

*Takes precedence of all
prior laws. Repealed (1) & sup-
plied by ch. 167, v. 22, 286*

TITLE TENTH. *AB 1893-566*

Of Corporations.

✓ CHAPTER 273.

GENERAL PROVISIONS RESPECTING CORPORATIONS.

AN ACT PROVIDING A GENERAL CORPORATION LAW.

*Be it enacted by the Senate and House of Representatives of the State
of Delaware in General Assembly met (with the concurrence of
two-thirds of the members elected to each House of the Gen-
eral Assembly.)*

AB 23-570

SECTION 1. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this Act as hereinafter provided; excepting for such purposes as are excluded from the operation of a general law by Section 1 of Article 9 of the Constitution of this State, upon making and filing a certificate of incorporation in writing in manner hereinafter mentioned.

Number of persons required.

Purpose. *↙*

SECTION 2. Every corporation created under the provisions of this Act shall have power:

Powers. *↙*

1. To have succession, by its corporate name, for the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual.

Succession.

↙ See one

2. To sue and be sued, complain and defend in any court of law or equity.

Suits.

3. To make and use a common seal and alter the same at pleasure.

Seal.

4. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding in value the amount limited in its charter, and all other real estate which shall have been bona fide mortgaged to the said corporation by way of security, or conveyed to it in satisfaction of debts previously

Property.

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contracted or purchased at sales upon judgments or decree which shall have been obtained for such debts and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest.

Officers.

5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

By-laws.

6. To make by-laws not inconsistent with the Constitution or laws of the United States or of this State, fixing and altering the number of its directors for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars.

Dissolution.

7. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

Additional powers.

SECTION 3. In addition to the powers enumerated in the second section of this Act, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this Act, and the powers expressly given in its charter or in its certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this Act contained, so far as the same are appropriate to and not inconsistent with such charter or Act under which such corporation was formed, and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

Banking powers denied.

SECTION 4. No corporation created under the provisions of this Act shall, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidences of debt of receiving deposits of money, of buying gold and silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

Amendment or repeal of act.

SECTION 5. This Act may be amended or repealed, at the pleasure of the Legislature, but such amendment or repeal shall not take away or impair any remedy against any corporation created under this Act, or its officers for any liability which shall have been previously incurred; this Act and all amendments thereof shall be a part of the charter of every such corporation except so far

Act part of charter.

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as the same are inapplicable and inappropriate to the objects of such corporation.

SECTION 6. Any corporation created under this Act may conduct business in this State, other States, the District of Columbia, the territories and colonies of the United States and in foreign countries, and have one or more offices out of this State, and may hold, purchase, mortgage and convey real and personal property out of this State; *provided*, such powers are included within the objects set forth in its certificate of incorporation.

Where business may be conducted.

Offices. Property.

SECTION 7. The certificate of incorporation shall set forth: Certificate.

1. The name of the corporation, which shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this State. Name.

2. The name of the city or town, county or place within the county in which its principal office or place of business is to be located in this State. Principal office.

3. The nature of the business or objects or purposes proposed to be transacted, promoted or carried on. Business.

4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares in which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created. *Provided, however*, that the provisions of this paragraph shall not apply to religious or literary corporations, unless it is desired to have a capital stock; in case any religious or literary corporation desires to have no capital stock it shall be so stated, and the conditions of membership shall be also stated. Capital stock.

5. The names and places of residence of each of the original subscribers to the capital stock, or if there be no stock, of the original corporators. Subscribers or corporators.

6. Whether or not the corporation is to have perpetual existence; if not, the time when its existence is to commence and the time when its existence is to cease. Existence.

7. By what officers or persons the affairs of the corporation Government.

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are to be conducted and the time and place at which they are to be elected.

Value of property held. 8. The value of real and personal estate of which the corporation may become seized and possessed.

Indebtedness. 9. The highest amount of indebtedness or liability, which the corporation may at any time incur.

Liability of stockholders. 10. Whether the private property of the stockholders, not subject by the provisions of the law under which it is organized, shall be subject to the payment of corporate debts, and if so, to what extent.

Other provisions. SECTION 8. The certificate of incorporation may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of the stockholders; *provided*, such provisions are not contrary to the laws of this State.

Execution of certificate. SECTION 9. The certificate shall be signed and sealed by the original corporators, or a majority of them, and shall be acknowledged before any officer authorized by the laws of this State to take acknowledgements of deeds, to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth; said certificate shall be filed in the office of the Secretary of State, who shall furnish a certified copy of the same under his hand and seal of office, and said certified copy shall be recorded in the office of the Recorder of Deeds of the county where the principal office of said corporation is to be located in this State in a book to be kept for that purpose; said certificate or a copy thereof duly certified by the Secretary of State, accompanied with the certificate of the Recorder of the county wherein the same is recorded under his hand and the seal of his office stating that it has been recorded, the record of the same in the office of the Recorder aforesaid, or a copy of said record duly certified by the Recorder aforesaid shall be evidence in all courts of law and equity in this State.

Amendments. SECTION 10. Amendments and alterations of the original certificate may be made by a supplemental certificate, made, signed, acknowledged, filed and recorded in the same manner in every respect as is provided in reference to the original certificate.

Supplemental certificate. SECTION 11. Until the directors are elected, the signers of the certificate of incorporation, shall have the direction of the affairs and of the organization of the corporation and may take such steps

Temporary management by corporators.

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as are proper to obtain the necessary subscriptions to stock and to perfect the organization of the corporation.

SECTION 12. Upon making the certificate of incorporation and causing the same to be filed and a certified copy thereof recorded as aforesaid, and paying the license tax therefor to the Secretary of State, the persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate, by the name set forth in said certificate, subject to dissolution as in this Act elsewhere provided.

Beginning of corporate existence.



SECTION 13. The capital stock shall be paid in such amounts and at such times as the directors may require; and when any corporation is authorized to commence business, it may, if its whole capital stock has not been subscribed, open books for additional subscriptions to its capital stock; and when any stockholder fails to pay any installment on his stock when requested by the directors, they may sell sufficient of the stock of such delinquent at public sale to pay the amount due, with cost and interest, having first given him twenty days notice in writing, if he resides in the county, or, if not, by letter mailed to his last known address, of the time and place, when and where, the stock will be sold, or they may collect it by action at law; if no bidder can be had to pay the amount due on the stock and it cannot be collected then said stock may be forfeited to the corporation and the amount previously paid in, by the delinquent on the stock shall be forfeited to the corporation by order of the board of directors, and such stock sold by it, within one year from the time of such forfeiture; if the stock is sold, and there remains a surplus after the payment of the amount due, with interest and costs, such surplus shall be paid to the original owner of the stock, his executors, administrators or assigns.

Payment of capital stock.

Failure to pay.

Sale of stock.

Forfeiture of stock.

SECTION 14. When the whole capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the charter of the company, or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the company, which said sum or proportion thereof may be recovered as provided for in Section 44 of this Act.

Assessment of unpaid stock to pay debts.



SECTION 15. No corporation shall take as security for any debts a lien upon any part of its capital stock, or be the holder or purchaser of any part thereof, unless such lien or purchase shall be necessary to prevent loss upon a debt previously contracted.

Corporation not to take lien on or hold its stocks. Exception.

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SECTION 16. The shares of stock shall be deemed personal property and transferable on the books of the company in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments, and at such time or times as shall be determined by the directors or managers, and an action at law may be maintained in the name of the corporation to recover any portion of an installment which shall remain due and unpaid for the period of twenty days after the application of the money which may arise from the proceeds of the sale of the delinquent shares of stock as herein provided; and whenever transfer of shares shall be made for collateral security, and not absolutely, the same shall be so expressed in the entry of the said transfer.

Stock, personal property.
Transfer.

Payment of.

Collection of.

Collateral transfers.

Voting.

Alphabetical list of stockholders.

Evidence of who are stockholders.

(Original or duplicate stock and transfer books evidence.

SECTION 17. After the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of the company within twenty days next preceding such election, and it shall be the duty of the officer who shall have charge of the transfer books to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open at the principal office or place of business for said ten days, to the examination of any stockholder and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. Upon the neglect or refusal of the said directors to produce such list at any election they shall be ineligible to any office at such election. The stock ledger, or if there be none, then the transfer books of the company shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the company or to vote, in person or by proxy, at any election. The original or duplicate books of any corporation organized under this Act, in which the transfers of stock shall be registered, and the original or duplicate books containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours for business, be open to the examination of every stockholder at its principal office or place of business in this State, and said original or duplicate books shall be evidence in all courts of this State.

No dividends.

Except from surplus or net profits.

SECTION 18. No corporation created under the provisions of this Act, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this Act, and in case of any violation of the pro-

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visions of this section, the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within six years after paying such dividend to the corporation and to its creditors or any of them in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued; *provided*, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

Liability of Directors.

Exoneration of Directors.

SECTION 19. If the directors or officers of any corporation organized under the provisions of this Act, shall knowingly cause to be published or given out any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be jointly and severally, individually liable for any loss or damage resulting therefrom.

False statement or report.

Liability for.

SECTION 20. The business of every corporation organized under the provisions of this Act shall be managed by a board of not less than three directors, except as hereinafter provided, each of whom shall own in his own right not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified and a majority of them shall constitute a quorum for the transaction of business and at least one of whom shall be a resident of this State. All elections for directors shall be by ballot, and shall be held in this State unless the by-laws otherwise provide; and in the first instance the directors shall be elected at a meeting held before the corporation is authorized to commence business, and thereafter at an annual meeting of the stockholders to be held on the day and at the place named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held, and notice of any change shall be given to each stockholder twenty days before the election is held; and if, for any cause, an election is not held on the day named in the by-laws a special meeting for that purpose shall be called within thirty days thereafter, of which due notice shall be given by the

Directors. Management of business.

To be stockholders.

Term of office.

Quorum.

Elections of.

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Secretary to each stockholder, in person or by letter mailed to his last known address.

Voters at meetings.
Proxy.

A stockholder shall be entitled to one vote for each share of stock he may hold and may vote at any meeting by proxy, in writing, signed by him and attested by him in such manner as the by-laws may prescribe; and a vacancy in the Board of Directors shall be filled by the Board, and the directors so appointed shall hold office until the next annual election and until their successors shall be duly elected and qualified.

Vacancies in directors.

Classes of directors, expiration of terms.

The directors of any corporation organized as aforesaid may, by a vote of the stockholders, be divided into one, two or three classes, the term of office of those of the first class to expire at the annual meeting next ensuing, of the second class one year thereafter, of the third class three years thereafter; and at each annual election held after such classification directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

Officers.

Election.

Qualification.

Duties.

SECTION 21. Every corporation organized under this Act, shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their office until their successors are chosen and qualified; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the proceedings of the meeting of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer may be required to give bond in such sum, and with such surety or sureties as shall be provided by the by-laws, for the faithful discharge of his duty.

The secretary and treasurer may or may not be the same person.

Other officers.

SECTION 22. The corporation may have such other officers, agents and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or determined by the Board of Directors, and may secure the fidelity of any or all of such officers by bond or otherwise; and may also provide by the by-laws for the qualification of any or all of such officers before any person authorized by law to administer an oath.

Failure to elect, not to dissolve.

A failure to elect annually a president, secretary, treasurer or other officer shall not dissolve a corporation.

Vacancies, how filled.

Any vacancy occurring among the directors or in the office of president, secretary or treasurer, by death, resignation, removal or

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otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the Board of Directors.

SECTION 23. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged, shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.

Voting stock held by fiduciary or pledged stock.

SECTION 24. Shares of stock of the corporation belonging to the corporation shall not be voted upon directly or indirectly.

Stock of corporation belonging to it not to be voted.

SECTION 25. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators named in the certificate of incorporation, designating the time, place and purpose of the meeting; and such notice shall, at least two weeks before the time of any such meeting, be published three times in some newspaper of the county where the corporation may be established, or have its principal place of business; or said first meeting may be called without such publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, or if all the parties named in the certificate shall, in writing, waive notice and fix a time and place of meeting, then no notice or publication whatever shall be required of such first meeting.

First meeting.

Notice.

Waiver of notice

SECTION 26. The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders.

