareholders, or between any shareholders or alleged shareholders, and the company, and, generally, the Judge may in any such proceeding decide any question which it may be necessary or expedient to decide for the rectification of the said books.

Decision as to title.

(2) The Judge may direct an issue to be tried in which any question of law may be raised.

Appeal.

(3) An appeal shall lie, as in ordinary cases, before such Judge.

(4) This section shall not deprive any Court of any jurisdiction it may have.

Books to be open for inspection.

74. 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 or agents at the head office, and every such shareholder, creditor, agent, or representative, may make extracts therefrom.

Liability for refusal to allow inspection of books.

75. 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.

Books to be *prima facie* evidence.

76. 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.

Books of account to be kept.

77. The directors shall cause proper books of account to be kept containing full and true statements:

(*a*) Of the company's financial and trading transactions;

(*b*) Of the stock-in-trade of the company;

(*c*) Of the sums of money received and expended by the company, and the matters in respect of which such receipt or expenditure takes place, and

(*d*) Of the credits and liabilities of the company;

Minutes of proceedings.

and also a book or books containing minutes of all the proceedings and votes of the company, or of the board of directors, respectively, and the by-laws of the company, duly authenticated, and such minutes shall be verified by the signature of the president, or other presiding officer of the company.

ANNUAL STATEMENT AND SUMMARY, ETC.

Annual statement of income and expenditure.

78. At each annual meeting, or, at least, once in every year, and at intervals of not more than fifteen months, the directors shall, at a general meeting duly called, lay before the company a statement of the income and expenditure of the company for the past year, made up to a date not more than three months before such annual or general meeting, and shall also lay before the company such further information respecting the company's financial position and profit and loss account as the by-laws or the charter of the company may require.[1]

Annual summary of the affairs of the company.

79. (1) The company shall, on or before the first day of February in every year, make out a summary in duplicate, verified as hereinafter required, containing as of

[1] For Form of Balance Sheet see *post*.

Contents of statement.

the thirty-first day of December preceding, correctly stated, the following particulars.[1]

(*a*) The corporate name of the company;

(*b*) The manner in which the company is incorporated, whether by special Act, or by letters patent;

(*c*) The place where the head office of the company is situated;

(*d*) The place, or places where, or from which the undertaking of the company is carried on;

(*e*) The name, residence and post-office address of the president and of the secretary, and of the treasurer of the company;

(*f*) The name, residence and post-office address of each of the directors of the company;

(*g*) The date upon which the last annual meeting of the company was held;

(*h*) The amount of the capital of the company and the number of shares into which it is divided;

(*i*) The number of shares subscribed for and allotted;

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

(*k*) The amount issued subject to call;

(*l*) The amount of calls made on each share;

(*m*) The total amount of calls received;

(*n*) The total amount of calls unpaid;

(*o*) The total amount of shares forfeited;

(*p*) The total amount of shares which have never been allotted or subscribed for;

(*q*) The total amount for which shareholders of the company are liable in respect of unpaid stock held by them;

(2) The said summary may, also, after giving the information hereinbefore required, give in a concise

[1] These returns may be inspected by anyone interested, at the Provincial Secretary's Department, Toronto, on payment of the authorized fee.

form, such further information respecting the affairs of the company as the directors may consider expedient.

List of shareholders.

(3) The summary shall also contain a list of persons who, on the 31st day of December previously, were shareholders of the company; and such list shall state the names alphabetically arranged, and the address and occupation of each such person; the amount of stock held by each; and the amount, if any, unpaid and still due by each such person;

Return as to crude petroleum.

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

(i.) 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.

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

[*As to returns by companies carrying on the business of warehousing crude petroleum see also cap. 215, sec. 4.*]

Mode of writing the same.

(5) The 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.

Verification thereof.

(6) The 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.

Posting thereof.

(7) One of the duplicate summaries, with the affidavit of verification, shall be posted up in a conspicuous

Deposit with Provincial Secretary.

position in the head office of the company in Ontario, on or before the 2nd day of February; and the company shall keep the same so posted, until another summary is posted under the provisions of this Act; and the other duplicate summary, verified as aforesaid, shall on or before the 8th day of February next after the time hereinbefore fixed for making the summary be transmitted, by registered letter, to the Provincial Secretary and be addressed to him at the Parliament Buildings, Toronto.

Penalty for default.

(8) If a company makes default in complying with the provisions of this section, the company shall incur a penalty of $20 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.

When section not to apply.

(9) This section shall not apply to any company until the 1st day of February next after the first 31st 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.

Further proviso.

(10) This section shall not apply to any company not incorporated for commercial, mercantile, manufacturing, trading, or business purposes, or objects, where such company by its charter of incorporation is declared to be exempt from the provisions thereof, or to any company not incorporated for any of the said purposes which, on proof thereof being shown to the Lieutenant-Governor in Council, is, on, from and after a date to be set forth in the order of the Lieutenant-Governor in Council in that behalf, declared to be exempt.

Blank form 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.

INSPECTION.

The Court may appoint an inspector.

80. (1) Upon an application by not less than one-fifth in value of the shareholders of the company, a Judge may, if he deems it necessary, appoint an inspector to investigate the affairs and management of the company, who shall report thereon to the Judge, and the expense of such investigation shall, in the discretion of the Judge, be defrayed by the company, or by the applicants, or partly by the company and partly by the applicants as he may order, and, if he thinks fit, he may require the applicants to give security to cover the probable cost of the investigation, and he may make necessary rules and prescribe the manner in which and the extent to which the investigation shall be conducted; or the Judge may, if he deems it necessary, examine the officers or directors of the company under oath as to matters that come in question.

Examination by company.

(2) The company may by resolution passed at the annual meeting, or at a special general meeting called for the purpose, appoint an inspector to examine into the affairs of the company. The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by a Judge, with this exception, that instead of making his report to the Judge he shall make the same in such manner and to such persons as the company by said resolution directs.

Powers and duties of inspector.

Production of books and documents.

(3) It shall be the duty of all officers and agents of the company to produce for the examination of any such inspector all books and documents in their custody or power. Any such inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he

Examination on oath.

Penalty for non-production.

shall incur a penalty not exceeding $20, in respect of each offence.

CONTRACTS, DIVIDENDS, ETC.

Contracts, etc., when to be binding on company.

81. Every contract, agreement, engagement or bargain made and every bill of exchange drawn, accepted or indorsed, and every promissory note and cheque made, drawn or indorsed 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 or resolutions 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, resolution or special vote or order; nor shall the person so acting as agent, officer or servant of the company, be thereby subjected individually to any liability therefor.

Not to purchase stock in other corporations.

82. The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless and until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a general meeting of the company duly called for considering the subject of the by-law.

Liability of directors declaring a dividend when company is insolvent, etc.

83. The directors of the company shall not declare or pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent, or diminishes the capital thereof; but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability.

How a director may avoid such liability.

No loan by company to shareholder.

84. 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.

Liability of directors for wages.

85. 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.

Liability of Directors for wages. A person employed as foreman of works, who hires and dismisses men, makes out pay rolls, receives and pays out money for wages and does no manual labour, and in addition to receiving pay for his own services at the rate of five dollars per day, payable fortnightly, is paid for the use of machinery belonging to him and of horses hired by him, is not a labourer, servant or apprentice within the meaning of section 68 of the Joint Stock Companies' Letters Patent Act, R. S. O. Cap. 157, and cannot recover against the directors personally.

Welch v. Ellis, 22 A. R. Ont. 255.

The section mentioned in this judgment is identical with section 85 of this Act.

Winding up Acts to apply.

86. The company shall be subject to the provisions of any Act of the Legislature for the winding up of joint stock companies.

AUDITORS AND THEIR DUTIES.

Accounts may be audited.

87. If the special Act, letters patent or the by-laws of the company so direct, the accounts of the company shall be examined once at least in every year, and the correctness of the balance-sheet shall be ascertained, by an auditor.

Appointment of first auditor.

88. Such auditor may be appointed by resolution at a general meeting of the company; if so appointed, he shall hold office until the next annual general meeting thereafter unless previously removed by a resolution of the shareholders in general meeting; subsequent auditors may be appointed by a resolution of the company in general meeting.

Auditors may be shareholders.

89. The said auditor may be a shareholder of the company, but no person shall be eligible as an auditor who is interested, otherwise than as a shareholder, in any transaction of the company; and no director or other officer of the company shall be eligible during his continuance in office.

Remuneration of auditors.

90. The remuneration of the auditor shall be fixed by the company in general meeting.

Auditors re-eligible.

91. Any auditor shall be eligible for re-appointment.

Auditors to examine accounts, etc.

92. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

Access of auditors to books, etc.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company.

Auditors to make reports to shareholders.

94. The auditor shall make a report to the shareholders upon the balance sheet and accounts, and in every such report he shall state whether in his opinion the balance sheet is a full and fair balance sheet, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case he has called for explanations, or information from the

directors, or officers of the company, whether such explanation or information has been given by the directors, and whether it has been satisfactory.

FEES, ETC.

Fees on letters patent, etc., to be fixed by Order-in-Council.

95. (1) 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, or of licenses should 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.

May be varied.

(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.

Restriction.

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

The following is a 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 fee to be charged for a License granted under an Act authorizing Corporations and Institutions incorporated out of Ontario to lend and invest moneys therein, R. S. O. 1897, shall be according to the capital of the Company, and be the same in amount as if the Company was being incorporated.

The fee to be paid by a Company whose capital is over $3,000, for the notice in *The Gazette*, required by Sec. 4 of Cap. 215 R. S. O., respecting the Changing of the Names of Companies, is $12; if the capital is $3,000 or less, $5.

Certain informalities not to invalidate letters patent, etc.

96. The provisions of this and any other Act relating to matters preliminary to the issue of the letters patent shall be deemed to be directory only; and no letters patent, or supplementary letters patent, or license, notice, order or other proceeding by or on behalf of the Lieutenant-Governor in Council, Provincial Secretary or other Government or departmental officer under this or any other Act shall be held to be void or voidable on account of any irregularity, or otherwise, in respect of any matter preliminary to the issue of the letters patent, or supplementary letters patent, license, notice, order or other proceeding, or of any alterations in any petition or papers submitted in order to make them comply with this or any other Act, or with the departmental practice thereunder.

Liability for False Statements.

False returns, etc.

97. (1) If any person in any return, report, certificate, balance sheet, or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding six months, with or without hard labour, and on summary conviction to imprisonment not exceeding three months, with or without hard labour, and in either case to a fine of $100 in lieu of or in addition to such imprisonment as aforesaid.

(2) A person charged with an offence under this section may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness.

[*As to the liability of directors and others for untrue statements in a prospectus advertisement or notice, see Cap. 216.*]

FORFEITURE OR SURRENDER OR REVOCATION OF A CHARTER, ETC.

Forfeiture of charter for non-user.

98. If a company incorporated by letters patent does not go into actual operation within two years after incorporation, or, for two consecutive years, does not use its corporate powers, such powers, except so far as is necessary for winding up the company, shall be forfeited, and its name, in whole or in part, may be granted to another company, notwithstanding anything contained in section 10 of this Act; and, in any action or proceeding where such non-user is alleged, proof of user shall lie upon the company, provided, however, that no such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of such forfeiture.

Revocation of charter.

99. The charter of a company incorporated by letters patent may, at any time, be declared to be forfeited, and may be revoked and made void by an order of the Lieutenant-Governor in Council on sufficient cause being shown to the Lieutenant-Governor in Council in that behalf, and such forfeiture, revocation and making void may be upon such conditions and subject to such provisions as to the Lieutenant-Governor may seem proper.

Individual liability for whole of the company's debts if business is carried on with less than five members.

100. If a company carries on business when the number of its shareholders is less than five for a period of six months after the number has been so reduced, every person who is a shareholder in the company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with less than five shareholders, shall be severally liable for the payment of the whole of the debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of the company or of any other shareholder; but any shareholder who has become aware that the company is carrying on business when the number of its shareholders is less than five, may serve a protest in writing on the company, and may, by registered letter, notify the Provincial Secretary of such protest

having been served, and of the facts upon which it is based, and such shareholder may thereby, and not otherwise, from the date of his said protest and notification, exonerate himself from liability; and if after notice from the Provincial Secretary the company refuses or neglects to bring the number of its shareholders up to five, such refusal or neglect may, upon the report of the Provincial Secretary, be regarded by the Lieutenant-Governor in Council as sufficient cause for the revocation of the company's charter.

A charter may be surrendered.

101. The charter of a company incorporated by letters patent may be surrendered if the company proves to the satisfaction of the Lieutenant-Governor in Council:

(*a*) That it has no debts existing, or other rights in question, or,

(*b*) That it has parted with its property, divided its assets rateably amongst its shareholders, and has no debts, or liabilities, or,

(*c*) That the debts and obligations of the company have been duly provided for or protected, or that the creditors of the company or other persons holding them consent,

and that the company has given notice of the application for acceptance of surrender as may be required by regulations made under section 11 of this Act; and the Lieutenant-Governor in Council, upon a due compliance with the provisions of this section, may accept and direct the cancellation of the charter, and may, by his order, fix a date upon and from which the company shall be deemed to be dissolved, and the company shall thereby and thereupon become dissolved accordingly.

Extension of Powers.

Additional powers which may be granted by supplementary letters patent.

102. In case a resolution, authorizing an application by petition 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 consider-

ing 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:

(*a*) 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.

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

(*c*) Varying any provision contained in the letters patent, so long as the alteration desired is not contrary to the provisions of this Act;

(*d*) Making provision for any other matter or thing in respect of which provision might be made by original letters patent under this Act.

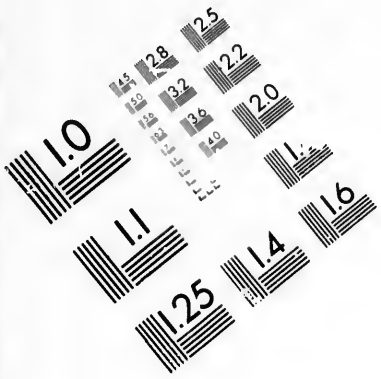
AMALGAMATION OF COMPANIES.

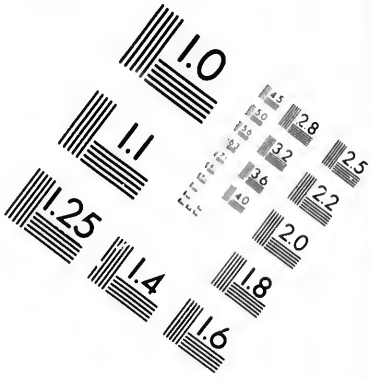
Amalgamation of companies.

103. (1) Any two or more companies incorporated under the laws of this province, and having objects within the scope of this Act, may, in the manner herein provided, unite, amalgamate and consolidate their stock, property, businesses and franchises, and may enter into all contracts and agreements therewith necessary to such union and amalgamation.

Joint agreement between directors proposing to amalgamate, etc.

(2) The directors of the companies proposing to so amalgamate or consolidate as aforesaid, may enter into a joint agreement, to be executed under the corporate seal of each of the said companies, for the amalgamation and consolidation of the said companies, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new company, of which the last word shall be the word "Limited," the number of the directors thereof and who shall be the first directors thereof and their places of residence, the number





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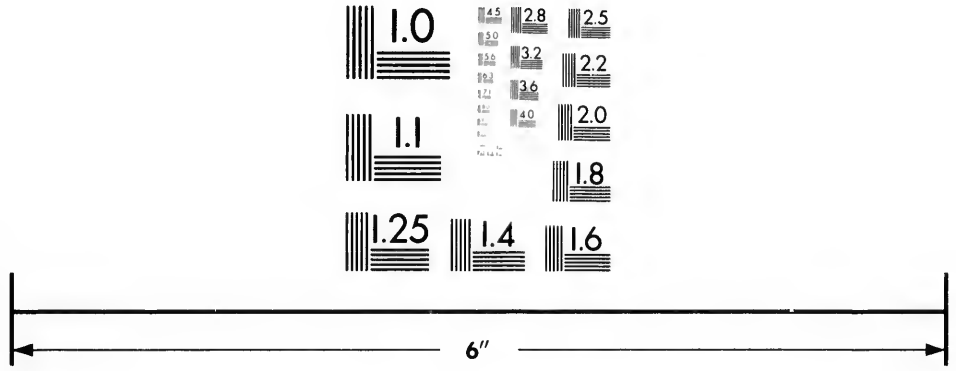

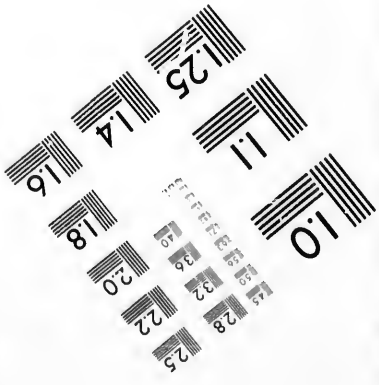

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of shares of the capital stock, the amount of par value of each share, and the manner of converting the capital stock of each of the said corporations into that of the new corporation, and how, and when directors of the new corporation shall be elected, with such other details as they deem necessary to perfect the new organization and the consolidation and amalgamation of the said companies and the after management and working thereof.

To be submitted to shareholders of each company for consideration.

(3) The agreement shall be submitted to the shareholders of each of the said companies at a meeting thereof called in accordance with the by-laws, and held separately, for the purpose of taking the same into consideration.

Vote by ballot to be taken.

(4) At such meetings of shareholders, the agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, and each share shall entitle the holder thereof to one vote, and the ballots shall be cast in person or by proxy; and if two-thirds of the votes of all the shareholders of each of such companies are for the adoption of the agreement, then that fact shall be certified upon the agreement by the secretary of each of such companies under the corporate seal thereof; and if the agreement is so adopted at the respective meetings of the shareholders of each of the said companies, the companies by their joint petition may, through the Provincial Secretary, apply to the Lieutenant-Governor in Council for letters patent confirming the said agreement.

Upon completion of consolidation, the new corporation to possess rights, powers, etc., and be subject to duties, etc., of each of united societies.

(5) With their joint petition, the companies shall deposit with the Provincial Secretary, an original of the agreement, and shall furnish such further and other documents and evidence in this behalf as the Provincial Secretary may require, and the Lieutenant-Governor in Council may by letters patent confirm such agreement, and on and from the date of the letters patent, confirming the said agreement, and from such date only, the said companies shall be deemed and taken to be amalgamated and consolidated, and to form one company by the

name in the said agreement and letters patent provided, and the consolidated company shall possess all the properties, real, personal and mixed, rights privileges and franchises, and be subject to all the liabilities, contracts, disabilities and duties of each of the companies so consolidated.

Proviso as to rights of creditors, etc., of either of corporations.

(6) All rights of creditors to obtain payment of their claims out of the property, rights and assets of the company liable for such claims, and all liens upon the property, rights and assets of either of such companies shall be unimpaired by such consolidation, and all debts, contracts, liabilities and duties of either of the said companies shall thenceforth attach to the consolidated company and be enforced against it to the same extent as if the said debts, contracts, liabilities and duties had been incurred or contracted by it.

Proviso as to actions against.

(7) No action or proceeding, 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.

Notice of amalgamation.

(8) The Provincial Secretary shall give such a notice respecting the amalgamation of the said companies as the regulations made under section 11 of this Act may prescribe.

RE-INCORPORATION BY INCORPORATED COMPANIES.

Subsisting companies may apply under this Act.

104. (1) 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 application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor in Council, upon proof that 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.

Existing companies may apply for letters patent with extended powers.

105. 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.

LETTERS PATENT TO COMPANIES INCORPORATED BY SPECIAL ACT.

Letters patent for certain purposes may be granted to companies incorporated under special Acts.

106. Where any company has been incorporated by a special Act for purposes or objects within the scope of this Act, then, in case a resolution authorizing an application by petition 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.

Certain powers may be granted by license to extra-provincial companies.

107. (1) Any company, incorporated otherwise than by or under the authority of an Act of the Legislature of Ontario, desiring to carry on any of its business which is within the scope of this Act, within the Province of Ontario, may, through the Provincial Secretary, petition the Lieutenant-Governor in Council for a license so to do, and the Lieutenant-Governor in Council may thereupon authorize such company to use, exercise, and enjoy any powers, privileges and rights set forth in the said license.

Copy of Act or other instrument of incorporation, with power of attorney to be deposited with Provincial Secretary.

(2) No such license shall be issued until such company has deposited in the office of the Provincial Secretary a true copy of the Act, charter or other instrument incorporating the company, verified in the manner which may be satisfactory to the Lieutenant-Governor in Council, together with a duly executed power of attorney, under its common seal, empowering some person therein named and residing in the Province of Ontario to act as its attorney and to sue and be sued, plead or be impleaded in any Court, and, generally, on behalf of such company and within the said province, to accept service of process and to receive all lawful notices, and for the purposes aforesaid to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney, and such company may from time to time by a new or other power of attorney, executed and deposited as aforesaid, appoint another attorney within the province for the purposes aforesaid to replace the attorney formerly appointed.

Power of Attorney.

Notice.

(3) Such notice of the granting of the said license shall be given forthwith by the Provincial Secretary in *The Gazette* as the regulations made under section 11 of this Act hereof may prescribe.

Evidence of having been licensed.

(4) The license, or any exemplification thereof under the Great Seal of Ontario, shall be sufficient evidence in any proceeding in any Court in this province, of the due licensing of the company as aforesaid.

Return.

(5) A company licensed as aforesaid shall, on or before the 8th day of February in every year during the continuance of such license, make to the Provincial Secretary a statement, according to a form approved of by the Lieutenant-Governor in Council for the purpose, containing information similar to that required under section 79 of this Act, or so much thereof as may be prescribed in such form.

(6) If a company makes default in complying with the provisions of this section, the company shall incur a penalty of $20 for every day during which the default

The petition required by sub-section one should be signed by the Executive Officers of the company, and sealed with its common seal. It should set out such material facts as the date and place of incorporation, the law or laws under which it was incorporated; the powers of the company; its capital, specifying the amount subscribed for and paid up, etc., etc. Evidence of the authority of the Executive to make the application should also be furnished, and may consist of a duly verified resolution of the company, authorizing the application for license. The copy of the Act, charter, or other instrument incorporating the company should be verified by the officer issuing or having the custody of the originals. For instance, a company incorporated at Ottawa must have the copy of its charter verified by the Department of the Secretary of State; a company incorporated in England or Scotland must furnish a copy of its Memorandum and Articles of Association, verified by the Registrar of Joint Stock Companies; while a company incorporated in any one of the United States must furnish a copy of its charter or instrument of incorporation, verified by the Secretary of State, or other proper State officer. Notarial or other unofficial copies of these documents cannot under the practice of the Department be accepted.

The Power of Attorney should follow as nearly as possible the language of the Statute, and should be duly verified.

The fee for the license will depend upon the nominal capital of the company, and will be according to the Schedule given on page 163.

No. 56.—FORM OF PETITION FOR LICENSE.

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

The Petition of.....Limited, Humbly sheweth:

1. That your petitioners were incorporated under the [1] Companies, Act of the Dominion of Canada, under the name of ..... Limited.

2. That the head office of your petitioners is and always has been in the City of.....

3. That the authorized capital stock of your petitioners is the sum of $..... of which $..... has been subscribed and issued and fully paid up.

