Byers on Kentucky Corporations

CONTAINING

The Laws of the State of Kentucky pertaining to private corporations generally, banks, railroads and various miscellaneous companies, excepting insurance, as amended to January 1, 1923

TOGETHER WITH

Decisions, Commentaries, Forms and Precedents

By

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Of the Louisville Bar

CINCINNATI

THE W. H. ANDERSON COMPANY

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PREFACE

The laws of Kentucky relating to private corporations have not hitherto been codified or grouped together. The governing idea in the preparation of this volume has been to assemble the provisions of the Constitution, Statutes and Civil Code, relating to private corporations, and to collate the authorities, insofar as possible, firstly under the main subject of corporations generally and, secondly under the various subdivisions of corporate law. All of the statutory law in Kentucky, on private corporations, excepting insurance companies, will be found in these pages, together with full annotations, including both State and Federal cases construing the statutes, and tax laws. It must be remembered that Kentucky has not been a predominately industrial state, and that therefore many provisions of corporation law have not been adjudicated and that furthermore a large portion of private company law in this State is of such recent origin that the courts have not been given the opportunity of construction and interpretation. The recent acts, however, concern only particular classes of companies, and not business companies generally. I have therefore, in some measure, drawn upon authorities from other jurisdictions and the standard works on corporation law, cited by the Court of Appeals. Counsel are almost wholly dependent upon the standard works, encyclopediae and authorities outside of our jurisdiction, for treatment of such subjects as the issual of bonds secured by deeds of trust, and voting trusts. These matters are given attention in this volume. The book is also designed as a hand book for organization and management of corporations. Forms have been inserted throughout the work at convenient places for this purpose. I am indebted to Fred P. Caldwell, Esq., of the Louisville Bar, not only for permission to use a few of the forms published in Caldwell's Com-

plete Kentucky Form Book, but for his generous counsel and advice in the preparation of the book. If there are any errors in the text it is because a long and diligent revision of the proof has failed to note them. I respectfully desire, above all else, that the book will meet with the approval of the Bar, and in some degree assist the members, in this ever increasing field of professional endeavor. My grateful acknowledgment for their generous assistance and suggestions is due to Arthur E. Hopkins, Esq., former State Revenue Agent and expert tax attorney; to the Hon. Augustus E. Willson, former Governor of Kentucky; Messrs. Richard P. Dietzman and E. P. Baker, all of the Louisville Bar; to Mrs. Byers for her untiring interest and assistance in the revision of the proof and the preparation of the indices; to Miss Susan Fleming, the efficient librarian of the Louisville Law Library, and to Walter Moffat, Esq., of the New York Bar, and John Gilroy, Esq., of the Philadelphia Bar, both able corporation lawyers.

GARDNER K. BYERS.

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Laws of the State of Kentucky Relative to Private Corporations

CHAPTER I

GENERAL PRINCIPLES OF THE LAW

CHIEF JUSTICE MARSHALL has contributed to American jurisprudence one of the most comprehensive definitions of the corporation to be found in the books. The learned Chief Justice said: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessities, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession, with these qualities and capacities that corporations were invented, and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being." (Dartmouth College case, 4 Wheat. 518.) According to Blackstone the origin of corporations may be traced back to Rome (1 Blackstone's

Com. 468). But it appears that the Civil Law was not introduced into Britain until 1140 by Norman Abbott Theobald, Archbishop of Canterbury, and as Prof. Fletcher points out in his valuable work on corporations. "It would perhaps be more satisfactory to accept the conclusion that the English corporation in its origin, was a product of local evolution (like the great body of the common law) while admitting freely that its subsequent development was unquestionably influenced by the introduction of the Civil (or Roman) Law." The corporate idea first came into existence in England, in connection with trade guilds and ecclesiastical corporations of the Church, known as the corporation sole. In America the corporate idea was the very basis and being of the colonies, from which the Government of the United States itself, ultimately sprung. Lord Coke said, "Persons capable of purchasing are of two sorts, persons natural, created by God, and persons created by the policy of man, as persons incorporated into a body politic." Since the days of John Marshall, most of the modern industrial and commercial business of the country has come to be transacted by and through the medium of corporations, with the result that, particularly in the last quarter century, corporations have grown from "infant industries" to giant organizations of wealth and power, far beyond the dreams of the courts whose decisions form a part of the common law on the subject. Hence for the protection of society as well as the stockholders, many statutes have been enacted which modify the common law, insofar as may be necessary to meet modern industrial conditions and business development.

ATTRIBUTES OF CORPORATIONS

The usual attributes of corporations are (1) the capacity of perpetual succession. This term is not generally construed to imply corporate immortality, as might be inferred from Marshall's famous definition, but, as is the case in Kentucky, the term should be construed to mean that period of time, limited by its charter, during which the corporation may continuously exist, without interruption by reason of the death

or disability of one or more of its individual members or stockholders; (2) to acquire or transfer real or personal property and to promote or conduct any legitimate object or purpose; to contract and be contracted with, and to mortgage or pledge its property; (3) to sue and be sued in its corporate name; (4) to hold real estate on certain conditions; (5) to have a corporate seal; (6) to elect directors and officers, and to prescribe rules and regulations for the management of its internal affairs.

ORGANIZATION AND INCORPORATION

That a corporation is the creature of the state is an elementary principle. In England charters were granted by the Crown, later by acts of Parliament, and in this country by Congress and the legislatures of the several states. Not until 1795 was there any departure from the usual practice of granting charters by special act of the legislature. Until 1892 the legislature of Kentucky created corporations by special act, but by the present constitution of Kentucky, adopted in that year, special legislation is prohibited, and while corporations remain, as always, the creatures of the state, charters may only be obtained under the general corporation laws which are applicable to all corporations alike, and only in the manner prescribed in such statutes. (Ky. Const., Sec. 59.) Corporations in this State are not vested with powers of perpetual succession, in the sense of unlimited duration or existence, but must in the charter state when the business is to begin and the period for which it is to continue (K. S. Sec. 539-6) and all charters and grants of or to corporations, or amendments thereof, enacted or granted since February 14, 1856, and all other statutes relating to corporations are subject to repeal by the legislature, but no repeal shall impair other rights previously vested. (K. S. Sec. 1987.)

The general corporation law is an Act of 1893, Chapter 171, and all corporations not otherwise specially provided for come within the purview of this Act and amendments thereto; and their organization, incorporation, powers, consolidation, and

dissolution are regulated by the terms of the general act. But Kentucky corporations may exercise a wide discretion in the management and control of their internal affairs, and the Courts will not ordinarily, in the absence of fraud, interfere in such management and control.

Any number of persons, not less than three, may associate to incorporate a company in this State and the statute does not make any specific requirements as to residence or citizenship of the incorporators. (K. S. Sec. 538.) They may associate under the provisions of the general act to establish any lawful business, including the real estate business, subject to certain statutory and constitutional limitations relative to the holding of real estate for other than business purposes. Banking, building and loan, insurance, and railroad corporations are provided for by special statutes, made generally applicable to all corporations of such classes.

ORDER OF PROCEDURE TO INCORPORATE

1. Meeting of Incorporators. Until the directors are elected the incorporators or signers of the articles of incorporation shall have direction of the affairs of the corporation, including the steps necessary for the organization of the company. The incorporators are responsible for the procurement of subscriptions to the capital stock. However the directors must have been elected before the corporation is entitled to lawfully transact business in this State, except of course business which it may have with its stockholders or subscribers. (K. S. Sec. 541, 551.)

2. Preparation of Articles. The articles of incorporation must be drawn in strict conformity with the statutes relating thereto, otherwise they will be rejected by the Secretary of State. (K. S. Sec. 539.) Before giving the corporation a name, the incorporators should ascertain from the Secretary of State's office at Frankfort whether or not there is another corporation of the same name in existence in this State, otherwise duplication of the name will be a cause for delaying the filing of the articles. (See Form of Articles.)

3. **Filing and recording of articles.** The articles of incorporation must be signed and acknowledged by at least three of the incorporators, and filed in the office of the county clerk of the county wherein the principal place of business is to be located, together with payment of a nominal filing fee to the county clerk. The original is filed with the county clerk, whose duty it is to certify a copy thereof to be filed in the Secretary of State's office. The certified copy should be accompanied by a check, payable to the State Treasurer for the organization tax which is $1.00 per $1,000 capital, and also a check payable to the Secretary of State to cover the cost of recording fee which is twenty-five (25) cents per hundred words, and $1.00 for filing the required statement designating the agent in this State upon whom process may be served. Unless the amount covering the organization tax, the recording and certificate fee, accompany the certified copy of the articles, the certificate of incorporation will be withheld until such payment, and the articles of incorporation will not be recorded. Although not required the checks covering the organization tax and the fees due the Secretary of State should be certified in order to avoid the question of delay. (See form of Statement designating agent.)

4. **Subscription of the necessary proportion of stock.** The law requires at least fifty per cent. of the capital stock of all corporations formed under the general corporation law to be in good faith subscribed before such corporations can begin the transaction of any business, other than business with the stockholders (K. S. Sec. 543) and no stock may be issued except for value, either in cash, property, or labor done. (K. S. Sec. 568; Ky. Const., Sec. 193.) In Kentucky there is no provision for the issuance of non-par value stock, but the par value may be of any amount. As to the question of what constitutes "labor done" it is a well settled principle of corporation law that the services of promoters in connection with the incorporation of a company do not constitute services such as may be compensated by the payment of stock and stock which is

deemed to be paid in for these services will not be upheld by the Courts, as paid in capital stock. (See form of Statement.)

5. **Filing of statement of officers and directors.** A statement signed by the president or secretary naming the location of the principal place of business and the agent thereat upon whom process may be served must be filed with the Secretary of State. (K. S. Sec. 571.) This is important by reason of the fact that the corporation is not authorized to do business in Kentucky until such statement is filed and the courts will not give the corporation the benefit of any contract, made before such filing, in an action to enforce the same.

DE FACTO CORPORATIONS

No corporations organized under the general corporation law 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 corporations, or sued for injury done to its property be permitted to rely upon such want of legal organization as a defense. (K. S. Sec. 566.) A de facto corporation is one which is exercising corporate powers under color of legal organization, when in fact its organization is more or less irregular, but it has complied with the forms of the statute. The Court of Appeals has held that when the corporation is organized as the statute requires, neither its purpose nor its validity can be inquired into collaterally and any proceeding which challenges its right to exist must be instituted and maintained by the State, under whose laws it is organized, and the want of legal organization can not be set up in private litigation to which the corporation is a party. A de facto corporation must however have complied with the forms of the statute under which it is organized to enable it to be free from collateral attack. For instance, if a corporation has not filed the required statement designating an agent upon whom process may be served, such failure would constitute a defense to a suit upon a contract made by it under certain circumstances, where it sought the benefit of the contract, but the company could not shield itself to the

detriment of others by setting up such failure as a defense in a suit against it. (Calor Oil & Gas Co. v. Franzell, 128 Ky. 715; 109 S. W. 328.) The reason for this rule is that it would produce endless confusion and destroy the corporation if the legality of its existence could be drawn in question in every suit in which it was a party, for then no judgment could be rendered which would finally settle the question. (Cumberland Telegraph, etc., Co. v. Louisville Home Tel. Co., 114 Ky. 892; 24 Ky. L. R. 1676, 72 S. W. 4.)

CORPORATE POWERS

The corporation may adopt a name and be known thereby providing no other corporation in the State has the same name. This power includes the right to sue and be sued in its corporate name, as distinguished from a partnership where all of the parties to the partnership must sue or be sued in their individual names as partners, trading and doing business under the firm name and style of the partnership. The corporation may contract and be contracted within its own name and use a corporate seal in connection with its signature on all contracts and transfers of real or personal property. This is a power not incident to persons engaged in partnership activities. It has power to pledge and mortgage real or personal property and to own the same subject to the limitation that it may not own real estate except for the promotion of the particular business in which it may be engaged by virtue of its corporate charter, for a longer period than five years under penalty of escheat to the State. This limitation upon the right of corporations to own real estate in Kentucky has been very liberally construed by the Courts in favor of the corporations, and the penalty of escheat can only be enforced by the State in an action brought in the name of the Commonwealth. The power to pledge and mortgage real or personal estate includes of course the power to issue bonds, debentures and other securities, against such property. The corporation has power to enforce its contracts, and to remove and elect its officers and directors, define their powers and duties and to

require them to give bond if desired, and to prescribe, by action of its board of directors, by-laws for the regulation of its affairs, in any manner not inconsistent with the statute, and to exercise subject to law, such powers as may be necessary and incident to the conduct of the business and the promotion of the objects for which it was created. (K. S. Sec. 542.)

MEETINGS AND VOTING

All meetings, notice of their call, time and place thereof, may be regulated by the by-laws of the company, except meetings for the election of directors, which must be held in this State and upon twenty days notice in writing to each of the stockholders mailed to his last known address. A stockholder may vote at any meeting by proxy duly signed and attested, and each stockholder may cast in person or by proxy one vote for each share of stock standing in his name upon the books of the company, or he may vote his stock cumulatively, that is, he may cast the whole number of his votes for one candidate for a directorship or distribute his votes among two or more candidates as he may see fit. Proxies must have attached to them a ten cent internal revenue stamp as provided by the Federal statutes. If notices of meetings shall not have been mailed as prescribed by statute or by the by-laws of the company, this defect may be cured by entering upon the records the written waivers of notice signed by all of the stockholders or directors as the case may be. A meeting of the board may be held immediately following the annual meeting of stockholders. If there is a failure to hold an annual election of directors then the existing directors continue to hold office until their successors are elected. At a stockholders' meeting if all the directors are present, any action taken by such meeting will be binding upon the corporation, as if such action had been taken by the directors separately. It has been held, however, on the theory of principal and agent, that an act by the stockholders at a meeting, has the same effect as if done by the directors, who are in reality the agents of the stock-

holders. This rule is not desirable to follow except in jurisdictions where the statute thus clothes stockholders with all the powers of directors. The power of stockholders usually does not extend to the internal management of corporate affairs, but such management is vested exclusively in the board of directors, who may be held accountable to the stockholders as quasi-trustees for their benefit. When some special action is to be taken by the stockholders, such as the approval of a mortgage or deed of trust which the directors have authorized, the proposed action should be stated in the notice of meeting. Special meetings should be called only upon due notice and such notice should state the purpose of the meeting. These matters however are not specifically provided for by statute in Kentucky, but should be regulated by the by-laws of the company.

DIRECTORS

The affairs of each corporation shall be managed by a board of directors of not less than three in number, each of whom shall own in his own right not less than three shares of the capital stock. They shall hold office until their successors are elected and qualified and a majority of them shall constitute a quorum at any meeting. All elections of directors shall be by ballot and held in this State upon twenty days notice mailed to each stockholder at his last known address. The first board of directors is elected by the incorporators before the corporation is authorized to commence business, and thereafter annually at a meeting of the stockholders to be held on the date 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. The directors may be classified as to their respective terms of office, on a plan similar to that adopted for the election of United States senators, so that the board may have perpetual succession so long as the corporation continues to exist, i. e., one third may be elected in the first instance for one year, one third for two years, and one third for three years. Thereafter on each annual election date one third of the membership may be

elected for a three year term of office. The statute is not mandatory and this method, like the method of cumulative voting, is entirely optional with the stockholders or incorporators, as the case may be. In the case of banks and certain other corporations, a minimum of five directors, owning five shares of the capital stock, is required to constitute a legal board of directors. There are no provisions as to the residence of directors, except that in the case of banks a majority of them are required to be residents of this State. The number of directors may be changed in the manner provided for the amendment of articles of incorporation. (K. S. Sec. 559.) The directors have power to enact the by-laws (K. S. Sec. 542) and to wind up the affairs of the corporation pursuant to proceeding for the voluntary dissolution of the company. (K. S. Sec. 561.) There are no specific provisions restricting the action of the board of directors, except in the matter of declaring dividends contrary to law, in which case they are jointly and severally liable for all of the debts of the corporation existing at the time of such wrongful declaration of dividends. (K. S. Sec. 548.) Meetings may be held in or out of the State and at such times and places as the by-laws may prescribe, there being no statutory provision to the contrary.

Directors have power to elect the executive officers of the company and to appoint such other agents and subordinate officers as the necessities of the business may in their judgment require. The officers of a corporation usually can not themselves delegate their duties to subordinate officers, but the management of the corporation may properly be entrusted to subordinate officers by the board. Directors are liable in damages for the issuance of false reports concerning the condition of the business (K. S. Sec. 549), for a payment of a fine for violation of any of the provisions of the corporation laws of this State (K. S. Sec. 550), and jointly and severally liable for the debts of the company at the time of a wrongful declaration of dividends (K. S. Sec. 548), i. e., such a declaration of dividends as would impair the capital stock of the company.

CORPORATE RECORDS

A book shall be kept by every corporation at its principal office showing the name, address and number of shares held by each stockholder and the time when each of them became a stockholder, also all transfers of stock and the dates of such transfers, together with the names of the transferor and the transferee. This book must be open to the inspection of stockholders and persons doing business with the corporation, during business hours. (K. S. Sec. 546.) In a proper case the Courts will compel the exhibition of books for inspection by minority stockholders by mandatory injunction. For refusal to permit the proper inspection of books the officers will be liable under Section 550 of the Kentucky Statutes.