By-laws, making, alteration, &c.

SECTION 27. Every corporation organized under the provisions of this Act, may, at any meeting called for that purpose, notice of which shall be given, as required for the first meeting, increase its capital stock and the number of shares therein until it shall reach the amount named in the original certificate, and every stockholder shall have a certificate under the seal of the corporation, signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

Increase of capital stock.

SECTION 28. Whenever more capital stock is deemed necessary for the transaction of the business of any corporation, created under the provisions of this Act, or existing under the laws of this State, an additional certificate may be filed, under the hands

Additional certificate of increase.

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Authentication,
&c.

and seals of two-thirds in interest of the stockholders, or their legal representatives, stating the amount of such additional capital required, which shall be acknowledged, filed and recorded in the manner heretofore provided for in this Act, with respect to the original certificate; and the said corporation shall pay to the Secretary of State the license tax required by law upon such increase of capital; provided, that for all stock, issued under any supplemental certificate, such corporation, its directors and stockholders shall be entitled to the benefits and subject to all the liabilities contained in this Act as to such corporation.

Assessment of
unpaid stocks.

SECTION 29. The directors of every corporation organized under this Act, may, from time to time, assess upon each share of stock not fully paid up such sum of money as two-thirds of the stockholders in interest shall direct, not exceeding in the whole the balance remaining unpaid on said stock up to the par value thereof; and such sums so assessed shall be paid to the Treasurer at such times and by such installments as the directors shall direct, the said directors having given thirty days notice of the time and place of such payments in a newspaper of the county where such corporation is established or has its principal place of business, or by written notice mailed to each stockholder at his last known post-office address.

Collection of
assessment.

SECTION 30. If the owner of any shares shall neglect to pay any sum assessed, for thirty days after the time appointed for the payment thereof, the Treasurer of the corporation, when ordered by the board of directors, shall sell at public auction such number of the shares of such delinquent owner as will pay all assessments then due from him, with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement for three weeks successively, once in each week before the sale, in a newspaper of the county where such corporation is established; and notice shall be mailed by the Treasurer of the corporation to such delinquent stockholder, if his postoffice address is known twenty days before such sale.

Sale of stock.

Notice.

Certificate of
payment of
stock.

SECTION 31. The president and directors with the secretary and treasurer of every corporation organized under this Act, upon payment of each installment of capital stock, and upon payment of each installment of every increase thereof, shall make a certificate, stating the amount of the installments so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any previously paid and reported, which certifi-

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cate shall be signed and sworn or affirmed to by the president, and secretary or treasurer, and they shall, within thirty days after the making of such payment or payments, cause the certificate to be filed in the office of the Secretary of State.

Authentication.

Filing.

SECTION 32. If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted after the making of such payments as provided in the preceding section and before the filing of such certificate.

Failure of officers to make and file certificate of payment of stock.

Penalty.

SECTION 33. Any corporation organized under this Act, may reduce its capital stock at any time by a vote of, or by the written consent of stockholders representing two-thirds of its capital stock, and after notice of the proposed decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the reduction shall be signed and acknowledged by the president and a majority of the directors, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be. No such reduction, however, shall be made in the stock of any corporation until all its debts which are not otherwise fully secured shall have been paid and discharged.

Decrease of stock

Notice.

Statement.

Securing debts.

SECTION 34. If it should be deemed advisable, in the judgment of the board of directors, and most for the benefit of any corporation organized under this act, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, beginning within said ten days cause a like notice to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceeding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds

Dissolution.

Proceedings.

Notice.

Meeting of stockholders.

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Consent of stockholders. in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and secretary or treasurer, shall be filed in the office of the Secretary of State, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the Secretary of State of an affidavit of the manager or publisher of the said newspaper that said certificate has been published four weeks successively, and at least once a week in said newspaper, the corporation shall be dissolved; and the president and directors, or the managers of the affairs of the said corporation, at the time of its dissolution, or whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such moneys and property shall enable them.

Certificate of dissolution.

Trustees for settling business.

Waiver of notice or meeting, &c. Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary but on filing said consent in the office of the Secretary of State, he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

Duties of trustees. SECTION 35. The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall be sueable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the moneys and property of such corporation at the time of its dissolution, which shall come to their hands or possession.

Continuance of corporate existence for closing business of corporation. SECTION 36. All such corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

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SECTION 37. When any corporation organized under this Act shall be dissolved in any manner whatever, the Chancellor, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation if in being that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the Chancellor shall think necessary for the purpose aforesaid.

Chancellor to appoint receivers or trustees on application of stockholders.

Duties.

SECTION 38. The Chancellor shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

Jurisdiction of Chancellor

SECTION 39. The said trustees or receivers, after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

Application of assets.

Distribution of balance, after payment of debts, &c.

SECTION 40. Before the payment of any part of the capital and before beginning business for which the corporation was created, the incorporators named in any certificate of incorporation may surrender all their corporate rights and franchises, by filing in the office of the Secretary of State a certificate, verified by the oath or affirmation of a majority of the incorporators named in any certificate of incorporation that no part of the capital has been paid and such business has not been begun, and surrender all rights and franchises, and thereupon the said corporation shall be dissolved.

Surrender of corporate rights before beginning business.

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Actions not to
abate in case of
dissolution.

SECTION 41. If any corporation organized under this Act becomes dissolved by the expiration of its charter or otherwise, before final judgment obtained in any action pending or commenced in any Court of Record of this State, against any such corporation, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested upon the record, and the names of the trustees or receivers of said corporation being entered upon the Record, and notice thereof served upon said trustees or receivers, or if such service be impracticable upon the counsel of Record in such case, the said action shall proceed to final judgment against the said trustees or receivers by the name of the corporation.

Trustees or re-
ceivers to be
parties.

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Filing of decree
of dissolution or
forfeiture.

SECTION 42. Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the Court of Chancery, the said decree or judgment shall be forthwith filed by the Register in Chancery of the county in which such decree or judgment shall be entered, in the office of Secretary of State, and a note thereof shall be made by the Secretary of State on the charter or certificate of incorporation, and on the index thereof, and be published by him in the next volume of Laws, which he shall cause to be published.

Note on certifi-
cate in office of
Secretary of
State.

Service of pro-
cess.

SECTION 43. Service of legal process upon any corporation created under this Act shall be made by delivering a copy thereof personally to the president of such corporation, or by leaving the same at his dwelling house or usual place of abode. If the president resides out of the State service thereof may be made by delivering a copy thereof to the secretary or one of the directors of said corporation, or by leaving the same at the dwelling house or usual place of abode of such secretary or director, or at the principal office or place of business of the corporation in this State. Service by copy left at the dwelling house or usual place of abode, or at the said principal office or place of business in this State, to be effective must be delivered thereat at least six days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto; *provided*, that process returnable forthwith must be served personally.

By copy.

Returns.

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Suits against
officers liable
under act.

SECTION 44. When the officers, directors or stockholders of any corporation organized under this Act shall be liable by the provisions of this Act to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action on the case against any one or more of them, and the declaration shall state the claim against the corporation, and the ground

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on which the plaintiff expects to charge the defendants personally ; or the person to whom they are liable may have his remedy by bill in chancery.

SECTION 45. When any officer, director or stockholder shall pay any debt of a corporation for which he is made liable by the provisions of this Act, he may recover the amount so paid in an action against the corporation for money paid for its use, and in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.


Actions of officers against corporation for debts, &c., paid.

SECTION 46. No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall be stayed, after execution levied, or other proceedings to acquire lien, until such return shall have been made.

Judgment against and return of no property of corporation before sale of property of directors, &c.

SECTION 47. Receivers or trustees shall, as soon as convenient, file in the office of the Register in Chancery of the county in which the corporation's principle place of business is, a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the Court of their proceedings, whenever and as often as the Court shall direct.

Inventory to be filed by receivers and trustees.

SECTION 48. All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the office of the Register in Chancery of the county in which the corporation's principal place of business is, within six months from the date of the appointment of a receiver or trustee for such corporation, or sooner if the Court shall order and direct, and all creditors and claimants failing to do so, within the time limited by this Act, or the time prescribed by the order of the Court may, by direction of the Court be barred from participating in the distribution of the assets of the corporation ; the Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of said claim.

Proof of claims.

SECTION 49. It shall be the duty of the Register in Chancery, immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of the preceding section of this Act, to notify the receiver or trustee of the filing of said


Adjustment of claims.

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claims, and it shall be the duty of said receiver or trustee within thirty days after receiving said notice, to inspect said claims, and if said trustee or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, said receiver or trustee shall forthwith notify the creditors whose claims are disputed, of his decision; the said receiver or trustee shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the receiver or trustee shall direct, and such creditors shall produce such books and papers relating to their claims as shall be required; and the receiver or trustee shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

Appeal to Chan-
cellor.

Provided, however, that every creditor or claimant, when he shall have received notice from said receiver or trustee that he is not satisfied with the said claim as filed in the office of the Register in Chancery, shall have the right, within ten days thereafter, to demand that the said receiver or trustee shall certify the said claim to the Court of Chancery, which Court shall have jurisdiction to pass upon the said claim as presented, and to determine the rights of the claimant, and to make such order or decree touching the same as shall be equitable and just; and *provided, further,* that when any creditor or claimant shall submit himself to such examination in relation to his claim, as the receiver or trustee shall direct, and the receiver or trustee shall pass upon and allow or disallow such claim, the creditor or claimant so submitting himself, or any other creditor or claimant, shall have the right of appeal to the Court of Chancery, which Court shall hear and determine the rights of the claimant, and shall make such order or decree touching the same as shall be equitable and just.

Substitution of
receiver as party
plaintiff in suits.

SECTION 50. A receiver shall, upon application by him in the Court in which any suit is pending, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was so pending at the time of his appointment; and no action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor or against the corporation in case no new receiver is appointed.

Sale of deteriorating
property of insolvent
corporation.

SECTION 51. Whenever the property of an insolvent corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the

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property of the corporation is of a character which will deteriorate in value pending the litigation respecting such lien, the Court of Chancery may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of such sale into the Court, there to remain subject to the order of the said Court, and to be disposed of as the Court shall direct.

SECTION 52. Whenever any corporation, formed under the provisions of this Act, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of said corporation ; but the word "employee" shall not be construed to include any of the officers of such corporation.

Lien of employees.



SECTION 53. The Court of Chancery, shall, before making distribution of the assets of an insolvent corporation, among the creditors or stockholders thereof, allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in said Court, to be first paid out of the assets.

Compensation to receiver or trustees

SECTION 54. Any two or more corporations organized under the provisions of this Act, or existing under the laws of this State, for the purpose of carrying on any kind of business of the same or similar nature, may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation ; the directors or a majority of them, of such corporations, as desire to consolidate, may enter into an agreement signed by them, and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in Articles of Incorporation, as provided in this Act, as well as the manner of converting the shares of each of the old corporations into the new, with such other details and provisions as are deemed necessary.

Consolidation or merger of corporations, agreement.



Written notice of the time and place of a meeting to consider the purpose of entering into such an agreement, shall be mailed to the last known post office address of each stockholder of each corporation, at least twenty days prior to the time of such meeting, and such notice shall be published at least two weeks in some news-

Notice to stockholders.

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paper printed and circulated in the county of the principal place of business of each corporation, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity and adoption of such an agreement; that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified and acknowledged as herein provided for original certificates of incorporation, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be; said certificate, or a copy thereof duly certified by the Secretary of State, shall be evidence in all courts of law and equity in this State.

Consent of stockholders to consolidation.

Filing, recording, &c.

Ceasing of old corporations.

Beginning of new.

Rights, powers, &c.

Preservation of rights of creditors.

SECTION 55. When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this Act; *provided*, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Dissatisfied stockholders, payment for stock.

SECTION 56. If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock

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at the date of consolidation; in case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

Disagreement as to value of stock.

Transfer of stock.

SECTION 57. Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

Preservation of pending rights and actions.

SECTION 58. The liability of corporations created under this Act, or existing under the laws of this State, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations or by any change or amendment in the Articles of incorporation.

Liability, &c., of corporations.

Not affected by sale, increase or decrease of capital, &c.

SECTION 59. When two or more corporations are consolidated, the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock, to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.