4. That the business carried on by your petitioners is a..... .....business.

5. That by the charter of your petitioners they are authorized to carry on the following business (*as* Dealers in Hardware, Iron, and General Merchandise).

1 Here set out the law or laws under which the Company was incorporated.

6. That your petitioners desire that a license may be issued to them under the provisions of sec. 107 of R. S. O. 1897, chap. 191, authorizing your petitioners to use, exercise and enjoy all the powers, privileges and rights as granted to them by the Charter aforesaid.

Your petitioners therefore pray that Your Honour will be pleased to issue a license to your petitioners authorizing your petitioners to use, exercise and enjoy all the powers, privileges and rights set forth in the Charter as aforesaid.

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

{Seal.}

.....
For signature of President.

.....
For signature of Secretary.

No. 57.—FORM OF POWER OF ATTORNEY.

Know all men by these presents, that The..... Limited, for causes and considerations it thereunto moving, has made, nominated, constituted and appointed, and by these presents does make, nominate, constitute and appoint.....of the City of....., Merchant, the true and lawful attorney of The ....Limited, to act as its attorney, and to sue or to be sued, plead or be impleaded, in any Court, and generally on its behalf and within the Province of Ontario, to accept service of process and to receive all lawful notices, and for the purposes aforesaid to do all acts, and to execute all deeds, and other instruments, relating to the matters within the scope of this Power of Attorney; and the said The..... .....Limited, do hereby confirm and agree to confirm all and singular what its attorney aforesaid shall lawfully do or cause to be done in the premises by virtue hereof.

In witness thereof the corporate seal of The ..... Limited, has been hereunto affixed, and the hands of its President and Secretary have hereunto been set this.....day of..... in the year of our Lord one thousand eight hundred and ninety.....

..... Witness.

{Seal.}

....
For signature of President.

.....
For signature of Secretary.

continues, and every director, manager, or secretary of the company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

Penalty for default.

(7) The Lieutenant-Governor in Council may, by an Order in Council, to be published by the Provincial Secretary in *The Gazette*, and otherwise as may be prescribed by the said regulations, suspend, or revoke and make null and void any license granted, under this section, to any company which refuses or fails to comply with any of the provisions of this section, and, notwithstanding such suspension or revocation, the rights of creditors of the company shall remain as at the time of such suspension or revocation.

SCHEDULE A. *(Section 10.)*

(To be executed in duplicate; one duplicate to be deposited in the office of the Provincial Secretary).

THE.....COMPANY OF.....LIMITED.

MEMORANDUM OF AGREEMENT AND STOCK BOOK.

WE the undersigned do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of *The Ontario Companies' Act* under the name of THE..... COMPANY OF.....LIMITED, or such other name as the Lieutenant-Governor in Council may give to the Company, with a capital of.....dollars, divided into.....shares of.....dollars each.

AND WE DO hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

Name of Subscriber.	Seal.	Amount of Subscription	Date and place of Subscription		Residence of Subscriber.	Name of Witness.
			Date.	Place.		
		$				

SCHEDULE B.

(Section 10).

PETITION.

TO HIS HONOUR .....ETC., ETC., ETC.

Lieutenant-Governor of the Province of Ontario in Council:

THE PETITION of.....

.....

.....

..... *Humbly sheweth as follows:—*

1. Your Petitioners are desirous of obtaining by letters patent, under the Great Seal, a charter, under the provisions of *The Ontario Companies' Act*, constituting Your Petitioners and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of THE..... COMPANY, LIMITED, or such other name as shall appear to Your Honour to be proper in the premises.

2. Your Petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership, or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.*

3. Your Petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of Your Petitioners as aforesaid.†

4. Your Petitioners are of the full age of twenty-one years.

5. The object for which incorporation as aforesaid is sought by Your Petitioners is to.....

.....

6. The undertaking of the company will be carried on at (*or* from) ....., which is (*or* are) within the Province of Ontario.

7. The head office of the Company will be at.....

8. The amount of the capital stock of the Company is to be..... dollars.

9. The said stock is to be divided into ..... shares of .....dollars each.

---

* Add here when proper "except the name '.....,' and Your Petitioners elsewhere show that they have received the necessary consent in writing under section 10 of the said Act to the use of the name applied for."

† If otherwise, then the interests liable to be so affected shall be set out at length by affidavit to be briefly referred to here.

10. The number of the Board of Directors of the Company is to be .....

11. The said ..... are to be the provisional directors of the Company.

12. By subscribing therefor in a Memorandum of Agreement, duly executed, in duplicate, with a view to the incorporation of the Company, Your Petitioners have taken the amounts of stock set opposite their names.

Petitioners.	Amount of stock subscribed for.
.....	$ .....
.....	$ .....
.....	$ .....
.....	$ .....

NOTE.—If any payment, in cash or otherwise, has actually been made by any petitioner on his stock, particulars thereof may be set out here.

YOUR PETITIONERS therefore pray that Your Honour may be pleased, by Letters Patent under the Great Seal, to grant a Charter to Your Petitioners constituting Your Petitioners, and such others as have or may become subscribers in the Memorandum of Agreement and stock-book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

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

Signatures of Witnesses.	Signatures of Petitioners.
.....	.....
.....	.....
.....	.....
.....	.....

Dated at..... .....this..... day of.....18

FORMS.

NOTE.—The following Forms are drawn so as to actually represent the steps taken in the formation of a company by the name of The Hamilton Stove Company, Limited, and also in 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 and furnaces 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 John street north, 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 east, Hamilton:—

To the Provisional 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, 1st May, 1897.

FORM NO. 2.

THE HAMILTON STOVE COMPANY, LIMITED.

Office, No. 100 King street east,
Hamilton, 10th May, 1897.

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

THOMAS TAYLOR,
Secretary.

To.....
Hamilton.

FORM NO. 3.

INSTALMENT SCRIP.

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

(Instalment Scrip and Stock Certificates should be bound in the same manner as bank cheques are).

Stub.

THE

HAMILTON STOVE COMPANY,

LIMITED.

Instalment Scrip.

No. 1.

Dated 18th May, 1897.

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
$5,990. 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 May, 1897.

THOMAS TAYLOR, *Secretary.* (Seal.) WILLIAM JOHN THOMAS, *President.*

FORM NO. 4.

STOCK CERTIFICATE.

(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 June, 1897.

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 under the Ontario Companies' Act.

THIS CERTIFIES *that Samuel Andrew Thomson, of the City of Hamilton, is the owner of Two Fully Paid Shares of the Capital Stock of the Hamilton Stove Company, Limited, transferable only on the books of the Company in person or by attorney on surrender of this Certificate.*

IN WITNESS WHEREOF, *the said Company has caused this Certificate to be signed by the duly authorized officers, under the corporate seal of the Company, at Hamilton, Ontario, this first day of June, 1897.*

{Seal.}

THOMAS TAYLOR, *Secretary.*

WILLIAM JOHN THOMAS, *President.*

See the Ontario Mining Companies' Incorporation Act for certain additions to be made to stock certificates, when company incorporated under that Act.

FORM NO. 5.

PETITION FOR LETTERS PATENT.

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

The petition of William John Thomas, Foundryman, Samuel Andrew Thomson, Machinist; Thomas Taylor, Gentleman; and Thomas Bright Taylor, Stove Manufacturer, all of the City of Hamilton, in the County of Wentworth, and Province of Ontario; Henry Victor Taylor, of the City of New York, in the County of New York, in the State of New York, one of the United States of America, Moulder, and George Peter Sharpe, of the City of Edinburgh, in the County of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, Capitalist,

Humbly Sheweth:

1. That your Petitioners are desirous of obtaining by Letters Patent, under the Great Seal, a Charter under the provisions of the Act respecting the Incorporation and Regulation of Joint Stock Companies (*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, or such other name as shall appear to Your Honour to be proper in the premises.

2. That Your Petitioners have satisfied themselves and are assured that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive (*b*).

3. That Your Petitioners have satisfied themselves and are assured that no public or private interest will be prejudicially affected by the incorporation of your Petitioners as aforesaid (*c*).

4. That Your Petitioners are of the full age of twenty-one years.

5. That the object for which incorporation is sought by Your Petitioners is to manufacture and sell stoves and furnaces.

(*a*) If incorporation is sought under any other Act as well, its title should be interlined here, as for instance, "The Ontario Mining Companies' Incorporation Act," or "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*) Add here, when proper, "except the name '.....,' and your Petitioners elsewhere show that they have received the necessary consent in writing under section 10 of the said Act to the use of the name applied for."

If otherwise, then the interests liable to be so affected shall be set out at length by affidavit to be briefly referred to here.

See the Ontario Mining Companies' Incorporation Act for certain additions to be made to company incorporated under that Act.

6. That the undertaking of the Company will be carried on at the city of Hamilton aforesaid, which is within the Province of Ontario.

7. That the head office of the Company will be at the said City of Hamilton.

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

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

10. That the number of the Board of Directors of the Company is to be three.

11. That the said William John Thomas, Thomas Taylor and Thomas Bright Taylor are to be the Provisional Directors of the said Company (*d*).

12. That by subscribing therefor in a memorandum of agreement and stock book, duly executed in duplicate, with a view to the incorporation of the Company, Your Petitioners have taken the amounts of stock set opposite their respective names as follow :

PETITIONERS.	Amount of stock subscribed for.
William John Thomas	Fifty-nine thousand nine hundred dollars.
Samuel Andrew Thomson..	One hundred dollars.
Thomas Taylor	Sixty thousand dollars.
Thomas Bright Taylor	Fifty-nine thousand nine hundred dollars.
Henry Victor Taylor	One hundred dollars.
George Peter Sharpe	Twenty thousand dollars.
*	

* If any payment in cash or otherwise, has, *as a matter of fact*, actually been made by any petitioner on his stock, and it is considered expedient to set it out, particulars thereof may be written here.

Your Petitioners therefor pray that Your Honour may be pleased, by Letters Patent under the Great Seal, to grant a Charter to your Petitioners, constituting your Petitioners and such others as have or may become subscribers in memorandum of agreement and stock-book of the Company thereby created, a body corporate and politic for the due carrying out of the undertaking aforesaid.

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

(*d*) 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.*

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, By his Attorney, HERBERT MASON.
JOHN G. GIBSON, as to	G. P. SHARPE, By his Attorney, HERBERT MASON.

Dated at Hamilton this 15th day of May, 1897.

Witnesses, in their verifying affidavits, must identify each signature *in the form* in which it was made.

Petitioners will use their ordinary signatures, and see that their names, etc., in the preamble are correctly stated in full.

FORM NO. 6.

AFFIDAVIT VERIFYING PETITION; AND AS TO NAME OF COMPANY.

PROVINCE OF ONTARIO, County of Wentworth, To WIT: } IN THE MATTER of the application of William John Thomas and others for the incorporation by the grant of Letters Patent of The Hamilton Stove Company, Limited.

I, William John Thomas, of the City of Hamilton, in the County of Wentworth, Foundryman, make oath and say:—

1. That I am one of the applicants herein.

2. That I have a knowledge of the matter, and that the allegations in the within Petition contained are, to the best of my knowledge and belief, true in substance and in fact.

3. That I am informed, and believe that each Petitioner is of the full age of twenty-one years.

4. That the proposed corporate name of the Company is not on any public ground objectionable, and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the Company as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this seventeenth day of May, A. D. 1897. } W. J. THOMAS.

JOHN ROE,

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

FORM NO. 7.

POWER OF ATTORNEY TO SIGN PETITION AND STOCK-BOOK AND MEMORANDUM OF AGREEMENT (a).

Know all men by these presents that I, George Peter Sharpe, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, do hereby make, constitute and appoint Herbert Mason, of the City of Hamilton, in the Province of Ontario, Esquire, my true and lawful Attorney, for me and in my name and stead to sign the petition of William John Thomas and others now seeking incorporation under the name of The Hamilton Stove Company, Limited, under the provisions of The Ontario Companies' Act, and also in my name and as my act and deed to sign the Memorandum of Agreement and Stock-Book of the said Company for four hundred shares of the capital stock thereof at fifty dollars per share, and generally to do all lawful acts requisite and necessary for effecting the premises, hereby agreeing to ratify and confirm all that my said Attorney shall do herein.

In witness whereof, I have hereunto set my hand and seal at Edinburgh this second day of May, A.D. 1897.

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

{ Seal. }

A similar Power of Attorney must be furnished by Mr. H. V. Taylor.

FORM NO. 8.

AFFIDAVIT VERIFYING POWER OF ATTORNEY.

CITY OF EDINBURGH, County of Edinburgh, Scotland. } IN THE MATTER of the Power of Attorney given by George Peter Sharpe, of the City of Edinburgh, Capitalist, to Herbert Mason, of the City of Toronto, in the Province of Ontario, Esquire.

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

(a) The power of attorney should in every case be given for the specific purpose in view, as shown above, and not in general terms, or for general business, as it will be retained by the Provincial Secretary.

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, which must accompany the application.

This rule also applies to the Memorandum of Agreement and Stock-Book.

1. That I was personally present and did see the Power of Attorney hereunto annexed duly signed and sealed by George Peter Sharpe, one of the applicants for incorporation as The Hamilton Stove Company, Limited.

2. That I know the said George Peter Sharpe.

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

4. That the signature "Geo. Inglis," attesting the signature aforesaid as the witness thereto, is the true signature of me, this deponent.

Sworn before me at the City of Edinburgh, in the County of Edinburgh, in the Kingdom of Scotland, this second day of May, 1892.

GEO. INGLIS.

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

A similar affidavit should be furnished verifying Mr. Taylor's Power of Attorney.

FORM NO. 9.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION.

PROVINCE OF ONTARIO, County of Wentworth, To Wit.

IN THE MATTER of the application, under The Ontario Companies' Act, of 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, Samuel Andrew Thomson, Thomas Taylor and Thomas Bright Taylor, four of the applicants for incorporation by Letters Patent of The Hamilton Stove Company, Limited, 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," "S. A. Thomson," "Thos. Taylor," and "Thos. B. Taylor," are the true signatures 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 seventeenth day of May, A.D. 1807.

A. F. LOBB.

JOHN ROE,
A Commissioner, etc.

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

FORM NO. 10.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION WHEN SIGNED UNDER POWER OF ATTORNEY.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit.

In the matter of the application under the Ontario Companies' Act of William John Thomas and others, for incorporation as The Hamilton Stove Company, Limited.

I, John George Gibson, of the City of Hamilton, in the County of Wentworth, Student-at-Law, make oath and say:

1. That I was personally present and did see Henry Victor Taylor, one of the applicants for incorporation by Letters Patent of the said Company, by his Attorney, Herbert Mason, duly authorized in that behalf, sign the petition hereunto annexed, and marked as Exhibit "A" to this, my affidavit.

2. That I was personally present and did see George Peter Sharpe, one of the applicants for incorporation by Letters Patent of the said Company, by his Attorney, Herbert Mason, duly authorized in that behalf, sign the petition hereunto annexed, and marked as Exhibit "A" to this, my affidavit.

3. That I know the said Herbert Mason.

4. That the signatures "H. V. Taylor" and "G. P. Sharpe" are of the proper handwriting of the said Herbert Mason.

5. That the signatures "Jno. G. Gibson," attesting the signatures hereinbefore mentioned, are the true signatures of me, this deponent.

Sworn before me at the City of Hamilton, in the County of Wentworth, this fifteenth day of May, A.D. 1897.

JOHN ROE,
A Commissioner, etc.

JNO. G. GIBSON.

FORM NO. 11.

THE HAMILTON STOVE COMPANY, LIMITED.

MEMORANDUM OF AGREEMENT AND STOCK-BOOK.

WE, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of *The Ontario Companies' Act* under the name of THE HAMILTON STOVE COMPANY, LIMITED, or such other name as the Lieutenant-Governor in Council may give to the Company, with a capital of two hundred thousand dollars, divided into four thousand shares of fifty dollars each.

AND WE DO hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names, as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.

In witness whereof we have signed.

Name of Subscriber	Seal.	Amount of Subscription. $	Date and Place of Subscription.		Residence of Subscriber.	Name of Witness.
			Date.	Place.		
W. J. Thomas	L.S.	59,900	15th May, 1897	Hamilton.	Hamilton.	A. F. Lobb.
Thos. Taylor	L.S.	60,000	15th " "	"	"	A. F. Lobb.
Thos. B. Taylor	L.S.	59,900	15th " "	"	"	A. F. Lobb.
S. A. Thomson	L.S.	100	17th " "	"	"	Jno. G. Gibson.
H. V. Taylor (by his Attorney, H. Mason)	L.S.	100	17th " "	"	New York.	Jno. G. Gibson.
G. P. Sharpe (by his Attorney, H. Mason)	L.S.	20,000	17th " "	"	Edinburgh, Scotland.	Jno. G. Gibson.

FORM NO. 12.

AFFIDAVIT VERIFYING SIGNATURES TO MEMORANDUM OF AGREEMENT AND STOCK-BOOK.

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

I, 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, Samuel Andrew Thomson, Thomas Taylor, and Thomas Bright Taylor, therein named, sign the Memorandum of Agreement and Stock-Book of the said proposed Company, marked as exhibit "A" to this, my affidavit.

2. That I know the said parties.

3. That the signatures "W. J. Thomas," "S. A. Thomson," "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 seventeenth day of May, A.D. 1897. | 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.

BY-LAW FOR INCREASE OF CAPITAL STOCK.

BY-LAW NUMBER 29.

A By-law to increase the capital stock of The Hamilton Stove Company, Limited.

Whereas the capital stock of The Hamilton Stove Company, Limited, is two hundred thousand dollars, divided into four thousand shares of fifty dollars each, of which nine-tenths has been taken up, and ten per centum thereon paid in ;

And whereas, for the due carrying out of the objects of the Company, the said Company considers it requisite to make a by-law increasing the capital stock of the Company to the sum of two hundred and fifty thousand dollars ;

Now, therefore, The Hamilton Stove Company, Limited, enacts as follows, that is to say:

1. That the capital stock of the said Company be, and the same is hereby increased from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock at fifty dollars each.

2. That the new shares be issued and allotted in such manner and proportion as the Directors of the Company may deem proper for the benefit of the Company.

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

Passed this third day of June, A.D. 1897.

W. J. THOMAS,
President.

Seal.

THOS. TAYLOR,
Secretary.

Hamilton, 3rd June, 1897.

The original by-law must be produced to the Provincial Secretary. A copy of the by-law to be retained by the Provincial Secretary should accompany the original, and should have appended to it the words:

"Certified under the Seal of the said Company to the Honorable the Provincial Secretary."

W. J. THOMAS,
President.

Seal.

THOS. TAYLOR.
Secretary.

FORM NO. 14.

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 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 By-law Number 29, passed on the 3rd June, 1897, by the said Company, for the purpose of increasing the capital stock of the said Com-

pany from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars, by the issue of one thousand shares of new stock of fifty dollars each.

3. That the said By-law was sanctioned by a vote of not less than two-thirds in value of the Shareholders of the said Company, present in person or by proxy at a general meeting of the Company duly called for considering the By-law, and held on the 11th July, 1897.

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 12
day of July, 1897. THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

This affidavit may be adapted for use in case of the increase or decrease of the number of Directors, or the removal of the head office of the Company.

FORM NO. 15.

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

"C"

BY-LAWS Nos. 2 & 3.

Whereas, the Directors of The Hamilton Stove Company, Limited, deem it expedient that certain by-laws for regulating the affairs of the Company should be made. Now, therefore, be it enacted, and it is hereby enacted:

2. That a general meeting of the Shareholders may be called at any time by the Directors, when they may deem the same necessary or advisable for any purpose, not contrary to law, or the letters patent of the Company; 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 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. 16.

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 Nos. 2 and 3, regulating the calling of special general meetings of the Company.

Sworn before me at the City of Hamilton, in the County of Wentworth, this third day of June, 1897. } THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM NO. 17.

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 Company 3rd of June, 1897), for the increase of the capital stock of the Company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars, by the issue of one thousand shares of new stock at fifty dollars each, will be held at the Company's Office, No. 100 King street east, in the City of Hamilton, on Wednesday, the 11th day of July next, at the hour of 10 o'clock in the forenoon.

By Order.
THOS. TAYLOR,
Secretary.

This form may be used for notice in *The Ontario Gazette* if necessary.

FORM NO. 18.

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 July, A.D. 1897.

3. That the said meeting was duly called pursuant to the By-laws (*a*) of the Company, by giving notice thereof on the 1st July, 1897, 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.

5. That said meeting was called for considering and sanctioning By-law No. 29 of the said Company, increasing the capital stock of the Company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock of fifty dollars each.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 11th day of July, A.D. 1897.

THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM NO. 19.

AFFIDAVIT PROVING DUE CALLING OF GENERAL MEETING WHERE NO BY-LAW FOR THE PURPOSE HAS BEEN PASSED (*b*), 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 July, 1897, 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 June, 1897) (*c*), increas-

(*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*.

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

(*c*) *Or* for increasing or decreasing the number of directors, *or* for, etc., etc., *as the case may be*.

ing the capital stock of the Company from the sum of two hundred thousand dollars to the sum of two hundred and fifty thousand dollars by the issue of one thousand shares of new stock of fifty dollars each, was inserted in *The Hamilton Times*, a newspaper published at the head office and chief place of business of the Company, on the 1st day of July, 1897.

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) (*a*).

5. That the clipping from the said *The Ontario Gazette*, attached to this, my affidavit, and now shown to me, marked "B," is a true and correct copy of the said notice given as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 11th day of July, A.D. 1897.

THOS. TAYLOR.

JOHN ROE,
A Commissioner, etc.

FORM NO. 20.

PETITION FOR SUPPLEMENTARY LETTERS PATENT INCREASING CAPITAL STOCK.

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

The Petition of the Hamilton Stove Company, Limited,

Humbly Sheweth:

1. That The Hamilton Stove Company, Limited, was incorporated under the Ontario Joint Stock Companies' Letters Patent Act by Letters Patent, dated 21st March, A.D. 1897.

2. That the capital stock of the Company was, by the said Letters Patent, fixed at two hundred thousand dollars, of which nine-tenths has been taken up and ten per centum thereon paid in.

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

4. That the Company made, on the third day of June, A.D. 1897, a By-law increasing the capital stock of the Company to the sum of

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

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.

5. That the said By-law was sanctioned by a vote of not less than two-thirds in value of the Shareholders at a general meeting of the Company duly called for considering the same, held at the City of Hamilton on the 11th day of July, A.D. 1897.

Your Petitioner therefore prays that Your Honor may be pleased to grant, under the Great Seal, Supplementary Letters Patent confirming the said By-law.

And Your Petitioner, as in duty bound, will ever pray.

Witness:
JOHN ROE.

Seal.

W. J. THOMAS,
President.
THOS. TAYLOR,
Secretary.

Dated at Hamilton this eleventh day of July, A.D. 1897.

FORM NO. 21.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION FOR SUPPLEMENTARY LETTERS PATENT.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit.

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

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

1. That I was personally present and did see William John Thomas, as the President, and Thomas Taylor, as the Secretary of the said Company, sign, and seal with the Company's Common Seal, the Petition for Supplementary Letters Patent, marked as Exhibit "A" to this, my affidavit.