CAPITAL STOCK

There is no general provision as to the amount of capital stock necessary to organize a business corporation, but fifty (50%) per cent. of whatever amount is decided upon must be in good faith subscribed before the commencement of business with the general public. (K. S. Sec. 543.) As previously stated there is no provision for non-par value stock under the laws of Kentucky, and the statutes as well as the Constitution of the State require that no stock shall be issued except for value, either in cash, property or labor done (K. S. Sec. 568, Ky. Const., Sec. 193), but the par value may be of any amount. The subscribers are required to pay in such amounts as they have subscribed for upon the terms and conditions named by the Board of Directors, and the Board may enforce payment of the same, by the delinquent subscribers, by public sale. Capital stock may be increased or decreased by written consent of the stockholders representing two thirds of the capital stock. (K. S. Sec. 553.) Capital stock may be divided into two classes, viz., preferred and common, upon such terms as the stockholders or incorporators may agree. (K. S. Sec. 564.) Shares of stock can only be transferred upon the books of the Company, in the manner prescribed by the by-laws. (K. S. Sec. 545.) Dividends are payable only out of the surplus

earnings of the company, and payments declared when the company is insolvent, or when such declaration would impair the capital stock, will render the directors jointly and severally liable for all the debts of the corporation existing at the time of such wrongful declaration of dividends. (K. S. Sec. 548.) The limitation requiring stock to be issued only for value (K. S. Sec. 568) renders liable all stockholders who receive so called "bonus" stock, for the difference between what the stock cost them and the par value of the same, according to the construction placed upon this section by the Kentucky Court of Appeals. (Rice v. Thomas, 184 Ky. 168; 211 S. W. 428.) This limitation as to issuance of stock for value, it seems, only applies to domestic corporations, and the liability of stockholders owning bonus stock in foreign corporations is governed by the law of the State in which such foreign corporations are organized. Where stock of a domestic corporation is given away then the holder thereof is liable for the par value of such stock on the claim of creditors of the company.

LIABILITY OF STOCKHOLDERS

Stockholders are ordinarily liable to creditors of the corporation for the unpaid portion of the stock subscribed for by them. This is a common law liability which exists independently of the statute upon that subject, and would exist if there were no statutory provision. Such liability, according to the Kentucky Court of Appeals, rests upon the theory that such unpaid subscriptions constitute a trust fund for the benefit of creditors, and while the trust fund doctrine is denied by most jurisdictions, it seems, nevertheless to be the law in Kentucky. This partial liability is not only a matter of statute in this State (K. S. Sec. 547) but this section also provides for the so called "double liability" in the case of stockholders in banks, trust companies, guaranty companies, investment companies and insurance companies; in other words that they shall be liable equally and ratably, and not one for the other, for all contracts and liabilities of such cor-

porations to the extent of the amount of their stock at par value, in addition to the amount of the stock. The double liability however does not apply to persons holding stock in the corporations specified, as fiduciaries, but does apply to the estates in their hands. (K. S. Sec. 547.) For a full explanation of the principles of stockholder's liability the reader should refer to the annotations cited under Section 193 of the Constitution together with commentaries on the subject (p. 32).

CERTAIN POWERS AND LIMITATIONS

No corporation shall engage in business other than that expressly authorized by its charter or amendments thereto, and any contract or act performed by it, in its corporate capacity, which is not within the scope of its authorized powers, is known as an *ultra vires* act, voidable in law, but not voidable in and of itself. For this reason the powers of the corporation, as stated in the purpose clauses of its charter should be sufficiently broad so as to embrace all the powers which might be necessary or convenient to the successful operation of the business for which it is created. Of course all of the powers which a corporation expects to exercise need not be set out in great detail. Only the principal purposes of the company together with a general enabling clause, empowering the corporation to do all things necessary and incident to the business need be stated.

No corporation in this State is permitted to engage in or to carry on, in any way, the business of banking or insurance of any kind, unless it has been organized under the laws relating to banking or insurance, and on the other hand a banking institution can not, for instance, engage in the glass manufacturing business, as such an undertaking would be clearly *ultra vires* and not within the scope of its powers.

We have already referred to the limitation placed upon the holding of real estate for a longer period than five years under penalty of escheat, for other than business purposes. (K. S. Sec. 567.) The courts are very liberal however, in construing this provision of the statute in favor of corporations.

No corporation shall take as security for any debt, 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 on a previously contracted debt; and stock so purchased shall in no case be held by the company for a longer period than one year. (K. S. Sec. 544.) This does not apply to redemption of stock sold.

Every corporation shall have power to sell and convey all of its property, rights, privileges, franchises, easements, rights of way, and all other property or property rights it may use or possess, by consent in writing or by consent given at a special meeting, called for the purpose, of stockholders representing three-fourths (¾) of the capital stock of the selling company. (K. S. Sec. 883, Act of 1918, Ch. 15.)

In most of the States the laws require an endless amount of filing of reports concerning the financial condition of the company along with their annual tax report, and the filing of statements regarding changes of address and officers and various matters relating to the internal affairs of the company. In Kentucky the ordinary corporation is comparatively free from this burden.

SALE OF STOCKS AND BONDS

The sale of corporate stock and bonds in this State is now regulated by the so-called "Blue Sky Law" (Act of 1920, Ch. 125). In general this law provides that corporate securities may be disposed of through licensed dealers only, or upon approval of the Banking Commissioner, after consideration of the financial condition of the corporation. The licensed dealers or investment companies are placed under the supervision of the Banking Commissioner whose duty it is to enforce the provisions of the Blue Sky Law. The jurisdiction of the Banking Commissioner however does not extend to sales outside of the Commonwealth of Kentucky.

MERGER OF CORPORATIONS

A majority of the directors may agree to consolidate with another corporation, upon written notice to each of the stock-

holders, and publication in a newspaper for two weeks of notice of intention to consolidate. Consent of the holders of two thirds of the capital stock shall be necessary to validate the act of consolidation or merger, but any stockholder is entitled to object to such merger, and within twenty days, thereafter, demand that the old corporation pay him the market value of his stock owned therein, at the date of such consolidation. (K. S. Secs. 555, 556, 558, with Forms.)

VOLUNTARY DISSOLUTION

Voluntary dissolution of a corporation and the winding up of its business may take place only with the written consent of the holders of a majority of the capital stock, and if such consent is obtained, then it becomes the duty of the officers of the corporation to speedily settle its affairs and to publish notice of dissolution in some newspaper in the county for four consecutive weeks. All debts and demands against the corporation must be paid before any distribution can be made to the officers. (K. S. Sec. 561.)

FORFEITURE OF CHARTER

The Attorney General of the Commonwealth may bring proceedings *quo warranto* to forfeit the charter of a corporation when it is guilty of an abuse of power or for other cause shown. (See Quo Warranto Proceedings.)

FOREIGN CORPORATIONS

No foreign corporation shall be permitted to do business in this State under more favorable terms than are granted to domestic corporations (Ky. Const., Sec. 202) and it shall be unlawful for foreign corporations to do business in this State without first having filed in the office of the Secretary of State, a statement signed by its president or secretary, giving the location of its principal office in this State and the name of the agent thereat upon whom process may be served against the corporation, and also any changes which may be made. (K. S. Sec. 571.) Too great stress can not be laid upon the importance of this requirement, inasmuch as the Courts of

Kentucky will not enforce contracts made by foreign corporations which have not complied with this section. This rule does not apply however to foreign corporations engaged in an inter-state business, when the particular contract in question is an inter-state transaction, according to a recent decision of the United States Supreme Court. With regard to the matter of issuing shares for value and the liability of stockholders thereon, the Court of Appeals has held that this is governed by the laws of the State wherein the corporation is organized. The withdrawal of corporations from this State must also be noted in a statement filed with the Secretary of State, signed by the president or secretary of the corporation. The provision of the statutes of this State prohibiting foreign corporations from removing causes, in which they are parties, from State to Federal courts is unconstitutional. (See annotations K. S. Sec. 572.) There is a special provision of the statutes relating to foreign railroad corporations to the effect that railroads desiring to extend their lines into the State of Kentucky shall be required to file a copy of their charter with the Secretary of State in the same manner provided for domestic corporations. (Ky. Const., Sec. 211, K. S. Sec. 765.)

CLASSIFICATION OF CORPORATIONS

There is no systematic classification of corporation law in this State, but the statutes are grouped under the following general subheads: (1) General Corporation law, (2) Banking institutions of various kinds, (3) Railroad law, (4) Insurance companies, the latter being omitted from this work as being a subject by itself, and (5) various statutes relating to miscellaneous corporations, such as building and loan associations, bridge companies, telegraph and telephone companies, oil and gas companies, religious and charitable corporations, investment companies, and cooperative associations, and most of these are regulated by the general corporation law which applies unless otherwise specifically provided.

TAXATION

(See chapter on Corporation Tax Law.)

CHAPTER II

PROVISIONS OF THE KENTUCKY CONSTITUTION RELATIVE TO PRIVATE CORPORATIONS

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12. Business unauthorized by charter prohibited—real estate (192).
13. Stock or bonds not to be issued unless for value (193).
14. Agent upon whom process may be served to be located in this State (194).
15. Eminent domain—right of retained by the State (195).
16. Transportation—charge for—common law liability (196).
17. Free passes forbidden (197).
18. Trusts and combinations to be suppressed. (This section held unconstitutional by the United States Supreme Court (198.)
19. Telegraph and telephone companies (199).
20. Domestic corporation does not become foreign by consolidation (200).
21. Common carrier not to consolidate with or purchase parallel line—contracts between, when forbidden—exception (201).
22. Foreign corporations subject to laws relating to domestic corporations (202).
23. Sale or lease of franchise does not affect existing liabilities (203).
24. Banks (204).
25. Forfeiture of charter for abuse of power (205).
26. Elevators and warehouses (206).
27. Directors, election of, cumulative voting permitted (207).
28. Definition of word "corporation" (208).
29. Negligent injury resulting in death, action for (241).
30. Condemnation of private property (242).
31. Labor to be paid in money (244).
32. Railroads (provisions of constitution in relation to, see Railroad Law).

Sec. 3. Franchises and charters subject to repeal or amendment. All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution; and every grant of a franchise, privilege or exemption, shall remain subject to revocation, alteration or amendment.

Exemptions from taxation. Ky. Const. Sec. 170.

Repeal of charters, K. S. Sec. 1987.

Cases construing similar section (Bill of Rights Sec. 1) Constitution of 1850; Dembitz Ky. Jurisp. p. 48.

License tax exemptions (City of Newport v. French Bros., etc., 169 Ky. 175, 183 S. W. 532). State institutions (Carman v. Hickman Co., 185 Ky. 640, 215 S. W. 408).

Statute of 1906 (K. S. Sec. 3941a; see Anti-trust Legislation), authorizing pooling of crops does not grant exclusive privilege within the meaning of this section. (Owen County Burley Tobacco Ass'n v. Braumback, 128 Ky. 137, 32 Ky. L. R. 916, 170 S. W. 710.)

A salvage corps of an insurance company is not entitled to the use of public streets in preference to other persons. (Louisville Ry. Co. v. Louisville Fire & Life Protective Ass'n, 151 Ky. 644, 152 S. W. 799.)

Public service defined. The test to which the right of the employment of special privileges by private corporations must be subjected is, do they perform any public service and are they subject to public control? It must be a public service that carries with it some measure of public control and supervision, and the right of public control and authority must precede or accompany the grant of the privilege and be so much a part of it that the privilege can not be exercised without incurring the responsibility and liability that attaches to the performance of public duties. (Louisville Ry. Co. v. Louisville Fire & Life Protective Ass'n, *supra.*)

Sec. 13. Private property not to be taken for public use without compensation. * * * nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

Condemnation by public utilities corporations. Ky. Const. Secs. 195, 242; also Railroad Condemnation Law.

Early authorities, Dembitz Ky. Jurisp. pp. 41, 48.

Assessments for street improvements against street railway are not invalid under this section. (Henderson Traction Co. v. City of Henderson, 178 Ky. 124, 198 S. W. 730.)

Street railway can not be compelled to operate at a loss in the absence of a contract obligation to do so. (Potter Matlock Trust Co. v. Warren County, etc., 182 Ky. 840, 207 S. W. 709.)

Land can not be condemned for a private use, and the **burden** is upon a private corporation which seeks to condemn land, to show that it is needed for a public use. (Riley v. Louisville, H. & St. L. Ry. Co., 142 Ky. 67, 133 S. W. 971.)

Railroad commission has no power, under K. S. Sec. 829, to take property or apply it to public use, either by award or otherwise, without the consent of the carrier nor without just compensation being made to it. (L. & N. R. Co. v. Greenbrier Dist. Co., 170 Ky. 775, at 791, 187 S. W. 296.)

Compensation. Neither the State, nor a corporation under its authority, can be permitted to take private property without first making compensation to the owner. Bond of indemnity insufficient. Measure of damages not confined to market value of property condemned but also the loss and inconvenience to the owner. (Covington Short Route T. R. Co. v. Piel, 87 Ky. 267, 8 S. W. 499.)

Necessity and public use, must, in all cases, exist as a condition precedent to the legal right of a railway to enforce the remedy, given by its charter, to condemn property. (Tracy, etc., v. Elizabethtown, L. & B. S. R. Co., 80 Ky. 259.)

Compensation must be paid, or a legal tender made, to the owner before the taking of his property. Judgment of county court in condemnation proceedings not equivalent to payment. (Bushart v. County of Fulton, 183 Ky. 471, 209 S. W. 499.)

See, further, Railroad Condemnation Law, *post.*

Sec. 19. No law shall be enacted impairing obligation of contracts. No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.

Constitutional inhibition against impairment of the obligations of contracts has no application to the impairment of obligations growing out of municipal or quasi-municipal charters. (Larue v. Redmon, 168 Ky. 487, 182 S. W. 622; Covington v. Commonwealth, 173 U. S. 242; Thomp. on Corporations Sec. 5382.)

Right of repeal, when reserved in charter does not constitute an impairment of the obligation of a contract.

Taxation of banks—when not in violation of this section. (Deposit Bank, etc. v. Daviess County, 102 Ky. 174, 39 S. W. 1030.)

Contra, where right of repeal was not expressly reserved no levy for taxes may be made against corporation whose charter exempts it from such taxes.

Extension of charter by the legislature does not have the effect of creating a new charter. (Franklin County Court v. Deposit Bank of Frankfort [including briefs of counsel], 87 Ky. 370, 9 S. W. 212.)

Act authorizing removal of seat of college, in the absence of express contract to the contrary, held not in violation of this section. (Bryan v. Board of Education, etc., 90 Ky. 323, 13 S. W. 276.)

Amendment of charters of turnpike companies—fixing toll rates. (Covington & L. T. R. Co. v. Sanford, 14 Ky. L. R. 689, 20 S. W. 1031; reversed in 164 U. S. 578, Op. per Harlan, J.)

Transfer of management to county court, of turnpike company, power being reserved, held valid. (Simpson County Court v. Arnold, 7 Bush 353.)

Railroads, power of taxation of, presumed in the absence of a clearly expressed intention to relinquish such power. (Louisville, C. & L. R. Co. v. Commonwealth, 10 Bush 43; Bradley v. McAtee, 7 Bush 667.)

Repeal of charter. (Cumberland & O. R. Co. v. Barren County Ct., 10 Bush 604.)

Acts of incorporation are contracts within the meaning of provisions of the Federal and Kentucky constitutions prohibiting laws impairing the obligation of contracts. (Hamilton v. Keith, 5 Bush 458.)

Reservation by the legislature in a charter, to alter repeal or amend does not imply the power to alter or change the vested rights acquired by the corporators under the charter and to add new parties and managers without the consent of the corporators. The alteration must be consistent with the original object of the corporation. (Sage v. Dillard, 15 B. M. [54 Ky.] 340.)

See, further, historic cases on this subject: City of Louisville v. President, etc., University of Louisville, 15 B. M. 642; Dartmouth College v. Woodward, 4 Wheat. (U. S.) 518.

Sec. 59. Creation of corporations by special act prohibited. The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely: * * *

17. Charters. To grant a charter to any corporation, or to amend the charter of any existing corporation; to license companies or persons to own or operate ferries, bridges, roads or turnpikes, etc.

Most of the states have thus placed a constitutional inhibition upon the legislature to prevent the passage of private legislation for the

benefit of corporations, not made generally applicable to corporations as a class. (See Index to constitutional provisions of various states, 10 Cyc. 172.)

Sec. 150. Bribery by corporations, penalty for. * * * and if any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or anything of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the General Assembly to provide for the enforcement of the provisions of this section * * *.

Statutory penalty and proceedings quo warranto by Attorney General (K. S. Sec. 569a). See also Quo Warranto Proceedings, *post*. p. —.

Sec. 163. Public utilities forbidden to use streets without authority of city. No street railway, gas, water, steam heating, telephone, or electric light company, within a city or town, shall be permitted or authorized to construct its tracks, lay its pipes or mains, or erect its poles, posts or other apparatus along, over, under or across the streets, alleys or public grounds of a city or town, without the consent of the proper legislative bodies or boards of such city or town being first obtained; but when charters have been heretofore granted

conferring such rights, and work has in good faith been begun thereunder, the provisions of this section shall not apply.