Bonds of consolidated corporation.

Stock of.

SECTION 60. If the franchise and property of any corporation formed under the provisions of this Act, or existing under the laws of this State, is sold, the persons who may become the purchasers, at private sale or under the judgment of the Court, may organize a

Purchase of franchises entitled to continuance of corporation.

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corporation for the continuation, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this Act.

Formation of such corporation. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this Act, set forth the description of the property sold and the decree under which the sale was made; if it was sold under judgment, or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the Secretary of State, who shall furnish a certified copy of the same under his hand and seal of office, which shall be recorded as hereinbefore provided for certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this Act.

Execution, filing, &c., of articles of incorporation.

Powers, &c.

Judicial sale of franchise.

Notice.

How effected.

SECTION 61. Sales of the property and franchises of such corporations that may be sold under a decree of Court shall be made after such notice of the time and place as the Court may deem proper; and if such sales are made in the foreclosure of one or more mortgages, the Court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages or if the property and franchise will produce so much, then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the Court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from encumbrances. Sales under this section shall be made on such credits as the Court may deem proper.

SECTION 62. Any corporation organized under this Act shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business, or to promote the objects or purposes for which it was organized.

Failure to commence business for two years to forfeit charter.

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SECTION 63. No corporation organized under this Act or existing under the laws of this State, shall be permitted to set up, or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of the corporation or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain such challenge shall be admissible in any such suit or proceeding.

SECTION 64. Every corporation organized under this Act, shall in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "Incorporated." And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, shall appear in letters sufficiently large to be easily read the word "Incorporated." And such corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars, to be recovered with costs by the State, before any court of competent jurisdiction, by action at law to be prosecuted by the Attorney General.

SECTION 65. Every corporation organized under this Act, may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the corporation against any claim that may be made against it on account of the alleged loss of any such certificate; a new certificate may be issued without requiring any bond when, in the judgment of the directors it is proper so to do, and when any such corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives, may apply to the Superior Court of the State of Delaware in and for the county in

Want of legal organization no defense in actions.

Judicial inquiry into organization.

Name, &c., of corporation to be displayed on principal places of business.

Failure. Fine.

Issue of new certificates of stock for lost or destroyed.

Bond.

Petition to Court.

OF CORPORATIONS.

which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition duly verified, in which shall be stated the name of the corporation, the number and date of certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said Court shall make an order requiring the corporation to show cause at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition; a copy of the petition or order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary, treasurer or any director thereof personally or left at the principal office or place of business of the corporation in this State at least five days before the time designated in the order.

Rule to show cause.

Service of petition.

Hearing.

SECTION 66. At the time and place specified in the order, and on proof of service thereof, the Court shall proceed to hear the proofs and allegations in behalf of the parties in interest, relative to the subject matter of inquiry, and if upon such hearing the court shall be satisfied that the petitioner is the lawful owner, the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot be found, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the Court shall direct that the petitioner file such bond in such form and with such security as to the Court shall appear sufficient to indemnify any person who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order of Court; and obedience to said order may be enforced by the Court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

Order requiring issue of new certificate.

Bond.

Attachment, &c.

Corporations for drainage or reclamation of low lands.

SECTION 67. Every corporation organized under this Act, for the drainage or reclamation of low lands, shall, in addition to the other powers conferred by this Act, have power, for the purpose of

See Const. 1897. art. 2. sec. 19 (Ditches)

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reclamation of low lands by ditching, draining and bringing them into cultivation, to enter upon any lands that, in the opinion of the directors or managers, will be benefited by the operation to be performed by the corporation, and with their workmen, laborers, teams, agents and employees, to cut and make, and when made, from time to time, to clean out, remove all obstructions and thoroughly cleanse all such ditches or drains as in the opinion of such directors or managers shall be necessary for effectually draining and reclaiming the said lands. Before proceeding to accomplish the ends of its incorporation, the said corporation shall apply to the Superior Court of the State of Delaware, in and for the county in which the low lands, desired to be drained, or the greater part thereof, may be located, for the appointment of commissioners to go upon the lands, through, along or across which the ditch or ditches of the said corporation are proposed to be cut, and view the same and determine whether any and which of them will be benefited by the same, and to make a return of their proceedings in the premises to the said Superior Court, with a survey and plot of the proposed ditches, showing their course, and the lands, by general designation, through, along and across which they will run and to be benefited thereby and the probable costs of making the improvements. They shall also return a valuation of the several parcels of land to be benefited by such improvements. Should there be upon the lines of the corporation's works any lands through, along and across which the ditch or ditches are to be made that will be injured by the making of them, they shall estimate such damage in money and the same shall be paid to the owner, or, in case of his refusal to receive it, or absence from the State, or inability by reason of legal disability, it shall be deposited to his credit in the Farmers' Bank, or that branch thereof at the county seat, in which the lands are located, before the company shall have any right to construct or make their works through such land.

Additional powers.

Commissioners.

Return of.

Survey, plot, &c.

Return of valuation.

Damage.

The return of the commissioners, upon being confirmed by the said Superior Court, shall be final and conclusive upon all parties, and shall be the basis upon which the taxes of the corporation are to be laid. Said return of the commissioners, together with the survey, and plot, being approved by the said Superior Court, shall be, by the Prothonotary, forthwith delivered to the Recorder of Deeds of the county in which the proceedings are instituted to be by him recorded in a book to be procured for the purpose. The said valuation thus approved by the said Court shall continue until a majority of the taxables or of those liable to pay the said taxes demand a new one, proceedings for which shall be taken in the said Court by petition, and the prayer of the petitioner granted, if in

Confirmation of return.

Recording of return, &c.

Continuance of valuation.

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- the opinion of the Court such new valuation is proper to be made at the time; and said new valuation, if any is ordered to be made, shall be returned to the Court, and being approved, shall be, by the Prothonotary, forthwith delivered to the Recorder of the county, to be by him recorded in the same manner as is provided for the recording of the original proceedings.
- New valuation.**
- Exceptions to the returns of commissioners hereinbefore provided for may be made by any person aggrieved thereby, and said exceptions shall be heard and determined under such rules and regulations as the Court shall adopt for that purpose. Before any commissioners appointed under this section proceed to act they shall be sworn or affirmed by one of their own members, or other person authorized by law to administer oaths, to perform the duties required of them with fidelity, which qualification must be certified upon their return. When record is made of the return, together with the survey and plot, where the survey and plot is a part of the return, the original shall be delivered over to the corporation and it or the record thereof, or any certified office copy of the latter, shall be evidence. The commissioners shall each be paid by the corporation two dollars for each day employed under this Act, and the surveyor, for his survey and plot (including a fee of one dollar and fifty cents each day to the chain carriers) such sum as the commissioners may deem just, and tax the same upon the return; and this money shall be paid before the commissioners shall be required to make any return. The fees of the Prothonotary and all costs incurred in any and all proceedings had in this behalf in the Superior Court, shall be paid to the Prothonotary by the corporation, before he shall be required to deliver the returns, surveys and plots or any of them to the Recorder of Deeds as hereinbefore provided; and the fees of the Recorder shall also be paid to him at the time of the delivery to him of the said return, survey and plot. Whatever money the corporation may deem necessary to raise for cutting the ditch or ditches (including the expenses in this section provided for), and for keeping the same open and in repair, shall from time to time, as the exigency may require, be collected by the taxation of the taxables, according to the nature of their property to be benefited; to provide for which the managers shall make an estimate of the money to be raised and apportion it among the said taxables; and they shall at once give notice, under their hands, of a meeting of said taxables, to be held on a day therein to be named, and at some convenient place, and between ten o'clock of the forenoon and four o'clock of the afternoon, of said day, to consider the said apportionment. At said meeting, any taxable, shall have the right to be present and object to the justice of the same in his case. The
- Exceptions to returns.**
- Oath of commissioners.**
- Evidence of return, &c.**
- Compensation of commissioners, surveyor, &c.**
- Fees of Prothonotary, recorder, &c.**
- Taxation.**
- Meeting of taxables.**
- Voting.**

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manager shall, at the close of the meeting (which shall be kept open at least three hours), reconsider their apportionment and alter the same, if they deem it just and expedient so to do. Such reconsideration shall be final, and then they shall make a copy of the apportionment under their hands, and deliver the same to the treasurer; and when the company orders money to be collected for its necessary purposes, the treasurer shall, upon receiving their warrant in writing, proceed to collect the same, from the respective taxables, according to such apportionment, and for that purpose shall have all the powers of a collector of county taxes. The apportionment shall continue until a new apportionment shall be made by the managers and approved at a meeting of taxables, called for the consideration thereof, which meeting shall be called in the same manner and kept open for the same time as is provided for the first apportionment, and made after the managers shall reconsider their apportionment and alter the same, if they shall deem it expedient so to do, and taxes may, from time to time, be collected according to it, as the needs of the company may require. Orders for collections, however, shall only be valid when made by the corporations at an annual meeting.

Reconsideration of apportionment.

Collection of taxes.

Continuance of apportionment.

Orders to collectors.

In case of private owners of a ditch or ditches not within the corporation's limits, but the waters collected in which can be discharged into the ditches of the corporation, such private owners may be allowed to connect with the ditch or ditches of the corporation on such terms as may be agreed upon, and may thenceforth become constituent members of the corporation, with the rights of such members, and subject as to themselves and their lands drained by such private ditch or ditches, to all the burdens and responsibilities of other members of the corporation; and the managers shall, at once, add their lands to the other lands within the corporation's operations, and apportion their share of the taxes among them as above provided with respect to original taxables. The managers shall take account of all changes of ownership of lands within the corporation's limits from whatever cause, and substitute the names of the new owners or taxables in lieu of the old ones upon their original apportionment, from which they shall be transferred to the copy in the hands of the treasurer, and when transferred the new taxables shall stand in the place of the old, in all respects as if they had been original owners or taxables. Such corporations as are provided for in this section shall set forth the name of the hundred or hundreds in which their operations are to extend, in the certificate of their incorporation. All the provisions of Section 7, Chapter 59, Revised Code, as amended, &c., A. D. 1893, shall be applicable to all corporations created under the provisions of this Act for the drainage or reclamation of low lands.

Private ditches draining into that of corporation.

Change of owners of land on ditch.

Transfer of names of new owners.

Location of ditch.

Sec. 7 of chap. 59, Revised Code to apply.

OF CORPORATIONS.

Building and loan associations, additional powers.

SECTION 68. Building and loan associations organized under this Act shall, in addition to the other powers herein granted, have power to sell their accumulated funds to and among their stockholders at any premium which may be obtained for the same, and when such funds cannot be loaned to any stockholder at par they may be loaned to any person not a stockholder at any rate of interest not exceeding six per cent.

Railroads, formation of, number of incorporators, succession, purpose, &c.

SECTION 69. Any number of persons, not less than nine, may form a corporation under the provisions of this Act, which corporation so formed as aforesaid shall have perpetual succession, for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers, and shall do and perform the several matters and things hereinafter stated and shall have and exercise all the rights, powers and privileges hereinbefore and hereafter conferred and be subject to all the duties, limitations, restrictions and liabilities hereinafter imposed upon such corporation; and for that purpose may make and sign articles of association, in lieu of the articles of association hereinbefore required by the provisions of this Act, in which shall be stated:

Articles of association.

Name.

1. The name of the corporation.

Location.

2. The place from which and to which such railroad is to be constructed, maintained and operated.

Length.

3. The estimated length of such railroad and the name of each county in this State through or into which it is intended to be made.

Capital stock.

4. The amount of the capital stock of the corporation, which shall not be less than five thousand dollars for every mile of road proposed to be constructed.

Shares.

5. The number of shares of which said capital stock shall consist.

Directors.

6. The names and places of residence of nine directors of the corporation, who shall manage its affairs for the first year and until others are chosen in their places; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation; at least one of said directors shall be a resident of this State.

Principal office.

7. The name of the city, town, county or place within the county in this State in which its principal office or place of business will be located in this State.