2. That I know the said parties.

3. That the signatures "W. J. Thomas" and "Thos. Taylor" are the true signatures of the said parties.

4. That the signature "John Roe," attesting the signatures hereinbefore mentioned, is the true signature of me, this deponent.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 11th day of July, 1897.

JOHN ROE.

R. W. EVERETT,
A Commissioner, etc.

FORM NO. 22.

AFFIDAVIT RESPECTING *BONA FIDE* CHARACTER OF INCREASE OF CAPITAL STOCK.

PROVINCE OF ONTARIO,
County of Wentworth,
To Wit:

In the matter of the petition of The Hamilton Stove Company, Limited, for Supplementary Letters Patent to confirm a By-law for the increase of the capital stock thereof.

I, William John Thomas, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That I am the President of the Hamilton Stove Company, Limited, and that I have a knowledge of the matters herein deposed to.

2. That nine-tenths of the capital stock of the Company has been taken up, and ten per centum thereon paid in.

3. That the present capital of the Company is insufficient for the purposes of the Company.

4. That the proposed increase in the capital stock of the Company is *bona fide*, and in the opinion of the Company requisite and necessary for the due carrying out of the objects of the Company.

5. That the allegations in the said petition contained are, to the best of my knowledge and belief, true in substance and in fact.

Sworn before me at the City of Hamilton, in the County of Wentworth, this eleventh day of July, A.D. 1897.

W. J. THOMAS.

JOHN ROE,
A Commissioner, etc.

FORM NO. 23.

BY-LAW INCREASING (OR DECREASING) THE NUMBER OF DIRECTORS.

BY-LAW NUMBER 30.

Whereas the number of the Directors of The Hamilton Stove Company, Limited, is three (or, *as the case may be*), and it is expedient that the number should be increased;

Now, therefore, the said The Hamilton Stove Company, Limited, enacts as follows:

That the number of Directors of the said Company be and the same is hereby increased (*or*, decreased) to five.

Dated at Hamilton, this seventh day of June, A.D. 1897.

W. J. THOMAS,
President.

Seal.

THOS. TAYLOR,
Secretary.

Sanctioned this eleveth day of July, A.D. 1897.

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.

Affidavit verifying the By-law may be adapted from No. 14.

FORM NO. 24.

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

Under the provisions of The Ontario Companies' Act, The Hamilton Stove Company, Limited, hereby gives public notice that it has sanctioned a By-law for the purpose of increasing the number of Directors of the Company, of which the following is a true copy:

"Whereas the number of Directors of The Hamilton Stove Company, Limited, is three (or, *as the case may be*), and it is expedient that the number should be increased;

"Now, therefore, the said The Hamilton Stove Company, Limited, enacts as follows:

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

W. J. THOMAS,
President.

{Seal.} THOS. TAYLOR,
Secretary.

Dated at Hamilton
this eleventh day of July, A.D. 1897.

This notice may be adapted for publishing in *Ontario Gazette*, By-law changing head office.

FORM NO. 25.

AFFIDAVIT PROVING PUBLICATION IN *ONTARIO GAZETTE* OF BY-LAW CHANGING NUMBER OF DIRECTORS.

PROVINCE OF ONTARIO,
County of Wentworth
To Wit.

In the matter of the By-law of The Hamilton Stove Company, Limited, changing the number of the Directors of the said Company.

I, Thomas Taylor, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say:

1. That I am the Secretary of the said The Hamilton Stove Company, Limited.

2. That the by-law made by the said Company on the seventh day of June, 1897, increasing the number of Directors thereof from three to five, was published in *The Ontario Gazette* on the 13th day of July, A.D. 1897.

3. That the clipping from the said *The Ontario Gazette*, attached to this, my affidavit, and now shown to me marked "B," is a true and correct copy of the said notice given as aforesaid.

Sworn before me at the City of Hamilton, in the County of Wentworth, this sixteenth day of July, A.D. 1897.

THOS. TAYLOR.

R. W. EVERETT,
A Commissioner, etc.

This affidavit may be adapted for use in case of the removal of the head office of the Company.

FORM NO. 26.

BY-LAW CHANGING HEAD OFFICE.

BY-LAW NUMBER 30.

Whereas the Head Office of The Hamilton Stove Company, Limited, is in the City of Hamilton, in the County of Wentworth, and Province of Ontario ;

And whereas it has been deemed expedient that the same should be changed to the City of Toronto, in the said Province ;

Therefore The Hamilton Stove Company, Limited, enacts as follows :

1. That the Head Office of The Hamilton Stove Company, Limited, be and the same is hereby changed from the City of Hamilton to the City of Toronto.

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

Passed this 3rd day of July, A.D. 1897.

W. J. THOMAS,
President.

(Seal.)

THOS. TAYLOR,
Secretary.

Hamilton, 3rd July, 1897.

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.

Affidavit verifying the By-law may be adapted from No. 14.

FORM NO. 27.

PETITION FOR ORDER-IN-COUNCIL CHANGING NAME OF COMPANY.

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

The petition of the Hamilton Stove Company, Limited,

Humbly Sheweth:

1. That The Hamilton Stove Company, Limited, was incorporated under a general Act (*a*), viz., The Ontario Joint Stock Companies' Letters Patent Act, by Letters Patent under the Great Seal, bearing date the twenty-first day of March, A.D. 1897.

2. That Your Petitioner is desirous of changing its corporate name to that of The Toronto Stove Company, Limited.

3. That Your Petitioner is in a solvent condition, as is shown by the verified statement in General Balance Sheet of the Company, hereto annexed.

4. That the change desired by Your Petitioner is not for any improper purpose, and is not otherwise objectionable, the object of Your Petitioner 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 Petitioner therefore prays that Your Honor will be pleased, by Order-in-Council, to change the corporate name of Your Petitioner from that of "The Hamilton Stove Company, Limited," to that of "The Toronto Stove Company, Limited."

And Your Petitioner, as in duty bound, will ever pray.

W. J. THOMAS,
President.

{Seal.}

THOS. TAYLOR,
Secretary.

Dated at Hamilton,
25th July, A.D. 1897.

FORM NO. 28.

AFFIDAVIT VERIFYING SIGNATURES TO PETITION.

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 about to carry on business at the City of Toronto, for an Order-in-Council changing its name.

(*a*) If Company was incorporated under some other Act, insert title here.

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

1. That I was personally present, and did see William John Thomas and Thomas Taylor, President and Secretary, respectively, of the said Company, sign the said Petition marked as Exhibit "A" hereto; and affix thereto the Common Seal of the Company, that I know the said parties, and that the signatures "W. J. Thomas" and "Thos. Taylor are of the true signatures of the said parties.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 25th day of July, A.D. 1897.

A. F. LOBB.

J. ROE,
A Commissioner, etc.

FORM NO. 29.

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 Honor 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. 1897.

W. J. THOMAS.

JOHN ROE,
A Commissioner, etc.

FORM NO. 30.

EVIDENCE OF THE COMPANY'S SOLVENCY.

This should consist of a Balance Sheet, or of a Statement specially prepared for the purpose, and bearing a date not more than six months from the date of the petition, 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, it being sworn by one cognizant of the fact that the financial position of the Company has not materially altered since the Balance Sheet was prepared; 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 facts to the correctness of which he swears.

FORM NO. 31.

NOTICE OF FIRST GENERAL MEETING.

The first General Meeting of the Shareholders of The Hamilton Stove Company, Limited, for the purpose of organizing the Company for the commencement of business, will be held at the Company's Office, No. 100 King street east, in the City of Hamilton, on Wednesday, the 20th day of May next, at the hour of 10 o'clock in the forenoon.

By order.
THOS. TAYLOR,
Secretary.

Hamilton,
30th April, 1897.

FORM NO. 32.

REQUISITION BY SHAREHOLDERS FOR SPECIAL GENERAL MEETING.

To the Directors of The Hamilton Stove Company, Limited.

We, the undersigned, members of the above-named Company, holding not less than one-tenth of the subscribed capital of the Company, do hereby, under the provisions of The Ontario Companies' Act, section 52, require you, within 21 days from the date hereof, to convene a special general meeting of the Company, to be held at the Company's Office in this City, for the purpose of considering, and, if thought fit, passing the subjoined resolution (or for such other business as shall be mentioned in this notice).

RESOLUTION.

"That," etc. (set it out.)

....
Signatures.

HAMILTON,
15th July, 1897.

FORM NO. 33.

BY-LAW UNDER ONTARIO MINING COMPANIES' INCORPORATION ACT, FIXING AND DECLARING RATE OF DISCOUNT.

By-law No. 16 of The Company, Limited (No personal liability), fixing and declaring the rate of discount at which shares are to be sold.

Whereas The Limited (No personal liability) deem it advantageous and proper to sell the unissued shares of the Company at a discount, as hereinafter provided.

Now, therefore, The Limited, enacts as follows:

That the unissued shares of the Company shall be sold at a discount on their par value of seventy-five per cent., and the price per share accordingly shall be twenty-five cents instead of one dollar.

Passed by the said Company this 12th day of October, A.D. 1897.

President.

L. S.

Secretary.

This By-law must be verified by an affidavit, which may be adapted from Form No. 14, and a copy of the By-law must be transmitted to the Provincial Secretary within 24 hours after it was sanctioned. As a matter of precaution, the Shareholder to whom such stock is issued should agree to be subject to the terms of this By-law.

FORM NO. 34.

ANOTHER BY-LAW UNDER ONTARIO MINING COMPANIES' INCORPORATION ACT, FIXING RATE OF DISCOUNT AND LIMITING TRANSFER OF SHARES.

By-law No. authorizing the sale of one hundred and fifty thousand shares of the capital stock of The Limited (No personal liability), at a discount of seventy-five per cent., and limiting the transfer of the same.

Whereas The Limited (No personal liability) deem it advantageous and proper to issue one hundred and fifty thousand shares of the capital stock of the said Company at a discount of seventy-five per cent., and to limit the transfer of the same until the 1st day of November, 1898.

Now, therefore, the said The Limited, enacts as follows:

That one hundred and fifty thousand shares fully paid-up and non-assessable in the capital stock of The

be issued at the price or sum of twenty-five cents each, and that the shares be allotted among the applicants therefor, or such of them as the said Directors may, by resolution from time to time, determine.

Such shares at twenty-five cents each shall be sold upon the express condition that the same shall be non-transferable until the first day of November 1898, without the previous consent of the Directors, and that the usual stock certificates shall not be issued therefor until the said first day of November, 1898, in order to provide that the said shares so sold at twenty-five cents each may not interfere with subsequent issues of stock at higher prices when deemed advisable.

Passed by the said Company this 12th day of November, A.D. 1897.

{Seal.} *President.*

Secretary.

Toronto, 12th May, 1897.

This By-law must be verified by an affidavit, which may be adapted from Form No. 14, and a copy of the By-law must be transmitted to the Provincial Secretary within 24 hours after it was sanctioned. As a matter of precaution, the Shareholder to whom such stock is issued should agree to be subject to the terms of this By-law.

FORM NO. 35.

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 } {Seal.}

For affidavit verifying, use Form No. 8.

FORM NO. 36.

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 and as my acts, all and every such other thing which may be necessary and requisite for procuring such incorporation.

And for all and every of the purposes aforesaid I 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.

For affidavit verifying, use Form No. 8.

FORM NO. 37.

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 r lation 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. '8

Signed, sealed and delivered in presence of }

{ Seal. }

For affidavit verifying, use Form No. 8.

FORM NO. 38.

PROXY.

THE 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 Hamilton Stove Company, Limited, hereby appoint and authorize Herbert Mason, of the City 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 Companies' 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, as soon as Letters Patent have been obtained by the said parties of the second part incorporating the said Company, all the rights granted unto by Letters Patent of invention, dated at the City of Ottawa, on the day of A.D. 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 hereinbefore mentioned and set forth.

In witness whereof, the said parties hereto have hereunto set their hands and seals at the of
in the of this day of
A.D. 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 Companies' Act, represented herein by
who are nominated as provisional directors of the said Company, and act herein as trustees for the said Company, of the second part.

Whereas the parties of the first part are the joint owners of the patent or the sole right to

and other purposes.

And whereas the parties of the first part are the Shareholders of the said proposed Company, and have paid up per cent. on all their shares therein, amounting in all to dollars, and they have agreed to sell the said patent or sole right to the said Company for the said sum of dollars of lawful money of Canada, payable as follows:

The said sum of dollars in cash, and the balance or sum of dollars, to be acknowledged by the said proposed company as received by them in cash, and as paid in on the said shares of the said parties of the first part, thereby making the said shares as paid up in full.

Now these presents witness that in consideration of the premises and of the said sum of dollars, and for the purpose of carrying out the said agreement, the parties of the first part do grant, assign, and transfer to the said parties of the second part, as such trustees and their assigns, the said patent and sole right to

and the said parties of the second part, representing herein the said proposed Company, do hereby acknowledge and admit that the said shares of the said parties of the first part are fully paid-up shares and unassessable.

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

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

FORM NO. 42.

ANOTHER AGREEMENT.

An agreement, made the day of between A. B., of of the one part, and C. D., on behalf of the below-mentioned Company, of the other part.

Whereas, the said C. D. and others are about to procure the formation, under the Ontario Companies' Acts, of a Company limited by shares, by the name of The Company, Limited, with a capital of $100,000, divided into 2,000 shares of $50 each.

Now, therefore, it is hereby agreed as follows:

1. The said A. B. shall sell and the said Company, when formed, shall purchase

[*Here will follow a description of the property or right.*]

2. The consideration for the said sale shall be $50,000—payable, as to $25,000, in cash, and, as to the residue, in fully paid-up shares of the Company.

3, 4, 5. [*Here will follow various clauses as to what evidence of title the vendor is to show, and when and where the purchase is to be completed, etc., etc.*]

6. If this agreement is not adopted by the Company before the day of next, either of the parties hereto may, by notice in writing to the other, rescind the same.

As witness the hands of the said parties hereto the day and year first above written.

C. D., mentioned in the above form, is a nominee of the persons who are about to form the Company. He may be one of them or a stranger. Such an agreement is commonly referred to as a "preliminary agreement."

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 Ontario Companies' Act.

Names of Shareholders alphabetically arranged.	Address.	Occupation.	Amount of Stock held.		Amount unpaid and still due 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 Signatures of Deponents.*)

, a J. P. in and for the County of

FORM NO. 45.

Specimen page—REGISTER OF SHAREHOLDERS (*a*).

DATE.		NAME.	ADDRESS.	CALLING.	REMARKS.
1	3/8	2½	2¼	2¼	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.	ADDRESS.	CALLING.	RETIRED.		REMARKS.
1	3/8	2½	2	2	5/8	3/8	2½

NOTE.—The figures in each column denote the proper breadth in inches or fractions of an inch of such column.

FORM NO. 47.

REGISTER OF TRANSFERS (*a*).

TO WHOM.			Date.	No. of Shares.	Paid in.	Unpaid.	FROM WHOM.		Remarks.
Name.	Calling.	Address.					Name.	Address.	
5	2	2	5/8 3/8	1 1/8	5/8 3/8	5/8 3/8	2 1/2	2 1/2	3 1/2

Margin for binding, say 2 inches.

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

No..... ..... paid the sum of .....Dollars

subject to the By-laws, Rules and Regulations of the Company already passed or hereafter to be passed by the said THE HAMILTON STOVE COMPANY, LIMITED.

WITNESS my hand, at the office of the Company, in the City of Hamilton, this .....day of .....in the year of our Lord, 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:*** .....

Power of Attorney Dated this.....day of.....189....

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)														

(a) Note.—These figures in each column denote the proper breadth in inches or fraction of an inch of such column.

FORM NO. 50.

NOTICE OF CALL.

I beg to give you notice that the Directors of The Company, Limited, have made a call of $5 per share, and that the same will be payable to Mr. , the Treasurer of the Company, at the Company's Office street, on the day of 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 COMPANY, 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 Company, 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

The loss should be proved by affidavit.

FORM NO. 53.

AGREEMENT APPOINTING SECRETARY OR MANAGER.

This agreement, made the day of , between The Company, Limited (hereinafter called the Company), of the one part, and A. B., of , of the other part. Whereas the Directors of the Company are empowered to appoint a secretary (or manager) of the Company, either for a fixed term or otherwise, and to fix and determine his remuneration, which may be by way of salary or otherwise.

Now it is hereby agreed as follows:

1. The said B. shall be secretary (or manager) of the Company for a term of years, to be computed from the date hereof.

2. There shall be paid by the Company to the said B., as such secretary (or manager) as aforesaid, a salary at the rate of $ per annum. Such salary shall commence from the date hereof, and shall be payable quarterly on every day of day of day of , and day of , the first of such quarterly payments to be made on the day of

3. The said B. shall, unless prevented by ill-health during the said term, devote the whole of his time, attention, and abilities to the business of the Company, and shall obey the orders, from time to time, of the Board of Directors of the Company, and in all respects conform to, and comply with, the directions and regulations given and made by them, and shall well and faithfully serve the Company, and use his utmost endeavors to promote the interests thereof.

4. The said B. shall, during his tenure of the said office, be entitled to leave of absence for a period in each year not exceeding weeks,

and, unless otherwise arranged between the Board of Directors of the Company and the said B., such leave of absence shall be granted in each year as follows, namely, from the day of to the day of , etc., etc. The aforesaid salary of the said B. shall continue notwithstanding such leave of absence.

5. Either of the parties hereto may determine this agreement by giving to the other not less than calendar months' notice in writing, and upon the expiration of the period specified in such notice, the said B. shall cease to be secretary (or manager) of the Company.

In witness, etc.

FORM NO. 54.

AUDITORS' CERTIFICATE.

To the President, Directors and Shareholders of THE TORONTO STOVE COMPANY, LIMITED.

GENTLEMEN,—We, the undersigned, having examined the securities and vouchers, and audited the books of the Company, certify that we have found them correct, and that the annexed balance sheet is a correct statement of the Company's affairs for the year ending the 30th of April, 1897.

JOSEPH BLAKELEY,
W. A. DOUGLAS, B.A.,
Auditors.

Toronto, 13th May, 1897.

FORM NO. 55.

EXAMPLES OF AGENDA FOR DIRECTORS' MEETINGS—p. 48.

To elect Chairman.

To appoint Secretary.

To approve design for seal.

To approve agreement for renting offices.

To appoint a Committee to buy books and furniture.

To appoint a Solicitor.

To appoint Bankers, and give directions as to opening account and signature of cheques thereon.

To consider and approve prospectus.

To draw cheques in favor of

To read and confirm minutes of last meeting.

To produce bank book showing credit of $

To consider applications for shares.

BY-LAWS.

As it is impossible to frame a set of by-laws that will be proper and sufficient for all kinds of companies organized under the laws of different Provinces, the following are given as examples of by-laws in general, which companies can alter to suit their respective circumstances and requirements. The first task of a person about to draw up a set of by-laws should be to examine carefully the charter of the company and the Statutes under which it is organized. After he has done that, he may derive some assistance from an examination of the following table. 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 fourth Wednesday in the month of January in each year, to receive the report of the Directors for the past year, to elect Directors for the ensuing year, and for all other general purposes relating to the management of the Company's affairs.

2. That a general meeting of the Shareholders may be called at any time by the Directors whenever they may deem the same necessary or advisable for any purposes not contrary to law, or the Letters Patent of the Company, and it is incumbent on the President to call a special meeting of the Shareholders whenever required so to do in writing by one-tenth 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 *Hamilton Times* (*a*), and also by mailing the same as a registered letter (*b*) duly addressed to each Shareholder at least ten days previous to such meeting.

(*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 Ontario companies having a capital not exceeding three thousand dollars.

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.

6. That questions at meetings shall be decided by a majority in value of the Shareholders present, either in person or by proxy, and in case the number of votes is equal, the President or Chairman shall have a deciding or casting vote.

DIRECTORS.

7. That the affairs of the Company shall be managed by a Board of three Directors, of whom two shall form a quorum.

8. That the President and Vice-President shall be chosen by the Directors from amongst themselves at the first board meeting after the annual meeting.

9. That the President shall, if present, preside at all meetings of the Company. He shall call meetings of the Board of Directors and Shareholders when necessary, and shall advise with and render such assistance to the manager as may be in his power. In his absence the Vice-President shall have and exercise all the rights and powers of the President. A Director may at any time summon a meeting of Directors.

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 forfeited stock shall thereupon become the property of the Company, and may be disposed of in such manner as the Company in general meeting think fit.

20. That receipts for payment of calls shall be issued from time to time as such payments are made, but stock certificates shall only be issued when shares are fully paid up, and both receipt and certificate shall be authenticated by the signatures of the President and Secretary, and sealed with the Company's seal.

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

(*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, subject to the provisions of the Statutes, be imposed by the Company in general meeting, or it may, in certain cases, be well to strike this by-law out altogether.

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.

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 list of all books kept by the Company and with a copy of the balance sheet and abstract of the affairs thereof and it shall be their duty to examine the same and make a report thereon to the Board as soon after the close of the financial year as possible, together with such suggestions or recommendations as they may think fit. Their remuneration shall be $..... each per annum.

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 197.

An Act respecting the Incorporation and Regulation of Mining Companies.

SHORT TITLE, s. 1.
APPLICATION OF ACT, s. 2.
INCORPORATION, s. 3.
POWERS OF COMPANIES, s. 4.
STOCK, ss. 5, 6.
  Subject to call, etc., s. 5 (2).
  Non-personal liability, s. 5 (3)-(5).
  Sale at a premium or discount, ss. 6, 7.
DIRECTORS' LIABILITY FOR WAGES, etc., s. 8.
RETURNS, s. 9.
EXTRA-PROVINCIAL COMPANIES, ss. 10, 11.
OFFENCES AND PENALTIES, ss. 7, 12.
  Sale of shares at discount, s. 7.
  False returns, s. 12.
COMPANIES FOR CONSTRUCTING WORKS ON MINING LANDS, s. 13.

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

Short title.

1. This Act may be cited as "*The Ontario Mining Companies Incorporation Act.*"

Application of Act.

2. All mining companies whether heretofore or hereafter incorporated under any general Act in force in Ontario shall be subject to the provisions of this Act.

Incorporation by Letters Patent, Rev. Stat. c. 191.

3. The Lieutenant-Governor in Council may, by letters patent under the Great Seal, grant a charter under *The Ontario Companies Act*, to any number of persons, not less than five, who petition therefor, constituting such persons, and others who may become shareholders in the company thereby created, a body corporate and politic, for the purpose of carrying on within the Province of Ontario, or any of the counties and districts therein, the business and operations of a mining, mill-

ing, reduction and development company, or such business and operations as may be set forth in the letters patent.[1]

Powers of company.