A municipality can not grant a franchise otherwise than as provided in Sec. 164 of the Constitution. (Cumberland Tele., etc. Co. v. City of Calhoun, 151 Ky. 241, 151 S. W. 659.)

The fact that steam railroads are omitted from the provisions of this section does not deprive the legislature of the power to make consent of a city the condition precedent to the occupation of its streets by a steam railroad. (City of Covington v. Louisville & N. R. Co., 158 Ky. 136, 164 S. W. 329.)

This section does not apply except when some part of the public ways or public grounds is to be occupied. (Bland v. Cumberland Tele., etc. Co., 33 Ky. L. R. 399, 109 S. W. 1180.)

Sec. 164. Municipal franchises limited to twenty years, exception. No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding twenty years. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids. This section shall not apply to a trunk railway.

If a public service corporation uses or occupies the streets of a city without first having obtained the right to do so under this section, it is a trespasser and can not invoke in its favor any of the laws enacted for the benefit of corporations that have observed the law. Secs. 163 and 164 must be read together. (Cumberland Tele., etc. Co. v. City of Calhoun, 151 Ky. 241, 151 S. W. 659.)

A lighting contract with a municipality for a period of twenty years from a future date on which the lighting plant is to be put in operation, and made under an existing valid twenty-year lighting franchise, is valid. (Schaff & Co. v. City of LaGrange, 176 Ky. 549, 195 S. W. 1097.) Contra, (City of Somerset v. Smith, 105 Ky. 678, 49 S. W. 456 and City of Princeton v. Electric Light Co., 166 Ky. 730, 179 S. W. 1074; distinguished in Judge Miller's opinion in the LaGrange case, *supra*.)

Interurban railroad is not a street railway within the meaning of this section. (Bentler v. C., C. & Erlanger Ry. Co., 180 Ky. 497 at 506, 203 S. W. 199.)

Telephone franchises. (Bastin Tel. Co. v. Davidson, 176 Ky. 25, 195 S. W. 148; East Tennessee Tel. Co. v. City of Russellville, 106 Ky. 667, 51 S. W. 308; Christian Todd Tel. Co. v. Commonwealth, 156 Ky. 557, 161 S. W. 543; Lutes v. Fayette Home Tel. Co., 155 Ky. 555, 160 S. W. 179.)

This section does not repeal the grants of franchises prior to the adoption of the fourth constitution. (Louisville & N. R. Co. v. Bowling Green Ry. Co., 110 Ky. 788, 63 S. W. 4.)

A city cannot enlarge a franchise except by an award under this section. (People's Electric Light & Power Co. v. Capital Gas & Electric Light Co., 116 Ky. 76, 75 S. W. 280.)

Trunk railway defined. (Diebold v. Kentucky Traction Co., 117 Ky. 146, 77 S. W. 674.)

A city is liable for the reasonable value of lights furnished it under a void contract. (City of Providence v. Providence Electric Light Co., 122 Ky. 237, 91 S. W. 664.)

A city has no power to grant a telephone franchise without offering it at public sale. (Moberly v. Richmond Tel. Co., 126 Ky. 373, 103 S. W. 714.)

Sec. 170. Taxation—Exemption from, of religious corporations and manufactories. There shall be exempt from taxation public property used for public purposes; places actually used for religious worship, with the grounds attached thereto and used and appurtenant to the house of worship, not exceeding one half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education; public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto; * * * and all laws exempting or commuting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxa-

tion, for a period not exceeding five years, as an inducement to their location.

Manufactories exempted by K. S. Sec. 4026; see also Gen'l Ordinances, City of Louisville, 1919 ed., pp. 668, 965.

Reorganization and transfer of manufacturing establishments held not to create a "new" enterprise entitled to an exemption by a city ordinance under this section of the constitution. (McCormick Lumber Co. v. City of Winchester, 155 Ky. 494, 159 S. W. 997; City v. Board of Education, 154 Ky. 316, 157 S. W. 379.)

Destruction by fire. The rebuilding and enlargement of a plant, held not to be a "new business." (Elain v. Sallsbury, 180 Ky. 143, 202 S. W. 66.)

Erection and enlargement of a new plant does not make the company a "new business." (City of Louisville v. Louisville Tin & Stove Co., 170 Ky. 557, 186 S. W. 124.)

Mere enlargement of existing establishment, new buildings, new machinery, new processes, new capital, new management, new ownership, new employees, held not to constitute a "new business." (Mengel Box Co. v. Sea, 167 Ky. 193, 180 S. W. 347; see also Mengel Box Co. v. City of Louisville, 117 Ky. 735, 79 S. W. 255.

School tax. Exemption from municipal taxation does not exempt corporation from school tax. (N. V. Lumber Co. v. City of Louisville, 163 Ky. 467, 173 S. W. 1120.)

New business—when exempt under this section. (Vogt Bros. Mach. Co. v. Sea, 181 Ky. 327, 204 S. W. 76.)

Prior charter rights. Exemption does not apply to a corporation whose charter was granted prior to the adoption of this constitution (1891) and its provisions are prospective only. (City of Middlesborough v. New South Brewing Co., 108 Ky. 351, 56 S. W. 427.)

A foreign corporation coming into this state and establishing a business and plant here, is entitled to municipal exemption. (Continental Tobacco Co. v. City of Louisville, 29 Ky. L. R. 616, 94 S. W. 11.)

Merger of three corporations into one does not entitle the new corporation to exemption under this section. (Jones Bros. v. City of Louisville, 142 Ky. 759, 135 S. W. 301.)

Certain real estate owned by a religious organization and not used for religious purposes was held not exempt from taxation. (Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S. W. 12.)

A manufacturing establishment which was enlarged and transferred to another plant and put in the name of the corporation held not to be entitled to exemption. (City of Louisville v. New York Baking Co., 151 Ky. 758, 152 S. W. 980.)

Sec. 171. Annual tax, classification of property. The General Assembly shall provide by law an annual tax, which, with

other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

The General Assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the State and of counties, municipalities, taxing and school districts shall not be subject to taxation.

Any law passed or enacted by the General Assembly pursuant to the provisions of or under this amendment, or amended section of the Constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the Secretary of State not more than four months after the final adjournment of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become a law when it is approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidate for Governor at the regular election, last preceding the filing of any petition, shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be

ordered by the Legislative Assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year one thousand nine hundred and seventeen. After that time the power of the referendum may be ordered either by the petition signed by five per cent. of the legal voters or by the Legislative Assembly at the time said acts or bills are enacted. The General Assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act, shall not delay the remainder of that act from becoming operative.

(Amendment to Constitution, 1915.

Sec. 172. Basis of tax assessment. All property, not exempted from taxation by this constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer or other person authorized to assess values for taxation, who shall commit any wilful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office and be otherwise punished as may be provided by law. (See K. S. Sec. 4043.)

Sec. 174. Taxes to apply to corporations and individuals alike. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises.

License and franchise tax. (Ky. Const. Secs. 181, 181a.)
Exemption from municipal tax. (Ky. Const. Sec. 170.)
Taxation generally. (Corporation Tax Law, p. 372.)

Corporate property, value of, how estimated, assessment of. (Eminence Dist. Co. v. Henry Co., 178 Ky. 811, 200 S. W. 347.)

Franchise tax. (B. & O. R. Co. v. Commonwealth, 177 Ky. 566, 198 S. W. 35; Commonwealth v. Ky. Heating Co., 176 Ky. 35, 195 S. W. 459; Henderson Bridge Co. v. Commonwealth, 99 Ky. 623, 31 S. W. 486; Green v. Louisville & I. R. Co., 244 U. S. 501; Louisville & N. R. Co. v. Green, 244 U. S. 522.)

Railroads, method of assessment and taxation of. (Commonwealth v. Louisville & N. R. Co., 149 Ky. 829, 150 S. W. 37.)

Double taxation, unconstitutional. (Cumberland T. & T. Co. v. Hopkins, 121 Ky. 851, 90 S. W. 594; Cumberland T. & T. Co. v. City of Calhoun, 151 Ky. 241, 151 S. W. 659.)

Sec. 177. Credit of Commonwealth not to be loaned to corporation—Commonwealth not to become a stockholder. The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State; nor shall the Commonwealth become an owner or stockholder in, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway.

Appropriations for public institutions upheld. (Hagar v. Ky. Children's Home, 119 Ky. 235, 83 S. W. 605; Norman v. Mgrs. World's Fair, 93 Ky. 537, 20 S. W. 901; Ky. Livestock Ass'n v. Hagar, 120 Ky. 125, 85 S. W. 738.)

Public roads, credit may be loaned to counties for. (Mitchell v. Knox County Fiscal Court, 165 Ky. 545, 177 S. W. 279; Gatton v. Fiscal Court Daviess Co., 169 Ky. 431, 184 S. W. 1.)

Commonwealth not to become stockholder in railroad company. (Whitney v. Ky. Midland R. Co., 110 Ky. 955, 63 S. W. 24.)

By an amendment submitted in 1908 and ratified in 1909 the Commonwealth may pledge or loan its credit to any county. (Ky. Const. 157a.)

Sec. 181. Legislature not to tax for local purposes but may authorize local authorities to levy such taxes. The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but it may, by general laws, confer upon the proper authorities thereof, respectively, the power to assess and collect such taxes. The General Assembly, may, by general laws only, provide for the

payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may, by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions. (See Ky. Const., Sec. 174, supra.)

Sec. 181a. License and franchise taxes in lieu of ad valorem tax exception. The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by general laws, confer upon the proper authorities thereof, respectively, the power to assess and collect taxes. The General Assembly may, by general laws only, provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may, by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions. And the General Assembly may, by general laws only, authorize cities or towns of any class to provide for taxation for municipal purposes, on personal property, tangible or intangible, based on income, licenses or franchises, in lieu of an *ad valorem* tax thereon: *Provided,* cities of the first class shall not be authorized to omit the imposition of an *ad valorem* tax on such property of any steam railroad, street railway, ferry, bridge, gas, water, heating, telephone, telegraph, electric light or electric power company.

Amendment. Sec. 181a, is an amendment to the constitution submitted in 1902 and ratified in 1903 providing that the legislature may authorize cities and towns of any class to levy taxes on franchises, licenses and incomes, in lieu of an *ad valorem* tax, but cities of the first class are obliged to impose an *ad valorem* tax on personal property of certain public utilities corporations.

Construction. It has been held by the Kentucky Court of Appeals, and by this court, that "the capital stock of the corporation" here referred to, includes its entire property of every kind and description, tangible

and intangible, and what is called a "franchise tax" is nothing else than a tax upon the intangible property of the company in Kentucky. Citing, Henderson Bridge Co. v. Commonwealth, 99 Ky. 623, 639, 641, 31 S. W. 486; Henderson Bridge Co. v. Kentucky, 166 U. S. 150, 154; Adams Express Co. v. Kentucky, 166 U. S. 171, 180; Louisville Tobacco Warehouse Co. v. Commonwealth, 106 Ky. 165, 49 S. W. 1069; Marion National Bank v. Burton, 121 Ky. 876, 888, 90 S. W. 944. There *seems* to be no provision of law for taxing franchises under either Sec. 174 or 181 of the Kentucky constitution. (Greene v. Louisville & Interurban R. Co., 244 U. S. 511.)

Constitutional law. The legislature may authorize municipalities to impose a tax, but it can not itself levy a tax on local communities for local purposes. Double taxation, defined. (Campbell County v. City of Newport, 174 Ky. 713, 193 S. W. 1.)

Tax must be reasonable. Sec. 181 of the constitution authorizes the legislature to confer power upon municipalities to levy local taxes on franchises, etc., and the legislature exercised that power in the enactment of charters for fourth-class cities, K. S. Sec. 3490. Ordinarily, so long as the municipality stays within the bounds of reason, the size of the license fee is a question for its determination, and so long as it exercises a reasonable discretion the courts will not interfere on the ground that the fee is unreasonable or prohibitive. (Salisbury v. Equitable Purchasing Co., 177 Ky. 351, 197 S. W. 813; citing Hall v. Commonwealth, 101 Ky. 382, 41 S. W. 2; Fiscal Court of Owen Co. v. F. & A. Cox Co., 132 Ky. 738, 117 S. W. 296; City of Louisville v. Pooley, 136 Ky. 286, 124 S. W. 315; Tandy & Farley Tobacco Co. v. City of Hopkinsville, 174 Ky. 189, 192 S. W. 46; Hagar v. Walker, 128 Ky. 1, 107 S. W. 254. But as to unreasonable taxation, see City of Louisville v. Pooley, supra; City of Louisville v. Sagalowski, 136 Ky. 324, 124 S. W. 339; Sperry & Hutchinson Co. v. City of Owensboro, 151 Ky. 389, 151 S. W. 932.)

Police power—inequality—double taxation. A license tax is within the police power of a state and it is not an inequality of taxation to tax one privilege and not another, neither is a license tax double taxation, although the property which is used in the enjoyment of the privilege bears an *ad valorem* tax. (Smith v. Commonwealth, 175 Ky. 286, 194 S. W. 367.)

Taxation on insurance companies, foreign and domestic. (Clay, Comm'r v. Dixie Fire Ins. Co., 168 Ky. 315, 181 S. W. 1123.)

A city ordinance imposing a license tax on trading stamp companies may be valid altho a like tax is not imposed on ordinary merchants. (Sperry & Hutchinson Co. v. City of Owensboro, 151 Ky. 389, 151 S. W. 932.)

Sec. 182. Assessment of railroads and railroad property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing, by law, how railroads and railroad property shall be assessed and how taxes thereon

shall be collected. And, until otherwise provided the present law on said subject shall remain in force.

See K. S. Sec. 4096; Greene v. Louisville & I. R. Co., 244 U. S. 512; Com. v. Southern Pac. Co., 150 Ky. 97, 149 S. W. 1105; Com. v. L. & N. R. Co., 149 Ky. 829, 150 S. W. 37.

Sec. 190. Acceptance of Constitution by corporations. No corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the Secretary of State an acceptance of the provisions of this Constitution.

See K. S. Sec. 570.

Where a corporation had not accepted the provisions of the constitution, it was held not entitled to the benefits of the Kentucky Statutes in relation to condemnation proceedings. (Newport & Cincinnati Bridge Co. v. Gill, 21 Ky. L. R. 942, 53 S. W. 650; also 22 Ky. L. R. 325, 57 S. W. 229. See Bridge Companies, p. 251; also Railroad Condemnation Law, p. 237.

An act authorizing counties to employ guards to protect threatened private property is not void although the corporation, the owner of such property, has not filed the acceptance mentioned in this section. (Cahille v. Perrine, 105 Ky. 531, 49 S. W. 344.)

Where the mode of taxing building and loan associations was changed by statute, held that the statute applied to corporations which had not filed the acceptance mentioned in this section, as well as to other corporations. (Commonwealth v. Fayette Building & Loan Ass'n, 24 Ky. L. R. 1223, 71 S. W. 5.)

A railroad company which filed its acceptance of the constitution after K. S. Sec. 573 was passed, and also after the passage of Sec. 820a, can not attack the constitutionality of said statute or orders made thereunder. (Louisville & N. R. Co. v. Siler, 186 Fed. 176.)

Sec. 191. Forfeiture of charters of corporations defectively organized prior to adoption of Constitution. All existing charters or grants of special or exclusive privileges, under which a *bona fide* organization, shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter be void and of no effect.

Sec. 192. Ultra vires acts—Limitation as to real estate. No corporation shall engage in business other than that expressly

authorized by its charter, or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate, except such as may be proper and necessary for carrying on its legitimate business, for a longer period than five years, under penalty of escheat.

K. S. Secs. 567, 582.

Escheat. A corporation may hold real estate for a longer period than five years, although not devoted to a legitimate corporate use, if it is held in anticipation of its future use for legitimate corporate purposes, with an ever present intention to devote it to such use. Evidence, proof of intention, how made. (Com. v. Mehler & Eckstenkemper Lumber Co., 183 Ky. 11, 208 S. W. 13; Com. v. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175; Com. v. Roberts Coal Co., 186 Ky. 395, 216 S. W. 584.)

Escheat proceedings. Such proceedings can only be enforced by the state. (C. & O. R. Co. v. Rosskamp, 179 Ky. 175, 180, 200 S. W. 496; Louisville School Board v. King, 127 Ky. 824, 107 S. W. 247; see also, 10 R. C. L. 612.)

Escheated property. Escheated property vests in school boards (K. S. Sec. 2971, repealed 1910-2, now Sec. 2978a) and the court is without jurisdiction to deprive the school board of property escheated by ordering the property sold and the surplus to be turned over to a corporation. The statute provides that it shall go to the school board and its loss to the corporation inevitably follows a judgment of escheat. (Louisville Property Co. v. Com., 146 Ky. 827, 143 S. W. 412.)