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SECTION 70. Said articles of association shall be presented to one of the Judges of the Superior Court of the State of Delaware, who shall examine the same, and if found to conform to the requirements of this Act, shall endorse his certificate thereon accordingly. On compliance with the foregoing provisions and the requirements of the next succeeding section, which latter shall be evidenced by the receipt of the State Treasurer delivered to the Secretary of State, such articles of association may be filed in the office of the Secretary of State, who shall endorse thereon in writing the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the Secretary of State to be filed, the persons who have so subscribed such articles of incorporation and all persons who shall become stockholders in such corporation, shall be a corporation by the name specified therein; every such corporation formed under this Act, in addition to the general powers hereinbefore in this Act set forth shall have power:

Approval of articles by Judge.

Filing, recording, &c.

Beginning of existence.

1. To have authority by its officers and servants, to enter upon the lands or waters of any person or persons, which may be necessary, to make such examination and surveys for its proposed railroad as shall be required to be made, in the selection of the most advantageous route, but subject at all times to responsibility for all and any damage which shall be done to the property of any such person or persons.

Additional powers.

Selection of route, &c.

2. To aid in the construction, maintenance and accommodation of its railroad, may take and hold such voluntary grants of real estate and other property as shall be made to it, but in all instances, the real estate received as a voluntary grant shall be held and used for the purpose of such grant only.

Property.

3. For the sole purpose, of the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the object of its incorporation, it may purchase, hold and use all such real estate or other property as may be necessary.

4. To construct its road and lay out the same as herein provided and for the purpose of cuttings and embankments, to take as much more land as may be necessary or required, for the proper construction and security for the road.

5. To use and exercise all other rights and powers herein granted.

SECTION 71. Articles of association, in compliance with the provisions of sections 69 and 70 of this Act, shall not be filed and

\$2,000 per mile of proposed road to be deposited with State Treasurer.

OF CORPORATIONS.

recorded in the office of the Secretary of State until at least two thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto and paid, in good faith and in cash, to the directors named in said articles of association, nor until the said directors shall have deposited the said money so subscribed and paid to them with the State Treasurer, who is constituted the custodian of the same, and shall hold the same, subject to be repaid to the directors of the said corporation, or to the treasurer thereof, in sums of two thousand dollars for each mile of said railroad, upon the construction of which it shall be proved to his satisfaction, that the said corporation has expended at least the sum of two thousand dollars, nor until there is endorsed on such articles of association, or annexed thereto, an affidavit, made by at least five of the directors named in said articles of association, that the amount of stock required by this section has been, in good faith, subscribed and paid in cash as aforesaid, and that it is intended in good faith, to construct or maintain and operate the road mentioned in such articles of association which affidavit shall be recorded with the articles of association as aforesaid.

Payment of money by State Treasurer.

SECTION 72. That a copy of any articles of association for the construction and operation of railroads, filed and recorded in pursuance of provisions of this Act, or of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto and duly certified to be a copy by the Secretary of State, shall be presumptive evidence of the incorporation of such corporation and of the facts therein stated.

Copy of charter, &c., to be evidence.

Judicial inquiry.

Nothing in this section contained shall prevent judicial inquiry into, and ascertainment of the existence of the corporation or the possession of the corporate powers it undertakes to assert in any suit or proceeding wherein the same shall be challenged.

Subscription to capital stock.

SECTION 73. The directors named in said articles of association may, when such articles of association and affidavit are filed and recorded in the office of the Secretary of State, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

Ten per cent. to be paid on subscriptions.

Directors, number, &c.

SECTION 74. That there shall be a board of not less than nine directors of every corporation formed under this Act for the purpose of constructing and operating a railroad or railroads, to manage its affairs; said directors shall be chosen annually by a majority of the votes of the stockholders at such elections, and in

Election of.

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such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected and qualified in their places; in the election of directors each stockholder shall be entitled to one vote for each share of stock held by him; vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation; the inspectors to hold the first election of directors shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen; at every election of directors the books and papers of such company shall be exhibited to the meeting and subject to the inspection of those present, provided a majority of the stockholders present shall require it.

Voting.
 Vacancies.
 Inspectors.
 Qualification of directors.
 Exhibition of books, &c.

SECTION 75. That within thirty days after the articles of association are filed in the office of the Secretary of State the directors therein named shall organize by the election of one of their number president; they may also elect a treasurer and secretary and adopt such by-laws as may appear to be proper and right for the government of the corporation.

Organization.
 Election of officers.
 By-laws

SECTION 76. That in case the capital stock of any company formed under this Act is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time, to any amount required for the purpose of constructing, maintaining and operating its railroad; such increase may be sanctioned by a vote in person or by proxy, of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder to be served on him personally, or by depositing the same, directed to him, in the postoffice nearest his usual place of residence, at least twenty days prior to such meeting; such notice must state time and place of meeting, and its object and the amount to which it is proposed to increase the capital stock; the proceedings of such meeting must be entered on the minutes of the corporation, and thereupon the capital stock of the corporation may be increased to the amount sanctioned by a vote of two-thirds in amount of all stockholders of the corporation as aforesaid.

Increase of capital stock.
 Meeting.
 Notice.
 Sanction of two-thirds of stockholders.

SECTION 77. That the stock of every company formed under this Act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no shares

Stock, personal property.
 Transfer of.

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shall be transferable until all previous calls thereon shall have been paid.

Assessment of damages for land, &c., required.

Notice.

Freeholders.

Oath of freeholders.

Notice of meeting.

Return of finding.

Writ of *ad quod damnum*.

Award.

Payment to entitle to land, &c.

Deposit of damages due minors, &c.

SECTION 78. That whenever any corporation created under this Act cannot agree with the owner or owners of any land, sand, earth, gravel or other materials necessary to be taken and used in the construction of the said railroad, for the purchase thereof, the said corporation may apply to the Associate Judge of the State of Delaware, resident in the county where the land and materials necessary to be taken are located, first giving the other party or owner at least five days' notice in writing of the intended application if within the State; and if said other party or owner be unknown or without the State, then such notice shall be published in some newspaper in the county in which the land proposed to be taken is located, at least five days prior to the intended application, and the said Associate Judge shall appoint five judicious and impartial freeholders, to view the premises and assess the damages which the owner or owners will sustain by reason of the said railroad passing through, taking and using the same. The said freeholders shall be sworn or affirmed before some Judge, Justice of the Peace, or Notary Public, before entering on the premises, faithfully and impartially to perform the duties assigned them. They shall give ten days' notice, in writing, to the owner or owners of the premises, or to their guardian or guardians, duly appointed according to law, if within the State, and the same to the president of the corporation of the time of their meeting to view the premises; and the said commissioners shall certify their finding and award to both parties, but if either party is dissatisfied with the damages so assessed such party may, on application to the Prothonotary of the Superior Court of the State of Delaware, in and for the county where the land lies, within thirty days after such assessment, sue out a writ of *ad quod damnum*, requiring the sheriff, in the usual form, to inquire of twelve impartial men of his bailiwick of the damages as aforesaid, and their report shall be final; the said commissioners shall, in assessing the damages as aforesaid, award at least the actual cash value of the land, sand, earth, gravel or other materials so to be taken and used, as aforesaid, whereupon the corporation, upon paying the damages so assessed, shall become entitled to have, hold, use and enjoy the said lands and materials for the purposes by them required, forever; and in case any owner of lands necessary and taken for the purpose of construction of the said railroad shall be a minor or a non-resident, or for any cause incapable of receiving, or unwilling or neglecting to receive said damages, or to call upon the said corporation, for the same, the said corporation may deposit the amount of the said damages to the credit of such owner or owners, in the Farmers' Bank in the

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county in which the said land and materials taken are located, subject to his, her or their order, whereupon the said corporation shall be entitled to have, hold, use and enjoy the said lands, premises and materials described and condemned in said report and required for the purposes of said corporation, for or on account of which said damages shall have been so assessed; the expenses of the assessment by the said commissioners of the damages aforesaid and the fees of the said Sheriff, Prothonotary and all costs incurred in the execution of the writ of *ad quod damnum*, shall in all cases be paid by the corporation.

Payment of expenses, &c.

SECTION 79. That any railroad constructed under the provisions of this Act shall not exceed sixty-six feet in width unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as such corporation may deem necessary, and it shall be lawful for such corporation, its agents, engineers, superintendents, or others in its employ to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling and laying out the route or routes of such railroad, and of locating the same, and all necessary works, buildings, conveniences, appurtenances and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such railroad and the location or locations of all other works, buildings, conveniences, appurtenances and appendages thereof, shall have been determined upon, and a survey of such route or routes, location or locations deposited in the office of the Secretary of State, then it shall be lawful for every such corporation formed under this Act, upon payment or tender of such compensation as hereinbefore provided, by the officers, agents, engineers, superintendents, workmen and other persons in their employ, to construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, offices, stations and depots as they may deem necessary at and between the points named in the articles of association, commencing at or within and extending to or into any town, city or village named as the place of terminus, and from time to time, either before or after completion of the main line, construct, maintain and operate branches within the limits of any county through which said road may pass, lay rails, and for that purpose to enter upon, take possession of, hold, have, use, occupy and excavate any lands, and erect any embankments, bridges and all other necessary works, and to do all other things which may be suitable or necessary for the completion, repairs or management of said railroad, and for the conveyance of passengers and freight to and from the termini thereof by steam power; provided, always, that the payment or tender of payment of all damages for the occupancy of all lands through, under or upon which

Width of road.

Entry on lands.

Survey of route, filing, &c.

Payment for lands, &c.

Construction, &c.

OF CORPORATIONS.

said railroad and its conveniences, appurtenances and appendages may be laid out or located, be made before the said corporation, or any person under its direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said railroad and its conveniences, appurtenances and appendages and of locating the same, unless the consent of the owner or owners of such lands be first had and obtained; and provided further, that the survey of the route of any branch shall not be filed in the office of the Secretary of State until the officers or directors of the corporation shall have deposited with the State Treasurer a sum equal to at least two thousand dollars for every mile and a proportionate sum for any distance less than a mile, of such branch which it is proposed to construct, and the said treasurer shall be custodian of such fund, and shall hold the same, subject to be repaid to the directors or treasurer of such company in sums of two thousand dollars for each mile and a proportionate sum for any distance less than a mile, of such branch upon the construction of which it shall be proved to his satisfaction that such amount has been expended; and provided further, that the construction of all such branches, shall be commenced within six months from the date of filing the survey thereof as aforesaid and shall be completed and opened within three years from the date of the commencement of the construction as aforesaid.

Deposit of \$2,000 per mile with State Treasurer.

Time of commencement and completion.

Bridges and passages.

Wagonways.

Cattleguards.

Crossing streets, &c.

SECTION 80. It shall be the duty of every railroad corporation organized under this Act to construct and keep in repair good and sufficient bridges and passages over, under or across the said railroad or right of way where any public or other road, street or avenue, now or hereafter laid shall cross the same, so that public travel on the said road shall not be impeded thereby; and it is further provided, that such bridges and passages shall be of such width and character as shall be suitable to the locality in which the same are situated; and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagonways, over, under or across the said railroad, and shall also construct and maintain suitable and proper cattleguards at all road crossings; provided, always, that in case any such railroad shall cross any street or streets, highway or highways, in any city or incorporated town, it shall be either above or below the grade of said street or streets, highway or highways, at such distance as shall not interfere with the free and uninterrupted use of such street or streets, highway or highways; provided, further, that the council of any city or the commissioners of any incorporated town, or other person having control over such street or streets, highway or highways, may grant permission to said corporation to cross such street or streets, highway or highways within

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the limits of the respective city or incorporated town at grade, if they deem it to be for the best interest of the city or incorporated town; and further provided that in the event that such corporation shall not, within a reasonable time after notification from the Council of the city or Commissioners of the incorporated town or other persons having control over such street or streets, highway or highways, in which such bridges and passages are to be so constructed, or repaired, proceed to construct or repair the same as required by this Act, the said Council or Commissioners or other persons aforesaid may, in the corporate name of such city or town institute proceedings in the Court of Chancery against such corporation to compel the specific performance of the duties imposed upon such corporation by this section of this Act, and in case a decree shall be made against such corporation in said proceedings, commanding it to specifically perform said duties, within a reasonable time to be fixed, and if such corporation shall neglect or refuse to specifically perform such duties within such time, the Chancellor, upon proof of such neglect or refusal may in his discretion, issue a writ of injunction to restrain said corporation from the exercise of any franchise or the transaction of any business in this State until said corporation shall have obeyed the command of said decree and shall have paid the costs of said proceedings, including a reasonable allowance to the solicitor of such city or town, to be fixed by the Chancellor; and further, provided, that said council or commissioners or other persons aforesaid in the event of the failure of such corporation to construct or repair such bridges or passages within a reasonable time after notification as aforesaid, may if they deem it advisable so to do, proceed themselves to construct or repair such bridges or passages, and when the costs thereof shall have been ascertained, the same may be collected of and from said corporation by said Council or Commissioners or other persons aforesaid by an action at law in any court of competent jurisdiction; provided further, that the permission of the Council of any city, of the Commissioners of any incorporated town or other persons hereinbefore referred to, shall not be necessary for the purpose of crossing any street or streets, highway or highways, at grade, unless said street or streets, highway or highways, at the point where said railroad shall cross, or at some point between the crossing of said railroad and the nearest terminus of said street or streets, highway or highways, shall be in actual use by and for pedestrians and teams at the time of acquirement of the right of way of said railroad across such street or streets, highway or highways.