4. Every such company shall, if the letters patent permit, have power for its mining, milling, reduction and development operations only:

(*a*) To prospect for, open, explore, develop, work, improve, maintain, and manage gold, silver, copper, coal, iron and other mines, mineral and other deposits and properties and to dig for, raise, crush, wash, smelt, assay, analyze, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same, or any part thereof, or any interest therein;

(*b*) To acquire by purchase, lease, concession, license, exchange or other legal title, mines, mining lands, easements, mineral properties, or any interest therein, minerals and ores and mining claims, options, powers, privileges, water and other rights, patent rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, or any interest therein;

(*c*) To construct, maintain, alter, make, work and operate on the property of the company, or on property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water-powers, aqueducts, wells, roads, piers, wharfs, buildings, shops, stamping-mills and other works and machinery, plant, and electrical and other appliances of every description, and to buy, sell, manu-

[1] The Department requires each incipient mining company, on its application, to show, both by its Petition and its Memorandum of Agreement and Stock Book, that, at least, ten per centum of its nominal capital has been subscribed.

facture and deal in all kinds of goods, stores, implements, provisions, chattels and effects required by the company or its workmen or servants;

(*d*) To build, acquire, own, charter, navigate and use steam and other vessels;

(*e*) To take, acquire and hold as the consideration for ores, metals or minerals sold or otherwise disposed of, or for goods supplied, or for work done by contract or otherwise, shares, debentures, bonds or other securities of or in any other company having objects similar to those of a company incorporated under this Act, and to sell or otherwise dispose of the same;

(*f*) To enter into any arrangement for sharing profits, union of interests, or co-operation with any other person or company, carrying on or about to carry on any business or transaction which may be of benefit to a company incorporated under this Act;

(*g*) To purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person or company carrying on any part of the business which a company incorporated under this Act is authorized to carry on, or possessed of property suitable for the purposes thereof;

(*h*) To subscribe for and take and hold shares or stock in any company incorporated as provided by section 13 of this Act for the purpose of acquiring, holding, constructing, maintaining, and keeping in repair, roads, bridges, improvements in waterways, or other means of communication, and drainage works, and other improvements, upon, through, over or adjacent to, or leading to or from the lands of a company incorporated as mentioned in this section; Provided, that the consent of the shareholders shall be first obtained by resolution passed at a special general meeting called for that purpose; and

(*i*) To do all such acts, matters and things as are incidental or necessary to the due attainment of the above objects, or any of them.

STOCK AND SHARES.

No personal liability. Rev. Stat. c. 191.

5. (1) Notwithstanding anything to the contrary in *The Ontario Companies Act* contained, the letters patent incorporating a mining company under this Act may, if the petition of the applicant so requires, contain a provision that no liability in excess of the amount actually paid, or agreed to be paid, to the company for shares therein shall attach to any holder of such shares, provided, however, that no such shares shall be issued at a discount, or any rate other than had previously been sanctioned by the company, unless expressly authorized by a by-law [1] of the company fixing and declaring the rate of discount and any other, if any, terms and conditions of issue, and further provided that a copy of such by-law shall, within twenty-four hours after the by-law was sanctioned, be by registered letter transmitted to the Provincial Secretary, and that such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are or is, at the proper time 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; and any company which refuses or fails to comply with the provision of this section, relative to the transmission of a copy of the by-law to the Provincial Secretary, shall incur a penalty of $20 for every day during which the default continues.

By-law must be verified.

Certificate of stock, what to contain.

(2) Where letters patent incorporating any such company have been granted with the provisions mentioned in this section, every stock certificate issued by the company shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Incorporated under *The Ontario Min-*

[1] Forms Nos. 33 and 34, *post*. Note.—*That the By-law must be verified by the joint affidavit of the President or Secretary or as otherwise provided.*

ing Companies Incorporation Act," and where such stock certificates are issued in respect of shares subject to call, the words "Subject to Call"; or if in respect of shares not subject to call, the words "Not Subject to Call," according to the fact.

"No personal liability" to appear on documents issued by company.

(3) Every mining company, the charter of which contains the said provision, shall have written or printed on its charter, prospectus, stock-certificates, bonds, contracts, agreements, notices, advertisements and other official publications, 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 the company, and in all bills of parcels, invoices, and receipts of the company, immediately after or under the name of such company, and shall have engraved upon its seal the words "No Personal Liability"; and every such company which refuses, or knowingly neglects to comply with this provision shall incur a penalty of $20 for every day during which such name is not so kept written or printed; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

Sale of stock on non-payment of calls.

(4) In the event of any call or calls on shares in a company so incorporated remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in some newspaper published at the place where the principal office of the company is situated, or in case no newspaper is published thereat, then in a newspaper published in the nearest place to said office, for a period of one month; and said notice shall contain the numbers of the stock-certificate or stock-certificates in respect of such shares and the number of shares, the amount of the assessment due and unpaid and the time and place of sale; and in addition to the publication of

the notice aforesaid, notice shall be personally served upon such shareholder by registered letter mailed to his last known address; and if the holder of such shares fails to pay the amount due upon such shares with interest upon the same and cost of advertising before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such assessment, together with interest and cost of advertising; provided that if the price of the shares so sold exceeds the amount due with interest and costs thereon, the excess thereof shall be paid to the defaulting shareholder.

Extent of liability of shareholders.

(5) No shareholder in any company so incorporated shall be personally liable for non-payment of any calls made upon his shares, nor shall such shareholder be personally liable for any debt contracted by the company or for any sum payable by the company.

Sale of shares at a premium or at a discount. Rev. Stat. c. 191.

6. (1) Notwithstanding anything to the contrary in *The Ontario Companies Act* contained, any mining company (whose charter does not contain a provision that no liability beyond the amount actually paid, or agreed to be paid, upon shares in such company by the holder thereof shall attach to such holder), may, for the lawful purposes of the company and no other, from time to time, by by-law, to be expressly sanctioned by the company and to be made for the purpose, dispose of shares in the company at such premium, or at such discount and on such terms and conditions as to the company seems to be advantageous and proper; provided, however, that a copy of such by-law shall, within twenty-four hours after the by-law was sanctioned, be by registered letter transmitted to the Provincial Secretary, and that such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are or is, at the proper time 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

Verification of by-law.

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; and any company which refuses or fails to comply with the provision of this section relative to the transmission of a copy of the by-law to the Provincial Secretary, shall incur a penalty of $20 for every day during which default continues.

Marking on face of stock certificate.

(2) Every stock-certificate issued in respect of any share sold or disposed of by the company under the provisions of this section shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Operating under *The Ontario Mining Companies Incorporation Act*," and where such stock-certificates are in respect of shares sold, or disposed of at a discount, the words "Issued by the Company at a discount of per centum," the rate of discount to be mentioned as a part of such words.

Selling shares below par.

7. No share in a mining company shall be issued, sold, or be in any other manner disposed of at a rate less than par, unless under the authority of a by-law passed by virtue of this Act; and any director, officer or agent of a company who acts in contravention of this section shall, on conviction thereof, be liable to a fine of $200 and to the costs of conviction, and in default of payment of such fine and costs may be sentenced to imprisonment for a period not exceeding three months.

DIRECTORS' LIABILITY.

Liability of directors

8. Notwithstanding anything contained in this Act, 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.

RETURNS.

Returns by mining companies.

9. In addition to the facts to be stated in the returns required of companies incorporated under *The Ontario Companies Act*, every mining company incorporated under the said Act, or under the provisions of *The Ontario Joint Stock Companies Letters Patent Act* or of any other Act, shall state the number of shares therein sold, or disposed of by the company under the provisions of this Act, or of any other Act, and the rate at which such shares were sold or disposed of, and shall forthwith furnish such further and other information as shall at any time be required by the Provincial Secretary, or by the Director of Mines, and any company which refuses or fails to comply with the provisions of this section shall, in addition to any other penalty, incur a penalty of $20 for every day during which default continues.

Rev. Stat. cc. 191, 190.

EXTRA-PROVINCIAL COMPANIES.

License to extra-provincial companies.

10. No extra-provincial mining, milling, reduction or development company having its head office elsewhere than within this Province, shall, either directly or indirectly, sell or otherwise dispose of within this Province any of its shares, stock, stock-certificates or other securities by whatsoever name known, unless and until it has received from the Lieutenant-Governor in Council a license authorizing it to sell and dispose of its shares and other securities, and any person who in contravention of this section acts for an unlicensed company shall, on conviction thereof, be liable to a fine of $20 per day for every day while he so acted, and, in case the fine be not paid, shall in the discretion of the Court, be imprisoned for a period not exceeding three months.

Proof of due incorporation, etc., upon application for license to extra-provincial companies.

11. No license shall be issued to an extra-provincial mining, milling, reduction and development company having its head office elsewhere than within this Province until the company has satisfied the Director of the Bureau of Mines that it has been duly incorporated and that it possesses the real estate, property and assets, and that it is carrying on its operations on a scale and in a manner to command the confidence of the public, and for this purpose the Director shall have power to require of the company such sworn documentary and other evidence as he deems to be requisite in the premises, and upon a report that he is satisfied that the company is one which may be licensed under this section, and upon the recommendation of the Provincial Secretary, the Lieutenant-Governor in Council may direct the issue of a license upon such terms and conditions as to him seem proper, and he may summarily revoke and annul such license for any cause that to him appears to be sufficient.

The following general conditions are required to be complied with on the part of an extra-provincial company applying for license under the provisions of Secs. 10 and 11 of Chap. 197, R. S. O. 1897:

1. The application should be in the form of a petition signed by the executive officers of the company, and under the company's seal. The signatures to be duly verified. The petition should set out something of the history of the company, and, apart from other documentary evidence that may be required, should show its powers, its standing, its real estate, property and assets, and that it is carrying on operations upon a scale and in a manner to command the confidence of the public. The petition should either include or be accompanied by a copy of a resolution authorizing the making of the application.

2. Where the applicant company has been incorporated in Great Britain, or in British Columbia, it is required, in addition, to file a copy of its memorandum of agreement and articles of association, verified by the Registrar or other proper officer having custody of the originals.

3. Where the applicant company has been incorporated under any Act it is required to file a copy of the Act, duly verified by the Clerk of the Parliament, or Clerk of the Legislative Assembly, or other proper officer having charge of the Rolls.

4. Where the applicant company has been incorporated by Letters Patent it is required to file a copy of its Letters Patent duly verified by the Registrar of the Province or State, as the case may be.

5. Where the applicant company has been incorporated by Declaration, it is required to file a copy of its Declaration, etc., certified by the officer having custody of the originals.

6. In addition to any other evidence of financial ability, the company is required to file a certified copy of its stock book as it stands upon the date of making its application.

7. Every applicant company is required to show that at least ten per centum of its nominal capital has been subscribed.

These are conditions of general application. Additional conditions may be required, the nature of which can only be determined by the particular case.

LIABILITY FOR FALSE STATEMENTS.

False returns, etc.

12. (1) If any person in any return, report, certificate, balance-sheet, or other document required by or for the purposes of this Act, wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding six months, with or without hard labour, and on summary conviction to imprisonment not exceeding three months, with or without hard labour, and in either case to a fine of $100 in lieu of or in addition to such imprisonment as aforesaid.

(2) A person charged with an offence under this section may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness. *See also Cap. 191, sec. 97.*

[*As to the liability of directors and others for untrue statements in a prospectus, advertisement or notice, see Cap. 216.*]

COMPANIES FOR CONSTRUCTING WORKS ON MINING LANDS.

Incorporation of companies for construction of works on mining lands.

Rev. Stat. c. 191.

13. (1) Subject to the provisions of *The Ontario Companies Act*, 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 petition therefor, constituting the said persons and others who may become shareholders in the company thereby created a body corporate and politic for the pur-

pose of acquiring, holding, constructing, maintaining and repairing roads, bridges, improvements in waterways, and other means of communication and drainage works, and other improvements upon, through, or over or adjacent to, or leading to or from, mining lands.

Powers of companies.

(2) Every company incorporated under this section shall have power, for carrying out the objects of incorporation only:

(*a*) To construct, maintain and keep in repair, roads, bridges, waterways, drainage works and other improvements and means of communication, through, over, or adjacent to, or leading to or from, mining lands;

(*b*) To acquire by purchase, lease, concession, license, exchange or other legal title, and hold lands and other properties necessary for the construction of such works, and from time to time to sell and dispose of all such lands as may be found to be unnecessary or unsuitable for the purposes of the company;

(*c*) To demand and receive from persons and corporations for the use of such works, such fees and tolls as may be fixed by the company, subject to approval by the Lieutenant-Governor in Council;

(*d*) To build, acquire, own, charter, navigate and use steam and other vessels;

(*e*) To enter into any arrangements for sharing profits, union of interest, or co-operation with any other person or company, carrying on, or about to carry on, any business or transaction which may be of benefit to any company incorporated under this section;

(*f*) To do all such acts, matters and things as are incidental or necessary to the due attainment of the above objects or any of them.

CHAPTER 215.

REVISED STATUTES OF ONTARIO, 1897.

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:—

Applications to Lieutenant-Governor to change names of companies.

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, may, by Order in Council, change the name of the company to some other name set forth in the said Order.

Regulations as to notice.

2. The Lieutenant-Governor in Council may make regulations respecting the notice (if any) to be given of the application for change of name under this Act.

In case proposed name is objectionable.

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.

Change to be published in *Gazette*.

4. The change of name shall be conclusively established by the insertion in *The Ontario Gazette* of a notice thereof by the Provincial Secretary.

Change not to affect actions or contracts.

5. 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.

Under the above Act 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).

These facts should be verified by affidavit. The petition should be signed by the president and secretary, and sealed with the company's common 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 to be paid by a Company, whose capital is over $3,000, for the notice in *The Gazette*, required by Sec. 4, is $12; if the capital is $3,000 or less, $5.

FORMS FOR CHANGING THE NAME OF A COMPANY.

Petition for change of name	Form No. 27
Affidavit verifying same	" 29
Affidavit verifying signatures to petition . . .	" 28
Evidence of company's solvency	" 30

[*See as to Insurance Companies, Cap. 203, s. 40.*]

CHAPTER 216.

REVISED STATUTES OF ONTARIO, 1897.

An Act respecting the Liability of Directors.

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

Short title

1. This Act may be cited as "*The Directors' Liability Act.*"

Interpretation.

2. In this Act, unless the context otherwise requires:—

"Untrue statement."

1. "Untrue statement" shall include a concealment or 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;

"Securities."

2. "Securities" shall include bonds, debentures, investment bonds; also policies, certificate, or other instruments of insurance, suretyship, or guarantee, or instruments evidencing contracts in the nature thereof;

"Company."

3. "Company" shall include 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;

Directors."

4. "Directors" shall include the officers, by whatever name known, appointed to manage the affairs of the company;

5. "Promoter" shall mean 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; "Promoter."

6. "Expert" shall include any person whose profession gives authority to a statement made by him. "Expert."

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. Application of Act.

4. (1) Where a prospectus, advertisement, or any printed or written document answering the purpose of a prospectus, advertisement or notice invites persons to subscribe or apply for shares, debenture stock, annuities on lives or other securities, by whatever name known or mentioned, of a company, every person who is a director of the company at the time of the issue of the prospectus, advertisement or notice, and every person who, with his authority, is named in the prospectus, advertisement or notice as a director of the company, or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, advertisement or notice, shall be liable to pay, to all persons so subscribing or applying on the faith of such prospectus, advertisement or notice, compensation for the loss or damage they may have sustained by reason of any untrue statement in the prospectus, advertisement 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— Liability for statements in prospectus.

(*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 on 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 authorized the issue of the prospectus, advertisement 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, advertisement or no-

tice, and that the prospectus, advertisement or notice was issued without his authority or consent; or that the prospectus, advertisement 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, advertisement 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 consent thereto, and caused reasonable public notice of such withdrawal and of the reason therefor, to be given.

Statements in prospectus for raising further capital.

(2) Where any company is desirous of obtaining further capital by subscriptions for shares, bonds, debentures, debenture-stock or other securities, and for that purpose issues a prospectus, advertisement or notice, no director of such company shall be liable in respect of any statement therein, unless he authorized the issue of such prospectus, advertisement or notice, or adopted or ratified the same.

Indemnity where name of person has been improperly inserted.

5. Where any such prospectus, advertisement or notice as aforesaid contains the name of a person as a director of a company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus, advertisement or notice was issued), and any other person who authorized the issue of such prospectus, advertisement 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, advertisement or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Contribution from co-directors, etc.

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 authorized the issue of the prospectus, advertisement 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 217.

REVISED STATUTES OF ONTARIO, 1897.

An Act to prevent Fraudulent Statements by Companies and others.

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

Penalty for false statements as to capital of companies.

1. (1) Where any advertisement, letter-head, postal-card, account or document issued, published or circulated by any corporation, association or company or any officer, agent or employee of any such corporation, association or company, purports to state the subscribed capital of the corporation, association or company, then the capital actually and in good faith subscribed and no more shall be so stated; and any such corporation, association, company, officer, agent or employee who causes to be inserted an advertisement in any newspaper, or who publishes, issues or circulates, or causes to be published, issued or circulated, any advertisement, letter-head, postal-card, account or document which states, as the capital of such company, any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid, or which contains any untrue or false statement as to the incorporation, control, supervision, management or financial standing of such corporation, association or company, and which statement is intended or calculated or likely to mislead or deceive any person dealing or having any business or transaction with the said corporation, association or company, or with any officer, agent or employee of the same, shall, upon summary conviction thereof, before any Police Magistrate or Justice of the Peace having jurisdiction

where the offence was committed, be liable to a penalty not exceeding $200 and costs and not less than $50 and costs, and in default of payment the offender, being any officer, agent or employee as aforesaid, shall be imprisoned with or without hard labour for a term not exceeding six months and not less than one month, and on a second or any subsequent conviction he may be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

(2) Any one may be prosecutor or complainant under this Act, and one-half of any fine imposed by virtue of this Act shall, when received, belong to Her Majesty for the use of the Province, and the other half shall belong to the prosecutor or complainant.

CHAPTER 219.

REVISED STATUTES OF ONTARIO, 1897.

An Act respecting Returns required from Incorporated Companies.

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

"Return" —meaning of.

1. The word "Return" where used in this Act shall include any list, statement or other information required to be furnished to the Government of Ontario, or to any officer or department thereof, by any incorporated company.

No action for default in making return to be brought after receipt of return by proper officer.

Rev. Stat. c. 191.

2. No action brought against any incorporated company which is required, or whose directors or officers are required to make a return to the Government of Ontario, or to any officer or department thereof, or brought against any director or officer of such company, either under the provisions of *The Ontario Companies Act*, or under any other Act, for not duly making a return in accordance with the requirements of any such Act, or for any default in respect to the mode of dealing with such officer or department of a return for a later year: commenced subsequent to the receipt by the proper officer or department of the Government of the return, for the non-making of which, or with reference to which the action is brought, or subsequent to the receipt by such officer or department of a return for a later year: Provided the return made is, except in respect of the time at which the same is made, in substantial compliance with the requirements of the Act under which it is or was made as aforesaid, and is duly verified in accordance

Proviso.

with the provisions of such Act, unless the action is brought by the Crown, or by the Attorney-General of Ontario suing on behalf of the Crown.

Limitation of amount of penalty.

3. The entire amount of the penalty or penalties to be recovered against a company, or the directors or officers thereof, in respect of any default or defaults in complying with any of the requirements of section 79 of the said *Ontario Companies Act*, or in complying with the requirements, in respect of the making of returns, of any other Act up to the time at which the action is brought, shall not in the whole exceed $1,000; and in case several actions are brought, either against the company or against its directors or officers, the Court or a Judge thereof may give such directions as may appear just, either for consolidating the actions or staying the later actions, or any of the actions, upon such terms as may be deemed fitting.

Rev. Stat. c. 191, s. 79.

Returns by companies warehousing crude petroleum.

4. (1) Every incorporated company carrying on a business of warehousing crude petroleum in this Province shall, on or before the first day of February of each year, make out a summary in duplicate which shall contain the following particulars:—

(*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.

[*As to these Returns, see also Cap. 191, s. 79 (4).*]

Rev. Stat. c. 191.

(2) The said summary shall be in accordance with sub-sections 5, 6 and 7 of section 79 of *The Ontario Companies Act*, and subsections 8 and 9 of the said section shall apply to every such company and to the officers thereof therein named.

DOMINION LEGISLATION.

Information respecting the incorporation of Joint Stock Companies by letters patent under the provisions of "The Companies Act," Revised Statutes of Canada, 1886, Chapter 119, prepared for the use and guidance of intending applicants.

Letters Patent.

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.

Public Notice.

The applicants for such letters patent must give at least one calendar month's previous notice in the *Canada Gazette* of their intention to apply for same. All communications having reference to the publication of the notice should be addressed to the Queen's Printer and Controller of Stationery, Ottawa.

The notice must contain the following particulars:—

I. The proposed corporate name of the Company, which must 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.

The name of a company should, as far as it is possible, indicate its object. The prefix "The" and the word "Company" or some equivalent collective appellation, such as "Factory," "Association" or "Club," must form part of the corporate name of all companies incorporated under this Act. The word "Limited" must likewise be added to the proposed name.

II. The purposes within the purview of the Act for which its incorporation is sought.

(a) *Intending applicants should not overlook the provisions which the Statute makes for the acquiring of real estate, buildings, etc., requisite for the due carrying out of the undertaking of the company, and for the doing of all business properly incidental thereto, and should omit from their notice all reference to powers provided for by the Act.*

(b) *The intention of the Act is to limit the powers of a company to the due carrying out of but one object and the strictly necessary adjuncts thereto, and the practice of the department is to so restrict them. It is useless, therefore, for intending applicants to encumber their petition with the recital of a multiplicity of powers which cannot be granted.*

(c) *In the charter granted to telegraph and telephone companies the following provisos are added to the powers given to these companies, and are incorporated in their charters. These should, therefore, be embodied in the petition for incorporation, though not necessarily inserted in the notice.*

Provided that nothing herein contained shall be construed to interfere with any private rights or to confer on the said company the right of building bridges, piers, or works over any navigable river in Canada, without the consent of the Governor in Council, or of erecting posts or placing their line of telegraph (or telephone) upon the line of any railway, without the consent of the company or parties to whom such railway belongs.

Provided also, that any message in relation to the administration of justice, the arrest of criminals, the discovery or prosecution of crime, and government messages or despatches shall always be transmitted in preference to any other message or despatch, if required by any person connected with the administration of justice or any person thereto authorized by any Minister of Canada.

(d) *If it is not specifically stated in the purposes for which incorporation is sought that the operations of the company are to be carried on throughout the Dominion of Canada, that fact should be set out in a supplementary paragraph to be added to such purposes.*

III. The place within the Dominion of Canada which is to be its chief place of business.

The above is the language of the statute; consequently one place only can be named in the Charter as the chief place of business.

IV. The proposed amount of its capital stock, which in case of a loan company, shall not be less than one hundred thousand ($100,000) dollars.

V. The number of shares into which the capital is intended to be divided, and the amount of each share.

The statute contemplates the issue of ordinary stock only, and, therefore, no provision can be made in the Letters Patent for the issue of any other class of stock.

VI. The Christian names in full, and the address or residence, and the calling and occupation of each of the applicants, with special mention of not less than three—nor more than fifteen, of their number, who are to be the first or provisional directors of the Company, and the majority of whom must be resident in Canada.

Each Director must be a shareholder in the company, and own stock absolutely in his own right.

The Petition.

I. At any time, not more than one month after the last publication of such notice in the *Canada Gazette*, the applicants may petition the Governor-General, through the Secretary of State of Canada, for the issue of such letters patent.