Construction of section. The purpose of this section is to prevent corporations from buying up large and valuable tracts of lands, not for any purpose connected with their business but for speculative purposes, or for the purpose of removing from the market, for the time being, minerals or timber thereon. A corporation may take title to, and hold for a period longer than five years, real estate, without the same being subject to escheat if such holding is for a proper, legitimate and necessary use of the corporation in the conduct of its business, although such use may not be actually exercised within five years after the acquisition of the property. (Com. v. Mengle Box Co., 152 Ky. 287, 153 S. W. 771.)

Railroad property—pleading. Where a reasonable necessity for the use of property is shown, the fact that the property in the meantime is rented to the owner of a lumber yard, not only for the convenience of such owner, but to enable the company to handle traffic more conveniently and at less expense, will not of itself authorize a judgment of escheat. Description of the property and affirmative allegation that it has been held for a longer period than five years, and was not proper and necessary for carrying on the legitimate business of the cor-

poration, held sufficient. (Louisville & N. R. Co. v. Com., 151 Ky. 325, 151 S. W. 934.)

Ultra vires act. Where a corporation receives money or property of another under an agreement or duty to account therefor, it may be compelled to perform such duty, although the transactions were *ultra vires*. (Laurel County v. Howard, 189 Ky. 221, 224 S. W. 762.)

Banks. Banks are subject to limitation of this section. (K. S. Sec. 582; Com. v. Clark County Nat. Bank, *supra*.)

Hotel, restaurant and park adjoining railroad property, for use and benefit of passengers and employees, Held, a legitimate and proper use of land. (Louisville Property Co. v. Commonwealth, 146 Ky. 827, 143 S. W. 412.)

Common Law. At common law the right to hold real property was incident to every corporation, unless specially restrained by its corporate charter or by statute. (2 Kent's Comm. 281.) The common law of Kentucky made no discrimination "between the right of a corporation to contract for land and its right to contract for anything else." In the Lathrop bank case, 8 Dana 354, Mr. Chief Justice Robertson, delivered a learned and interesting opinion on the common law in this respect, and discusses at length the famous British statutes of mortmain, which he says, "were all local to that Kingdom, and no part of them was ever in force in either Virginia or Kentucky." See also the case of Moore's Heirs v. Moore's Devisees and Executors, 4 Dana 354. These cases are merely cited for their historical value and for the value of the opinions of one of Kentucky's most illustrious jurists.

Sec. 193. No corporation shall issue stock or bonds except for value. No corporation shall issue stocks or bonds except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time such labor was done or property delivered, and all fictitious increase of stock or indebtedness shall be void.

K. S. Sec. 568, also 7 R. C. L. 245, Fletcher's Encyc, 3585, White on Corp. 479, Clark on Corp. 370.

This section and K. S. Sec. 568 not applicable to subsequent transfer of stock when paid for in full by original subscriber. (Johnson v. Belle Point Lumber Co., 196 Ky. 436.)

Issual of stock without payment—cancellation. Secs. 193 of the constitution and 568 of the statutes forbid corporations to issue stock without a payment in money or property or services of the actual value

of the stock, and likewise forbid the issual of fictitious or bonus stock, and if stock should be issued contrary to those provisions, it is subject to cancellation at the instance of stockholders who do not consent thereto, and when the corporation attempts of its own accord to cancel such stock, its action will not be enjoined at the instance of minority stockholders. (Rice v. Thomas, 184 Ky. 168, 211 S. W. 428.)

Creditors—appropriation of trust fund. Creditors of a corporation have the right to look to and appropriate its assets, including unpaid stock subscriptions, as a trust fund which the corporation holds for their benefit. But this right is not absolute from the time of the creation of the debt so as to place such assets in lien for that purpose, but they become so characterized when the corporation becomes insolvent and it is necessary for the creditors to go into court in order to collect their debt. So that although an attempted cancellation of stock wrongfully issued might operate to the detriment of prior creditors, their right to complain does not accrue until their debts mature and the corporation becomes insolvent, and a suit brought by them to enjoin such cancellation before that time will be dismissed as prematurely brought, but such dismissal will not be a bar to their right to look to the cancelled stock for the collection of their debts when they mature and it is necessary therefor. (Rice v. Thomas, *supra*.)

Creditors. Creditors within the above rule and having the rights above enumerated are only those who become such while the liability existed which was, or which is attempted to be, released or cancelled, and does not include creditors whose debts were contracted before the liability, released or cancelled was assumed; nor those whose debts were incurred after such release or cancellation, but the knowledge of a creditor at the time his debt is created of an unexecuted agreement to release or cancel the liability made by the corporation will not alone be sufficient to defeat his right to appropriate the fund to the payment of his debt.

Control and management—actions. A court will not substitute its judgment at the instance of minority stockholders for that of the governing body of the corporation in the internal management of its affairs, unless the actions complained of are so clearly against the interest of the minority as to indicate bad faith and amount to a wanton and fraudulent destruction of their rights and constitute a flagrant violation thereof. (Rice v. Thomas, *supra*.)

Common stock as bonus with preferred. Under this section the liability of stockholders to creditors of a corporation for unpaid stock subscriptions is absolute. Where a corporation issued a certificate of common stock to an agent, with the agreement that the common stock should be given as a bonus to purchasers of preferred stock, who were informed that they would receive one share of common stock with each two shares of preferred. Held, that such purchasers were not *bona fide* transferees for value, but were liable to the creditors of the corporation for the par value of the common stock. (Stoecker v. Goodman, 183 Ky.

330, 209 S. W. 374.) This recent decision of the Kentucky Court of Appeals is of much importance to investors because of the custom, now prevalent among corporate concerns, to issue what is commonly known as "bonus stock."

Foreign corporations. Issuance of bonds in excess of the amount of debt intended to be secured. The issuance of bonds, the amount of which is in excess of the amount of the debt intended to be secured, is governed by the law of the state where the corporation is created. Such issuance is void when attempted by a domestic corporation, under this section of the constitution and K. S. Sec. 568. See cases cited in opinion; Mayfield Water & Light Co. v. Graves Co. Banking & Trust Co., 170 Ky. 56, 185 S. W. 485, and Bennett v. Stewart, 161 Ky. 264, 170 S. W. 642.

Contra, Common law, 10 Cyc. 1169, 3 Thomp. on Corp. 2301. The common law obtains in jurisdictions where there is no statute to the contrary. (U. S. Cast Iron Pipe & Foundry Co. et al. v. Henry Vogt Machine Co. et ano., 182 Ky. 473 at pp. 488-489, 206 S. W. 806.)

Under the Kentucky constitution declaring fictitious increases of stock or indebtedness void, and forbidding the acceptance of labor or property in payment of stock or bonds, at a greater value than the market price at the time said labor was done or property delivered, stock or bonds can only be issued in exchange for work or property when the market price thereof is equal to the par value of the bonds of stock exchanged. (Altenberg v. Grant, Op. per Taft, C. J., 85 Fed. 345.)

Creditors of an insolvent corporation may make a subscriber to the stock in the corporation, liable to the payment of his debt, to the extent that the stockholder, has failed to pay for his stock. (Jones v. Bowman, 181 Ky. 722, 205 S. W. 923.)

Sales and pledges of stock. This section prohibits the issuance of shares of capital stock or bonds for less than par value and also the pledge of stock or bonds as collateral security in amount, at par value, in excess of the debt it is pledged to secure. (Mayfield etc. v. Graves etc., 170 Ky. 56, 185 S. W. 485.)

Equity suit to enforce subscription by injured stockholder who had paid in full, laches not a bar. (Bergman v. Evans, 158 Pac. 961.)

Equity will not enforce an agreement among stockholders, which violates this section. (Bennett v. Stewart, 161 Ky. 275, 170 S. W. 642.)

As to the effect of similar constitutional and statutory provisions in other states, see Clark on Corporations, p. 370.

Capital stock payments. Under this section, a corporation organized under the laws of this state, cannot receive the stock of another corporation at par value, in payment for its own stock, unless the assets of the other corporation be equal in market value to the par value of the total capital stock of said corporation. (Taylor v. Citizens Oil Co., 182 Ky. 350, 206 S. W. 644.)

Right of corporations having non-par value shares to do business in a state which requires par value shares, discussed in 89 Cent. Law Jour. 316; North American Petroleum Co. v. Hopkins, 181 Pac. R. (Kan.) 623.

Issue of stock—consideration. Under this section and K. S. Sec. 568, 569, corporate stock cannot be issued in return for labor and services, unless the market value of the services is equal to the par value of the stock, and where a contract was invalid by reason of an agreement to issue stock without receiving its par value, the validity of the contract is not affected by a rejected offer to pay an additional amount pending the litigation. (Detroit-Kentucky Coal Co. et al. v. Bickett Coal & Coke Co., 251 Fed. 542; Jones v. Bowman, 181 Ky. 722.)

No par value law. States authorizing the issuance of shares without par value are Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, Illinois, Kansas, Wisconsin, Missouri, Michigan, Virginia, West Virginia, North Carolina, Alabama, Idaho, Utah, Colorado, California. (See 51 Am. Law Review, 258; Corporation Trust Company Pamphlet "Shares without Par Value.")

The decisions in New York and New Jersey and the statutes in those states on consideration for the issuance of stock or bonds are more moderate than the prevailing rule. (White on Corp., p. 479; N. Y. Stock Corp. Law Sec. 55; New Jersey Gen. Corp. Law Sec. 49.) The New York Stock Corp. Law Sec. 19 also provides for the issuance of certain stock without nominal or par value.

Sec. 194. Designation of agent upon whom process may be executed in this state. All corporations formed under the laws of this State, or carrying on business in this State, shall, at all times, have one or more known places of business in this State, and an authorized agent or agents there, upon whom process may be executed, and the General Assembly shall enact laws to carry into effect the provisions of this section.

K. S. Sec. 571 also Civil Code of Proc. Sec. 51.

NOTE—While the framers of the constitution evidently considered the matter of service of process of sufficient importance to embody it in a constitutional provision, yet it is so obviously a matter of procedure, rather than of substantive law, that the authorities and annotations will be found under Sec. 51 of the Civil Code of Procedure, in that part of this work devoted to Code provisions in relation to corporations.

Sec. 195. Eminent domain. The Commonwealth, in the exercise of the right of eminent domain, shall have and retain the same powers to take the property and franchises of incorporated companies for public use which it has and retains to take the property of individuals, and the exercise of police

powers of this Commonwealth shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe upon the equal rights of individuals.

This section provides that corporations like individuals shall be amenable to the law. That is, that the state shall have the same power to take the property of a corporation, under the right of eminent domain, that it has to take the property of an individual. Throughout the whole report we have endeavored to carry out this idea, that corporations were simply artificial persons, and should always be amenable to law, not any more severely or critically but just the same as individuals, and whether the property shall belong to corporations or individuals, should it be necessary under this right, to take it away, the state shall have and continue to have the right to do so. (Remarks upon this provision by Dr. John D. Clardy, Acting Chairman of Committee which submitted this provision to the Constitutional Convention, Debates, Ky. Const. Convention, 1890, Vol. III p. 3638.)

Sec. 196. Regulation of transportation—Unjust discrimination—Common law liability. Transportation of freight and passengers by railroad, steamboat or other common carrier shall be so regulated, by general law, as to prevent unjust discrimination. No common carrier shall be permitted to contract for relief from its common law liability.

See constitution, *post*, Secs. 213-218 inclusive. K. S. Secs. 816-820.

Carmack Amendment. In so far as this section regulates common carriers doing an inter-state business, it is superseded by the Carmack Amendment to the Federal Interstate Commerce Law. (Robinson v. L. & N. R. R. Co., 160 Ky. 237, 169 S. W. 831; Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 153 Ky. 730; L. & N. R. R. Co. v. Miller, 156 Ky. 677, 162 S. W. 73.

The Carmack Amendment is an act amending Section 20 of the Interstate Commerce Law, known as the Hepburn Act of Feb. 4, 1887, approved June 29, 1906. The Carmack Amendment has subsequently been changed to some extent by two recent acts of Congress known as the Cummins Acts but which do not affect the principles involved in this section of the constitution of Kentucky. The Cummins Acts were approved March 4, 1915 and August 9, 1916 respectively. The whole of Section 20 of the Hepburn Act, as amended by the Carmack and the Cummins Acts will be found in the U. S. Compiled Statutes Secs. 8604a and 8604aa. (1918 Ed.)

Under the Carmack Amendment an interstate carrier may, by a fair, open and reasonable agreement, limit the amount recoverable by the shipper, to an agreed value, made for the purpose of obtaining the

lower of two or more rates, proportioned to the amount of the risk. The purpose of Congress in enacting this law was to provide a uniform rule as to the liability imposed upon interstate carriers and in so far as it conflicts with state regulations the regulating power of the state is at an end. (Adams Express Co. v. Croninger, 226 U. S. 491; also 13 I. C. C. Report, page 350.)

If the interstate carrier relies upon a contract limiting its liability it must show that it has complied with the federal law, by filing a graduated schedule of rates with the Interstate Commerce Commission, or that the contract is just and reasonable and that the shipper declared a value upon the shipment, to secure the lesser of two freight rates, (Adams Express Co. v. Cook, 162 Ky. 593, 172 S. W. 1096.)

Time limited for presentation of claims, contract providing for such limitation held a valid and reasonable condition, but written notice may be waived by agent of company. (Howard & Callahan v. Illinois Central R. Co., 161 Ky. 783, 171 S. W. 442; Armstrong v. I. C. R. Co., 162 Ky. 539, 172 S. W. 947.)

Telegraph companies may by contract limit their liability for negligence in failing to deliver an unrepeated message under an act of Congress approved June 18, 1910 (36 Stat. 544) but neither the Carmack Amendment nor the Cummins Acts apply to telegraph companies. (Merriweather v. Western Union Tel. Co., 183 Ky. 710, 210 S. W. 190; Western Union Tel. Co. v. Lee, 174 Ky. 210, 192 S. W. 70.)

Passengers, limitation of liability to. The freedom of the states to establish and apply their own laws and policies touching the validity of contracts exempting carriers from liability to passengers for injuries due to negligence, is not affected by the Carmack Amendment, which deals only with shipments of property. (Chicago, Rock Island & Pac. Ry. Co. v. Maucher, 248 U. S. 359.)

Appeals on federal questions. A federal question such as the one raised here in connection with the Carmack Amendment, will not be reviewed by the Court of Appeals, when not mentioned or raised in the pleadings, instructions of the trial judge or in the motion for a new trial. (Louisville & N. R. Co. v. Woodford & Ireland, 152 Ky. 407, 153 S. W. 722; Acme Mills Elevator Co. v. Rives, 141 Ky. 786, 133 S. W. 786; Missouri, Kansas & Texas Ry. Co. v. Sealy, 248 U. S. 363.)

Workmen's Compensation Act does not violate this section. (Green v. Caldwell, 170 Ky. 581, 186 S. W. 648; case of contract with employees under common law, Davis v. C. & O. Ry. Co., 122 Ky. 528, 92 S. W. 339, distinguished.)

Federal control of railroads, effect of as bearing upon litigation against railroad companies. (L. & N. R. Co. v. Steele 180 Ky. 291, 202 S. W. 878.)

As to interstate shipments, the Carmack Amendment of June 29, 1906, to the Interstate Commerce Act of 1887 supersedes the Kentucky

doctrine that the shipper is not bound by a recital of value in his contract of shipment. (Louisville & N. R. Co. v. Miller, 156 Ky. 677, 162 S. W. 73; see also, Boston & Maine R. Co. v. Hooker, 233 U. S. 97.)

Sec. 197. Free passes not to be issued by common carrier. No railroad, steamboat or other common carrier, under heavy penalty to be fixed by the General Assembly, shall give a free pass or passes, or shall at reduced rates not common to the public, sell tickets for transportation to (public officers, etc.,) * * *.

Acts of 1916, Ch. 1., Kentucky Traction & Term. Co. v. Murray, 176 Ky. 593, 195 S. W. 1119; Louisville & N. R. Co. v. Brown, 186 Ky. 435, 217 S. W. 686.

Sec. 198. Monopolies and combinations in restraint of trade. It shall be the duty of the General Assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

The whole subject of anti-trust legislation so-called, will be found under a separate chapter devoted to that subject, in another part of this volume. There are two distinct acts relating to monopolies in this state. (1) Act of 1890 and (2) Act of 1916, Ch. 17, as amended by Act of 1920, Ch. 50, which now supplements the original act. This section has been held unconstitutional by the Supreme Court as violating the due process of law clause of the Fourteenth Amendment to the Federal Constitution, and likewise various provisions of the Act of 1890. (International Harvester Co. v. Commonwealth, 234 U. S. 216; Collins v. Commonwealth, 234 U. S. 634; but see, Gay v. Brent, 166 Ky. 833 at 845, 179 S. W. 1051.)

Statues repealed. Since the above was written the statutes relating to trusts and conspiracies in restraint of trade have been expressly repealed. (Act of 1922, Ch. 71.)

Sec. 199. Telegraph and telephone companies declared to be common carriers, transmission of messages. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to con-

struct and maintain lines of telegraph within this State, and to connect the same with other lines, and said companies shall receive and transmit each other's messages without unreasonable delay or discrimination, and all such companies are hereby declared to be common carriers and subject to legislative control. Telephone companies operating exchanges in different towns or cities, or other public stations, shall receive and transmit each other's messages without unreasonable delay or discrimination. The General Assembly shall, by general laws of uniform operation, provide reasonable regulations to give full effect to this section. Nothing herein shall be construed to interfere with the rights of cities or towns to arrange and control their streets and alleys, and to designate the places at which, and the manner in which, the wires of such companies shall be erected or laid within the limits of such city or town.