SECTION 81. That any railroad corporation created under this Act which shall have duly located the route of its railroad by a

Crossing
streams, &c.

OF CORPORATIONS.

survey deposited in the office of the Secretary of State, as required by Section 79, shall have power in the construction of its said railroad on such route to cross any canal, navigable stream or water-course between its termini, but in such manner as not unnecessarily to impede the navigation and use thereof; and shall also have power to cross any railroad or railway intervening between such termini and acquire the necessary easement for such crossing either by agreement with the corporation owner thereof, or, on failure to agree, by condemnation proceedings in the manner prescribed by Section 78; *provided*, however, that whenever practicable so to do, the crossing at grade of any railroad or railway shall be avoided, but, if not practicable, the crossing may be at grade subject to the further provisions made by this section, and in that event it shall be the duty of the corporation whose railroad track or tracks shall cross the track or tracks of such other railroad or railway company, at its own expense, to erect and maintain at such crossing a signal tower and signals of a generally approved pattern with an electric warning attachment, and also to maintain an interlocking system with derailing switches, and keep a competent watchman and switchman on duty thereat; and the trains of the crossing company shall come to a full stop at least two hundred feet from the tracks of the railroad or railway crossed; and the trains or cars of the company owning or operating the railroad or railways so crossed at grade shall have precedence and priority of movement over the trains of the company constructing the crossing. And, provided further, that no such grade crossing shall be permitted or effected until the question of the practicability of an overhead or undergrade crossing shall have been considered and determined by the Chancellor, who shall, upon the petition or bill of the company desiring to effect such crossing at grade, have full power and jurisdiction upon notice to and answer by the company whose tracks are proposed to be crossed, to hear and determine the matter by an appropriate decree, either refusing or permitting the crossing at grade, and if permitted to prescribe and regulate by such decree the manner and character of the said crossing, together with such safeguards against collisions thereat, in addition to those by this section provided as he may deem proper, with the right of appeal from the Chancellor's decree to the Supreme Court by either party, as in other cases in equity.

Crossing rail-
roads, &c.

Grade crossings
avoided.

Signals, switches,
&c.

Decision of ques-
tion of practica-
bility of grade
crossings.

Appeal.

Time of com-
mencement and
completion.

SECTION 82. That any corporation created under this Act for the purpose of constructing a railroad shall commence the proposed construction within six months from the date of its organization, and complete at least one track of said road within three years from the date of the commencement, as aforesaid; *provided*, that if any company or corporation organized under this Act shall fail to

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comply with the provisions of this section, it shall thereby forfeit the franchise given it by this Act; *provided, further*, that if any corporation organized under this Act shall be restrained, prevented or enjoined by any proceedings whatever at law or in equity from prosecuting the work on its road, or from opening or completing its said road, the time during which any such corporation shall be so restrained, prevented or enjoined shall not be taken or computed as any part of the time allowed and limited in this section for the opening and completing of said road.

SECTION 83. Any corporation organized under this Act for the construction and operation of a railroad shall have power to borrow such sums of money, from time to time, not exceeding in the aggregate double the amount of its full paid capital stock, as shall be necessary to build, construct or repair its road, and furnish all necessary engines and other equipments for the uses and objects of said corporation, and to secure the repayment thereof by the execution, negotiation and sale of any bond or bonds, and secure the same by mortgage on said lands, privileges, franchises and appurtenances of and belonging to said corporation; *provided*, that said corporation shall not plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of any bond or mortgage executed under the provisions of this section; and *provided, further*, that said bonds and mortgages shall constitute a first lien on the railroad, its cars, real estate and franchises, and the proceeds of said bonds shall be used for the purpose of aiding in the construction of said railroad and equipments; and *provided, further*, that if any person or persons shall issue such bonds to any greater amount than double the amount, at the time of such issue, that shall have been actually paid up on the capital stock of such railroad, he, she or they shall be guilty of a misdemeanor, and shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than three years, or by both, at the discretion of the Court.

SECTION 84. Every corporation created under this Act for the construction of a railroad shall erect and maintain fences on both sides of its road, of the height and strength of a fence required by law, with openings or gates or bars therein, at farm crossings or the road for the use of proprietors of lands adjoining such railroad; and shall also construct and maintain cattle guards at all road crossings suitable and sufficient to prevent cattle and other animals from getting on the railroad; and until such fences and cattle guards shall have been duly made the corporation shall be liable for all damages which shall be done by their engines and cars to cattle, horses or other animals thereon; and after such

Power to borrow money.
Purposes.

Securing.

Lien.

Penalty for issuing bonds more than double paid up capital.

Fences.

Cattleguards.

Damages.

OF CORPORATIONS.

Trespass.

fences and guards shall be duly made and maintained the corporation shall not be liable for any such damages, unless negligently or willfully done; and if any person shall ride, lead or drive any horse or other animal upon such railroad and within such fences and guards other than at farm crossings without the consent of the corporation, he shall for every such offence forfeit a sum not exceeding ten dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved; it shall not be lawful for any person other than those connected with or employed upon the railroad to walk along the track or tracks of any such railroad, except when the same be laid along public roads or streets.

Badges of employees.

SECTION 85. Every conductor, baggage-master or brakeman of any railroad corporation, formed under this Act, employed in a passenger train, shall wear upon his hat or cap a badge which shall indicate his office, and the initial letters of the name of the corporation by which he is employed; no conductor or collector of fares or tickets, without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any powers of his office, and no officer without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

Damages to road, &c.

SECTION 86. Any person who shall willfully impair, injure, destroy or obstruct the use of any railroad enjoyed under the provisions of this Act or any of its necessary works, wharves, bridges, carriages, engines, cars, machines, or other property, shall forfeit and pay to the corporation the sum of fifty dollars, to be by it recovered in any Court having competent jurisdiction in any action of debt; and further shall be liable for all damages sustained.

Annual report to stockholders.

SECTION 87. It shall be the duty of every railroad corporation created under the provisions of this Act to make an annual report to the stockholders of its operations, which report shall be verified by the affidavit of the secretary, treasurer, superintendent or directors of the corporation, and shall state:

The entire length of the road in operation, the length of single track, the length of double track, and the weight of rail per yard.

The full amount of the capital stock annually subscribed and the full amount paid thereon.

The entire amount of the actual cost of the road, showing the amount expended for the right of way, bridging, grading, iron and other buildings respectively, and for all other purposes incidental to the construction of such road.

OF CORPORATIONS.

The nature of the amount of its indebtedness, distinguishing the first or other mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

The amount received for the transportation of passengers, property and mails, for interest, and from all other sources respectively.

The amount of freight, specifying the quantity in tons or other usual mode of measurement.

The full amount paid for repairs of the road, buildings, engines and cars respectively, for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for the wages and employees; the aggregate amount paid for salaries of officers and for any other purpose incidental to the business of transportation, so as to give a complete statement of the entire annual expenses of the corporation.

The entire amount paid for loss and damage to freight and injury to person and property.

The full number and amount of dividends and when made and in what manner such dividends have been paid.

The entire amount appropriated to sinking fund, and the manner in which the same has been applied, and the total amount then held by such sinking fund.

The whole number of persons killed or injured, the causes thereof, if known, and whether passengers or persons employed by the corporation; and the secretary of each railroad corporation, formed as aforesaid, shall mail to every stockholder thereof, whose post office address is known, a copy of said annual report and shall file a certified copy thereof with the Secretary of State on or before the expiration of fifteen days from the making of such annual report. Filing copy.

SECTION 88. Any two or more railroad corporations created Merger. under this Act, or any one of such corporations and a corporation now existing for the construction and operation of a railroad whose charter does not prohibit merger or consolidation, may consolidate into a single corporation in the manner provided in Section 54 of this Act, and the other sections thereof relating to the consolidation of corporations, and such new corporation shall possess all the powers, rights and privileges conferred upon such two or more corporations, and shall be subject to all the restrictions and liabilities and perform all the duties imposed by the provisions of their respective charters or certificates of incorporation not inconsistent with the provisions of this Act.

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- Signal boards.** SECTION 89. Every railroad corporation formed under this Act shall cause signal boards, well supported by posts, or otherwise, at such heights as to be easily seen by travelers, and not obstructing travel, containing on each side, in capital letters, at least five inches high, the following inscription: "Railroad Crossing," to be placed and constantly maintained, at such public highway where it is crossed by the railroad at the same level; but such board need not be put up in cities or towns, unless required by the authorities thereof.
- Gates.** SECTION 90. Whenever, in the opinion of the authorities of any city or incorporated town, the public interest requires that a gate be erected and maintained, or a flagman stationed and kept at the place where any highway or street is crossed, within the corporate limits of such town or city, by any railroad constructed under this Act; they shall give the Superintendent or Manager of the railroad written notice that the same is required and the corporation shall, within the time prescribed in such notice, erect and maintain at such crossing the style of gate directed in said notice, and keep a man in charge of the same during such hours as the said authorities may designate, or keep a flagman at such crossing during such hours as they may require. And the said authorities may authorize the discontinuance of such gate or flagman whenever in their judgment the public interest no longer requires the same.
- Flagman.**
- Lighting, naphtha, &c., prohibited.** SECTION 91. No passenger car on any railroad of any corporation organized under the provisions of this Act shall be lighted by naphtha or by illuminating oil or fluid made in part of naphtha, or of any oil or fluid which will ignite at a temperature of less than three hundred degrees Fahrenheit.
- Air brake.** SECTION 92. No regular or other passenger train on any railroad constructed under this Act shall be run without an air brake, or some equally effective appliance for controlling the speed of trains, which may be applied by the engineer to each car composing the train, and which shall at all times be kept in good condition and ready for use at the discretion of the engineer.
- Violation of certain provisions.** SECTION 93. Any corporation failing to comply with or violating or permitting any of its employees or agents to violate any of the provisions of Sections 85, 89, 90, 91 and 92 of this Act shall in addition to subjecting itself to any damages that may be caused by such failure or violation be guilty of a misdemeanor, and upon conviction thereof be fined for failure or violation, not less than one hundred dollars nor more than five hundred dollars.
- Penalty.**

OF CORPORATIONS.

SECTION 94. No railroad or railway corporation organized under this Act shall charge, demand or receive from any person, company, or corporation for the transportation of passengers or property a greater sum than it shall charge or receive from any other person, company or corporation for like service, from the same place, under like conditions, under similar circumstances, and for the same period of time. For every violation of the provision of this section such corporation shall be liable to the party suffering thereby in double the entire amount so charged to such party, to be recovered before any Court having jurisdiction thereof; *provided, however,* that nothing in this section shall be construed to prohibit the carriage or handling of persons or property free or at reduced rates for the United States, State or municipal governments, or to or from fairs and expositions for exhibitions thereof; or the free carriage of destitute and homeless persons transported by charitable societies and the necessary agents employed in such transportation; or the issuance of mileage, excursion or commutation passenger tickets; nor to prohibit any such corporation from giving reduced passenger rates to ministers of religion solely engaged in ministerial duties, or to the United States, State or municipal governments; nor to prohibit any such corporations from giving free carriage to their own officers and employees; nor to prohibit any such corporation from giving reduced rates of transportation to other railroad corporations for railroad construction, material, equipment or supplies.