(a) *The persons who petition must be the same persons whose names appear in the notice in the* Canada Gazette *and must be shareholders in the proposed company.*

(b) *One-half of the proposed capital stock must be subscribed for and ten per cent. in cash paid in thereon by those whose names are set out in the notice in the* Canada Gazette *and in the petition, or by some of them. Stock subscribed for by persons who have not joined in the notice and petition shall not be recognized.*

(c) *The petition must correspond in every particular with the facts set forth in the notice inserted in the* Canada Gazette *and should contain the following additional information, that is to say :—*

The amount of stock taken by each of the petitioners respectively; the amount paid in thereon by each applicant, and how it is held for the Company, and whether it was paid in cash, by services, or by the purchase or transfer of property, or how otherwise. This information should be given in the form of the tabulated statement embodied in the specimen petition hereto annexed. The stock book of the Company need not be produced.

The aggregate of the stock taken must be at least one-half of the total amount of the stock of the Company. The aggregate paid in on the stock taken must, if the company be not a loan company, be at least ten per cent. thereof, and must not be less than one hundred thousand dollars.

Such aggregate must have been paid in to the credit of the Company, or to the credit of trustees (at least two

in number) therefor, and must be standing at such credit in some chartered bank or banks in Canada. A certificate must be produced showing that this has been done, which should be signed by the manager of the bank in which the deposit has been made. The manager should sign in the presence of a witness who should make a statutory declaration of execution.

If the object of the Company is one requiring that it should own real estate, any portion, not more than one-half of such aggregate, may be taken as paid in, if *bona fide* invested in real estate suitable to such object, duly held by trustees (at least two in number) for the Company, and being of the required value, over and above all encumbrances thereon.

Evidence must be produced showing the value of the real estate which it is proposed to transfer to the Company.

The petition may ask for the embodying in the letters patent of any provision which under the Act might be made by by-law of the company 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.

The petition must be signed by each of the applicants in person, and in presence of a witness. If, however, this is found impracticable in any case the applicant may sign by an attorney, but the original Power of Attorney, or a duly authenticated or notarial copy thereof, must be produced. Each signature should be verified by an affidavit or statutory declaration made by the witness thereof.

PROOF REQUIRED BY SECTION 6 OF THE ACT.

(*a*) An affidavit or statutory declaration establishing the sufficiency of the petition and the truth and sufficiency of the facts therein stated, also that the proposed name of the Company is not that of any other known incorporated or unincorporated Company.

(*b*) An affidavit or statutory declaration proving the publication in the *Canada Gazette* of the notice required by Section 6 of the Act, setting out the dates of the several insertions and having attached to it a copy of such notice.

(*c*) Affidavits or Statutory Declarations verifying the signatures of the petitioners.

The proofs required with reference to the truth and sufficiency of the facts stated in the petition, and with respect to the proposed corporate name, may be made by an affidavit or affirmation, or statutory declaration of any of the petitioners or their Attorney or Agent, who should be a resident of the Dominion of Canada.

Fees.

No step shall be taken in any department of the Government towards the issue of any letters patent, until after the amount of all fees therefor shall have been duly paid.

The following is the schedule of fees payable under section 84 of the Act:—

1. When the proposed capital is $1,000,000 or upwards, $500.

2. When the proposed capital stock of the Company is $500,000 or upwards and less than $1,000,000, $300.

3. When the proposed capital stock of the Company is $200,000 or upwards and less than $500,000, $250.

4. When the proposed capital stock of the Company is $100,000 or upwards and less than $200,000, $200.

5. When the proposed capital stock of the Company is more than $40,000 or less than $100,000, $150.

6. When the proposed capital stock of the Company is $40,000 or less than $40,000, $100.

On application for Supplementary Letters Patent the fee is 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 Honourable the Secretary of State, and must be transmitted to him by Registered Letter.

Supplementary Letters Patent.

Supplementary letters patent may be granted to a company for:—

1. Changing corporate name of Company.
2. Obtaining of further powers.
3. Increasing the capital stock.
4. Decreasing the capital stock.
5. Subdividing the existing shares.

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. See page 251.
2. Affidavit or declaration verifying insertion of same in *Gazette*. See page 254.
3. Petition for incorporation. See page 252.
4. Affidavit or declaration verifying truth of facts set out in petition. See page 254.
5. Bank manager's certificate with respect to deposit paid in. See page 256.

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 authorizing 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. Subdividing 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.

FORMS.

NOTICE OF INTENTION TO APPLY FOR LETTERS PATENT OF INCORPORATION TO BE INSERTED IN THE *CANADA GAZETTE.*

Notice is hereby given that within one month after the last publication of this notice in the *Canada Gazette*, application will be made to His Excellency the Governor-General-in-Council for a charter of incorporation by letters patent, under the provisions of "The Companies' Act," Revised Statutes of Canada, chapter 119, incorporating the applicants and such other persons as may become shareholders in the proposed company, a body corporate and politic, under the name and for the purposes hereinafter mentioned.

1. The proposed corporate name of the Company is "The Company" (Limited).

2. The purposes within the purview of the Act, for which incorporation is sought, are

3. The chief place of business of the said Company is to be the of in the Province of

4. The intended amount of the capital stock is dollars.

5. The number of shares is to be and the amount of each share is to be of the value of dollars.

6. The names in full, and the address and calling of each of the applicants are as follows:

of whom the said

are to be the first or provisional directors of the said company.

Dated at this day of A.D. 18

Solicitors for the applicants.

FORM OF PETITION FOR INCORPORATION.

To His Excellency
the Governor-General in Council.

The petition of

(Here insert names in full, address, and calling, or occupation of each of the applicants).

1. That your petitioners are desirous of obtaining a charter of incorporation by letters patent under the provisions of "The Companies Act" (Revised Statutes of Canada, chapter 119), incorporating your petitioners and such others as may become shareholders in the Company, thereby created, a body corporate and politic, under the name of "The Company" (Limited), which is not the name of any other known Company incorporated or unincorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

2. That your petitioners have given one month's previous notice of their intention to apply for the said letters patent, by inserting the same in the issues of the *Canada Gazette* of the following dates, 18 , viz:—

3. That the purposes or objects of the said Company within the purview of the Act for which incorporation is sought are:—

4. That the operations of the said Company are to be carried on at , and elsewhere throughout the Dominion of Canada.

5. That the chief place of business of the said Company is to be at the of in the Province of in the Dominion of Canada aforesaid.

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

7. That the said stock is to be divided into shares, of the value of dollars each.

8. That the said are to be the first or provisional directors of the said Company.

9. That your petitioners have taken the amount of stock, and paid in thereon the several amounts thereon, set opposite to their respective names as follows:—

Petitioners' names in full.	No. of shares taken.	Amount of stock subscribed for	Amount paid in on stock subscribed.	How paid.
Total.....				

10. The aggregate of stock so taken amounts to dollars, being one-half of the total amount of the stock of the Company, and the aggregate paid in on the stock so taken amounts to dollars, being ten per cent. thereof, such aggregate has been paid in to the credit of *(Company, or Trustees, in the latter case naming the persons)* and is now standing at such credit in the Bank in the of as appears by the certificate of Manager of the said bank at aforesaid, which is hereto annexed.

There has been invested in real estate, suitable to the objects of the Company, the sum of dollars. The said real estate consists of and is of the value of at least dollars over and above all incumbrances thereon, being sufficient with the sum so paid in as aforesaid, to make per cent. of the aggregate of the stock so taken, and is duly held by and as trustees for the said Company (*a*).

Your petitioners therefore pray.

That your Excellency will be pleased to grant a charter of incorporation by Letters Patent under the

(*a*) This clause is only to be inserted when necessary.

Great Seal to your petitioners and such others as may become shareholders in the Company thereby created, a body corporate and politic, for the purposes and objects aforesaid, under the name of "The Company" (Limited).

And your petitioners as in duty bound will ever pray.

Dated at the of in the of
this day of A.D. 18

Signed and executed in the presence of

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FORM OF DECLARATION TO BE USED IN FURNISHING PROOF REQUIRED IN SUPPORT OF PETITION FOR INCORPORATION.*

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 , do solemnly declare:—

1. That I was personally present and did see sign their respective names to the petition (hereunto annexed) praying for letters patent of incorporation as "The Company" (Limited).

**Where it is impossible for one person to subscribe as to the facts set out in the several paragraphs of this declaration, it will, of course, be necessary to omit that portion and have it established in a separate declaration by some one possessing the requisite knowledge.*

2. That I know the said

3. That the signatures of are of the proper handwriting of the said parties respectively.

4. That the several allegations and statements made and contained in the petition for incorporation of "The Company" (Limited) hereunto annexed are, to the best of my knowledge and belief, true and correct.

5. The proposed corporate name "The Company" (Limited), is not, as I verily believe, the name of any other known company, incorporated or unincorporated, or liable to be confounded therewith, or otherwise on public grounds objectionable.

6. That I have examined copies of the *Canada Gazette* published on the and in each of said issues of that publication is inserted the notice of application in this matter similar to that hereto annexed marked

7. That I was personally present, and did see the annexed certificate of deposit duly signed by who is manager *(agent or cashier)* of the Bank of at the of aforesaid.

8. That I know the said

9. That I am the subscribing witness to the said document.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act, 1893."

Declared before me at the)
of in the)
of this)
day of A.D. 189 .)

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 at the of in in the of and Province of do hereby certify

That there is deposited in this bank to the credit of (a) the sum of dollars, and the 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.*)

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: —

1. This Act may be cited as "*The Companies Act.*" Short title

2. In this Act, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,— Interpretation.

(*a*) The expression "the company" means the company incorporated by letters patent under this Act; "Company."

(*b*) The expression "the undertaking" means the business of every kind which the company is authorized to carry on; "Undertaking."

(*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; "Loan company."

(*d*) The expression "real estate" or "land," includes messuages, lands, tenements and hereditaments of any tenure, and all immovable property of any kind; "Real estate," "Land."

(*e*) The expression "shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder; "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, 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 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.

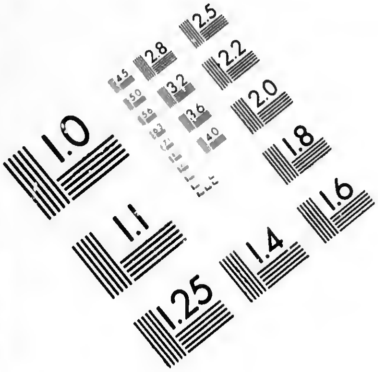
5. Such aggregate shall be paid in to the credit of the company, or of trustees therefor, and shall be standing at such credit in some chartered bank or banks in Canada, unless the object of the company is one requiring that it should own real estate—in which case any portion not exceeding one-half of 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:

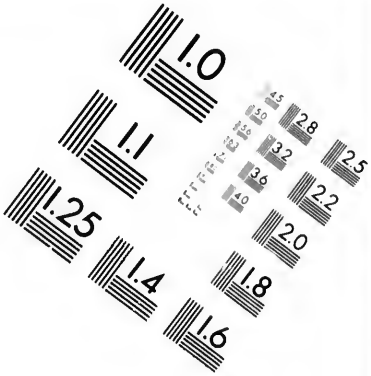
Certain provisions may be inserted in letters patent.

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





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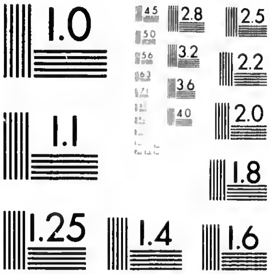

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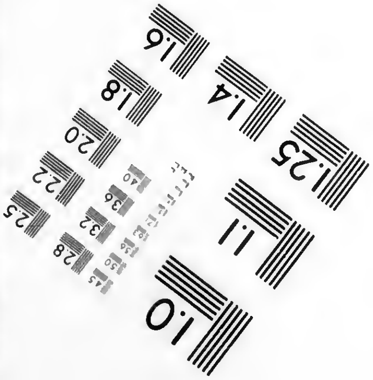

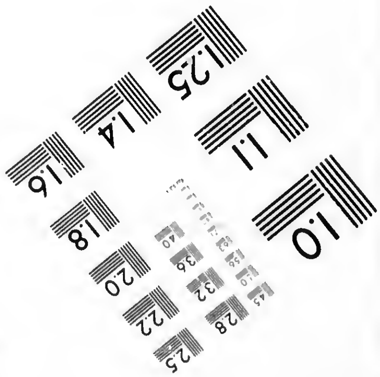

Governor in Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company; and for that purpose, the Secretary of State, or such 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 applica-

tion 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.

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.

By-law for that purpose.

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, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of 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 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 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.

Evidence may be taken and kept by Secretary of State.

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.

Granting of supplementary letters patent; —notice; —effect of such letters patent.

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 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 supplementry 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 provision 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.

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.

Residence.

By-law for increase or decrease of number of directors.

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

When to be valid.

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.

(*d*) Every election of directors shall be by ballot; Ballot.

(*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; Vacancies, how filled.

(*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. President, vice-president and officers.

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. Failure to elect directors, how remedied.

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:— Powers and duties of directors.

(*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; Stock.

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

(*c*) The number of the directors, their term of service, the amount of their stock qualification, and their remuneration, if any; Number, etc., of directors.

(*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; Agents and officers.

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;

(*b*) Hypothecate or pledge the real or personal property of the company to secure any sums borrowed by the company; Charging property.

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 the limitation made by this section shall not apply to commercial paper discounted by the company.[1] Limitation of amount to be borrowed. Exception.

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. Calling in of moneys unpaid on shares.

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. Interest on calls overdue.

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 money so paid in advance, or so much thereof as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate, not exceeding eight per cent. per annum, as the shareholder who pays such sum in advance, and the directors agree upon. Payment in advance on shares. Interest may be allowed.

[1] Amended by Chap. 27, 1897, which see *infra*.

Forfeiture of shares for non-payment of calls.

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.

Proviso: liability of holders continued.

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 the 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,—

(*a*) A copy of the letters patent incorporating the company, and of all supplementary letters patent, and of all by-laws thereof; Copy of letters patent, by-laws, etc.

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

(*c*) The address and calling of every such person, while such shareholder; Address-s.

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

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

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

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. Register of transfers.

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. Books to be open for inspection and taking extracts therefrom.

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. Penalty for false entries.

46. Every company which neglects to keep such book or books as aforesaid, shall forfeit its corporate rights. Forfeiture for neglect.

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 transferor, 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 had 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.

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.

Notice of application.

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.

Transfer by personal representative.

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.

Liability limited to amount unpaid on stock.

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 of shareholders.

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; 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.

When accrue.

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 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.

How directors may avoid 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 between 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

Proof of incorporation.

any exemplification or copy thereof under the Great Seal, shall be conclusive proof of every matter and thing therein set forth.

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 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.

Effect of such charters.

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

No individual liability

Proviso: as to bank notes.

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.

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.

Prospectus etc., to specify certain contracts entered into by company or be deemed fraudulent.

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.

Company not to be liable in respect of trusts.

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 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.

Amount of fees may be varied.

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.

Must be paid before action is taken.

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.

Full statement of affairs at each meeting for elections.

35. 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.

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 .

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.

CHAPTER 27.

[*Assented to 29th June, 1897.*]

An Act to Amend the Companies' Act.

HER Majesty, by and with the consent of the Senate and House of Commons of Canada, enacts as follows:— Preamble.

1. Section 37 of *The Companies' Act* is hereby amended by striking out the following words at the end thereof, "But the limitation made by this section shall not apply to commercial paper discounted by the Company";—and by substituting therefor the following words:—"Provided always, that the limitations and restrictions on the borrowing powers of the Company contained in this section shall not apply to or include moneys borrowed by the company on bills of exchange or promissory notes drawn, made, accepted, or indorsed by the Company." R.S.C., c. 119, s. 37, amended. Exception from restrictions of borrowing powers.

2. This Act shall be read as part of *The Companies' Act*, and the provisions hereof shall apply and extend to all existing companies to which the provisions of *The Companies' Act* are applicable. Application of amendment.

QUEBEC ACT.

REVISED STATUTES, QUEBEC, 1888.

TITLE XI., CHAPTER III.

SECTION II.

INCORPORATION OF JOINT STOCK COMPANIES.

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§ 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;

5. The expression "real estate" or "land" includes all immovable 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 favourable 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 stated 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.

The company may, by a simple resolution, issue notes, payable to order or to bearer, for the settlement of accounts or other current matters; it may further, on a resolution of the two-thirds of the actual shareholders present at a meeting specially convened for the purpose, issue bonds or debentures to the amount of the two-thirds of the total value of the immovable property.

Such bonds or debentures, after their registration in the office or offices of the registration division or divisions in which the immovables of the said company are situated (which must be described in a notice to that effect given to the registrar), constitute a privileged claim in favour of the holders thereof against the company, and give a right of preference over all other debts and claims against the company, posterior to the issuing of such debentures. *This and preceding paragraph enacted by 54 V. c. 35, s. 1.*

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 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.

4713. (*a*) The company may, by by-law, increase to not more than nine or decrease to not less than three the number of its directors, or may change the company's chief place of business in the Province; 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 Provincial Secretary and published in the *Quebec Official Gazette*. *This section enacted by 58 V. c. 37, s. 2.*

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 *primâ 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 *bonâ 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 of the shareholders of the Company.

2. The property accounts of a company shall represent only the amount of the actual *bonâ 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 *primâ 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.

1732. 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.

1733. 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.

1734. 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.

1735. 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.*

1736. 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.

1737. 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 *primâ 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 *primâ 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.

SECRETARY'S OFFICE,

Quebec, 5th December, 1892.

His Honor the Lieutenant-Governor has been pleased, by Order in Council, dated the 3rd of December instant, to amend Order in Council No. 205, of the 27th of April last, concerning the tariff of fees of the Provincial Secretary and Registrar, by striking out Article 26, and replacing the whole of Articles 17, 18, 19, 20 and 21, by the following :

17.	On letters patent incorporating joint stock companies, when the capital stock is $500,000 or over, the fee will be	$260 00
18.	When the proposed capital stock is $200,000 or over, but under $500,000	150 00
19.	When the proposed capital stock is $100,000 or over, but under $200,000	100 00
20.	When the proposed capital stock is under $100,000	50 00
21.	On applications for supplementary letters-patent, other than those for increasing capital stock, the fee will be one-half of the amount payable on the original letters-patent.	

When application is made for an increase of capital stock, the fee will be calculated on the actual amount of the increase of such capital stock, and will be the same as that payable on original letters-patent for an amount equal to such increase.

LOUIS P. PELLETIER,

Provincial Secretary.

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 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.

1754. Every incorporated company, carrying on any labour, 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.

1755. The prothonotary and the registrar shall enter such declaration in the books kept by them respectively for the registration of declarations of partnerships.

1756. 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.

1757. 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.

1758. 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.

1759. The fines imposed by this section are recoverable, before any court having jurisdiction in civil cases to the amount of such fine, by any person 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, etc.,*) by (*Letters-Patent or Statute, giving title, etc.,*) 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.

THE COMPANIES ACT, 1897.

An Act for the Incorporation and Regulation of Joint Stock Companies and Trading Corporations.

WHEREAS there are now several systems whereunder Joint Stock Companies and Trading Corporations can be incorporated and formed, and it is expedient to amend and consolidate the law in this respect, and to enact an exclusive and comprehensive law governing the formation and incorporation of Joint Stock Companies and Trading Corporations.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Interpretation.

1. In the construction and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them:—

"Charter" of a company shall mean the Act, statute, ordinance, or other provision of law by or under which the company is incorporated, and any amendments thereto applying to such company, whether of this or of any other Province, or of the Dominion of Canada, or of the United Kingdom, or of any colony or dependency thereof, or of any foreign state or country, the Memorandum of Association or agreement or deed of settlement of the company, and the letters patent, or charter of incorporation, and the license or certificate of registration of the company, as the case may be:

"Charter and regulations" of a company shall mean the charter of the company and the Articles of Association and all by-laws, rules and regulations of the company, and all resolutions and contracts relating to or affecting the capital and assets of the company:

"Company" shall mean any company which has been or is about to be incorporated under this Act, for any purpose or object to which the legislative authority of the Legislature of British Columbia extends, except the construction and working of railways and the business of insurance:

"Extra-Provincial Company" shall mean any duly incorporated company other than a company incorporated under the laws of the Province of British Columbia:

"Real Estate" or "land" shall include all messuages, lands, tenements, leaseholds and hereditaments of any tenure, and all immovable real property of every kind:

"Registrar" shall mean the Registrar of Joint Stock Companies:

"Registrar-General" shall mean the Registrar-General of Titles:

"Supreme Court" and "the Court," shall mean and refer to Her Majesty's Supreme Court of British Columbia:

"Shareholder" shall mean every subscriber to or holder of shares in the company, and extend to and include the personal representatives of the shareholder:

"Subscriber" shall mean any person who subscribes for shares in the Memorandum of Association of the company.

Preliminary.

2. The Lieutenant-Governor in Council may from time to time appoint such person as he shall think proper to act as Registrar of Joint Stock Companies.

(2) It shall be the duty of the Registrar to enforce compliance with the several provisions, regulations and stipulations in this Act contained, or in any regulations made thereunder, but such duty shall not affect the right of any other person to compel compliance with the provisions hereof.

3. The Lieutenant-Governor in Council may from time to time, by Order or Orders in Council, make and establish such General Rules and Orders, not inconsistent with this Act, as may from time to time to him appear necessary or expedient for the purpose of giving full effect to the provisions of this Act or any or either of them, and for prescribing the course to be adopted in the course of official business under this Act and the forms to be used therein. All such General Rules and Orders shall, after the making thereof, be published in the *British Columbia Gazette* and shall thereupon have the force of law, until amended, altered, or revoked.

Incorporation.

4. Associations of persons for the acquisition of gain by any lawful means within the scope of this Act, may be formed according to the provisions of this Act, and any such company, the members, shareholders, and stockholders thereof shall be subject to the conditions and liabilities, and be entitled to the rights and privileges imposed and conferred by this Act.

5. In case a resolution, authorizing registration under the provisions of this section, and the execution by the directors on behalf of the shareholders of the company of a Memorandum of Association for the objects specified in such resolution, 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, any company heretofore incorporated, or purported or expressed to have been incorporated, under any Act of this Province, or either of the former Colonies of Vancouver Island or British Columbia, for purposes or objects and possessing powers and rights within the scope of this Act, or within the scope of this Act as it may be hereafter amended, and being at the time of registration a subsisting and valid corporation, may deliver to the Registrar an official copy of the Charter and regulations of the company, certified under the hand and seal of a person duly authorized for the purpose by the resolution aforesaid, and the certificate (if any) of the incorporation of such company, or an official copy thereof, certified as aforesaid, and upon payment to the Registrar of a fee of ten dollars shall be entitled to receive from the Registrar a certificate of the reincorporation and registration of the company as a company under this Act, for the objects and purposes set out in the Memorandum of Association executed in pursuance of such resolution, and, thereupon the old company shall as such company cease to exist, and all the rights and 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 the certificate of reincorporation and registration to set out the names of the shareholders; and after such reincorporation and registration 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 reincorporation, and of such reincorporation the certificate aforesaid shall be conclusive evidence, as well as conclusive evidence of due registration and observance of all statutory requirements with respect to registration or incorporation in force prior to the passage of this Act.