See Acts 1912, Ch. 143, p. 649 or Carroll's (1915) Edition Kentucky Statutes Sec. 4679f; also, Telegraph & Telephone Companies, *post*.

Telephone companies are public utility corporations subject to the control of the legislature. (Carrollton Tel. Ex. Co. v. Spicer, 177 Ky. 345, 197 S. W. 827.)

This section applies only to telephone companies that have legally acquired the right to establish and operate a telephone system. (Rural Home Tel. Co. v. Kentucky & Ind. Tel. Co., 32 Ky. L. R. 1068, 107 S. W. 787.)

Sec. 200. Consolidation of foreign and domestic corporations, effect of. If any railroad, telegraph, express or other corporation, organized under the laws of this Commonwealth, shall consolidate by sale or otherwise, with any railroad, telegraph, express or other corporation organized under the laws of any other State, the same shall not thereby become a foreign corporation, but the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this State in all matters which may arise, as if said consolidation had not taken place.

This section is almost identical with the constitution of Colorado (1876, Art. 15, Sec. 14.) There are apparently no authorities reported

in Kentucky, construing this section, but it is well settled that a corporation created by the concurrent legislation of two or more states, exists in each one of such states, as a domestic corporation of that state. (1 Thomp. on Corporations, Secs. 319, 320; Re St. Paul, etc., R. Co., 36 Minn. 85; Attorney General v. Boston, etc., R. Co., 109 Mass. 99; Clark v. Barnard, 108 U. S. 436; Railroad Co. v. Harris, 12 Wall. 65, 82.)

Effect of consolidations, generally, see 4 Cook on Corporations, Sec. 897.

Effect of incorporation in different states. Though different states may create under their own laws, corporations having the same name, the same powers, the same management, and with their principal offices in one of the creating states, the result is not the creation of a single corporation in all the states, but of a separate and distinct corporation in each state, each of which is a citizen and resident or inhabitant of the state by, or under the laws of which, it was created. (Vaughan v. Nashville, C. & St. L. Ry., 192 Ky. 137, 232 S. W. 411.)

Sec. 201. Merger of parallel lines prohibited, telephone companies excepted. No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises, or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company, owning a paralled or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying; [provided, however, that telephone companies may acquire by purchase or lease, or otherwise and operate, parallel or competing exchanges, lines and structures, and the property of other telephone companies, if the railroad commission or such other State commission as may have jurisdiction over such matters shall first consent thereto, and if, further, each municipality wherein such property or any part thereof is located shall also first consent thereto as to the property within its

limits, but under any such acquisition and operation toll line connections with the property so acquired shall be continued and maintained under an agreement between the purchasing company and the toll line companies then furnishing such service, and in the event they are unable to agree as to the terms of such an agreement the railroad commission or such other State commission as may have jurisdiction over such matters, shall fix the term of such agreement].

(See Telegraph & Telephone Companies, K. S. Sec. 4679d *post.* Part in brackets is new by Amendment of 1916.)

This section was amended by Act of 1916, Ch. 125, approved by popular ratification, Nov. 1917, and the amendment was put into effect by an act giving the Railroad Commission jurisdiction of the subject matter. (Acts 1918, Ch. 68.)

Section 4679e-3 of the Kentucky statutes, in its entirety, except the last sentence, is taken from the amendmnt of Sec. 201 of the Kentucky Constitution, adopted in 1917, and the first clause of K. S. Sec. 4679e-1 is taken from Sec. 201 of the Constitution.

Injunction. Equity has jurisdicton in an action by the state to enjoin a corporation from exceeding its chartered powers, or doing acts otherwise illegal and injurious to the public. The state may enjoin a railroad from purchasing a "parallel" or a "Competing line" in violation of this section.

"Parallel"—construction of word includes two lines conforming in their general direction. (Louisville & Nashville R. R. Co. v. Commonwealth, 97 Ky. 675; 31 S. W. 476.)

This L. & N. Railroad Co. case was affirmed in Louisville & Nashville R. Co. v. Kentucky, 161 U. S. 677, wherein the Supreme Court held that Sec. 201 of the Kentucky constitution is a legitimate exercise of the police power of the state and forbids the consolidation between the Louisville & Nashville Railroad and the Chesapeake, Ohio and Southwestern Ry. Co. (See also, Commonwealth v. L. & N. R. R. Co., 144 Ky. 324, 138 S. W. 291.)

Carriers, contracts between, when in restraint of trade. A company, whether incorporated or a co-partnership, which engages in the business of operating an omnibus line for hauling passengers and wagons or hauling freight, either or both, is a common carrier within the meaning of Sec. 201, constitution, and where two of such companies in the same place enter into a contract whereby one of them, in consideration of a sum paid it by the other and the undertaking of the latter to confine its business to the hauling of passengers alone, and the former obligates itself to quit the business of hauling passengers and confine itself to

the hauling of freight alone, such a contract is in restraint of trade and in violation of this section (201). (Fields, et al. v. Holland & Son, 158 Ky. 544, 165 S. W. 699.)

Bridges when not "parallel" or "competing" within the meaning of this section. (Commonwealth v. L. & N. R. R. Co., 148 Ky. 94, 146 S. W. 767.)

See also, pools, trusts, and prohibitions against consolidations (Gathright v. H. M. Byllesby & Co., 154 Ky. 106 at 129, 157 S. W. 45) also chapter of this work treating of "Pools. Trusts and Combinations in Restraint of Trade," post, p. 422.

Sec. 202. Domestic and foreign corporations subject to same laws. No corporation organized outside the limits of this State shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this Commonwealth.

Since a corporation is not a citizen within the meaning of Sec. 2, Art. IV of the federal constitution, providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens of other states, it is competent for a state to impose the terms and conditions under which a foreign corporation may come into its borders for the purpose of exercising its functions as a corporation, including the exaction of taxes, citing Orient Insurance Co. v. Daggs, 172 U. S. 557 and other Supreme Court decisions. (Green v. Kentenia Corporation, 175 Ky. 661, 194 S. W. 820.)

This section does not compel incorporation by a foreign corporation according to the manner and forms prescribed for the incorporation of domestic corporations, but prevents a foreign corporation from doing business in this state under more favorable conditions than like domestic corporations. (National Benefit Ass'n. v. Clay, Comm'r., 162 Ky. 409, 172 S. W. 922.

Insurance companies. This section applies equally to contracts of foreign and domestic insurance companies. (Metropolitan Life Ins. Co. v. Clay, Comm'r., 158 Ky. 192, 195, 164 S. W. 968; Clay, Comm'r. v. Employer's Indemnity Co. of Phila., 157 Ky. 232, 162 S. W. 1122.)

A foreign corporation has no legal existence in this state until the laws of the state are complied with. (Oliver Co. v. Louisville Realty Co., 156 Ky. 628, 648, 161 S. W. 570.)

Sec. 203. Sale of corporation not to relieve from liabilities. No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the

liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

Under this section the corporation owning a railroad is responsible to the public for the wrongs done by its lessee in operating it. (Louisville Bridge Co. v. Sieber, 157 Ky. 154, 162 S. W. 804; McCabe v. Maysville etc., R. R. Co., 112 Ky. 861, 66 S. W. 1054; Illinois Central R. R. Co. v. Shegog, 126 Ky. 252, 103 S. W. 323.)

While the lessor of a railroad is not liable to the employees of the lessee for torts of the lessee, resulting from the negligent operation of its trains, and the general management of the leased property, it is liable to them for injuries resulting from the negligent omission of a duty owed to the public, such as proper construction of its road, station houses, etc. (C. & O. R. R. Co. v. Vaughan's Admx., 159 Ky. 436, 167 S. W. 141.)

The purchaser of tangible property of a railroad corporation is not charged with the contract duty of the vendor to maintain a fence on each side of its right of way, the purchaser having no notice of the contract at the time of the purchase. (Bailey v. Southern Ry. Co., 110 Ky. 231, 61 S. W. 31.)

Municipal corporations do not come within the scope of this section, it being applicable to private corporations; private and municipal corporations, distinguished. (Carrollton Furniture Mfg. Co. v. City of Carrollton, 104 Ky. 525, 47 S. W. 439, 885.)

A corporation may mortgage its property and franchises. (Russell's Admr. v. Frankfort Ry. Co., 131 Ky. 862, 116 S. W. 289.)

Sec. 204. Bank prohibited from receiving deposits when insolvent, penalty. Any president, director, manager, cashier or other officer of any banking institution or association for the deposit or loan of money, or any individual banker, who shall receive or assent to the receiving of deposits after he shall have knowledge of the fact that such banking institution or association or individual banker is insolvent, shall be individually responsible for such deposits so received, and shall be guilty of a felony and subject to such punishment as shall be prescribed by law.

See K. S. Sec. 597.

When a bank remains open for the transaction of business and reception of deposits, the law presumes, that the president of the bank assented to the reception of deposits shown by the bank's books during such time. (Parish v. Commonwealth, 136 Ky. 77, 123 S. W. 339.) A

bank is insolvent, within the meaning of this section, when all of its property and assets are not sufficient to satisfy its debts. It is not insolvent, when it has sufficient assets to pay its debts, but is not able immediately to satisfy depositors, in cases of a run on the bank. (Ibid Gregory's Ky. Criminal Law, page 506.)

Sec. 205. Revocation of charters for abuse of corporate powers. The General Assembly shall, by general laws, provide for the revocation or forfeiture of the charters of all corporations guilty of abuse or misuse of their corporate powers, privileges or franchises, or whenever said corporations become detrimental to the interest and welfare of the Commonwealth or its citizens.

See K. S. Sec. 569.

Practice—Ordinary action in lieu of quo warranto writ, Ky. Civ. Code Sec. 480 etc.

Constitution, penalty for bribery, ante, Sec. 150.

NOTE—The subject of forfeiture of corporate charters is treated in detail in this work, under quo warranto proceedings, post, p. 418.

Sec. 206. Legislative regulation of warehouses and elevators. All elevators or storehouses, where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses, subject to legislative control, and the General Assembly shall enact laws for the inspection of grain, tobacco and other produce, and for the protection of producers, shippers and receivers of grain, tobacco and other produce.

See K. S. Sec. 4768.

A warehouseman owes a duty to the public. (Nash v. Page, 80 Ky. 539.)

Sec. 207. Election of directors — Cumulative voting permitted. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in

person or by proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner.

See K. S. Sec. 552.

NOTE—In substance this section provides for what is commonly known as "cumulative voting" at corporate elections and will be treated in detail under K. S. Sec. 552, *post.*

Sec. 208. Definition of word "Corporation." The word corporation as used in this Constitution shall embrace joint stock companies and associations.

See General Construction Act, Sec. 457 K. S. Ky. Civil Code of Procedure, Sec. 51.

It seems that this provision relates to the service of process. (International Harvester Co. v. Commonwealth, 147 Ky. 669.) This provision does not make a joint stock company a corporation. This is evident from the fact that there is an absence of legislation in this state upon the subject of joint stock companies and they therefore possess the status which the common law gives to that form of association. A joint stock company bears some of the earmarks of both the corporation and the partnership but in fact is neither. (Roller v. Madison, 172 Ky. 693, 189 S. W. 914.)

To arrive at a clearer understanding of what a corporation is we may define those two forms of organization which a corporation is not, namely a partnership and a joint stock association. A partnership is a legal entity, formed by the association of two or more persons for the purpose of carrying on business together and dividing its profits (Natural Gas & Oil Co. v. Thomas, 21 Ind. App. 1); but there must be an agreement to share not only in the profits but in the losses. (McBride v. Ricketts, 98 Iowa 539, 67 N. W. 410.) Practically the only distinction between a joint-stock company and a partnership is the fact that the parties in the former case are the holders of a specified number of shares in the common capital of the company and such shares are transferable without the consent of the other members, hence the death of one shareholder in a joint stock company does not dissolve the agreement as it does in the case of a simple partnership. (Roller v. Madison, *supra.*) These associations formed for business purposes were at common law, and as a general rule still are, considered merely as partnerships, and their rights and liabilities are in the main, governed by the same rules which regulate commercial partnerships. (Adams Exp. Co. v. Schofield, 111 Ky. 832, 64 S. W. 903.) See also, Stearns Coal Co. v. McPherson, 144 Ky. 730, 139 S. W. 971.

Sec. 241. Recovery of damages for injury causing death. Whenever the death of a person shall result from an injury

inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporations and persons so causing the same. * * *

See K. S. Sec. 6, Const. Sec. 54.

A corporation and its employees who inflicted the injury are jointly liable. (Pugh v. C. & O. Ry. Co., 101 Ky. 77, 39 S. W. 695.)

A corporation is not liable when engaged in the performance of a duty which it owes the public and in the doing of which was the exercise of a purely governmental power. (Smith's Adm'r v. Comm'rs of Sewerage, 146 Ky. 562, 143 S. W. 3.)

Sec. 242. Condemnation of private property taken for public use—Appeal from assessment proceedings—Jury trial. Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, or paid or secured, at the election of such corporation or individual, before such injury or destruction. The General Assembly shall not deprive any person of an appeal from any preliminary assessment of damages against any such corporation or individual, made by commissioners or otherwise; and upon appeal from such preliminary assessment, the amount of such damages shall, in all cases, be determined by a jury, according to the course of the common law.

See Sec. 839, K. S., and Const., Sec. 13.

See "Railroad Law," and "Telegraph and Telephone Companies," *post.*

A corporation is liable for injury to adjacent property from the construction and operation of stock pens. (Bramlette v. L. & N. R. R. Co., 113 Ky. 300, 68 S. W. 145.)

A railroad corporation may, after judgment, elect to take or not to take lands condemned and an absolute personal judgment for the amount of damages awarded is not proper before the exercise of this right of election. (Long Fork Ry. Co. v. Sizemore, 184 Ky. 54, 211 S. W. 193.)

The erection of a drainage system is an exercise of the police power of the state and a railroad company is not entitled to compensation for damages resulting therefrom. (L. & N. R. R. Co. v. Board of Drainage Comm'rs, 183 Ky. 282, 209 S. W. 15.)

This section applies to the building of a fill, by a railroad company, on the lands of another, and obstructing ingress and egress to and from his lands. (Hazard Dean Coal Co. v. McIntosh, 183 Ky. 316, 209 S. W. 364.)

Municipal corporations come within this section. (Adams v. Sengel, 177 Ky. 535, 197 S. W. 974; O'Hara et al. v. City of Dayton, 175 Ky. 395, 194 S. W. 380; City of Dayton v. Rewald, 168 Ky. 398; City of Georgetown v. Ammerman, 143 Ky. 209, 136 S. W. 202; City of Louisville v. Heheman, 161 Ky. 523, 171 S. W. 165.)

Measure of damages in cases of the exercise of eminent domain by railroad corporations. (L. & N. R. R. Co. v. Wilson, 165 Ky. 151, 178 S. W. 1049.)

Telegraph company may condemn the right of way of a railroad in the County Court, with a jury of twelve men sitting. (L. & N. R. R. v. Lang, 160 Ky. 702, 170 S. W. 2); but see, K. S. Sec. 840a, repealing telegraph companies' right to condemn railroad property.

Instructions to juries in cases of eminent domain, see Hobson, Blain & Caldwell's Instructions to Juries, Secs. 249, 250.

Lateral support. A railroad company is liable to an adjacent landowner for damage to his land by removing the lateral support afforded by its right of way, whether there is negligence or not. (C. & O. Ry. Co. v. May, 157 Ky. 708, 163 S. W. 1112; L. & N. R. R. Co. v. Culbertson, 158 Ky. 561, 165 S. W. 681.)

Grade crossings. Legislative power to eliminate and require viaducts. (L. & N. R. R. Co. v. Hopkins, 153 Ky. 718, 156 S. W. 379.)

Private corporations which seek to condemn land must establish that the property will be needed for the public use. (Riley v. Louisville, Henderson & St. Louis Ry. Co., 142 Ky. 67, 133 S. W. 971.)

The words "public use" in this connection mean a use which concerns the whole community, as distinguished from a particular individual or number of individuals. It is not necessary however that each and every member of society should have the same degree of interest in this use, or be personally or directly affected by it in order to make it a public use. (Gilmer v. Lune Point, 18 Cal. 229, 251.) This public use and benefit need not extend to the whole public, or any large portion of it, within the jurisdiction of the legislature. It may be limited to the inhabitants of a small locality; but the benefit must be in common, not to particular persons or estates. (O'Reiley v. Kankakee Valley Draining Co., 32 Ind. 169.)

The following uses have been held to be public:—Highways, Drowberger v. Reed, 11 Ind. 420; bridges, Arnold v. Covington Br. Co., 1 Duv. (Ky.) 372; ferries, Day v. Stetson, 8 Me. 365; private roads as a "way of necessity" and long acquiesced in by the people, Robinson v. Swope, 13 Bush (Ky.) 21; public parks, Brooklyn Park Comm'rs v. Armstrong, 45 N. Y. 234; railroads, O'Hara v. Lexington R. Co., 1 Dana (Ky.) 232; grist mills, Bibb v. Montjoy, 2 Bibb (Ky.) 1; Shackleford v. Coffey, 4 J. J. Marsh (Ky.) 40.