Discrimination in charges, &c., prohibited.

Penalty.

Exceptions.

SECTION 95. Every railroad corporation organized under the provisions of this Act shall be required, upon filing the certificate, to pay to the Secretary of State the fees hereinafter provided for; and also pay to the State Treasurer for the use of the State such tax as is required by the provisions of Chapter 458, Volume 12, of the Laws of this State, entitled "An Act to raise revenue for this State," and Chapter 392, Volume 13, of the Laws of this State, entitled "An Act taxing railroad and canal companies in this State." *Provided, however,* that such railroad shall be entitled to the rights of commutation therefor as is provided by law for other railroad corporations of this State.

Fees to State.

Annual tax.

SECTION 96. Every corporation organized under the provisions of this Act for the purpose of producing or distributing steam, heat and power, shall, in addition to the powers conferred upon corporations generally, have full authority to lay the necessary pipes and conduits beneath the public roads, highways, streets, avenues and alleys in this State; *provided, however,* that such pipes and conduits shall be laid at least three feet below the surface of the same, and shall not in any wise unnecessarily obstruct or in-

Steam, heat and power companies

Additional powers.

OF CORPORATIONS.

terfere with public travel, or damage public or private property; and provided, also, that the consent of the Council, Town Commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district wherein or through which it is contemplated to lay such pipes and conduits beneath such public roads, highways, streets, avenues or alleys shall first, and as a condition precedent, be obtained before any such public roads, highways, streets, avenues or alleys shall be disturbed, opened or dug up; such consent of said Council or Town Commissioners to be by ordinance of such Council or Commissioners duly adopted, or of such person having control over the public roads or highways, by resolution adopted at a meeting to be held not less than thirty days after notice thereof shall have been given by notices posted up in five of the most public places on the public road or highway which is proposed to be used for the purposes aforesaid; that such use of public roads, highways or streets, avenues and alleys in any of the cities, towns or districts of this State shall be subject to such terms, regulations and restrictions as may be imposed by the Council, Town Commissioners or other persons having control over the public roads and highways of the district, and that the portions of surface of the roads, highways, streets, avenues and alleys disturbed in laying the said pipes shall be immediately restored to their original condition, and that any pavements which are removed for the purpose of laying or repairing the pipes shall be restored to as good condition as they were previous thereto, and so maintain the same for six months after the completion of the work, and in case of failure on the part of the corporation to so maintain and restore the same the Street Commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

Laying pipes.

SECTION 97. It shall be the duty of every corporation organized under the provisions of this Act in laying any pipe or conduits in any of the public roads, highways, streets, avenues and alleys, to be used for conveying steam, heat or power to lay the same at a distance not less than three feet, if possible from the outside of any water or gas pipe already laid, except in cases where it shall be necessary that said pipes or conduits shall cross any such water or gas pipe, and there such pipe or conduits shall be at least twelve inches distant from the outside of any water or gas pipe already laid.

↙ ↘
Electric light,
heat or power
companies.

SECTION 98. Every corporation organized under the provisions of this Act for the purpose of constructing, maintaining and operat-

OF CORPORATIONS.

ing works for the supply and distribution of electricity for electric lights, heat or power, shall in addition to the powers conferred upon corporations generally, have full power to use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same, to sustain the necessary wires and fixtures; provided that the consent of the Council, Town Commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district in or upon which the said posts or poles are to be erected, shall first, and as a condition precedent be obtained; and provided, further, that no posts or poles shall be erected in any street of any city or incorporated town except in those streets which shall be designated by the said authorities thereof, and then only in such place and manner as shall be thus designated, and that the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets, highways and roads; and that the use of the public streets in any of the cities and incorporated towns of this State shall be subject to such regulations and taxation as may be first imposed by the corporate authorities of such cities and towns; and provided also that no posts or poles shall be erected upon the soil or property of any person or persons without first obtaining the consent in writing of the owner or owners of the soil or property; and provided, also, that any wire crossing a railroad shall not be at a less elevation than twenty-three feet.

SECTION 99. Every such corporation is authorized and empowered to lay pipes or conduits and to lay wires therein beneath the public roads, highways, streets, avenues and alleys as they may deem necessary; provided, that said pipes and conduits shall be laid at least two feet below the surface of the same and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property, and shall not be laid nearer than three feet, except as is hereinafter excepted, to any water or gas main; but no public streets shall be opened for the purpose of laying any such pipes, conduits, or wires without the consent of the Council of any city, or the town Commissioners of any incorporated town, or other persons having control over said public roads, highways, streets, avenues and alleys; and provided, that such use of the public streets in any of the cities and towns of this State shall be subject to such regulations, taxation and restrictions as may be first imposed by the corporate authorities of such cities and towns.

SECTION 100. Every corporation in laying wires for conveying electricity or the conduits containing said wires, shall lay the

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same at the greatest practicable distance from the outside of any water or gas pipe now laid down, and when it is practicable and so provided in its permits such distance shall not be less than three feet, except in case where it shall be necessary that the said wires or conduits shall cross or intersect any such water or gas pipe.

Gas or water
companies.

Additional
powers of.

SECTION 101. Every corporation organized under the provisions of this Act, for the purpose of the production, distribution and sale of gas to be made from coal or other materials, and also every corporation organized as aforesaid, for the supply and distribution of water, shall in addition to the powers conferred upon corporations generally, have full authority to lay down necessary pipes, water-mains and conduits beneath the public roads, highways, streets, avenues and alleys of any city, incorporated town or district of this State; provided, however, that such pipes, water-mains and conduits shall be laid at least three feet below the surface of the same, and shall not in any wise unnecessarily obstruct or interfere with public travel, or damage public or private property; and provided, also, that the consent of the Council, Town Commissioners or other persons having control over the public roads, highways, streets, avenues and alleys of the city, town and district wherein or through which it is contemplated to lay such pipes, water-mains and conduits beneath such public roads, highways, streets, avenues or alleys shall first and as a condition, precedent be obtained, before any such public roads, highways, streets, avenues or alleys, shall be disturbed, opened or dug up; such consent of such Council or Town Commissioners or other persons having control over such roads, highways, streets, avenues and alleys to be by ordinance of such council or commissioners duly adopted, or by resolution of such persons having control over the public roads or highways, adopted at a meeting to be held not less than thirty days after notice thereof shall have been given by notices posted up in five of the most public places on the road or highway which is proposed to be used for the purpose aforesaid; that such use of public roads, highways or streets, avenues and alleys in any of the cities, towns or districts of this State shall be subject to such terms, regulations, taxation and restrictions as may be imposed by the Council, Town Commissioners or other persons having control over the public roads and highways of the district, and that the portions of surfaces of the roads, highways, streets, avenues and alleys disturbed in laying the said pipes shall be immediately restored to their original condition, and that any pavements, which are removed for the purpose of laying or repairing the pipes, water-mains and conduits, shall be restored to as good condition as they were previous thereto, and so maintain the same

OF CORPORATIONS.

for six months after the completion of the works, and in case of failure on the part of the corporation to so restore and maintain the same, the Street Commissioner or other officer having supervision of the streets may properly restore and maintain the same, and the costs thereof may be recovered by the city or town from the corporation in any court of competent jurisdiction.

SECTION 102. That any telegraph or telephone corporation or-
 ganized under the provisions of this Act, shall in addition to the
 powers conferred upon corporations generally, having authority to
 occupy and use public streets, roads, lanes, alleys, avenues, turn-
 pikes and water-ways within the State, or elsewhere, if they shall
 extend their lines and business, for the erection of poles and wires
 or cable or under-ground conduits, portions of which they may
 lease, rent or hire to other like companies ; provided that before en-
 tering upon any street, road, lane, alley, avenue, turnpike, or water-
 way the consent of the authorities having jurisdiction thereof shall
 have first been obtained and the same shall be used and occupied
 under such rules and regulations as shall be prescribed by such
 authorities ; and that the portions of the surfaces of the streets,
 avenues or alleys, disturbed in laying the wires, cables or under-
 ground conduits, shall be immediately restored to their origi-
 nal condition and that any pavements which are removed for
 the purpose of laying or repairing the wires, cables or underground
 conduits, shall be restored to as good condition as they were pre-
 vious thereto, and so maintain for six months after the completion
 of the works, and in case of failure on the part of the corporation
 to so restore and maintain the same, the proper authorities having
 supervision of the streets, avenues and alleys may properly restore
 and maintain the same and the cost thereof may be recovered by
 the city, town or district from the corporation in any court of com-
 petent jurisdiction ; provided that all posts or poles which shall be
 erected by authority herein conferred shall be so located as in no
 way to interfere with the safety or convenience of persons traveling
 on or over the said roads and highways ; and provided further,
 that all wires fastened upon posts or poles erected as aforesaid, shall
 be placed at the height of not less than twenty feet above all road
 crossings, and twenty-three feet above railroad crossings ; and that
 no posts or poles shall be erected upon the soil or property of any
 person without first obtaining the written consent of the owner
 thereof.

SECTION 103. Any number of persons not less than five may
 form a corporation under the provisions of this Act, which corpor-
 ation so formed as aforesaid, shall have perpetual succession for the

Telegraph and
 telephone com-
 panies.
 Additional
 powers of.

Railways.
 Formation, in-
 corporators, suc-
 cession, purpose,
 &c.

OF CORPORATIONS.

purpose of constructing, maintaining and operating a railway, for the transportation of freight and passengers, the carriages, coaches and cars of which, to be moved or propelled by electricity, by cable or motor or by any improved motive power other than steam and shall do and perform the several matters and things hereinafter stated and shall have and exercise all the rights, powers and privileges hereinbefore and hereinafter conferred and be subject to all the duties, limitations, restrictions and liabilities hereinafter imposed upon such corporations; and for that purpose may make and sign articles of association, in lieu of the articles of association hereinbefore required by the provisions of this Act, for corporations generally and for railroad corporations where steam power is used, in which shall be stated :

Articles of association

Name.

1. The name of corporation.

Location.

2. The place from which and to which such railway is to be constructed, maintained and operated.

Length.

3. The estimated length of such railway and the name of each county in this State through or into which it is intended to be made.

Capital stock.

4. The amount of the capital stock of the corporation which shall not be less than two thousand dollars for every mile of road proposed to be constructed.

Shares.

5. The number of shares of which said capital stock shall consist.

Directors.

6. The names and places of residence of the five directors of the corporation who shall manage its affairs for the first year and until others are chosen in their places; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation. At least one of said directors shall be a resident of this State.

Principal office.

7. The name of the city, town, county or place within the county, in this State, in which its principal office or place of business will be located in this State.

Approval of articles by Judge.

SECTION 104. Said articles of association shall be presented to one of the Judges of the Superior Court of the State of Delaware, who shall examine the same, and if found to conform to the requirements of this act shall endorse his certificate thereon accordingly. On compliance with the foregoing provision and the requirements of the next succeeding section, which latter shall be evidenced by the receipt of the State Treasurer, delivered to the Secretary of State, such articles of association may be filed in the

Filing, recording, etc.

OF CORPORATIONS.

office of the Secretary of State, who shall endorse thereon in writing the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the Secretary of State to be filed the persons who have so subscribed such articles of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified therein; every such corporation formed under this Act, in addition to the general powers hereinbefore in this Act set forth, shall have power:

Additional powers.

1. To have authority, by its officers and servants, to enter upon the lands or waters of any person or persons which may be necessary to make such examination and surveys for its proposed railway as shall be required to be made in the selection of the most advantageous route, but subject at all times to responsibility for all and any damages which shall be done to the property of any such person or persons.

Selection of route, &c.

2. To aid in the construction, operation and maintenance and accommodation of its railway, may take and hold such voluntary grants of real estate and other property as shall be made to it, but, in all instances, the real estate received as a voluntary grant shall be held and used for the purpose of such grant only.

Property, &c.

3. For the sole purpose of the construction, operation and maintenance of its railway, and the stations and other accommodations necessary to accomplish the object of its incorporation, it may purchase, hold and use all such real estate and other property as may be necessary.

4. To construct its road and lay out the same as hereby provided and for the purposes of cuttings and embankments to take as much more land as may be necessary or required for the proper construction and security of the road.