(*a*) Where an existing company applies for registration under this section the directors may, in and by the Memorandum of Association executed pursuant to and conforming to the provisions of the resolution of the company authorizing the execution thereof, extend, vary or limit the powers and objects of the company, and the certificate of registration under this section may be to the new company by the name of the old company, or by any other name of which the last word shall be the word "limited:"

(*b*) Where an existing company is registered under this section the capital of the company may be increased or decreased to any amount which may be fixed by the resolution of the company authorizing such registration:

(*c*) The said resolution may prescribe the manner in which the shares or stock in the new company are 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:

(*d*) Whenever the Registrar considers that public notice of an intended application, under this section, should be given, he may require such notice to be published in the Gazette or otherwise as he thinks proper:

(*e*) Every certificate of registration issued under this section shall be published for four weeks in the *British Columbia Gazette* and in one newspaper circulating in the city or district in which the registered office of the company is situate:

6. For the purposes of this Act, a company that carries on the business of fire, life, marine, or other insurance in common with any other business, shall be deemed to be an Insurance Company.

7. No company, association, or partnership, consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any business, within the scope of this Act, that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of letters patent.

8. This Act is divided into ten parts, relating to the following subject-matters:—

The First Part,—to the Constitution and Incorporation of Companies and Associations under this Act:

The Second Part,—to the Distribution of the Capital, and the Liability of Members of Companies and Associations under this Act:

The Third Part,—to the Extraordinary Powers of Companies under this Act:

The Fourth Part,—to the Management and Administration of Companies and Associations under this Act:

The Fifth Part,—to the Borrowing Powers of Companies under this Act:

The Sixth Part,—to the Licensing and Registration of Extra-Provincial Companies:

The Seventh Part,—to the Procedure in Actions against Unregistered Extra-Provincial Companies:

The Eighth Part,—to the Voluntary Winding up of Companies under this Act:

The Ninth Part,—to the Protection of Purchasers of Stock from Losses by Forged Transfers, and the Prevention of Fraudulent and Negligent Practices:

The Tenth Part,—to the Repeal of Former Enactments.

PART I.

Constitution and Incorporation of Companies and Associations under this Act.

Memorandum of Association.

9. Any five or more persons associated for any lawful purpose within the scope of this Act may, by subscribing their names to a Memorandum of Association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

10. The liability of the members of a company formed under this Act may, according to the Memorandum of Association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the company, in the event of its being wound up.

11. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the Memorandum of Association shall contain the following things, that is to say:—

(1) The name of the proposed company, with the addition of the word "Limited" as the last word in such name:

(2) The part of the Province in which the registered office of the company is proposed to be situate:

(3) The objects for which the proposed company is to be established:

(4) The time of existence of the proposed company, if it is intended to secure incorporation for a fixed period:

(5) A declaration that the liability of the members is limited:

(6) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount:

Subject to the following regulations:—

(1) That no subscriber shall take less than one share:

(2) That each subscriber of the Memorandum of Association shall write opposite to his name the number of shares he takes:

(3) That each subscriber to the Memorandum of Association shall be the *bona fide* holder in his own right of the share or shares for which he has subscribed in the Memorandum of Association.

12. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the Memorandum of Association shall contain the following things, that is to say:—

(1) The name of the proposed company, with the addition of the words "Limited by guarantee" as the last words in such name:

(2) The part of the Province in which the registered office of the company is proposed to be situate:

(3) The objects for which the proposed company is to be established:

(4) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

13. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the Memorandum of Association shall contain the following things, that is to say:—

(1) The name of the proposed company:

(2) The part of the Province in which the registered office of the company is proposed to be situate:

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

14. The Memorandum of Association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least; it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such Memorandum, subject to the provisions of this Act.

15. Any company limited by shares may so far modify the conditions contained in its Memorandum of Association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as to the location of the registered office of the company, and as is hereinafter provided, no alteration shall be made by any company in the conditions contained in its Memorandum of Association.

Articles of Association.

16. The Memorandum of Association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by Articles of Association, signed by the subscribers to the Memorandum of Association, and prescribing such regulations for the company as the subscribers to the Memorandum of Association deem expedient. The Articles shall be expressed in separate paragraphs numbered arithmetically; they may adopt all or any of the provisions contained in the table marked A in the First Schedule hereto; they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarant[illegible] or unlimited, that has not a capital divided into shares, state the [illegible]ber of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the Memorandum of Association the number of shares he takes.

17. In the case of a company limited by shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the First Schedule hereto, the last mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in Articles of Association, and the Articles had been duly registered.

18. The Articles of Association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such Articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such Articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company in the nature of a specialty debt.

General Provisions.

19. The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies, who shall retain and register the same. There shall be paid to the Registrar by a company having a capital divided into shares,

in respect of the several matters mentioned in the table marked B in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Lieutenant-Governor in Council may, from time to time, by Order or Orders in Council, direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Lieutenant-Governor in Council may, from time to time, by Order or Orders in Council, direct. All fees paid to the said Registrar in pursuance of this Act shall be paid and carried to the account of the Consolidated Revenue Fund of the Province.

20. Upon the registration of the Memorandum of Association, and of the Articles of Association in cases where Articles of Association are required by this Act, or by the desire of the parties to be registered, the Registrar shall issue a certificate of incorporation, showing the corporate name of the company, the part of the Province where the registered office of the company is proposed to be situate, the objects for which the company has been established, the amount of the capital of the company, the number of shares into which the same is divided, and the amount of each share, the time of existence of the company if incorporated for a fixed period, and in the case of a limited company that the company is limited, and in the case of a mining company the liability of the members whereof is specially limited under section 56 hereof, that the company is so specially limited under said section 56; and such certificate shall be published for four weeks in the *British Columbia Gazette*. The subscribers of the Memorandum of Association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the Memorandum of Association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect to registration have been complied with.

21. Subject to the provisions of this Act, any company registered under this Act may, by special resolution, alter the provisions of its Memorandum of Association, so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed, on petition, by the Supreme Court.

(2) Before confirming any such alteration the Supreme Court must be satisfied—

(*a*) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any

person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(*b*) That, with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section:

(3) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper:

(4) The Court shall, in exercising its discretion under the provisions of this section, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase:

(5) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

(*a*) To carry on its business more economically or more efficiently; or

(*b*) To attain its main purpose by new or improved means; or

(*c*) To enlarge or change the local area of its operations; or

(*d*) To carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or

(*e*) To restrict or abandon any of the objects specified in the Memorandum of Association.

22. Where a company has altered the provisions of its Memorandum of Association with respect to the objects of the company, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the

Memorandum of Association so altered shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the Memorandum so altered shall be the Memorandum of Association of the company.

(2) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall, upon summary conviction, be liable to a penalty not exceeding fifty dollars for every day during which it is in default, and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such default, shall, upon summary conviction, be liable to the like penalty.

23. A copy of the Memorandum of Association, having annexed thereto the Articles of Association, if any, shall be forwarded to every member, at his request, on payment of the sum of one dollar, or such less sum as may be prescribed by the company, for each copy; and if any company makes default in forwarding a copy of the Memorandum of Association and Articles of Association, if any, to a member, in pursuance of this section, the company so making default shall, upon summary conviction, for each offence be liable to a penalty not exceeding five dollars, and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

24. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company shall, upon the direction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceeding may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Contracts.

25. Contracts on behalf of any company incorporated under this Act may be made as follows, that is to say:—

(1) Any contract which, if made between private persons, would be by law required to be in writing, and if made according to the law of this Province or of the Dominion of Canada to be under seal, may be made on behalf of the company, in writing, under the common seal of the company, and such contract may be in the same manner varied or discharged:

(2) Any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3) Any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, any such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

26. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Act if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company.

27. Every contract, agreement, engagement, or bargain made and every bill of exchange drawn, accepted, or indorsed, and every promissory note and cheque made, drawn, or indorsed on behalf of the company by any agent, officer, or servant of the company, in general accordance with his powers as such under the regulations 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 regulations, or special resolution 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.

(*a*) 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.

28. The directors of the company shall not declare or pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or diminishes the capital thereof, but if any director present when such dividend is declared, forthwith, or if any director then absent, within twenty-four hours, after he has become aware thereof and able so to do, enters 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 head office or chief place of business of the company, such director may thereby, and not otherwise, exonerate himself from liability.

29. 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.

PART II.

Distribution of Capital of Companies and Liability of Members and Officers of Companies under this Act.

Distribution of Capital.

30. The subscribers of the Memorandum of Association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the Register of Members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the Register of Members, shall be deemed to be a member of the company.

31. The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

32. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

33. Every executor, administrator, guardian or trustee, shall represent the shares or 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.

34. A company shall, on the application of the transferor of any share or interest in the company, enter in its Register of Members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

35. Any transfer of shares in a company under this Act, made for the purpose of getting rid of the further liability of a shareholder, as such, for a nominal or no consideration, or to a person in the menial or domestic service of the transferor, shall be deemed to be a fraudulent transfer and need not be recognized by the company or by the Court on the winding up of the company.

36. Every company under this Act shall cause to be kept in one or more books a Register of its Members, and there shall be entered therein the following particulars:—

(1) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member:

(2) The date at which the name of any person was entered in the Register as a member.

(3) The date at which any person ceased to be a member:

And any company acting in contravention of this section, shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which its default in complying with the provisions of this section continues, and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such contravention shall, upon summary conviction, be liable to the like penalty.

37. Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list in the form E in the Second Schedule, of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is

more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, and so far as may be possible, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(1) The amount of the capital of the company, and the number of shares into which it is divided:

(2) The number of shares taken from the commencement of the company up to the date of the summary:

(3) The amount of calls made on each share:

(4) The total amount of calls received:

(5) The total amount of calls unpaid:

(6) The total amount of shares forfeited:

(7) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares formerly held by each of them:

The above list and summary shall be contained in a separate part of the Register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar.

38. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which such default continues, and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

39. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall forthwith give notice to the Registrar of such consolidation, division or conversion, specifying the shares so consolidated, divided, or converted, and in default shall be subject to the penalty in the last section mentioned.

40. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the Register of Members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

41. No notice of any trust, expressed, implied, or constructive, shall be entered on the Register, or be receivable by the Registrar, in the case of companies under this Act.

42. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands on the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

43. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

44. The Register of Members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, subject to such reasonable restrictions as the company in general meeting may impose (but so that no less than two hours in each day be appointed for inspection), be open to the inspection of any member gratis, and to the inspection of any other person on the payment of twenty-five cents, or such less sum as the company may prescribe for each inspection; and every such member or other person may require a copy of such Register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of twenty-five cents for every hundred words required to be copied. If such inspection or copy is refused, the company shall, for each refusal, upon summary conviction, be liable to a penalty not exceeding ten dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and every director, manager, secretary and officer of the company who shall knowingly authorize or permit such refusal shall, upon summary conviction, be liable to the like penalty; and in addition to the above penalty any Judge of the Supreme Court, sitting in Chambers, may by summary order compel an immediate inspection of the Register.

45. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the Register of Members for any time or times not exceeding, in the whole, thirty days in each year.

46. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in

the number of members beyond the registered number, shall be given to the Registrar in the case of an increase in capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid, the company in default shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which such neglect to give notice continues; and every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize and permit such default shall, upon summary conviction, be liable to the like penalty.

47. If the name of any person is, without sufficient cause, entered in or omitted from the Register of Members of any company under this Act, or if default is made or unnecessary delay takes place in entering in the Register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may by motion in the Supreme Court, or by application to a Judge thereof sitting in Chambers, apply for an order of the Court that the Register may be rectified, and the Court or Judge may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the Register, and may direct the company to pay all the costs of such motion or application, and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the Register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the Register: Provided that the Court or Judge may direct an issue to be tried, in which any question of law may be raised, and an appeal shall lie.

48. Whenever any order has been made rectifying the Register, in the case of a company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

49. The Register of Members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Liability of Members.

50. Every share in any 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 de-

termined by a contract duly made in writing and filed with the Registrar at or before the issue of such share.

51. Each shareholder, until the whole amount of his shares, stock, or other interest 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 shares, stock, or other interest, shall be the amount so recoverable with costs, against such shareholder:

(*a*) 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:

(*b*) 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.

52. No person holding shares, stock, or other interest 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 shares, stock, or other interest in his own name.

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

54. In the event of a company formed under this Act or under any other Act of the Legislature being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

(1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:

(2) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:

(3) No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(4) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the Memorandum of Association:

(6) Nothing in this Act contained shall invalidate any provision contained in any contract whereby the liability of individual members upon any such contract is restricted, or whereby the funds of the company are alone made liable in respect of such contract:

(7) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories among themselves.

PART III.

Extraordinary Powers of Companies.

Preference Shares.

55. The directors of any company incorporated or re-incorporated under this Act may, with the sanction of a special resolution of the company previously given in general meeting, create and issue any part of the capital as preference shares, giving the same such preference and priority as respects dividends and otherwise over ordinary shares as may be declared by the special resolution:

(*a*) The special resolution 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:

(*b*) Holders of such preference shares 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 special resolution as aforesaid:

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

Issue of shares without personal liability by Mining Companies.

56. The Memorandum of Association of a company incorporated or re-incorporated under this Act, the objects whereof are restricted to acquiring, managing, developing, working and selling mines, mineral claims, and mining properties, and the winning, getting, treating, refining and marketing of mineral therefrom, may contain a provision that no liability beyond the amount actually paid upon shares or stock in such company by the subscribers thereto or holders thereof shall attach to such subscriber or holder, and the Certificate of Incorporation issued under section 20 of this Act shall state that the company is specially limited under this section:

(a) The license or certificate of registration to any extra-provincial company (the objects whereof are restricted as aforesaid) issued under the provisions of Part VI. of this Act, may, if applied for in the application for such license, or the petition for such registration, contain the provision aforesaid:

57. Where a Certificate of Incorporation incorporating any such company, or a license or certificate of registration to any extra-provincial company has been issued containing the provision mentioned in section 56 of this Act, every certificate of shares or stock issued by the company shall bear upon the face thereof, distinctly written or printed in red ink, after the name of the company, the words "Issued under section 56 respecting Mining Companies of the 'Companies Act, 1897,'" and where such shares or stock are issued subject to further assessments the word "Assessable," or if not subject to further assessments, the word "Non-assessable," as the case may be.

58. Every mining company, the Memorandum of Association of which contains the said provision, shall have written or printed on its charter, prospectuses, stock certificates, bonds, contracts, agreements, notices, advertisements, and other official publications, 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 the company, and in all bills of parcels, invoices, receipts and letter-heads of the company, immediately after or under the name of such company, and shall have engraved upon its seal the words "Non-Personal Liability;" and every such company which refuses, or knowingly neglects, to comply with this section shall incur a penalty of twenty dollars for every day during which such name is not so kept written or printed, recoverable upon summary conviction; and every director and manager, secretary

and officer of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

59. In the event of any call or calls on assessable shares in a company so incorporated, remaining unpaid by the subscriber thereto, or holder thereof, for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash, by giving notice of such sale in some newspaper published or circulating in the city or district where the principal office of the company is situated, for a period of one month; and said notice shall contain the number of the certificate or certificates of such shares, and the number of shares, the amount of the assessment due and unpaid, and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such subscriber or holder by registered letter mailed to his last known address; and if the subscriber or holder of such shares shall fail to pay the amount due upon such shares, with interest upon the same and cost of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same or such portion thereof as shall suffice to pay such assessment, together with interest and cost of advertising; provided that if the price of the shares so sold exceed the amount due with interest and cost thereon, the excess thereof shall be paid to the defaulting subscriber or holder.

60. No shareholder or subscriber for shares in any company so incorporated, shall be personally liable for non-payment of any calls made upon his shares, beyond the forfeiture and sale, in the event of non-payment of such calls of the amount, if any, already paid on the shares held or subscribed for, nor shall such shareholder or subscriber be personally liable for any debt contracted by the company, or for any sum payable by the company beyond the amount, if any, paid by him upon such shares.

61. Wherever any shares have been heretofore issued by any company duly incorporated under any Act as fully paid-up shares, either at a discount or in payment for any mine, mineral claim, or mining property purchased or acquired by such company or for the acquiring whereof such company has been incorporated, all such shares shall, except as to any debts contracted by the company before the passing of this Act (in regard to which the liability on such shares shall be the same as if this Act had not been passed), be deemed and held to be fully paid-up, and the holder thereof shall be subject to no personal liability thereon, in the same manner as if the Memorandum of Association of the company had contained the provision aforesaid.

Adjustment of Calls and Dividends.

62. Nothing contained in this Act shall be deemed to prevent any company incorporated under this Act, if authorized by its regulations as

originally framed, or as altered by special resolution, from doing any one or more of the following things, namely :—

(1) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls :

(2) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made.

(3) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Subdivision of Shares.

63. Any company limited by shares may, by special resolution, so far modify the conditions contained in its Memorandum of Association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its Memorandum of Association :

(2) Provided that, in the subdivision of its existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

64. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the Memorandum of Association or other official document issued after the passing of any such special resolution, shall be in accordance with such resolution ; and any company which makes default in complying with the provisions of this section shall, upon summary conviction, be liable to a penalty not exceeding five dollars for each copy in respect of which such default is made ; and every director, manager, secretary and officer of the company who knowingly or wilfully authorizes or permits any such default shall, upon summary conviction, be liable to the like penalty.

Share Warrants to Bearer.

65. In the case of a company limited by shares, the company, if authorized to do so by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for

the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

66. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

67. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the Register of Members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its Register of Members the name of any bearer of a share warrant in respect of the shares or stock specified therein, without the share warrant being surrendered and cancelled.

68. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

(2) Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

69. On the issue of a share warrant in respect of any share or stock the company shall strike out of its Register of Members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars: –

(1) The fact of the issue of the warrant:

(2) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3) The date of the issue of the warrant:

and until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the thirty-seventh section of this Act to be entered in the Register of Members of a company: and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

70. After the issue by the company of a share warrant the annual summary required by the thirty-eighth section of this Act shall contain the following particulars: The total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Reduction of Capital and Shares.

71. Any company limited by shares may, by special resolution, so far modify the conditions contained in its Memorandum of Association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned:

(2) The power to reduce capital conferred by this section shall include paid-up capital, and a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved.

72. Every company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Supreme Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company.

73. A company which has passed a special resolution for reducing its capital may apply to the Supreme Court, by petition, for an order confirming the reduction, and on the hearing of the petition, the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit:

(2) Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital:

(*a*) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and

(*b*) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced:"

(3) In any case that the Court thinks fit so to do, it may require the company to publish, in such manner as the Court may direct, the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think expedient,

with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

74. Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object:

(2) The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and amounts of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

75. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say):

(1) If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated:

(2) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

76. The Registrar, upon the production to him of an order of the Supreme Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order, and of a minute (approved by the Court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount (if any) at the date of the registration of the minute, proposed to be

deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

(2) Notice of such registration shall be published in such manner as the Court may direct.

(3) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

77. The minute when registered shall be deemed to be substituted for the corresponding part of the Memorandum of Association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the Memorandum of Association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

78. If any creditor who is entitled, in respect of any debt or claim, to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the space of three weeks after demand made, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and, on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

79. A minute, when registered, shall be embodied in every copy of the Memorandum of Association issued after its registration; and if any company makes default in complying with the provisions of this section it shall, upon summary conviction, be liable to a penalty not exceeding five dollars for each copy in respect of which such default is made, and

every director, manager, secretary and officer of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

80. If any director, manager or officer of a company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall, for every such offence, upon summary conviction, be liable to a penalty not exceeding five hundred dollars.

81. Any company limited by shares may so far modify the conditions contained in its Memorandum of Association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken, or agreed to be taken by any person; and the provisions of the ten next preceding sections of this Act shall not apply to any reduction of capital made in pursuance of this section.

Change of Name.

82. When a company is desirous of changing its name, the Lieutenant-Governor, upon being satisfied that the company is in a solvent condition, that the change is desired not for any improper purpose, and is not otherwise objectionable, that the change has been sanctioned by a special resolution of the company, and that the notice hereinafter provided 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) The company shall give at least three months' previous notice in the *British Columbia Gazette*, and in some newspaper published or circulated 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) Such change shall be conclusively established by the insertion in the *British Columbia Gazette* of a notice thereof by the Provincial Secretary.

83. 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 suits 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.

PART IV.

Management and Administration of Companies and Associations under this Act.

Provisions for Protection of Creditors.

84. Every company under this Act shall have a registered office within the Province, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which business is so carried on.

85. Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

86. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its 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 engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such 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, receipts, and letters of credit of the company.

87. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or 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 issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall, upon summary conviction, be liable to a

penalty of two hundred and fifty dollars, and shall further 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.

88. Every company under this Act shall keep a Register of all mortgages and charges specifically affecting property of the company, and shall enter in such Register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall, upon summary conviction be liable to a penalty not exceeding two hundred and fifty dollars. The Register of Mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars, and a further penalty of ten dollars for every day during which such refusal continues; and in addition to the above penalty, any Judge of the Supreme Court sitting in Chambers may, by summary order, compel an immediate inspection of the Register.

89. Every company under this Act shall keep at its registered office a Register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar a copy of such Register, and shall from time to time notify the Registrar of any change that takes place in such directors or managers.

90. If any company under this Act makes default in keeping a Register of its directors or managers, or in sending a copy of such Register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

91. If any company under this Act carries on business when the number of its members is less than five for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than five members, shall be severally liable for the

payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Notices, Summons, Actions, Etc.

92. 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 or re-incorporated under this Act; and the Memorandum and Articles of Association of the company, or any exemplification, or copy thereof certified under the hand and seal of the Registrar, or any copy of the *Gazette* containing such Memorandum and Articles of Association shall be conclusive proof of every matter and thing therein set forth.

93. A copy of any resolution or special resolution of the company under its seal, and purporting to be signed by any officer of the company, or as to any special resolution filed with the Registrar, a copy certified under his hand and seal shall be received as *prima facie* evidence of such resolution or special resolution in all Courts in British Columbia.

94. Any summons, notice, order or other process or document requiring to be served upon the company may, in addition to any other method of service from time to time provided by any Act, Ordinance or Rule of Court in that behalf, be served by leaving the same at the head office of the company 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 head office 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.

95. 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.

96. Any description of action may be prosecuted and maintained between the company and any shareholder thereof, and no shareholder shall, by reason of being a shareholder, be incompetent as a witness therein.

Provisions for Protection of Members.

97. Every company formed under this Act shall hold a general meeting within four months after its Memorandum of Association is registered; and if such meeting is not held the company shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such four months

until the meeting is held; and every director or manager of the company, and every subscriber of the Memorandum of Association, who knowingly authorizes or permits such default shall, upon summary conviction, be liable to the like penalty.

98. A general meeting of every company under this Act shall be held once at the least in every year.

99. Subject to the provisions of this Act, and to the conditions contained in the Memorandum of Association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the Articles of Association or in the table marked A in the First Schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the Articles of Association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

100. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where, by the regulations of the company, proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

101. In default of any regulations as to voting, every member shall have one vote; and in default of any regulations as to summoning

general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the First Schedule hereto; and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

102. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar, and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall, upon summary conviction, be liable to a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director, manager and officer of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

103. Where Articles of Association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the Articles of Association that may be issued after the passing of such resolution. Where no Articles of Association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of twenty-five cents, or such less sum as the company may direct; and if any company makes default in complying with the provisions of this section it shall, upon summary conviction, be liable to a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall, upon summary conviction, be liable to the like penalty.

104. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place situate within or without the limits of this Province; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Inspectors.