For further annotations upon this subject, see, Chapter CXXII on the "Delegated Power of Eminent Domain." (4 Thomp. Corp. 4300; also, Clark on Corp. 211.)

The propriety of taking private property for a public use, is not a judicial question, but one of political sovereignty, to be determined by

the legislature, either directly or by delegating the power to public agents. (People ex rel. Herick v. Smith, 21 N. Y. 595.)

Delegation of power of eminent domain. Eminent domain is a sovereign power—it belongs to the state, and the state can authorize such persons at it sees fit to exercise the right in the public interest. This statement means that the legislature may authorize, *inter alia*, a private corporation, organized primarily for purposes of private gain, to take private property under the right or power of eminent domain in any case in which the legislature might take such property by legislative act, provided always of course that the constitution contains no prohibitory provision, but the acid test of the right to take private property under this right or power is always and invariably whether the property is proposed to be put to a public use. (3 Fletcher's Cyc. Corps., 2509, 2525, etc.)

Secs. 209-218 inc., see Railroad Law, *post.*

Sec. 244. Payment of labor in lawful money. All wage-earners in this State employed in factories, mines, workshops or by corporations shall be paid for their labor in lawful money. The General Assembly shall prescribe adequate penalties for violations of this section.

See Sec. 1350, K. S., with criminal penalty.

Indictment for failure to pay labor in money. (Commonwealth v. Hillside Coal Co., 109 Ky. 47, 22 Ky. L. R. 559, 58 S. W. 441; Commonwealth v. Reinecke Coal Mining Co., 117 Ky. 885, 97 S. W. 287.)

Agreement in violation of this section void. (Hudnall v. Watts Steel & Iron Syndicate, Ltd., 20 Ky. L. R. 1211, 49 S. W. 21, citing Crawford v. Wick, 98 Am. Dec. 103, holding agreement also void as against public policy.)

The redemption by the employer at bi-monthly pay days, of checks issued to employees for services, at a reduction of 10% their face value, violated this section. (Ky. Coal Mining Co. v. Mattingly, 133 Ky. 527, 118 S. W. 350.)

Coupons, letters of credit or merchandise script issued between pay days to enable employes to obtain credit, must be redeemed, in lawful money of the United States, if presented on pay day. (Pond Creek Coal Co. v. Riley Lester & Bros., 171 Ky. 811, 188 S. W. 907.)

The foregoing sections of the Kentucky Constitution are all the sections of the organic law of Kentucky which relate directly to corporations, except Sections 209-218 inclusive, which relate exclusively to railroads and railroad bridge companies, and therefore for convenience will be found under that part of this work which I have denominated "Railroad Law." There are many cases under these, and other sections, throughout the book, which are not cited because they have no direct bearing upon corporation law, however important they may be to other branches of the substantive law.

CHAPTER III

GENERAL PROVISIONS OF THE KENTUCKY STATUTES RELATIVE TO PRIVATE CORPORATIONS

1. Corporators, number necessary, laws applicable (538).
2. Articles of incorporation, what they shall specify (539).
3. Articles of incorporation, how executed and recorded (540).
4. Organization tax (4225). See also CORPORATION TAX LAW, p. 372.
5. Business, when to commence, powers of corporation (542).
6. Capital stock (543, 544, 545, 546).
7. Stockholders' liability (547).
8. Directors (548, 575).
9. Dividends (548).
10. Liability of officers and directors (549, 550).
11. Directors, election of (551).
12. Stock voting, cumulative voting (552).
13. Capital stock, increase and decrease of (553).
14. Organization of old corporations under this act (554).
15. Consolidation (555, 555a, 556, 557, 558).
16. Amendment of articles (559, 560, 574).
17. Dissolution (561).
18. Sale of corporation by purchase (562). See also 883b.
19. Sale of corporation under decree (563). See also 883b.
20. Classification of shares of stock (564).
21. Time within which corporation must commence business (565).
22. Defective or *de facto* corporation, not a defense (566).
23. Business corporation may engage in real estate (567).
24. Stock or bonds not to be issued except for value (568).
25. Forfeiture of charter. See also QUO WARRANTO PROCEEDINGS, p. 418.
26. Constitution, to be accepted by (570).
27. Agent upon whom process may be executed (571). See also CODE.
28. Charters in conflict with this act (573).
29. Word "incorporated," when to be used (576).
30. Labor, when to be paid (576a).
31. Sale and purchase of corporation (883b). See also 562, 563.
32. Prohibition against political contributions (1574a).
33. Influencing vote of employees prohibited (1574a).
34. Charters granted since 1856 subject to repeal (1987).

CORPORATIONS GENERALLY

Sec. 538. Organization of corporations. 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 (including the buying, selling, holding, dealing in, renting and letting of real estate), under the provisions of, and subject to the requirements of this article, but banking, building and loan, trust, insurance and railroad corporations shall, in addition to the provisions of this article, which are not inconsistent with the laws relating especially to them, be organized in the manner and subject to the provision of such laws. Act of 1893, Ch. 171 [as amended by Ch. 91 of the Acts of 1916; words in bracket being added.]

Stockholders. Purchase by one stockholder does not destroy the existence of, or dissolve the corporation, but has the effect of suspending its franchise until the transfer of such stock to others, but the liability for corporate debts continues as against the sole stockholder. (Louisville Banking Co. v. Eiseman, 94 Ky. 83, 21 S. W. 531.)

Directors. An invalid transfer of stock does not relieve the directors from control or liability for corporate debts. (Albany Mill Co. v. Huff Bros., 24 Ky. L. R. 2037, 72 S. W. 820.)

Married women. Contrary to the common law, married women may now be incorporators. Common law disabilities were removed by the Weissinger Act of 1894, now K. S. Sec. 2127.

Corporations sole. See RELIGIOUS CORPORATIONS.

NOTE—The provisions known as "general provisions" of the law of private corporations are applicable to all corporations, except such parts as are inconsistent with special provisions relating to special kinds of corporations.

Sec. 539. Articles of incorporation. Such persons shall execute articles of incorporation which shall specify:

(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.

(2) The name of the city or town and county in which its principal office or place of business is to be located.

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

(4) The amount of its capital stock, if any, and the number of shares into which the same shall be divided.

(5) The names and places of residence of each of its stockholders, and the number of shares of stock subscribed by each.

(6) The time when it is to commence, and the period it is to continue.

(7) By what officers or persons the affairs of the corporation are to be conducted, and the time and place at which they are to be elected.

(8) The highest amount of indebtedness or liability which the corporation may at any time incur.

(9) 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. (Act 1893, Ch. 171.)

Articles of incorporation must specify a definite time for the continuance of corporate existence or the secretary of state will refuse to file the same in his office. (Cheaney v. Bruner, 141 Ky. 32, 132 S. W. 167.) A determinate time must be fixed. (*Ibid.*)

Articles of incorporation constitute the contract between the stockholders and the officers of a corporation and both the stockholders and the officers are chargeable with knowledge of the provisions thereof. (Croninger v. Bethel Grove Camp Meeting Ass'n., 156 Ky. 356, 161 S. W. 230; Caldwell's Judicial Dict., cites this case.)

Articles of incorporation generally. Failure to file (111 Thomp. Corp. 2976), defective articles (1 Thomp. Corp. 219, 224), power to amend does not include power to consolidate (Ibid. 348), evidenceo of corporate existence (Clark on Corp. 75, VI Thomp. Corp. 7708, Jones on Ev. Secs. 55, 58n), by-laws must not contravene the articles of incorporation (1 Thomp. Corp. 1015; 1 Fletcher's Cyc. 990).

The right of amendment of charters is given by statute (Sec. 559) and the corporation cannot again be subjected to the payment of an organization tax when it amends its charter or articles to extend its corporate existence. (Bruner v. Louisville Packing Co., 139 S. W. 764, 144 Ky. 471; Ohio Valley Tie Co. v. Bruner, 148 Ky. 358, 146 S. W. 749.)

Nature of business. To state that the nature of the business to be carried on and conducted shall be a general banking and trust business as provided by the statute relating thereto, is sufficiently definite. (Brown v. Threlkeld's Guardian, 154 Ky. 835, 159 S. W. 595.)

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Place of business to be designated. Designation of such place and the holding of an election of officers there is a substantial compliance with this statute. Articles of incorporation must substantially comply with the statute. (Subd. 7; McChesney v. Batman, 28 Ky. L. R. 281, 89 S. W. 198.)

Corporate name. The name cannot be changed without amendment of the articles of incorporation, and if changed without such proceedings the persons assuming to act in the corporate capacity under the new name will be liable as partners to those with whom they contract. (Cincinnati Cooperage Co. v. Bate, 96 Ky. 356, 26 S. W. 538.)

Corporate name. Real or personal property may be recovered by a corporation in its new name without transfer of title. Those who contract with such a corporation in its new name are estopped to deny the title. (Rt. Rev. George McCloskey v. Doherty, 97 Ky. 300, 30 S. W. 649; also, Wilhite v. Convent, etc., 25 Ky. L. R. 1375.)

Debt limit. Contracts by officers and directors in excess of the debt limit are *ultra vires* and void. (Croninger v. Bethel Grove Camp Meeting Ass'n, *supra.*)

When the articles of incorporation place a limit upon the indebtedness which a corporation may incur, to willingly and knowingly exceed that limit is to violate this statute. (Nuckels v. Robinson-Pettett Co., 159 Ky. 215, 166 S. W. 972.)

A person dealing with a corporation must at his peril take notice of the articles of incorporation and charter. Therefore where the articles of incorporation provide that a corporation shall not incur any liability in excess of a cetain amount, one who makes a loan to the company in excess of that amount is not entitled, in the event of an assignment for the benefit of creditors, by the corporation, to a pro rata upon that amount of the loan which was in excess of the amount the corporation was allowed by its articles of incorporation. (First National Bank v. D. Kiefer Milling Co., 95 Ky. 98, 23 S. W. 675; American Southern Nat. Bank v. Smith, 170 Ky. 512, 186 S. W. 482.)

Pleading. Acts of officers and the question of their authority for such acts are matters of defense by way of answer and cannot be raised upon demurrer. (Williamsburg Canning Co. v. Delaney, 158 Ky. 649, 160 S. W. 192.)

Taxation—home office—place of business. The domicile of a corporation for the purposes of taxation is the place where the vital acts of its operations are performed. (Miliken v. Southern National Life Ins. Co., 155 Ky. 529, 159 S. W. 1141.)

Ibid. The home office for purposes of taxation is not that which is designated as such necessarily, but the place where its business is actually conducted. (Inter-Southern Life Ins. Co. v. Miliken, 149 Ky. 516, 149 S. W. 875; Cooley on Taxation [3rd Ed.] 641.)

Organization tax. K. S. Sec. 4225; Com. v. Sou. Pac. Co., 164 Ky. 819, 176 S. W. 375.

Cooperative associations come within the provisions of this section. (Acts of 1918, Ch. 159-2.)

Sec. 540. Execution and recording of articles. The articles shall be signed and acknowledged by the parties thereto, before any officer authorized to take acknowledgments to deeds, and recorded in the county clerk's office of the county in which its principal office or place of business is to be located, and a copy thereof shall be filed and recorded in the office of the Secretary of State; and said articles, or a certified copy thereof, may be used as evidence in any action for or against such corporation; and all amendments thereto shall become a part of the original articles. [The corporation shall pay to the Secretary of State a fee of twenty-five cents for one hundred words for recording the articles of incorporation, said fees to be turned into the State Treasury.] (Act of 1893, Ch. 171—words in brackets not in original act.)

FORM OF ARTICLES OF INCORPORATION

KNOW ALL MEN BY THESE PRESENTS:

That we, ———, ——— and ——— of the City of ———, County of ——— and State of Kentucky do hereby associate for the purpose of forming a corporation, under and by virtue of the laws of the State of Kentucky and do hereby adopt the following articles as and for its charter:

Article I. The name of the corporation shall be ——— Company, and by such name it shall have power to sue and be sued, to contract and be contracted with, to secure the fulfillment of its contracts, to pledge or mortgage its property real or personal, and all other powers in connection with its corporate existence which are not inconsistent with the laws of the State of Kentucky.

Article II. The principal office or place of business shall be located in the city (or town) of ———, county of ———.

Article III. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on by said corporation shall be. (Here state fully and in detail every object which the corporation proposes to undertake, and also every object which the corporation might desire to carry on in connection with the central or chief object for which it is created.)

Article IV. The amount of the capital stock of said corporation shall be ——— ($———) dollars; and the same shall be divided into ——— shares of the par value of $——— each. (If the shares are to be divided into preferred and common stock, here state the number of shares of each classification and the par value.)

Article V. The names and places of residence of each of the stockholders of said corporation, and the number of shares of stock subscribed by each, are as follows:

Names	Residence	Number of Shares
.....	.....	.....Pfd. .....Com.
.....	.....	.....Pfd. .....Com.
.....	.....	.....Pfd. .....Com.

Article VI. The corporation shall commence business as soon as practicable after these articles shall have been filed in the office of the ——— county clerk and the office of the Secretary of State of Kentucky, and after fifty per cent. of its capital stock shall have been in good faith subscribed, and certified by the Secretary of State of Kentucky. The corporate existence shall continue for a period of ——— years, unless terminated by the voluntary act of at least ——— per cent. of the stockholders, at an earlier date.

Article VII. The affairs of the said corporation shall be conducted and managed by a board of ——— directors who shall have power to elect from among their number a president and a vice president, and the president of the board shall be the chief executive officer of the said corporation. The said directors (there must be at least three) shall be elected in the first instance at a time and place determined by the incorporators, and after the commencement of business by the said corporation the said directors shall be elected at the office of the company in the City of ———, County of ———, and State of Kentucky; and thereafter at the annual meeting of the stockholders to be held on the ——— of ——— in each year. The election of directors shall be by ballot and each of whom shall own in his own right not less than three shares of the capital stock of the company.

The board of directors shall, in addition to the officers named above, elect a secretary and a treasurer of the said corporation, who shall hold office for the terms of ——— years, together with the president and vice-president, unless removed by a majority of the board of directors, and if a vacancy occur the board shall have power to elect successors for the unexpired term, and all officers and directors shall hold office until their successors are elected and qualified.

The board of directors shall have power to prescribe such by-laws and rules for the regulation and government of the corporation, as shall be necessary for the conduct of the business, and which are not inconsistent with the laws of the state.

Article VIII. The highest amount of indebtedness or liability which the corporation may at any time incur shall be $———.

Article IX. The private property of the stockholders shall not be subject to the payment of the debts of the corporation.

Article X. All those rights and powers granted to corporations generally, by the State of Kentucky, by virtue of the laws of the state,

not herein specifically mentioned, shall be included among the powers of this corporation and form a part of its charter.

IN TESTIMONY WHEREOF witness our hands this ——— day of ———, 19—.

———.
———.
———.

STATE OF KENTUCKY, }
COUNTY OF ——— } ss.

On the ——— day of ———, 19—, personally came before me ——— (names of incorporators) and produced to me in my office the within articles of incorporation, and duly acknowledged the same to be their act and deed.

Witness my hand this ——— day of ———, 19—.

———.

Notary public in and for the County of ———, State of Kentucky.
My commission expires the ——— day of ———, 19—.

FORM FOR MINUTES OF FIRST MEETING OF INCORPORATORS

The first meeting of the incorporators and subscribers to the capital stock of the ——— company was held at No. ——— (street) ——— in the City of ———, County of ——— and State of Kentucky on the ——— day of ———, 19—, at ——— m.

Mr. ——— called the meeting to order and stated the objects and purposes thereof.

Upon motion of Mr. ——— Mr. ——— was chosen chairman and Mr. ——— secretary.

The following incorporators and subscribers to the capital stock of the said company were personally present:

Name	Number of Shares
.....	.....
.....	.....
.....	.....

The following incorporators and subscribers to the capital stock of the said company were present by proxy:

Name	Name of Proxy Holder	Number of Shares
.....	.....	.....
.....	.....	.....

A written waiver of notice of the meeting, signed by all of the incorporators, was filed with the secretary and ordered entered upon the books of the secretary.

A copy of the articles of incorporation was duly presented by the chairman, who stated that the original of the same had been filed in the office of the county clerk of ——— County, and a copy thereof in the

office of the Secretary of State, at Frankfort, Kentucky, on the ——— day of ———, 19—, and on the ——— day of ———, 19— respectively; that the organization tax had been paid to the State Treasurer; that the recording fees had been paid the Secretary of State; and that the certificate of subscription to fifty per cent. of the capital stock had been filed with the Secretary of State.

It was thereupon moved and seconded that the said copy of the articles of incorporation be spread upon the minute book.

Upon motion of Mr. ———, the following were nominated for directors of the ——— company, to hold office for the term of ——— year from date of this meeting:

.....	..... votes
.....	..... votes
.....	..... votes

There being no other nominations, each of the above-named persons having received a number of votes representing a majority of the whole number of shares of the stock represented at the meeting, and said votes having been cast by ballot, the said persons were declared duly elected directors of the said corporation to serve for the terms above mentioned or until their successors should be duly elected and qualified. Mr. ——— and Mr. ——— acted as inspectors of election.