5. To use and exercise all other rights and powers hereby granted.

SECTION 105. Articles of association, in compliance with the provisions of Sections 103 and 104 of this Act, shall not be filed and recorded in the office of the Secretary of State until at least five hundred dollars of stock for every mile of railway proposed to be made is subscribed thereto and paid, in good faith and in cash, to the directors named in said articles of association, nor until the said directors shall have deposited the said money so subscribed and paid to them with the State Treasurer, who is constituted the custodian of the same, and shall hold the same, subject to be repaid to the directors of the said corporation, or to the treasurer thereof, in

\$500 per mile of proposed road to be deposited with State Treasurer.

Payment of money by State Treasurer.

OF CORPORATIONS.

sums of five hundred dollars for each mile of said railway, upon the construction of which it shall be proved, to his satisfaction, that the said corporation has expended at least the sum of five hundred dollars, nor until there is endorsed on such articles of association, or annexed thereto, an affidavit, made by at least three of the directors named in said articles of association, that the amount of stock required by this section has been in good faith, subscribed and paid in cash as aforesaid, and that it is intended, in good faith, to construct or maintain and operate the railway mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid.

Subscriptions to capital stock.

SECTION 106. The directors named in said articles of association, may, when such articles of association and affidavit are filed and recorded in the office of the Secretary of State, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

Ten per cent. to be paid on subscriptions.

Directors, number, &c.

SECTION 107. That there shall be a board of not less than five directors of every corporation formed under this Act for the purpose of constructing and operating railways, to manage its affairs. Said directors shall be chosen annually in the same manner that is provided for the choosing of directors for railroads as provided in Section 74 of this Act, and the inspectors to hold the first election shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder owning stock absolutely in his own right, and qualified to vote at the election at which he shall be chosen; at every election of directors the books and papers of such company shall be exhibited to the meeting and subject to the inspection of those present, provided a majority of the stockholders present shall require it.

Election of.

Sec. 74 to apply.

Inspectors.

Qualification of directors.

Exhibition of books, &c.

Organization.

SECTION 108. That within thirty days after the articles of association are filed in the office of the Secretary of State, the directors therein named shall organize by the election of one of their number president; they may also elect a treasurer and secretary and adopt such by-laws as may appear to be proper and right for the government of the corporation.

Election of officers.
By-laws.

Increase of capital stock.

SECTION 109. That in case the capital stock of any company formed under this Act is found to be insufficient for constructing and operating its railway, such company may, with the

OF CORPORATIONS.

concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purpose of constructing, maintaining and operating its railway ; such increase shall be authorized under the provisions which are contained in Section 76 of this Act, in relation to railroads and in compliance with all conditions and requirements contained in said section in relation thereto. Sec. 76 to apply.

SECTION 110. That the stock of every company formed under this Act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been paid. Stock, personal property.
Transfer of.

SECTION 111. Whenever any corporation created under this Act, for constructing, maintaining and operating a railway, cannot agree with the owner or owners of any land, sand, earth, gravel or other materials necessary to be taken and used in the construction of the said railway, for the purchase thereof, the said corporation may proceed for the condemnation thereof in the manner provided for in Section 78 of this Act, in relation to railroads ; and when the damages ascertained therefor in the manner provided in said section shall have been paid or deposited in the proper bank as therein provided, the corporation shall become entitled to have, hold, use and enjoy the said lands and materials for the purpose by them required, forever. Assessment of damages for required land, &c.
Sec. 78 to apply.

SECTION 112. That any railway constructed under the provisions of this Act shall not exceed forty feet in width, unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as such corporation may deem necessary, and it shall be lawful for such corporation, its agents, engineers, superintendents, or others in its employ, to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling and laying out the route or routes of such railway, and of locating the same, and all necessary works, buildings, conveniences, appurtenances and appendages thereof, doing no unnecessary injury to private or other property ; and when the route or routes of such railway and the location or locations of all other works, buildings, conveniences, appurtenances and appendages thereof, shall have been determined upon, and a survey of any such route or routes, location or locations deposited in the office of the Secretary of State, then it shall be lawful for every such corporation formed under this Act, upon payment or tender of such compensation as hereinbefore provided by its officers, agents, engineers, superintendents, workmen and other persons in their Width of road.
Entry on lands.
Survey, &c., filing.
Payment for lands, &c.

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Construction of
road.

employ, to construct, maintain and operate a railway with a single or double track, with such side tracks, turnouts, offices, stations and depots as they may deem necessary at and between the points named in the articles of association, commencing at or within and extending to or into any town, city or village named as the place of terminus, and from time to time, either before or after completion of the main line, construct, maintain and operate branches within the limits of any county through which said railway may pass, lay rails, and for that purpose to enter upon, take possession of, hold, have, use, occupy and excavate any lands, and erect any embankments, bridges and all other necessary works, and to do all other things which may be suitable for the completion, repairs or management of said railway, and for the conveyance of passengers and freight to and from the the termini thereof by motive power other than steam; provided, always, that the payment or tender of payment of all damages for the occupancy of all lands through, under or upon which the said railway and its conveniences, appurtenances and appendages may be laid out or located be made before the said corporation, or any person under its direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said railway and its conveniences, appurtenances and appendages, and of locating the same, unless the consent of the owner or owners of such lands be first had and obtained; and provided further, that the survey of the route of any branch shall not be filed in the office of the Secretary of State until the officers or directors of the corporation shall have deposited with the State Treasurer a sum equal to at least five hundred dollars for every mile, and a proportionate sum for any distance less than a mile, of such branch which it is proposed to construct, and the said treasurer shall be custodian of such fund, and shall hold the same subject to be repaid to the directors or treasurer of such company in sums of five hundred dollars for each mile and a proportionate sum for any distance less than a mile, of such branch upon the construction of which it shall be proved to his satisfaction that such amount has been expended; and provided further, that the construction of all such branches shall be commenced within six months from the date of filing the survey thereof as aforesaid, and shall be completed and opened within two years from the date of the commencement of the construction as aforesaid.

Deposit of \$500
per mile.

Time of com-
mencement and
completion.

Bridges and pas-
sages.

SECTION 113. It shall be the duty of every railway corporation organized under this Act, to construct and keep in repair good and sufficient bridges and passages over, under or across the said railway or right of way where any public or other road, street or avenue now or hereafter laid out shall cross the same, so that pub-

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lic travel on the said road shall not be impeded thereby; and it is *further provided*, that such bridges shall be of such width and character, as shall be suitable to the locality in which the same are situated; and also where the said railway shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagonways over, under and across the said railway, and shall also construct and maintain suitable and proper cattle guards at all road crossings; *provided always*, that in case any such railway shall cross any street and streets, highway or highways, in any city or incorporated town, it shall be either above or below the grade of said street or streets, highway or highways, at such distance as shall not interfere with the free and uninterrupted use of such street or streets, highway or highways; *provided further*, that the Council of any city or the Commissioners of any incorporated town, or other persons having authority or control over said highways and streets respectively may grant permission to said corporation to cross such street or streets, highway or highways, within the limits of the respective city or incorporated town at grade, if they shall deem it to be for the best interest of the city or incorporated town; and further provided, that in the event that such corporation shall not, within a reasonable time after notification from the Council of the City or Commissioners of the incorporated town or other persons having authority or control over said highways and streets respectively in which such bridges and passages are to be constructed or repaired, proceed to construct or repair the same as required by this Act, the said Council or Commissioners or other persons having authority or control over said highways and streets respectively, may in the corporate name of such city or town, institute proceedings in the Court of Chancery against such corporation to compel the specific performance of the duties imposed upon such corporation by this section of this Act, and in case a decree shall be made against such corporation in said proceedings, commanding it to specifically perform said duties within such time, the Chancellor, upon proof of such neglect or refusal, may in his discretion, issue a writ of injunction to restrain said corporation from the exercise of any franchise or the transaction of any business in this State until the said corporation shall have obeyed the command of such decree and paid the costs of said proceedings; *and further provided*, that the said Council or Commissioners or other persons having authority or control over said highways and streets respectively, in the event of the failure of such corporation to construct or repair such bridges or passages within a reasonable time after notification as aforesaid, may if they deem it advisable so to do, proceed themselves to construct and repair such bridges or passages, and when the costs thereof shall have been ascertained,

Wagonways.
Cattleguards.
Crossing streets.
&c.

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the same may be collected of and from said corporation by said Council or Commissioners or other persons having authority or control over said highways and streets respectively, by an action at law in any court of competent jurisdiction; *provided further*, that the permission of the Council of any city or the Commissioners of any incorporated town or other persons having authority or control over said highways and streets respectively, hereinbefore referred to, shall not be necessary for the purpose of crossing any street or streets, highway or highways, at grade, unless said street or streets, highway or highways, at the point where said railway shall cross or at some point between the crossing of said railway and the nearest terminus of said street or streets, highway or highways, shall be in actual use by and for pedestrians and teams at the time of the acquirement of the right of way of said railway across such street or streets, highway or highways.

Crossing
streams, &c.

Crossing rail-
roads or rail-
ways.

Grade crossings
to be avoided.

Switches, &c.

Decision of ques-
tion of practica-
bility of grade
crossings.

SECTION 114. That any railway corporation created under this Act, which shall have duly located the route of its railway by a survey deposited in the office of the Secretary of State, as required by Section 112 shall have power in the construction of its said railway on such route, to cross any canal, navigable steam or water course between its termini, but in such manner as not unnecessarily to impede the navigation and use thereof; and shall also have power to cross any railway or railroad intervening between such termini and acquire the necessary easement for such crossing either by agreement with the corporation owner thereof or, on failure to agree, by condemnation proceedings in the manner prescribed by Section 78. Provided, however, that when ever practicable so to do the crossing of any railroad at grade shall be avoided, but if not practicable, the crossing may be at grade, subject to the further provision in this section contained, and in that event, it shall be the duty of the corporation whose railroad track or tracks shall cross the track or tracks of the railway company, to so construct its railway track or tracks, as that on each side of the right of way of the railroad company so crossed and at a safe and convenient distance therefrom, there shall be a disconnection in each rail of the railway tracks capable of being connected by means of a switch arrangement whereby the said railway tracks may be made continuous for the passage of the cars of the railway company over the right of way and tracks of the railroad company, which shall be operated at the expense of the railway company by a competent agent thereof who shall always be on duty at said crossing for this purpose; and provided further, that no such grade crossing shall be permitted or effected until the question of the practicability of an overhead or underground crossing shall have been considered and determined

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by the Chancellor, who shall upon the petition or bill of the company, desiring to effect such crossing at grade, have full power and jurisdiction upon notice to, and answer by the company whose tracks are proposed to be so crossed to hear, and, determine the matter by an appropriate decree, either refusing or permitting the crossing at grade, and if permitted, to prescribe and regulate by such decree the manner and character of the said crossing, together with such safeguards against collisions thereat in addition to those by this section provided for as he may deem proper with the right of appeal from the Chancellor's decree to the Supreme Court by either party as in other cases in equity; and provided further that any railway may cross any other railway either at grade, or over head or under grade by an adequate structure, which, if under grade, shall be so located and constructed as not to disturb the road-bed so intersected, or, if overhead, shall be at such an elevation as not to impede or interfere with the free and safe passage of the cars on the railway so crossed.

SECTION 115. That any corporation created under this Act for the purpose of constructing a railway shall commence the proposed construction within six months from the date of its organization, and complete at least one track of said railway within two years from the date of commencement as aforesaid; *provided*, that if any such company or corporation organized under this Act shall fail to comply with the provisions of this section it shall thereby forfeit the franchises given it by this Act; *provided, further*, that if any such corporation organized under this Act shall be restrained, prevented or enjoined by any proceedings whatever at law or in equity from prosecuting the work on its railway, or from opening or completing its said railway, the time during which any such corporation shall be so restrained, prevented or enjoined shall not be taken or computed as any part of the time allowed and limited in this section for the opening and completing of said railway.

SECTION 116. Any corporation organized under this Act for the construction and operation of a railway shall have power to borrow such sums of money, from time to time, not exceeding in the aggregate double the amount of its full paid capital stock as shall be necessary to build, construct or repair its railway, and furnish all necessary cars and equipments for the use and objects of said corporation, and to secure the repayment thereof by the execution, negotiation and sale of any bond or bonds, secured by mortgage on said lands, privileges, franchises and appurtenances of and belonging to the said corporation; *provided*, that said corporation shall not plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of any

OF CORPORATIONS.