105. The Lieutenant-Governor in Council may appoint one or more competent Inspectors to examine into the affairs of any company under this Act, and to report thereon, in such manner as the Lieutenant-Governor in Council may direct, upon the applications following, that is to say:—

(1) In the case of any company that has a capital divided into shares, upon the application of members holding not less than

one-fifth part of the whole shares of the company for the time being issued;

(2) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

106. The application shall be supported by such evidence as the Lieutenant-Governor in Council may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Lieutenant-Governor in Council may also require the applicants to give security for payment of the costs of the inquiry before appointing any Inspector or Inspectors.

107. It shall be the duty of all officers and agents of the company to produce for the examination of the Inspectors all books and documents in their custody or power. Any Inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall, upon summary conviction, be liable to a penalty not exceeding twenty-five dollars in respect of each offence.

108. Upon the conclusion of the examination the Inspectors shall report their opinion to the Lieutenant-Governor in Council. A copy shall be forwarded by the Provincial Secretary to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the Inspectors were appointed, unless the Lieutenant-Governor in Council shall direct the same to be paid out of the assets of the company, which he is hereby authorized to do.

109. Any company under this Act may by special resolution appoint Inspectors for the purpose of examining into the affairs of the company. The Inspectors so appointed shall have the same powers and perform the same duties as Inspectors appointed by the Lieutenant-Governor in Council, with this exception, that instead of making their report to the Lieutenant-Governor in Council they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such Inspectors, or to answer any question, as they would have incurred if such Inspector had been appointed by the Lieutenant-Governor in Council.

110. A copy of the report of any Inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the Inspectors in relation to any matter contained in such report.

Prospectus.

111. Every prospectus issued by or on behalf of any company or intended company shall state the date on which it was issued, and that date shall be taken for all purposes as the date of publication:

(2) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his duly authorized agent, and shall be filed with the Registrar on or before the date of its publication.

(3) If default is made in complying with the requirements of this section, every officer and agent of the company who is a party to the issue of the prospectus shall, upon summary conviction, be liable to a fine not exceeding twenty-five dollars for every day during which the default continues.

112.—(1) Every prospectus of a company must state—

(*a*) the contents of the Memorandum of Association with the names, occupations, and addresses of the signatories, and the number of shares subscribed for by them respectively; and

(*b*) the number of shares, if any, fixed by the Articles of Association as the qualification of a director; and

(*c*) the names, occupations and addresses of the directors or proposed directors, and the number of shares held or agreed to be taken by them respectively, and whether any such share is held or agreed to be taken by any of them otherwise than in his own right as beneficial owner; and

(*d*) the minimum subscription on which the directors may proceed to commence business, and the minimum amount payable on application and allotment on each share; and

(*e*) the number and amount of shares and debentures issued or agreed to be issued as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and

where there is more than one vendor or the company is a sub-purchaser, the amount payable in cash, shares or debentures to each vendor; and

(*g*) the amount (if any) payable as purchase money in cash, shares or debentures, of any such property as aforesaid, specifying the amount payable for good-will, if any such amount is separately payable; and

(*h*) the amount (if any) payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*j*) the amount intended to be paid to any promoter and the consideration for which it is to be paid; and

(*k*) the amount intended to be reserved for working capital; and

(*l*) the dates, parties, and short purport or effect of every material contract and every material fact known to any director or promoter of the company who is a party to the issue of the prospectus, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of business carried on or intended to be carried on by the company, or to any contract entered into more than five years before the date of publication of the prospectus; and

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

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

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

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

(*c*) the contract depends for its fulfilment on such issue.

Legal Proceedings.

113. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the

next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

114. Where a company under this Act is plaintiff in any action, suit, or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

115. In any action or suit brought by a company under this Act against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

Notices.

116. Any summons, notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office, or in such other manner as may from time to time, by any Statute or Rules of Court for the time being in force, be permitted or prescribed.

117. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

118. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Arbitration.

119. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the "Arbitration Act, 1893," any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

120. All the provisions of the "Arbitration Act, 1893," shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act.

Alteration of Forms.

121. The forms set forth in the Second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Lieutenant-Governor in Council may from time to time make such alterations in the tables and forms contained in the First Schedule hereto, so that it does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and in the forms in the Second Schedule, or make such additions to the last-mentioned forms, as may be requisite. Any such table or form, when altered, shall be published in the *British Columbia Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Act; but no alteration made by the Lieutenant-Governor in Council in the table marked A, contained in the First Schedule, shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

PART V.

Borrowing Powers of Companies Under this Act.

122. All companies under this Act shall have power, subject to the conditions of and in addition to all other powers conferred by this Act, to borrow money for the purpose of carrying out the objects of their respective incorporations, and 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.

(2) These powers shall not be exercised except with the sanction of a special resolution of the company previously given in general meeting.

PART VI.

Licensing and Registration of Extra-Provincial Companies.

123. Unless otherwise provided by any Act, no extra-provincial company having gain for its purpose and object, shall carry on any business within the scope of this Act in this Province unless and until it shall have been duly licensed or registered under this Act, and thereby become expressly authorized to carry on such of its business as is specified in the license or certificate of registration, and no company, firm, broker or other person shall as the representative or agent of, or acting in any other capacity for any such extra-provincial company, carry on any of its business within this Province until such company shall have obtained such license or certificate of registration; and any such company which fails or neglects to obtain such license or certificate of registration, shall incur a penalty of fifty dollars, recoverable upon summary conviction for every day during which it carries on business in contravention of this section; provided that this section shall not apply until the first day of January, 1898, to any extra-provincial company carrying on business within this Province on the date of the passage of this Act, and further provided that proof as to compliance with this section shall at all times be upon the company.

124. Any extra-provincial company, duly incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, duly authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may obtain a license from the Registrar authorizing it to carry on business within this Province on compliance with the provisions of this Act, and on payment to the Registrar in respect of the several matters mentioned in the table marked B in the First Schedule hereto the several fees therein specified, and shall, subject to the provisions of the charter and regulations of the company and to the terms of the license, thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act.

125. Any extra-provincial insurance company, incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, may, upon complying with the requirements of this Act, apply for and obtain from the Registrar a license under the provisions of this Act, empowering it to purchase real estate, and to loan and invest its moneys in manner and to the extent permitted by the charter and regulations of the company.

126. Any such license obtained by any such insurance company before the first day of January, 1898, shall be deemed to have ratified

and confirmed all previous acts of the Company, and shall be construed as if such license had been granted before such company invested any money in this Province.

127. Before the issue of a license to any such extra-provincial company, the company shall file in the office of the Registrar—

(*a*) A true copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia :

(*b*) An affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter :

(*c*) A copy of the last balance sheet of the company and auditor's report thereon :

(*d*) A duly executed power of attorney, under its common seal, empowering some person therein named, and residing in the city, or place where the head office of the company in thi Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded in any Court, and, generally on behalf of such company and within the Province, to accept service of process and to receive all lawful notices, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney, and such company may from time to time, by a new or other power of attorney, executed and deposited as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar.

128. The license shall set forth the corporate name of the company, the place where the head office of the company is situate, the objects for which the company has been established and licensed, the amount of the capital of the company, and the number of shares into which the same is divided, and the amount of each share, the place where the head office of the company in this Province is situate, and the name, address and occupation of the attorney of the company ; and such certificate shall be published for four weeks in the *Gazette* and in one newspaper published or circulating in the place at which the head office of the company in this Province is situate, and in the district wherein the company proposes to carry on business, at the expense of the company ; and such license shall be conclusive evidence that all the requirements of this Act have been complied with.

(*a*) Notice in like manner shall be published in the *Gazette* and in a newspaper as aforesaid of the appointment (if any) of a new attorney, or of the ceasing of the company to carry on business within the Province under its license.

129. The license, or any copy thereof certified under the hand and seal of the Registrar, or a copy of the *Gazette* containing such license, shall be sufficient evidence in any proceeding in any Court in this Province of the due licensing of the company as aforesaid.

130. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service cannot be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding.

131. The Lieutenant-Governor in Council may, by an Order in Council, to be published in three consecutive issues of the *Gazette*, suspend or revoke and make null and void any license granted, under this Part, to any company which refuses or fails to keep a duly appointed attorney within the Province, or to comply with any of the provisions of this Part, and, notwithstanding such suspension or revocation, the rights of creditors of the company shall remain as at the time of such suspension or revocation.

Registration of Extra-Provincial Companies.

132. Any extra-provincial company, duly authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may register the company as a company under this Act on compliance with the provisions thereof, and on payment to the Registrar in respect of the several matters mentioned in the table marked B in the First Schedule hereto the several fees therein specified, and such company shall, subject to the provisions of the charter and regulations of the company, and of this Act, thereupon have the same powers and privileges in this Province as if incorporated under the provisions of this Act.

133. Any extra-provincial company, desiring to become registered as a company under this Act as aforesaid, may petition therefor under the common seal of the company, and with such petition shall file in the office of the Registrar—

(*a*) A true copy of the charter and regulations of the company verified in manner satisfactory to the Registrar, and showing that the company by its charter has authority to carry on business in the Province of British Columbia:

(*b*) An affidavit or statutory declaration that the said company is still in existence and legally authorized to transact business under its charter:

(*c*) A copy of the last balance sheet of the company and auditor's report thereon:

(*d*) A duly executed power of attorney, under its common seal, empowering some person therein named, and residing in the city, or place where the head office of the company in this Province is situate, to act as its attorney and to sue and be sued, plead or be impleaded in any Court, and, generally on behalf of such company and within the Province, to accept service of process and to receive all lawful notices, to issue and transfer stock, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney, and such company may from time to time, by a new or other power of attorney executed and deposited as aforesaid, appoint another attorney within the Province for the purposes aforesaid to replace the attorney formerly appointed. The power of attorney may be according to a form approved of and provided by the Registrar.

134. The Registrar shall issue to any extra-provincial company registered under the foregoing provisions of this Act, a certificate of registration, which shall set forth the corporate name of the company, the place where the head office of the company is situated, the objects for which the company has been established and registered under this Act, the amount of the capital of the company, and the number of shares into which the same is divided, and the amount of each share; the time of existence of the company if incorporated for a fixed period, and in the case of a limited company, that the company is limited, and in the case of a mining company, the liability of the members whereof is specially limited under section 56 hereof, that the company is so specially limited under said section 56; the place where the head office of the company in this Province is situate, and the name, address and occupation of the attorney of the company; and such certificate shall be published for four weeks in the *Gazette*, and in one newspaper published or circulating in the place at which the head office of the company in this Province is situate, and in the district wherein the company propose to carry on business, at the expense of the company; and such certificate of registration shall be conclusive evidence that all the requirements of this Act have been complied with.

(*a*) Notice in like manner shall be published in the *Gazette* and in a newspaper as aforesaid of the appointment (if any) of a new attorney, or of the ceasing of the company to carry on business within the Province under its said license.

135. The certificate of registration, or any copy thereof certified under the hand and seal of the Registrar, or a copy of the *Gazette* containing such certificate of registration, shall be sufficient evidence in any proceeding in any Court in this Province of the due registration of the company as aforesaid.

136. If the power of attorney hereinbefore prescribed becomes invalid or ineffectual from any reason, or if other service cannot be effected, the Court or Judge may order substitutional service of any process or proceeding upon the company to be made by such publication as is deemed requisite to be made in the premises, for at least three weeks in at least one newspaper; and such publication shall be held to be due service upon the company of such process or proceeding.

137. The Lieutenant-Governor in Council may, by an Order in Council, to be published in three consecutive issues of the *Gazette*, suspend or cancel and make null and void any registration effected under this Part, to any company which refuses or fails to keep a duly appointed attorney within the Province or to comply with any of the provisions of this Part, and, notwithstanding such suspension or revocation, the rights of creditors of the company shall remain as at the time of such suspension or cancellation.

General Provisions applying to Extra-Provincial Companies Licensed or Registered under this Act.

138. Any extra-provincial company licensed or registered under this Part may sue and be sued in its corporate name, and if authorized so to do by its charter and regulations, may acquire and hold lands in British Columbia by gift, purchase, or as mortagees, or otherwise, as fully and freely as private individuals, and may sell, lease, mortgage, or otherwise alienate the same.

139. Every extra-provincial company registered as a company under this Act shall, subject to the provisions of its charter and regulations, and of this Act, have and may exercise all the rights, powers, and privileges by this Act granted to and conferred upon companies incorporated thereunder; and every such extra-provincial company and the directors, officers, and members thereof, shall be subject to, and shall, subject as aforesaid, observe, carry out and perform every act, matter, obligation, and duty by this Act prescribed and imposed upon companies incorporated thereunder, or upon the directors, officers, and members thereof.

140. Every extra-provincial company registered under this Part shall, in and by the power of attorney hereinbefore prescribed, empower its attorney to issue and transfer shares of the company:

(1) Every such extra-provincial company shall, at its head office or chief place of business in this Province, provide and keep in form and manner provided by section 36 of this Act, a register of all stock issued at such head office or chief place of business, and of all transfers of shares in the company made within this Province and presented for record at such head office or chief place of business; and every lawful transfer of shares made by a member shall, upon entry and record on

such register, be valid and binding to all intents and purposes; and every act, matter or thing lawfully done by the attorney of the company pursuant to this section, shall be as valid and binding in all respects as if done by the company or the directors, managers or officers of the company, pursuant to the provisions of the charter and regulations of the company, and of this Act in that behalf.

141. Every extra-provincial company duly incorporated under the laws of Great Britain or Ireland, or of the Dominion of Canada, or of the late Province of Canada, or of any of the Provinces of Canada, heretofore registered in this Province as a foreign company under the provisions of any Act, may surrender to the Registrar the certificate of registration of the company issued under such Act, and obtain from him a license under the provisions of this Part; and for the purpose of obtaining such license the surrender of such certificate of registration shall be deemed to be a sufficient compliance with the requirements of this Part.

142. Every extra-provincial company heretofore registered in this Province as a foreign company under the provisions of any Act in that behalf and entitled to obtain a license under this Part shall, unless such license be obtained on or before the first day of January, A.D. 1898, and every other extra-provincial company so registered shall, from and after the passing of this Act, hold the certificate of such registration issued to the company subject in every respect to the provisions of and as if the same were a certificate issued under the provisions of this Part.

143. No act, matter, disposition or thing affecting the corporate rights and property of the company within this Province, made, done or executed by any extra-provincial company not entitled to obtain a license under this Part, although valid by the laws of the country or state under which such company is incorporated, or permissible under its original corporate powers, shall be of any force or effect, or enforceable by action in any Court in this Province, unless such act, matter, disposition or thing be within the rights, powers and privileges, granted by, and done and exercised according to the provisions of this Act in that behalf.

144. In case of any suit or other proceeding being commenced by any extra-provincial company against any person or corporation residing or carrying on business in this Province, such extra-provincial company shall furnish security for costs, if demanded.

145. Nothing contained in this Part of this Act shall authorize the registration of any Chinese company or association.

PART VII.

Process Against Unregistered Foreign Companies.

146. In this Part the word "company" shall be construed to mean any unlicensed and unregistered extra-provincial company, which has done, entered into or made any Act, matter, contract, or disposition giving to any person or company a right of action in any Court in this Province.

147. Any writ or summons, plaint, injunction, or other legal proceeding duly issued, at the instance or suit of any person, by any competent Court of the Province, or officer of such Court, may be served, as against the company, by delivering the same at Victoria, to the Registrar of the Supreme Court.

148. It shall be the duty of such Registrar to cause to be inserted, in the four regular issues of the *British Columbia Gazette* consecutively following the delivery of such process to him, a notice of such process, with a memorandum of the date of delivery, stating generally the nature of the relief sought, and the time limited, and the place mentioned for entering an appearance.

149. After such advertisement shall have appeared in such four issues, the delivery of such process to the Registrar as aforesaid, shall be deemed, as against the defendant company, to be good and valid service of such process.

150. In entering up, applying for, or obtaining a judgment by default, or for the purpose of taking any proceeding consequent or following on such service, it shall not be necessary, so far as such service is concerned, to file any affidavit, but the plaintiff shall, instead thereof, file a copy of each of the four issues of the *British Columbia Gazette* in which the advertisement shall have appeared: Provided always, that when service of process shall have been effected as hereinbefore mentioned, the plaintiff shall, and he is hereby required to prove the amount of the debt or damages claimed by him in manner following, that is to say: If the action shall have been brought in the Supreme Court, then before a jury, or before a Judge, or before the Registrar, as a Judge of the said Court may direct, or if the action shall have been brought in the County Court, before the County Court Judge; and the making of such proof shall be a condition precedent to the plaintiff obtaining judgment.

151. In any action, suit, or proceeding against the company, it shall not be necessary to aver in any pleading, or to adduce any evidence, that the company was organized or incorporated under the laws of any foreign state or jurisdiction, or that the company had power under its organization or incorporation to make the contract or incur the liability in respect of which the action, suit, or proceeding against the company shall be brought.

152. Nothing in this Part contained shall be deemed to limit, abridge, or take away any legal right, recourse, or remedy against a company not therein enacted or recognized, nor to absolve or lessen any obligation, rule, or duty imposed by law on a company.

PART VIII.

Voluntary Winding Up.

153. A company under this Act may be wound up voluntarily—

(*a*) Whenever the period, if any, fixed for the duration of the company by its Articles of Association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the Articles of Association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(*b*) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily:

(*c*) Whenever the company has passed a special resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

(2) A voluntary winding up shall be deemed to commence at the time of the passing by the company of the resolution authorizing such winding up:

(3) The provisions of the Acts of the Parliament of Canada, passed respectively in the forty-ninth year of the reign of Her present Majesty, chaptered one hundred and forty-nine and intituled "An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations;" in the fifty-second year of the reign of Her present Majesty, chaptered thirty-two and intituled "An Act to amend 'The Winding Up Act,' chapter one hundred and twenty-nine of the Revised Statutes;" and in the fifty-fifth and fifty-sixth years of the reign of Her present Majesty, chaptered twenty-eight and intituled "An Act further to amend 'The Winding Up Act,'" and all forms, rules and regulations for the time being in force, under and by virtue of section 92 of the said first-mentioned Act shall, so far as the same respectively are applicable, apply to and govern all proceedings, practice, and procedure relating to and occurring in any voluntary winding up of a company under the provisions hereof.

154. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member of the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

PART IX.

PROTECTING PURCHASERS OF STOCK FROM LOSSES BY FORGED TRANSFERS, AND THE PREVENTION OF FRAUDULENT AND NEGLIGENT PRACTICES.

Forged Transfers.

155. Where a company issue or have issued shares, stocks or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock or securities, in pursuance of a forged transfer, or of a transfer under a forged power of attorney, whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid:

(2) Any company may, if they think fit, provide either by fees not exceeding the rate of one dollar on every five hundred dollars transferred, with a minimum charge equal to that for one hundred dollars, to be paid by the transferee upon the entry of the transfer in the books of the company, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation:

(3) For the purpose of providing such compensation any company may borrow on the security of their property:

(4) Any such company may impose such reasonable restrictions on the transfer of their shares, stock or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery:

(5) Where a company compensate a person under this Part for any loss arising from forgery, the company shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had:

(6) Where the shares, stocks or securities of a company have by amalgamation or otherwise become the shares, stock or securities of another company, the last-mentioned company shall have the same power under this Part as the original company would have had if it had continued.

Fraudulent and Negligent Practices.

156. Where, after the passing of this Act, a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him, is named in the prospectus or

notice as a director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*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 did up to the time of the allotment of the shares, debentures or debenture stock, as the case may be, 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 an extract from the report or valuation, such director, person named, promoter or other person who authorized 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 a 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, 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 issu of such prospectus or notice and before allotment thereunder, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given:

(2) A promoter, in this section, means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

(3) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same.

157. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the 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, or has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice, shall be liable to indemnify the person named as 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.

158. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

159. Where any advertisement, letter-head, postal-card, account or document issued, published or circulated by any corporation, association or company, or any officer, agent or employee of any such corporation, association or company, purports to state the subscribed capital of the company, then the capital actually and in good faith subscribed, and no more, shall be so stated; and any such corporation, association, company, officer, agent or employee who causes to be inserted an advertisement in any newspaper, or who publishes, issues or circulates, or causes to be published, issued or circulated, any advertisement, letter-head, postal-card, account, or document, which states, as the subscribed capital of such company, any larger sum than the amount of such subscribed capital so actually and in good faith subscribed as aforesaid, or which

contains any untrue or false statement, as to the incorporation, control, supervision, management, or financial standing of such corporation, association or company, and which statement is intended or calculated or likely to mislead or deceive any person dealing or having any business or transaction with said corporation, association, or company, or with any officer, agent or employee of the association, corporation or company, shall, upon summary conviction, be liable to a penalty not exceeding two hundred dollars and costs and not less than fifty dollars and costs, and in default of payment the offender, being any officer, agent or employee as aforesaid, shall be imprisoned, with or without hard labour, for a term not exceeding three months and not less than one month; and on a second or any subsequent conviction he may be imprisoned with hard labour for a term not exceeding twelve months and not less than three months.

PART X.

Repeal of Former Enactments.

160. "The Companies Act," being chapter twenty-one of the Consolidated Acts, 1888; the "Companies Act Amendment Act, 1889"; the "Companies Act, 1890"; the "Companies Act Amendment Act, 1891"; the "Companies Act (1890) Amendment Act, 1892"; the "Companies Acts Amendment Act, 1893"; the "Companies Acts Amendment Act, 1894"; the "Fraudulent Statements Act, 1894"; and the "Companies Act Amendment Act, 1895," are hereby repealed: Provided—

(*a*) That such repeal shall not be held or taken to in any way alter, limit or affect the corporate existence, rights, privileges, powers and liabilities of any company incorporated under the said repealed Acts or any or either of them:

(*b*) That the provisions of the Eighth Part of this Act, and of sections 37, 38, 89, and 90 of this Act, shall apply to every company incorporated under the said repealed Acts, or any or either of them; and

(*c*) That every company incorporated under the said repealed Acts, or any or either of them, may dispose of the whole or any portion of its assets, rights, powers, privileges, and franchise by resolution duly passed to such effect at a general or special meeting of the shareholders representing at least two-thirds in value of the paid-up capital of the company, which meeting shall be held in the city, town or district where the company has its chief place of business in the Province: Provided always, that at least one month's notice of such meeting, signed by the secretary, or, in the event of his death or absence, by the acting secretary, or if there be neither secretary nor acting

secretary, then by one of the trustees, shall be published in at least four issues of the *Gazette*, and of some newspaper published in the city, town, or district aforesaid: Provided always, that nothing herein contained shall be construed or allowed to prejudice any claim against the corporation.

Miscellaneous.

161. Notwithstanding anything to the contrary in section 4 of the 'Mineral Act, 1896,' or section 4 of the 'Placer Mining Act, 1891,' or elsewhere in the said Acts or other the mining laws of the Province, no free miner's certificate shall be issued to a joint stock company for a longer period than one year, and such certificate shall date from the 30th day of June in each year; and every free miner's certificate held by a joint stock company at the passing of this Act shall be valid and existing until and shall expire on the 30th day of June, 1897. Upon applying to renew any such certificate on or before said 30th day of June, the joint stock company shall be entitled to a rebate of a proportionate amount of the fee paid for a certificate heretofore issued according to the further time for which it would but for this section have been valid.