[*Here state the adoption of such other resolutions or motions as were proposed in connection with the business of the corporation.*]

There being no further business the meeting on motion duly made and seconded adjourned.

———, Secretary.

———, Chairman.

By-laws may be adopted at this meeting or they may be left for adoption by the first meeting of the board of directors, if so provided in the articles of incorporation.

Any business which the directors acting alone may be empowered to transact, may be transacted at a meeting of the stockholders where all of the directors are present.

Order for first meeting of directors may be entered in the minutes of the first meeting of incorporators.

WAIVER OF NOTICE OF FIRST MEETING OF INCORPORATORS AND SUBSCRIBERS

We, the undersigned, being all the incorporators and all the subscribers to the stock, and all the parties named in the articles of incorporation, do hereby waive notice of the time and place and purpose of the first meeting of the stockholders of the ——— company; and do fix the ——— day of ———, 19—, at ——— o'clock — m., as the time, and the office of the company, No. ———, City of ———, Kentucky, as the place

of the first meeting of incorporators and subscribers to the stock of said company.

And we do hereby waive all the requirements of the statutes of the State of Kentucky relative to notice of this meeting, and the publication thereof; and we do consent to the transaction of such business as may come before the meeting.

Dated the ——— day of ———, 19—.

_____.
_____.
_____.

(See Sec. 544 and Forms for Subscription to Capital Stock and Certificate of Subscription to fifty per cent. of the Capital Stock to be filed with the Secretary of State, at Frankfort.)

FORM FOR DIRECTORS MEETING

Pursuant to an order of the first meeting of incorporators of the ——— company, held on the ——— day of ———, 19—, the board of directors of said company met at the office of the company on the ——— day of ———, 19—, at — m.

Present: Messrs. _____.

An oath faithfully to discharge their duties as directors of said company, was then taken as follows:

We, the undersigned, being duly sworn, say that we will faithfully discharge our duties as directors of the ——— company to the best of our ability, so help us God.

_____.
_____.
_____.

Sworn to before me this ——— day of ———, 19—.

_____.
Notary Public ——— Co., Ky.

On motion of Mr. ———, duly seconded by Mr. ———, the following by-laws for the ——— company were adopted.

(See form for by-laws.)

Upon motion duly made and seconded the following officers were duly elected for the ensuing year.

President: ———
Vice-President: ———
Secretary: ———
Treasurer: ———

There being no further business the meeting upon motion duly made and seconded thereupon adjourned.

_____, Secretary.

_____, Chairman of the Board.

Meetings of the board. There are no statutory provisions in Kentucky as to the time and place of meetings of the board or notice

thereof, which may be provided for by the by-laws. In the absence of such statutory provisions, notice should be given a reasonable time in advance of the meetings, and meetings, if the by-laws so provide, may be held in or out of the state.

DIRECTORS MEETING—WAIVER OF NOTICE

We, the undersigned, directors of the ——— company, hereby waive all notice whatsoever of the time and place of holding a meeting of the board of directors of said company, to be called for the purpose of (here state the purpose of the meeting), and do hereby consent that said meeting be held on the ——— day of ———, 19—, at — o'clock, — m., at the office of the company, No. ——— Street, in the City of ———, Ky., or at such other time and place as may be fixed by adjournment from time to time and do hereby further consent that such action be taken, without further or any notice to us or to any of us.

Dated, this ——— day of ———, 19—.

(Signatures.)

DIRECTORS ANNUAL MEETING—WAIVER OF NOTICE

We, the undersigned, directors of the ——— company, hereby waive all notice whatsoever of the annual meeting of directors, and do hereby agree and consent that the same be held in the office of the company, No. ——— Street, in the City of ———, Ky., on the ——— day of ———, 19—, at — o'clock, — m., for the purpose of electing officers for the ensuing year, for the consideration of the acts and transactions of the board of directors and of the executive committee, and for any and all lawful business that may be deemed advisable by the directors present at said meeting.

Dated the ——— day of ———, 19—.

(Signatures.)

FORM FOR BY-LAWS OF THE ——— COMPANY

Article I. CAPITAL STOCK. (1.) The amount of the capital stock of said company shall be the sum or sums mentioned in Article IV of the Articles of Incorporation of the said company, and be divided into the classification therein stated.

(2.) All certificates of stock shall be signed by the president and the secretary, and shall be sealed with the corporate seal.

(3.) Treasury stock shall be held by the corporation subject to the disposal of the board of directors, and shall neither vote nor participate in dividends.

(4.) The corporation shall have a first lien upon all shares registered in the name of each stockholder, and upon all dividends declared upon the same, for any indebtedness of the respective holders thereof to the corporation, and a memorandum of this subsection shall be printed upon the stock certificates. And after default on any debt of such stockholders the

directors, upon ten days notice, by mail or publication, shall have power to sell the same at public or private sale, and apply the proceeds of said sale to the satisfaction of said debt or debts.

(5.) Transfers of stock shall be made only upon the books of the company, and the old certificate, properly indorsed shall be surrendered to the company, before a new certificate shall be issued. Transfer books may be closed ten days before payment of a dividend or before the annual meeting of stockholders.

(6.) In case of loss or destruction of a certificate of stock, no new certificate shall be issued in lieu thereof except upon satisfactory proof to the board of directors of such loss or destruction; and upon giving a satisfactory security by bond or otherwise, against loss to the corporation. Any such new certificate shall be plainly marked in red ink upon its face, the word "Duplicate."

Article II. STOCKHOLDERS' MEETINGS. (1.) An annual meeting of the stockholders shall be held at — p. m. on the ——— day of ——— in each year at the principal office of the corporation. Provided however, that whenever such day shall fall upon a Sunday, or a legal holiday, the meeting shall be held on the next succeeding business day, at the same hour. At such meeting the stockholders shall elect directors to serve for a term of such duration as prescribed in the Articles of Incorporation, or until their successors shall be elected and qualified.

(2.) A special meeting of the stockholders to be held at the place mentioned for the annual meeting may be called at any time by the president, and in his absence by the vice-president; or by the directors. It shall be the duty of such officers to call a special meeting at the request of the stockholders holding ——— per cent. of the capital stock.

(3.) The secretary shall give notice in writing to each stockholder at least ten days before the time any special meeting shall take place.

(4) The vice-president in the absence of the president shall preside at the meetings of the stockholders.

(5.) At every such meeting each stockholder shall be entitled to cast one vote for each share of stock held in his own name, which vote may be cast by him either in person or by written proxy, duly acknowledged. All proxies shall be filed with the secretary before the vote is cast.

(6.) Every stockholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote, multiplied by the number of directors or managers to be elected at such election; and each stockholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors shall not be elected in any other manner.

(7.) A quorum for the transaction of business at any such meeting shall consist of a number of persons representing a majority of the shares of stock issued and outstanding; but the stockholders present at any meeting may adjourn a meeting to a future time.

(8). The stockholders at any such meeting, by a vote representing ——— per cent. of the capital stock, shall have power to remove from office any director or officer of said company.

Article III. (1.) The affairs of the corporation shall be managed by a board of (not less than 3) directors, each of whom shall own in his own right not less than three shares of capital stock, and who shall be elected by the stockholders.

(2.) The directors shall be elected by ballot at the regular annual meeting of the stockholders held each year, and shall hold office for a term of ——— years each, or until their successors shall be duly elected and qualified. (If a classification of the terms of the directors is desired the following clause may be inserted, in lieu of the last clause above.)

(2.) The directors shall be elected at the regular annual meeting of the stockholders held each year, and shall be classified with respect to the time for which they shall severally hold office, by dividing them into three classes, each consisting of one third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years and the directors of the third class shall be elected for a term of three years; and at each succeeding annual election the successors of the class of directors whose terms shall expire in that year shall be elected to hold office for a term of three years so that the term of office of one class of directors shall expire each year.

NOTE—Provisions of K. S. Sec. 551—Majority of directors in certain kinds of corporations must be residents of Kentucky during their terms of office.

(3.) The regular meeting of the board of directors shall be held in the principal office of the corporation immediately following the adjournment of the stockholders' annual meeting and also on the ——— day of ———, 19—, of each year. (Time and place of regular monthly meetings may be here inserted.)

(4.) Special meetings of the board may be held at any time at the call of the chairman of the board, or the vice-chairman in his absence, or by unanimous consent of the directors, at such place as they may designate (providing it does not conflict with some provision of the charter regulating the place of meetings of directors).

(5.) A quorum for the transaction of business at all meetings of the board shall consist of a majority of the members of the board.

Article IV. (1.) The officers of this corporation shall be a president, a vice-president, a secretary and a treasurer, who shall be elected for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of president or vice-president who is not a director of the corporation. Two offices may be held by one person. All officers shall be elected by the board of directors by ballot.

(2.) The president shall preside at all directors and stockholders' meetings; shall have general supervision over the affairs of the corporation and over other officers; shall sign all stock certificates and written contracts of the corporation, and countersign all checks; and shall perform all such other duties as are incident to his office. In

case of the absence of the president or his disability to serve, his duties shall be performed by the vice-president.

(3.) The secretary shall issue notices of all directors and stockholders' meetings, and shall attend and keep the minutes, records, books and papers of the same; shall be custodian of the corporate seal, and shall attest with his signature and impress with the corporate seal all stock certificates and written contracts of the corporation; and shall perform all such other duties as are incident to the office.

(4.) The treasurer shall have custody of all money and securities of the corporation and shall give bond for the faithful discharge of his duties. He shall sign all checks of the corporation, keep and have charge of regular books of account, and submit the same at any time to the board of directors, upon demand, for their examination and inspection, and shall annually make a written report to the stockholders at the regular annual meeting.

(5.) The officers shall receive such compensation as may be authorized by the board of directors.

Article V. The corporate seal of this company shall be circular, with the words "The ——— Company," and "Louisville, Ky.," surrounding the word "SEAL."

Article VI. Dividends, to be paid out of the surplus earnings of the corporation, may be declared from time to time by resolution of the board of directors; but no dividends shall be paid that will impair the capital of the corporation.

Article VII. The funds of the corporation shall be deposited in such bank or trust company as the directors shall designate, and shall be withdrawn only upon the check or order of the treasurer. (Countersigned by the president.)

Article VIII. Amendments to these by-laws may be made by a vote of the stockholders representing a majority of all the stock issued and outstanding, at any annual stockholders' meeting; or at any special stockholders' meeting, when the proposed amendment has been set out in the notice of such meeting. Amendments may also be made by a two-thirds vote of the directors at any regular meeting, or at any special meeting when the proposed amendment has been set out in the notice of such meeting.

The foregoing is a suggestive outline. In Kentucky, corporations have a wide scope of authority in the management and control of their own organization, and so long as not inconsistent with the statute or charter, the by-laws may take almost any form desired by the incorporators or directors. Additional articles on proxies, executive committee, lien of company on stock, lost certificates, and inspection of books, may be inserted. It is a good rule however, that where the statute is not specific to make provision in the by-laws more specifically, and where the statute is expressed in unambiguous terms no by-laws are necessary, because such statute forms part of the charter in any event.

Sec. 4225. Organization tax on capital stock, amendments excepted. Every corporation which may be incorporated by or under the laws of this State, having a capital stock divided into shares, shall pay into the State treasury *one-tenth of one per centum upon the amount of capital stock* which such corporation is authorized to have, and a like tax upon any subsequent increase thereof. Such tax shall be due and payable on the incorporation of the company and on the increase of the capital stock thereof, and no such corporation shall have or exercise any corporate powers until the tax shall have been paid, and upon payment it shall file a statement thereof with the Secretary of State.

Provided, that every corporation which has not heretofore paid the organization tax upon any or all of its capital stock, and which, by amendment of its charter, changes its name, increases its powers, enlarges its scope, or prolongs its corporate life, shall, upon the filing of such amendment, pay the tax as above provided upon its entire capital stock, or so much thereof as has not theretofore borne the tax. (Act of 1906, Ch. 22, as amended by Act of 1916, Ch. 77.)

This section is not retroactive. (L. & N. R. Co. v. Southern Pacific Co., 164 Ky. 818, 176 S. W. 375; Crecelius v. Carrollton Savings & Loan Ass'n, 167 Ky. 817, 181 S. W. 535; Louisville Gas & Electric Co. v. Bosworth, 169 Ky. 824, 185 S. W. 125.)

New corporation. A change in the name, increase in stock and extension of corporate existence amounts to the creation of a new corporation, thereby subjecting the company to the organization tax provided for by this section. (Avery Building Ass'n v. Commonwealth, 166 Ky. 199, 179 S. W. 39; but see, Greene v. Louisville Ry. Co., 184 Ky. 91, 211 S. W. 418.)

Organization tax. Section 4225, Kentucky Statutes, imposing an organization tax on corporations is not retroactive. The tax is imposed on the capital stock of corporations organized after its enactment and upon the increase of stock issues made after its enactment by all corporations. (L. & N. R. Co. v. Southern Pac. Co., *supra.*)

A corporation created by a special act of the legislature, or by Chapter 56 of the General Statutes, does not subject its original stock issues to the organization tax and become a new corporation as if organized under Chapter 32 of the Kentucky Statutes by formally accepting the provisions

of the Constitution and rendering itself amenable thereto. It remained a corporation organized under its old charter. (Louisville & Nashville R. Co. v. Southern Pacific Co., *supra.*)

Organization tax. A corporation organized under special act of the legislature, or under the provisions of Chapter 56 of the General Statutes, subjects its original stock issues to the organization tax whenever it amends its charter or files corporation papers which so radically and materially change its original scope, rights and powers as to amount to a dissolution of the old corporation and the creation of a new one. (Ibid.)

Railroads—change of corporate domicile—not new corporation—organization tax. Where a railroad company, created by special act of the legislature, by amendments, changed its corporate domicile within this state and increased its capital stock with the right to classify the increased issue into preferred and common shares, it was not such a radical or material change in its scope, rights and powers as to make it a new corporation and subject its original capitalization to the organization tax. (Ibid.)

Railroads—maintenance of telegraph and telephone lines—organization tax. A railroad company, created by special act of the legislature, with power to do a railroad business and become a common carrier for hire, had the power, as an incident to its business, or maintaining and operating telegraph and telephone lines along its right-of-way for aiding in the movement and operation of its trains. Where such corporation, by amendments, increased its capital stock and acquired the right also to transmit telephone and telegraph messages for hire and become a common carrier of such, it did not so change the scope, rights and powers of the original corporation as to create a new corporation and thereby subject its original stock issue to the organization tax. (Louisville & Nashville R. Co. v. Southern Pacific Co., supra.)

Exemption of foreign railroad companies from payment of tax under this section. (Vaughan v. Nashville, C. & St. L. Ry. Co., 192 Ky. 137, 232 S. W. 411.)

See also, Organization Tax, K. S. Sec. 556, post.

Sec. 541. Management of corporation before election of directors. Until the directors are elected, the signers of the articles of incorporation shall have the direction of the affairs of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock, and to perfect the organization of the corporation.

Election of directors—what constitutes—evidence. Where the charter of a corporation authorized the election of certain directors, and at several

annual meetings of stockholders, although no directors were formally elected as such, officers were elected who were only eligible as such because they were directors, and the minutes of the meeting recited that a general manager was appointed "with the approval of all the directors," held, that under such circumstances, the officers were as a matter of fact elected directors of the corporation. (Beha v. Martin, 161 Ky. 838, 171 S. W. 393.)

Contract with directors—rights of stockholders. The right of a majority of the stockholders of a corporation either to originally direct or affirm a contract between the company and a director or directors personally interested in the contract is not absolute and unqualified, but is subject to the qualification that the affirmance or adoption must not be brought about by unfair or improper means, and must not be illegal or fraudulent or oppressive towards those stockholders who oppose it. (Ibid.)

Right of majority of stockholders to deal with assets. The majority of the stockholders of a corporation, although they may deal with the assets of the company, cannot so deal with them as to divide the assets, more or less, between themselves to the exclusion of the minority. (Ibid.)

Services of directors as active officers—entitled to compensation. Directors of a corporation who are active officers are not required to donate their services to the corporation. Corporations—Salaries voted to officers by majority of stockholders—rights of minority—review by court of equity. Where directors who are majority stockholders of a corporation vote certain salaries to themselves as officers, equity will, upon application by the minority stockholders, review the reasonableness of the salaries so allowed, and where it appears that they are exorbitant or unreasonable, will afford adequate relief, by enjoining the payment of such salaries and adjudging a recovery of the excess over what is a reasonable salary. (Ibid; also Paine v. Kentucky R ` Co., 159 Ky. 270, 167 S. W. 375.)

Compensation of officers—reasonableness—how determined. The question of the reasonableness of the compensation of officers of a corporation depends on what the services of a competent officer are reasonably worth, and not on what he could make in a different business. (Ibid.)

Compensation of officers—reasonableness—how determined—burden of proof. It does not devolve upon the officer or director whose compensation is in question to prove that the compensation is fair, but the objecting stockholder must establish affirmatively that the salary or compensation is unreasonable and oppressive. (Ibid.)