Lien. bond or mortgage executed under the provisions of this section ; and *provided, further*, that said bonds and mortgages shall constitute a first lien on the railway, its cars, real estate and franchises, and the proceeds of said bonds shall be used for the purpose of aiding in the construction and operation of said railway ; and *provided, further*, that if any person or persons shall issue such bonds to any greater amount than double the amount, at the time of such issue, that shall have been actually paid up on the capital stock of such railway, he, she or they shall be guilty of a misdemeanor, and shall be punished by a fine of not less than two thousand dollars, or by imprisonment for not more than three years, or both, at the discretion of the Court.

**Limit of.
Amount of bonds.**

Sec. 84 to apply.

SECTION 117. The provisions of Section 84 of this Act shall be applicable to all railways that may be located and constructed under this Act elsewhere than on turnpikes, highways or public roads.

**Injuring prop-
erty of road.**

SECTION 118. Any person who willfully or maliciously obstructs any railway company in the legal use of its tracks, or delays the passing of cars or railway carriages thereon or aids or abets such detention or delay, shall be punished by a fine not exceeding fifty dollars, to be by it recovered in any court having competent jurisdiction in an action of debt ; and further shall be liable for all damages sustained.

Penalty.

Signal boards.

SECTION 119. Every railway corporation formed under this Act shall cause signal boards, well supported by posts, or otherwise, at such heights as to be easily seen by travelers, and not obstructing travel, containing on each side in capital letters, at least five inches high, the following inscription: "RAILWAY CROSSING." to be placed and constantly maintained, at such public highway where it is crossed by the railway at the same level ; but such boards need not be put up in the cities or towns, unless required by the authorities thereof.

Any corporation failing to comply with or violating or permitting any of its employees or agents to violate any of the provisions of this section, shall in addition to subjecting itself to any damages that may be caused by such failure or violation, be guilty of a misdemeanor and upon conviction thereof, be fined for each failure or violation, not less than one hundred dollars nor more than five hundred dollars.

**Annual report to
stockholders.**

SECTION 120. It shall be the duty of every railway corporation created under the provisions of this Act, to make an annual report to the stockholders of its operations during the year, which

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report shall be verified by the affidavit of the secretary and treasurer and shall state :

The entire length of the railway in operation, the length of single track and the length of double track ;

The full amount of capital stock actually subscribed and the full amount paid thereon ;

The entire amount of the actual cost of the railway, showing the amount expended for the right of way, bridging, grading, iron and building respectively, and for all other purposes incidental to the construction of such railway ;

The nature and amount of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness and the amount due the corporation ;

The amount received from all sources whatever and the full amount expended for all purposes ;

The entire amount paid for loss and damage to freight and injury to person and property ;

The full number and amount of dividends and when made and in what manner such dividends have been paid ;

The entire amount appropriated to sinking fund and the manner in which the same has been applied, and the total amount then held by such sinking fund ; the secretary of each railway corporation, formed as aforesaid, shall mail to every stockholder thereof, whose post office address is known, a copy of said annual report and shall file a certified copy thereof with the Secretary of State on or before the expiration of fifteen days. Filing copy.

SECTION 121. Any two or more railway corporations created under this Act, or anyone of such corporations and a corporation now existing for the construction and operation of a railway, whose charter does not prohibit merger or consolidation, may consolidate into a single corporation in the manner provided in Section 54 of this Act, and the other sections hereof relating to the consolidation of corporations, and such new corporations shall possess all the powers, rights and privileges conferred upon such two or more corporations, and shall be subject to all the restrictions and liabilities and shall perform all the duties imposed by the provisions of their respective charters, or certificates of incorporation not inconsistent with the provisions of this Act. Merger.

SECTION 122. Every railway corporation organized under this Form to State.

OF CORPORATIONS.

Other taxes.

Act shall be required, upon filing its certificate, to pay to the Secretary of State the fees hereinafter provided for; and also pay tax or taxes as are or may be imposed by law or by any authority having jurisdiction.

Not to use streets where track is now laid.

SECTION 123. That no railway shall be authorized or empowered hereunder nor shall any consent or authorization of any board of officials, city, county or hundred, be held to authorize any railway to be constructed, maintained or operated upon any street upon which any track is now laid.

Telegraph and telephone for use of road.

SECTION 124. That it shall be lawful for every railroad or railway corporation organized under the provisions of this Act or existing under the laws of this State and they are hereby authorized and empowered to erect, establish and maintain a line or lines of telegraph or telephone for their own use, along and upon the lands and right of way of such railroad or railway corporations.

Certain words defined.

SECTION 125. Whenever the words "DIRECTORS" and "MANAGERS" appear in any of the provisions of this Act, they shall be construed to be synonymous terms; and whenever the word "RAILROAD" occurs it shall be construed to be a road, the engine, cars, carriages and coaches on which are propelled by steam power; and whenever the word "RAILWAY" occurs, it shall be construed to be a road, the cars, carriages and coaches on which are propelled by electricity, by cable, motor or by any improved motor power, other than steam.

Copies, &c., evidence.

SECTION 126. That a copy of any article of association for the construction of railways filed and recorded in pursuance to the provisions of this Act, or of the record thereof, with a copy of the affidavit aforesaid, endorsed thereon or annexed thereto, and duly certified to be a copy by the Secretary of State, shall be presumptive evidence of the incorporation of such corporation and of facts therein stated.

Fees of State on filing certificates.

SECTION 127. On filing any certificate or other paper relating to corporations in the office of the Secretary of State, the following fees and taxes shall be paid to the Secretary of State, for the use of the State: For certificate of incorporation, fifteen cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty dollars, and when any certificate of increase of the capital stock shall be filed as required by this Act, the Secretary of State shall demand and receive, for the use of the State, fifteen cents on each one thousand dollars of such increase; and when two or more corporations shall consolidate or merge, he shall demand and receive, for the use of the State, fifteen cents on

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each one thousand dollars of capital stock authorized beyond the total authorized capital of the corporations consolidated or merged, but in no case less than twenty dollars.

Upon receiving and filing a certificate of dissolution, change of name, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of the number of shares, he shall demand and receive twenty dollars. All other certificates five dollars. *Provided,* ^{Exemptions.} that in case of corporations for religious, charitable or educational purposes the tax shall not be charged or collected.

The fees of the Secretary of State under this Act shall be ^{as Fees of Secretary of State.} follows :

For certified copies, the same as is now provided by law for the Secretary of State for certificates and copying ; for receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, surveys, reports and any other papers provided for by this Act two dollars in each case ; for recording and indexing certificates, articles of association and other papers required by this Act to be recorded by the Secretary of State the same fees as are now provided by law for the recording of deeds.

SECTION 128. For all purposes of title, action, attachment, ^{Situs of ownership of stock.} garnishment taxation and jurisdiction of all courts held in this State, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this Act or otherwise, shall be regarded as in this State.

SECTION 129. Any corporation existing under the laws of ^{Renewal of existing corporations.} this State may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its President and Secretary, duly sworn or affirmed to by ^{Certificate, filing, &c.} such officer before any person authorized by the laws of this State to administer oaths or affirmations, with the Secretary of State : ^{Contents of certificate.} which certificate shall set forth :

1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal.
2. The name of the city, town or place within the county in which its principal office or place of business is located in this State.

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3. The date when such renewal is to commence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue.

4. That the corporation desiring to renew and so renewing its charter is duly organized and carrying on the business authorized by its existing charter.

When filed, recorded, &c.

SECTION 130. Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the Secretary of State, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be recorded in the office of the Recorder of the county in which the principal office of said corporation is located in this State, in a book kept for the purpose; and said certificate or a certified copy thereof duly certified under the hand of the Secretary of State and his seal of office accompanied with the certificate of the Recorder of the county wherein the same is recorded under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the Recorder aforesaid, or a copy of said record duly certified by the Recorder aforesaid, or the record of such certified copy recorded in the Recorder's office aforesaid, shall be in evidence in all courts of law and equity of this State.

Evidence.

Fees of State.

SECTION 131. Upon the renewal of the existence of any corporation it shall pay to the Secretary of State, for the use of the State, a tax of twenty dollars before the delivery of a certified copy of its certificate of renewal by him to it.

Provisions of this act to apply

SECTION 132. Any corporation, desiring to renew, extend and continue its corporate existence, shall upon complying with the provisions of sections 129, 130 and 131 of this Act, and with the provisions of section 2 of article 9 of the Constitution of this State, be and continue for the time stated, in its certificate of renewal a corporation and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of this Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities by this Act imposed on such corporations.

Power of companies to hold stock, bonds, &c., of other companies.

SECTION 133. Any corporation created under the provisions of this act may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this State or any other State,

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county, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

SECTION 134. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the Secretary of State, an amended certificate, duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged in the manner in this act required for certificates of incorporation, in this act heretofore provided for, modifying, changing or altering its original certificate of incorporation in whole or in part; said Secretary of State shall furnish a certified copy under his hand and seal of office, and said certified copy shall be recorded in the office of the Recorder of the county in which its original certificate of incorporation was recorded; said amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; *provided, however* that nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this Act. For filing any such amended certificate of incorporation the Secretary of State shall receive for the use of the State, a tax of twenty dollars, and if the capital stock of the corporation is increased by any such amended certificate he shall receive, as aforesaid, an additional sum of fifteen cents for each one thousand dollars of increase.

SECTION 135. Every corporation organized under this Act may change the nature of its business, change its name, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendments, change or alteration as may be desired, in manner following:

The Board of Directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting power shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged by said president and secretary, before an officer authorized by the laws of this State to take acknowledgement of deeds, to be the act, deed and certificate of

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such corporation. And such certificate acknowledged as aforesaid, together with the assent in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the Secretary of State, and a copy thereof duly certified by the Secretary of State shall be recorded in the office of the Recorder of the county in which the original certificate of incorporation is recorded, and upon so filing and recording the same, the certificate of incorporation shall be deemed to be amended accordingly; *provided*, that such certificate of amendment, change or alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the Secretary of State that such certificate and assent have been filed in his office, the record of the same in the office of the Recorder aforesaid, or a copy of said record certified by the Recorder aforesaid, shall be taken and accepted as evidence of such change or alteration in all courts and places.

Places of meetings of stockholders.

SECTION 136. That in all cases where it is not otherwise provided by the by-laws the meetings of the stockholders of every corporation in this State shall be held at its principal office in this State; the directors may hold their meetings, and have an office or offices outside of this State, if the by-laws or certificate of incorporation so provide; and every corporation shall maintain a principal office or place of business in this State, and have an agent resident of this State in charge thereof.

Of directors.

Principal office in State.

Classes of stock.

SECTION 137. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this Act elsewhere provided, shall apply to all and any of the classes of stock; but at no time shall the total amount of the preferred stocks exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par at a fixed time and place, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporators shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, half yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock, unless its original certifi-

Proportion.

Dividends.

Liability.

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cate of incorporation shall otherwise provide, no corporation shall create preferred stock, except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous. When any corporation shall issue stock for labor done or personal property or real estate or leases thereof, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

Stock for labor, property, &c.

SECTION 138. Any corporation of this State existing at the time this Act becomes a law, whether created by special Act of the Legislature or general law, may change the nature of its business, be permitted to hold real and personal property of a greater or less amount in value, increase or decrease its capital stock, change its name, change the par value of the shares of its capital stock, change the location of its principal office or place of business in this State, and fix any method of altering its by-laws permitted by any law of this State, in the manner prescribed in Section 135 of this Act, and any corporation may in the same manner relinquish one or more branches of its business or extend its business to such branches as might have been inserted in its original charter or certificate of incorporation, not contrary to the laws of this State.

Changes and alterations in nature of business, &c., as in Sec. 135.

SECTION 139. All laws or parts of laws inconsistent with the provisions of this Act, are hereby repealed; *provided, however,* that all rights, privileges and immunities vested or accrued by and under prior laws, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and under laws prior hereto shall not be impaired, diminished or affected hereby.

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