Short Title.

162. This Act may be cited as the "Companies Act, 1897."

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1) If several persons are registered as joint holders of any shares, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of twenty-five cents, or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed on payment of twenty-five cents, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the time and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums 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 has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8) The instrument of transfer of any share in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the Register Book in respect thereof.

(9) Shares in the company shall be transferred in the following form:—

I, *A. B.*, of in consideration of the sum of dollars paid to me by *C. D.*, of do hereby transfer to the said *C. D.* the share (*or* shares) numbered standing in my name in the books of the Company, to hold unto the said *C. D.*, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C. D.*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands, the day of

(10) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person, to be named by him, registered as a tranferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

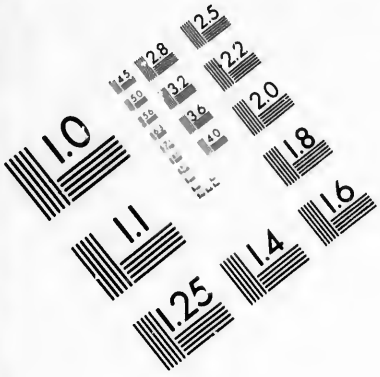
(16) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

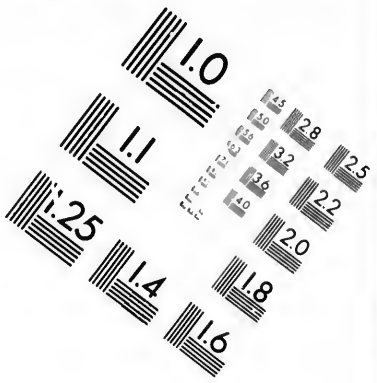
Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls,





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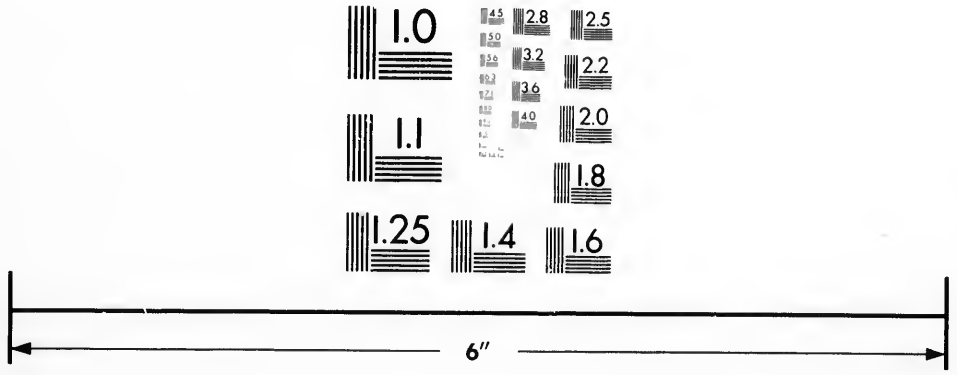

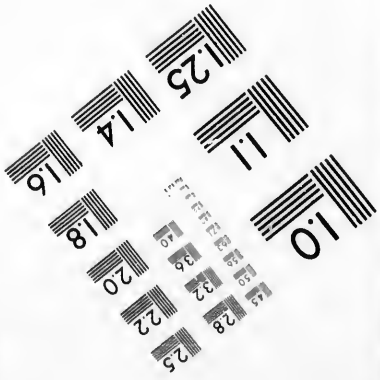

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23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the company and may be disposed of in such manner as the company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22) A statutory declaration, in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share; and such declaration, and the receipt of the company for the price of such share shall constitute a good title to such share, and the certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting the time within which the offer, if not accepted, will be deemed to be declined; and, after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of the calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29) The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine.

(30) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34) Upon the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If

they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

(35) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say:—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.

(38) If within one hour from the time appointed for a 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 time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the Book of Proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44) Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48) Votes may be given either personally or by proxy.

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I , of , in the County of being a member of the Company, Limited, and entitled to vote (*or* votes), hereby appoint of as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) General Meeting of the Company to be held on the day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held in the year).

As witness my hand, this day of

Signed by the said in the presence of

Directors.

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

(53) Until directors are appointed the subscribers of the Memorandum of Association shall be deemed to be directors.

(54) The future remuneration of the directors and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

(55) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these Articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57) The office of director shall be vacated,—

If he holds any other office or place of profit under the company:

If he becomes bankrupt or insolvent:

If he is concerned in or participates in the profits of any contract with the company:

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

(58) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

(61) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up:

(63) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office:

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66) The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69) A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing

dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserve fund, upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

(77) No dividend shall bear interest as against the company.

Accounts.

(78) 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;

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79) Once at the 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, made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81) A balance sheet shall be made out in every year, 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 heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83) Once at least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

(87) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid, the Lieutenant-Governor in Council may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other

persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the company.

(94) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95) A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register of Members; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

DR. BALANCE SHEET OF THE.....CO. MADE UP TO.....18.... CR.

CAPITAL AND LIABILITIES.					PROPERTY AND ASSETS.				
CAPITAL.		*Showing:*	$	$	III. PROPERTY held by the company.		*Showing:*	$	$
	1.	*The number of shares*				7.	*Immovable property, distinguishing—*		
	2.	*The amount paid per share*					*(a) Freehold land*		
	3.	*If any arrears of calls, the nature of the arrear, and the names of the defaulters.*					*(b) " buildings*		
	4.	*The particulars of any forfeited shares.*					*(c) Leasehold " *		
						8.	*Movable property, distinguishing—*		
II. DEBTS AND LIABILITIES of the Company.		*Showing:*					*(d) Stock in trade*		
	5.	*The amount of loans on mortgages or debenture bonds.*					*(e) Plant*		
	6.	*The amount of debts owing by the company, distinguishing—*					*The cost to be stated, with deductions for deterioration in value as charged to the reserve fund or profit and loss.*		
		(a) Debts for which acceptances have been given:			IV. DEBTS owing to the company.		*Showing:*		
		(b) Debts to tradesmen for supplies of stock in trade or other articles:				9.	*Debts considered good, for which the company hold bills or other securities.*		
		(c) Debts for law expenses:				10.	*Debts considered good, for which the company hold no security.*		
		(d) Debts for interest on debentures or other loans:				11.	*Debts considered doubtful and bad.*		
		(e) Unclaimed dividends:					*Any debt due from a director or other officer of the company to be separately stated.*		
		(f) Debts not enumerated above:							
VI. RESERVE FUND.		*Showing:*			V. CASH AND INVESTMENTS.		*Showing:*		
		The amount set aside from profits to meet contingencies.				12.	*The nature of investment and rate of interest*		
						13.	*The amount of cash, where lodged, and if bearing interest.*		
VII. PROFIT AND LOSS.		*Showing:*							
		The disposable balance for payment of dividend, etc.							
CONTINGENT LIABILITIES.		*Claims against the company not acknowledged as debts.*							
		Moneys for which the company is contingently liable.							

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a Company having a capital divided into shares.

For registration of a company whose nominal capital does not exceed $10,000, a fee of - - - - - - - - - $25 00

For registration of a company whose nominal capital exceeds $10,000 the above fee of $25, with the following additional fees, regulated according to the amount of nominal capital; (that is to say),—

For every $5,000 of nominal capital, or part of $5,000, after the first $10,000, up to $25,000 $5 00

For every $5,000 of nominal capital or part of $5,000, after the first $25,000, up to $500,000 - - - - - - - - 2 50

For every $5,000 of nominal capital, or part of $5,000, after the first $500,000 - - - 1 25

For registration of any increase of capital made after the first registration of the company, the same fees per $5,000 or a part of $5,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.

For a license to or registration of any extra-provincial company, the same fees as are payable for registering a new company.

For registration under this Act of any existing company the certificate of registration whereof is issued pursuant to section 56 hereof, or the capital whereof is increased pursuant to section 5 (*b*) hereof, in lieu of the fee of ten dollars prescribed by section 5 of this Act, the same fees as are payable for registering a new company hereunder, allowing credit as part of such fees for the amount of fees paid by such company in respect of its original registration.

For a license to or registration under this Act of any extra-provincial company already registered in this Province as a foreign company - - - - - - - - - 10 00

And, in addition thereto, if the license or certificate of registration under this Act is issued pursuant to section 56 hereof, the same fees as are payable for registering a new company hereunder, allowing credit as part of such fees for the amount of fees paid by such extra-provincial company in respect of its original registration in this Province.

For a license to an extra-provincial insurance company under section 125 of this Act - - - - - - - - - 25 00

For registering any document hereby required or authorized to be registered, other than the Memorandum of Association - 1 00

Money for which the company is contingently liable.

For making a record of any fact hereby authorized or required to be recorded by the Registrar, a fee of - - - - - $1 00

Publication in the *Gazette*, according to the scale of charges as defined in Schedule A of the "Statutes and Journals Act."

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a Company not having a capital divided into shares.

For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20 - $10 00

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100 - - - - - - - - - - 25 00

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of $25 with an additional $1 for every 50 members or less number than 50 members after the first 100.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of - - - - - - - - - - - - - - 100 00

For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase - - - - - - - - - - - - 1 00

Provided that no one company shall be liable to pay on the whole a greater fee than $100 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registering any document hereby required or authorized to be registered, other than the Memorandum of Association 1 00

For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of - 1 00

SECOND SCHEDULE.

FORM A.

MEMORANDUM OF ASSOCIATION of a Company limited by shares.

1st. The name of the Company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the Company will be situate in

3rd. The objects for which the Company is established are "the "conveyance of passengers and goods in ships or boats between such "places as the Company may from time to time determine, and the "doing all such other things as are incidental or conducive to the "attainment of the above objects."

4th. The liability of the members is limited.

5th. The capital of the Company is dollars, divided into shares of dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of shares taken by each subscriber.
"1. John Jones of	in the County of	Merchant.	200
"2. John Smith of	in the County of	—	25
"3. Thomas Green of	in the County of	—	30
"4. John Thomson of	in the County of	—	40
"5. Caleb White of	in the County of	—	15
	Total shares taken	— — —	310

Dated the day November, 189 .

Witness to the above signatures,

A.B., No. Street, British Columbia.

FORM B.

Memorandum and Articles of Association of a Company limited by guarantee and not having a capital divided into shares.

Memorandum of Association.

1st. The name of the Company is the "Mutual London Marine Association, Limited."

2nd. The registered office of the Company will be situate in

3rd. The objects for which the Company is established are "the "mutual insurance of ships belonging to members of the Company, "and the doing of such other things as are incidental or conducive "to the attainment of the above objects."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights

of the contributories amongst themselves, such amount as may be required, not exceeding dollars.

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thomson of in the County of
"5. Caleb White of in the County of

Dated the day of , 189 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

ARTICLES OF ASSOCIATION to accompany preceding MEMORANDUM OF ASSOCIATION.

(1) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2) The directors hereinafter mentioned may, whenever the business of the Association requires it, register an increase of members.

Definition of Members.

(3) Every person shall be deemed to have agreed to become a member of the Company who insures any ship, or share in a ship, in pursuance of the regulations hereinafter contained.

General Meetings.

(4) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

(10) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(12) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say:—If the members of 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 thirty.

(13) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman at such meeting.

(16) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the Book of Proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19) Every member shall have one vote and no more.

(20) If any member is a lunatic or idiot, he may vote by his committee, curator bonis, or other legal curator.

(21) No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

(22) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or if such appointer is a corporation, under its common seal.

(23) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, of , in the County of
being a member of the Company, Limited,
hereby appoint , of , as my proxy, to
vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) general meeting of the Company to be held
on the day of , and at any adjournment
thereof to be held on the day of next (*or*
at any meeting of the Company that may be held in the
year)
As witness my hand this day of
Signed by the said in the presence of

Directors.

(25) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

(26) Until directors are appointed, the subscribers of the Memorandum of Association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

(27) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28) The directors shall be elected annually by the Company in general meeting.

Business of Company.

[*Here insert Rules as to mode in which business of Insurance is to be conducted.*]

Accounts.

(29) The accounts of the company shall be audited by a committee of five members, to be called the Audit Committee.

(30) The first Audit Committee shall be nominated by the directors out of the body of members.

(31) Subsequent Audit Committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The Audit Committee shall be supplied with a copy of the Balance Sheet, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto.

(33) The Audit Committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company; they may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the Company.

(34) The Audit Committee shall make a report to the members upon the Balance Sheet and Accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the Company, and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35) A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(36) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding up.

(37) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined in the "Companies Act," is passed, requiring the company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thomson of in the County of
"5. Caleb White of in the County of

Dated the day of 189 .

Witness to the above signatures,
A. B., No. Street, British Columbia.

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION of a Company limited by Guarantee, and having a capital divided into shares.

Memorandum of Association.

1st. The name of the Company is "The Highland Hotel Company, "Limited."

2nd. The registered office of the Company will be situate in

3rd. The objects for which the Company is established are "the "facilitating travelling in the Province by providing Hotels and "Conveyances by sea and by land, for the accommodation of "travellers, and the doing all such other things as are incidental or "conducive to the attainment of the above object."

4th. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company, contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights

of the contributories amongst themselves, such amount as may be required, not exceeding dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thomson of in the County of
"5. Caleb White of in the County of

Dated the day of 189 .

Witness to the above signatures,
A. B., No. Street, British Columbia.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of dollars, divided into shares of dollars each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
"1. John Jones of	in the County of —	200
"2. John Smith of	in the County of —	25
"3. Thomas Green of	in the County of —	30
"4. John Thomson of	in the County of —	40
"5. Caleb White of	in the County of —	15
Total shares taken — — —		310

Dated the day of 189 .

Witness to the above signatures,
A. B., No. Street, British Columbia.

FORM D.

MEMORANDUM and ARTICLES OF ASSOCIATION of an unlimited Company having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the Company is "The Patent Stereotype Com-"pany."

2nd. The registered office of the Company will be situate in

3rd. The objects for which the Company is established are "the "working of a patent method of founding and casting stereotype plates, "of which method John Smith, of , is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thomson of in the County of
"5. Caleb White of in the County of

Dated day of 189 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is dollars, divided into shares of dollars each.

Application of Table A.

All the articles in Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by Subscribers.
"1. John Jones of	in the County of	Merchant	1
"2. John Smith of	in the County of	—	5
"3. Thomas Green of	in the County of	—	2
"4. John Thomson of	in the County of	—	2
"5. Caleb White of	in the County of	—	3
	Total shares taken	— — —	13

Dated the day of 189 .

Witness to the above signatures,

A. B., No. Street, British Columbia.

FORM E, as required by the Second Part of the Act.

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the day of .

Nominal Capital $, divided into shares of $ each.
Number of shares taken up to the day of
There has been called up on each share, $
Total amount of calls received, $
Total amount of calls unpaid, $

List of persons holding shares in the Company on the day of , and of persons who have held shares therein at any time during the year immediately preceding the said day of , showing their names and addresses, and an account of the shares so held.

Folio in Register Ledger containing particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing members on the day of .	Additional shares held by existing members during preceding year		Shares held by persons no longer members.		
						Number	Date of Transfer.	Number	Date of Transfer.	

NEW BRUNSWICK.[1]

Under the Provisions of the New Brunswick Joint Stock Companies Act (1893).

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*) The proposed corporate name of the Company, which shall not be that of any other known Company incorporated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable;

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

(*c*) The Town or place, or some one of the Towns or places within the Province of New Brunswick, in which its office or chief place of business is to be established;

(*d*) The amount of its capital stock, which shall not be less in any case than two thousand dollars ($2,000), actually subscribed;

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

(*f*) The name in full, 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 or Provisional Directors of the Company;

Petition.—Sec. 5.—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;

(*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.

[1] Copies of the New Brunswick Joint Stock Companies Act may be obtained on application to the Hon. the Provincial Secretary, Fredericton, N.B.

(*c*) The petition must also state whether such amount is paid in cash, or by transfer of property or how otherwise, and if by transfer of property, shall state briefly the description of property transferred.

(*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. 27.—The affairs of every company shall be managed by a board of not less than three directors.

Directors' Qualification.—Sec. 29.—A Director must be a shareholder owning stock in his own right and to the amount required by the by-laws of the company, and not in arrear in respect of calls thereon.

First Call.—Sec 53.—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.

Issue of Shares.—Sec. 38.—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. 39.—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 promotors, 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. 91.—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 direc-

tors may borrow money upon the credit of the company, and issue bonds, debentures or other securities, and may sell, pledge or hyphothecate the same for any sums borrowed, or deposit the same as collateral security for any promissory note or overdraft of the company, at such prices or for such amounts 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 by the Company, and may secure any bonds, debentures or other securities of the company by the said real or personal property or both; provided always, that the amount to be borrowed, or for which such bonds, debentures or other securities may be pledged or hypothecated, shall not at any time be greater than seventy-five per cent. of the actual paid-up stock; and provided always, that the limitations of this section shall not be held to apply to commercial paper discounted by the company.

TARIFF OF FEES.

(1) When the proposed Capital Stock of the Company is $5,000 or less, the fee to be Thirty dollars ($30.00).

(2) When the proposed Capital Stock of the Company is above $5,000 and less than $10,000, the fee to be Forty dollars ($40.00).

(3) When the proposed Capital Stock of the Company is $10,000 and less than $25,000, the fee to be Fifty dollars ($50.00).

(4) When the proposed Capital Stock of the Company is $25,000 and less than $50,000, the fee to be Sixty dollars ($60.00).

(5) When the proposed Capital Stock of the Company is $50,000 and less than $100,000, the fee to be Eighty dollars ($80.00).

(6) When the proposed Capital Stock of the Company is $100,000 and less than $200,000, the fee to be One hundred and twenty dollars ($120.00).

(7) When the proposed Capital Stock of the Company is $200,000 and less than $300,000, the fee to be One hundred and sixty dollars ($160.00).

(8) When the proposed Capital Stock of the Company is $300,000 and less than $500,000, the fee to be Two hundred dollars ($200.00).

(9) When the proposed Capital Stock of the Company is $500,000 and less than $1,000,000, the fee to be Two hundred and fifty dollars ($250.00).

(10) For every $500,000 in excess of $1,000,000, an additional fee of Fifty dollars ($50.00.)

(11) Supplementary Letters, when application is to increase the Capital Stock, a sum of Twenty dollars ($20.00), and a further sum in addition thereto, according to the scale aforesaid, upon the increased amount for which Letters are applied for.

In all other cases a fee of Fifty dollars ($50.00).

MANITOBA.

Under the provisions of the Revised Statutes of Manitoba (1891), p. 182.

Purposes.—Sec. 4.—The Lieutenant-Governor in Council 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. The capital stock of a company incorporated under this Act can not at any time exceed $500,000, unless it be a mining company, in which case it may not exceed $2,000,000.

Notice.—Sec. 5.—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. 6.—Within a month after the last publication the applicants may petition for the issue of Letters Patent:

7 (a) 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 each applicant, and also the amount, if any, paid in upon the stock of each applicant;

(b) The petition shall also state whether the amount is paid in cash or transfer of property or how otherwise;

(c) Petition may ask that there be embodied in charter any provision which might be embodied in any by-law of company when incorporated;

(8) 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, but business may not be commenced until 10 per cent. of stock has been subscribed and 10 per cent. of stock so subscribed has been actually paid up.

Directors.—Sec. 24.—The board of directors shall not be less than three nor more than nine directors.

Borrowing Powers.—Sec. 71.—Similar to Ontario Joint Stock Company.

Calls.—Sec. 50.—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
$2,000 and less than $50,000	30 00
Less than $2,000	10 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 (*a*), 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.

(*a*) The *Gazette* is published at Regina.

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

(8) On application for Supplementary Letters Patent, the fees to be one-half of that charged on the original Letters Patent.

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.

For a Company whose Capital Stock is less than $10,000 the fee is $20
$10,000 and less than $50,000 the fee is $30
$50,000 " $100,000 " $40
$100,000 " $250,000 " $50
$250,000 " $500,000 " $60
$500,000 and upwards, the fee is $70.
For Supplementary Letters increasing the Capital Stock, $15.
" " " powers, $15.
" " " name, $15.

PRINCE EDWARD ISLAND.

Under the provisions of the Prince Edward Island Joint Stock Companies Act, Chapter 14, 51st Victoria, incorporation is granted for the same purposes and subject to the same conditions of procedure and form as prevail under the Dominion of Canada Joint Stock Companies Act.

TARIFF OF FEES.

When the proposed capital stock of the company is less than
$10,000, fee to be paid $25 00
$10,000 and under $25,000 ..... 30 00
25,000 " 50,000 ..... 35 00
50,000 " 100,000 ..... 45 00
100,000 " 200,000 ..... 65 00
200,000 " 300,000 ..... 85 00
300,000 " 500,000 ..... 105 00
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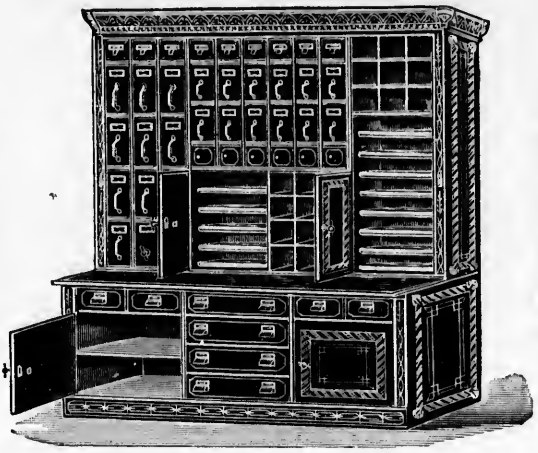

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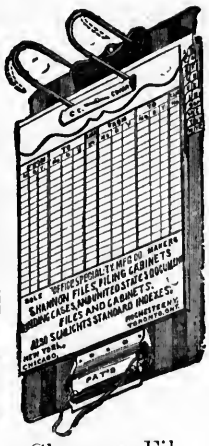

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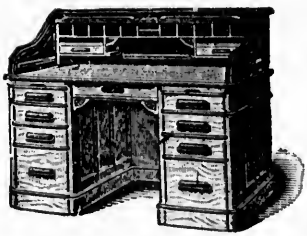

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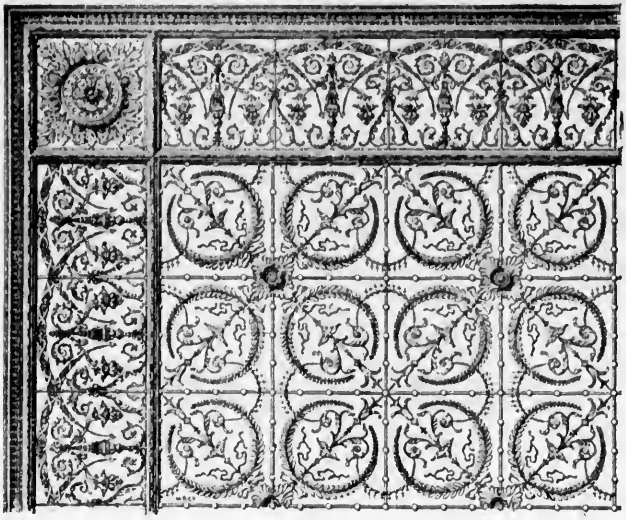

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