Right of directors to increase own salaries. While directors may vote increased salaries to themselves where each one refrains from voting when the resolution affecting himself is voted on, yet no person can vote on his own case. (Ibid.)

Right of directors to fix own salaries—evidence. Where three stockholders, being a majority, voted salaries to themselves as officers and

directors of the corporation, and the salaries of all three were fixed by one resolution, which was voted on by all of them, held, that each director voted in favor of fixing his own salary, and that the resolution was invalid. (Beha v. Martin, 161 Ky. 839, 171 S. W. 393.)

Authority of officers must be pleaded as a matter of defense. (Williamsburg Canning Co. v. DeLaney, 158 Ky. 649, 166 S. W. 192.)

Liability of officers for false statements. (K. S. sec. 549; Allen v. Neale, 134 Ky. 690, 121 S. W. 612.)

Tenure of office. The directors of a corporation have the right to discharge an officer at any time, without cause, in the absence of a contract under which the officer is entitled to hold office for a definite period. An officer who holds over after the expiration of his term of office as provided in the by-laws, does so at the pleasure of the board of directors. (O'Neal v. F. A. Neider Co., 118 Ky. 63, 80 S. W. 451.)

Sec. 542. Corporate powers—Commencement of business. When the articles are filed and recorded as provided, and the license tax imposed is paid to the State, the corporation shall be deemed to be organized for the purpose of transacting, promoting or carrying on the business or purpose for which it was created; and shall thereupon become a body corporate, and be known by its corporate name, and as such may adopt and use a corporate seal; and shall have power to sue and be sued, to contract and be contracted with; to pledge or mortgage its property, real or personal, to secure the fulfillment of its contracts; appoint, remove and elect officers, define their duties, and require from any of them a bond for the faithful discharge of their duties; to prescribe by its board of directors by-laws for the government of the corporations not inconsistent with law; and to exercise, subject to law, such powers as may be necessary to conduct the business or promote and carry on the objects and purposes for which it was organized. (Act of 1893, Ch. 171, Sec. 5; State capital stock tax, K. S. Sec. 4225.)

Removal of officers in absence of contract. (O'Neal v. Neider, supra.)

By-laws of a corporation must not be inconsistent with the law. (Bruner v. Citizen's Bank of Shelbyville, 134 Ky. 283, 120 S. W. 345.)

By-laws. A corporation can pass no by-law inconsistent with the statutes. (Corydon Deposit Bank v. McClure, 141 Ky. 483, 133 S. W. 201.)

Branch banks. Under the general corporation law and the statute relating especially to banks, a banking corporation has no power to establish a branch bank. (Bruner v. Citizen's Bank, supra.)

Management by agreement of stockholders. An agreement among three stockholders of a corporation to vote their stock so as to maintain two of them in positions as officers of the corporation, and in the management, is not binding upon, and will not be enforced against, an unwilling stockholder who was not a party to the contract, and knowledge of the existing contract cannot affect the rights of the non-signing stockholder. (Haldeman v. Haldeman, 176 Ky. 635, 197 S. W. 376.)

Directors, powers of—when equity will not interfere. In the absence of a charge of fraud against the directors of a corporation, a court of equity will not restrain them from exercising their powers as directors, so long as they act within the powers conferred upon them by law. If they have power to pass resolutions a court of equity will not question the motives of the directors in so doing. (Ibid.; but see Bernheim v. Louisville Property Co., 185 Ky. 63, 214 S. W. 801.)

Directors. A court of equity will not inquire into the personal differences of directors and in the absence of a breach of trust the court will not interfere because of an error or mistake of judgment on the part of the directors and the court will not assume to dictate the policy to be pursued by the corporation. (Ibid.)

Specific performance. A court of equity will not enforce a contract which on account of its many complicated and difficult questions is incapable of being specifically performed. (Ibid.)

Directors, delegation of power of. The directors may delegate their powers to an executive committee of the board of directors and the acts of such executive committee are binding upon the corporation. (Ibid.)

Receiver, appointment of. The power of a court of equity to appoint a receiver of a corporation, either because it has no properly constituted governing body, or because there are such dissensions in its governing body as to make it impossible for the corporation to carry on its business with advantage to its stockholders, is well settled, *but it is equally well settled that this power is subject to certain limitations and to be exercised with great caution, and only to such extent as may be necessary to preserve the property of the corporation and protect the rights of its stockholders.* (Ibid.)

Liability of stockholders in an "abortive" or unformed corporation. (See obiter dicta of the court and briefs of counsel reported in Warring v. Arthur, 98 Ky. 35, 32 S. W. 221.)

Failure of stockholders to pay in stock required before the commencement of business does not subject them to an action for fraud in the absence of fraudulent intent. (Louisville Banking Co. v. Eisenman, 94 Ky. 83, 21 S. W. 531, 1049; see briefs of counsel reported.)

Statement of tax payment. For failure to file a statement of payment of organization tax as prescribed in K. S. sec. 4225, the secretary of state will refuse to file the articles of incorporation, but a new corporation is not liable for the payment of an organization tax upon the stock of constituent companies, formerly organized and not subject to such tax. (Louisville Gas & El. Co. v. Bosworth, 169 Ky. 824, 185 S. W. 125.)

Bonds and mortgages. By virtue of this section a corporation has power to issue bonds, secured by mortgage on its corporate franchise, property, rights and privileges, subject however to the debt limit prescribed by its charter. (The Bell & Coggeshall Co. v. Kentucky Glass Works, 20 Ky. L. R. 1089, 48 S. W. 44; modified, 106 Ky. 7, 20 Ky. L. R. 1684, 50 S. W. 2.)

Bonds and mortgages, implied power to issue. Aside from statutory provisions all corporations have implied power to execute bonds for any purpose for which they may lawfully contract a debt, in the absence of restrictions in their charter. (Clark on Corporations 136; Thompson on Corp., vol. 5, sec. 6050, p. 4699; Corpus Juris., vol. 14a, p. 610, etc.)

Bonds and mortgages. There are no specific provisions in the Kentucky Statutes with reference to the issuance of bonds and debentures, except the limitation placed upon their issuance for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which the corporation was created (K. S. sec. 568), and there is no especial provision as to the manner of issuing bonds and executing collateral mortgages. However such instruments should be executed under the corporate seal and over the signature of the president, attested by the secretary of the corporation.

Bonds, how issued. The issuance of corporate bonds is effected (1) by resolution of the board of directors, stating the purpose of the issue, the amount, terms, number and denomination of the bonds to be issued, (2) by appointment of a trustee (usually a trust company or bank, duly authorized by law to act as trustee), (3) by executing a mortgage or deed of trust to the trustee, pledging such of the corporate property as is intended to secure the issue, and in case of a general first mortgage upon all the corporate rights, franchises, property, privileges and income, the consent of at least a majority of the stockholders should be obtained (although there is nothing in the statutes of this state requiring such consent). The mortgage should state in detail all the terms of the issue, the purpose of the mortgage, all the covenants and conditions between the corporation and its trustee, the remedies of bondholders in default of payment, exemption from personal liability upon the part of the officers and directors of the company, and the mortgage should also include a copy of the resolution authorizing the issue, a copy of the bond itself, and a full and accurate description of all property mortgaged, (4) certification by the trustee that each of the bonds issued is one of a series of bonds issued and described in the mortgage or deed

of trust, and that the holder thereof is entitled to the benefits of the trust so created.

Bonds—issuance of for value. A corporation is without power to issue or negotiate its bonds for less than the par value, so that if bonds were loaned to defendant without consideration, and by him used as collateral on his note to the plaintiff, a decree ordering their sale was error, and, if the company received the proceeds of the note, a sale to the extent that the par value of the bonds exceeded any part of the proceeds so received was erroneous. (Mayfield Water & Light Co. v. Graves County Banking & Trust Co., 170 Ky. 56, 185 S. W. 485; citing Altenberg v. Grant, Op. per Taft, C. J., 85 Fed. 345.)

Mortgage—issuance of for value. Section 203 of the constitution, declaring that no corporation shall lease or alienate its franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, does not affect the corporations right to mortgage its franchise and property. A mortgagee to the extent of his debt is a purchaser for value and it is not the purpose of the constitutional provision to destroy the security of a mortgage. (Russell's Admr. v. Frankfort & S. Ry. Co., 131 Ky. 862, 116 S. W. 289.)

Mortgages or deeds of trust. Mortgages are not valid against purchasers or creditors until recorded, and the term "creditors" includes all creditors irrespective of whether they have acquired a lien by legal or equitable proceedings or by voluntary conveyance. (Ky. Stat. sec. 496.) Recording of (see K. S. sec. 513).

Interest. Legal rate of interest is 6% and contracts for interest greater than the legal rate are void for the excess over the legal rate. (K. S. sec. 2218, 2219.)

Stockholders, consent of. In the absence of a statutory provision the consent of stockholders is not necessary to authorize the execution of a corporate mortgage. (Hodder v. Kentucky Ry. Co., 7 Fed. 793.)

Officers and directors—mismanagement. In a suit by a minority stockholder in his own right and on behalf of all such stockholders to oust the directors, annul a conveyance of a large part of the corporate property, and wind up the affairs of the corporation alleged to have been managed by its directors solely in the interest of and for the benefit of another corporation, held, under the evidence, that such mismanagement was established as to authorize the relief demanded. Mismanagement by directors need not be the result of corrupt motives but may consist in a misconception of their duties as such. (Bernheim v. Louisville Property Co., 185 Ky. 63, 214 S. W. 801; Bernheim v. Wallace, J., 186 Ky. 459, 217 S. W. 917; Southern Pac. Co. v. Bogert, 250 U. S. 483.)

Officers and directors—dealings with corporation. The relations of officers and directors of a corporation in respect to private business transactions with the corporation are more closely scrutinized than those of mere stockholders, and directors are bound to exercise nothing short of the *uberrima fides* of the civil law, and they must not in any degree

allow their official conduct to be swayed by their private interests or welfare, unless that interest be one they have in the good of the company in common with all the stockholders. (Reinhardt v. Owensboro Planing Mill Co., 185 Ky. 600, 215 S. W. 523.) But an officer of a corporation can deal with it if he does so fairly and honestly, and if the corporation was represented by other competent and authorized officers or agents. (Citizen's Development Co. v. Kypawva Oil Co., 191 Ky. 183, 229 S. W. 88; as to secret profits, see Jasper v. Appalachian Gas Co., 152 Ky. 68, 153 S. W. 50).

Officers—scope of authority. A corporation is not bound by any agreement of its superintendent if it is not shown to be within the scope of his express or implied authority. He is not authorized to compromise law suits brought against employees of the company, by employing the plaintiffs for the company. He is not a compromiser of lawsuits filed against others than his principal. (Rasnick v. Ritter Lumber Co., 187 Ky. 523, 219 S. W. 801.) Ordinarily the vice-president and general manager of a corporation is without authority to sell and dispose of all its assets, hence such an act is not within the apparent scope of his authority. (Empire Coal Mining Co. et al. v. Empire Coal Co., 183 Ky. 699, 210 S. W. 474; citing 21 R. C. L. sec. 34, p. 855.)

Sale under mortgage decree. The sale of property and franchises of a corporation under a decree to satisfy a mortgage, does not pass to the purchaser debts due the corporation nor destroy its corporate existence. The corporate existence continues for more than one purpose and certainly for the purpose of paying and collecting its debts. (Smith v. Gower, 63 Ky. [2 Duv.] 17.)

Foreclosure of mortgage or deed of trust. (K. S. sec. 563.)

Suits by stockholders against officers. A suit by a stockholder to obtain redress for wrongs done by the directors, on behalf of himself and others cannot be maintained by showing mere mistake or error of judgment on the part of directors or a majority of the stockholders. Their conduct must be *ultra vires*, illegal, fraudulent or oppressive. (Dudley v. Kentucky High School, 9 Bush 576.)

Prerequisites of suit by injured stockholders. In order to maintain a suit to enjoin or restrain the doing of certain acts which are detrimental to the equities of stockholders or the interests of the corporation as a whole or of the stockholders collectively, before the stockholder may sue for the corporation or to redress its wrongs, he must have requested it to sue, and it must have refused to do so, or, what is equivalent, there must be such a condition of hostile control or futility of making request that demand is thereby dispensed with. (Burley Tobacco Co. v. Vest, 165 Ky. 762, 178 S. W. 1102; Lebus v. Stansifer, 154 Ky. 444, 157 S. W. 727; Chilton v. Bell County Coke & Improvement Co., 153 Ky. 775, 156 S. W. 889; Gilman v. German Lithograph Stone Company, 152 Ky. 606, 153 S. W. 996; 6 Fletcher Cyc. Corp. 6936.)

Jurisdiction of suits by stockholders. The action must be maintained in a court having jurisdiction of either the parties or the subject matter,

and such suits are within the jurisdiction of courts of equity where there is no adequate remedy at law.

Foreign corporations—suits against. Courts are reticent to entertain actions involving any visitorial powers over foreign corporations or any judicial interference in their internal management, but it has been held on good authority (Miller v. Quincy, 179 N. Y. 294, 72 N. E. 116) that the courts will entertain jurisdiction of a representative action by resident stockholders on behalf of a foreign corporation.

Federal jurisdiction. A stockholder may bring an action in the Federal courts on behalf of himself and other stockholders to prevent or redress injuries to the corporation, and the existence of a federal question or a diversity of citizenship, as in the case of stockholders residing in one state and owning stock in a corporation organized under the laws of another state, will be sufficient to give the Federal courts jurisdiction of such an action, providing however that the bill recites such facts as are required to be set out under the rules of practice in equity. (New Equity Rule 27; Hawes v. Oakland, 104 U. S. 450; Delaware & Hudson Co. v. Albany, etc., 213 U. S. 435; Corbus v. Alaska Treadwell Gold Min. Co., 187 U. S. 455.)

Parties to suit by stockholders. When a stockholder sues in equity to enforce a right belonging to the corporation, or to enjoin or redress an injury to the corporation, all the stockholders are interested in the suit and it must therefore be brought on behalf of himself and all other stockholders, other than such as are made parties, and also the corporation itself is a necessary party defendant, so that any judgment on the merits may be binding upon it. If the suit is based upon fraudulent or wrongful acts or neglect on the part of the directors or other stockholders then they are necessary parties defendant. A distinction is made between a stockholder suing to redress an individual wrong, an injury affecting him alone, and a stockholder who sues to redress or enjoin a wrong or injury to the corporation. In the former case his suit is brought by him alone, in the latter, he sues for himself and others. If the number of other stockholders are numerous they need not be specifically named in the caption of the petition. (Newman's Pl. & Prac. sec. 116b; Shawhan v. Zinn, 79 Ky. 300; P. C. C. & St. L. Ry. Co. v. Dodd, 115 Ky. 176, 24 Ky. L. R. 2057, 72 S. W. 822; Kentucky Civil Code, sec. 25.)

Numerous parties with common interest. The Civil Code of Practice specifically provides for a remedy where there are parties with a common interest. "If the question involves a common or general interest of many persons, of if the parties be numerous and it is impracticable to bring all of them before the court within a reasonable time, one or more may sue or defend for the benefit of all." (Civil Code, sec. 25.) And this may be done by a stockholder in a corporation on behalf of the other stockholders, but the refusal of the officers, after demand made, to sue, must be alleged in the petition. (Jones v. Johnson, 10 Bush 649; Shawhan v. Zinn, supra.)

FORM FOR TREASURER'S BOND[1]

KNOW ALL MEN BY THESE PRESENTS:

That we, A. B. as principal and E. F. as surety, are held and firmly bound unto the C. D. company, a corporation duly organized and existing under and by virtue of the laws of Kentucky, and with its principal office in the City of ———, Ky., in the sum of ——— ($———) dollars, for which payment, well and truly to be made we bind ourselves firmly by these presents.

The condition of this obligation is such that, whereas, the said A. B. has been elected treasurer of the said C. D. company, for a period of one year from the ——— day of ———, 19—, and thereafter until his successor is elected and qualified. Now, if the said A. B. shall well, honestly and faithfully perform and discharge his duties as such treasurer and shall account to said C. D. company, its successors or assigns, for all money and property that may come into his possession or under his control, and shall well and faithfully pay and deliver said money and property as required or directed by said corporation, then this obligation to be void, otherwise to remain in full force and effect.

Provided that any forbearance on the part of the C. D. company toward the said A. B. in respect to his failure or neglect in the performance and discharge of his duties as such treasurer, or any extension or extensions by said corporation of the time or times of said payments of money or deliveries of property shall not in any manner operate to release or discharge the said E. F. from his liability under the foregoing obligation.

Dated the ——— day of ———, 19—.

A. B.
E. F.

Signed and delivered in the presence of ————.

FORM FOR BOND OF OFFICERS[2]

KNOW ALL MEN BY THESE PRESENTS:

That we, A. B. as principal, and E. F. as surety, are held and firmly bound unto the C. D. company, a corporation duly established under the laws of the state of Kentucky, in the sum of ——— ($———) dollars, for which payment to the said corporation, its successors or assigns, we do bind ourselves firmly by these presents.

WHEREAS, the said A. B. was on the ——— day of ———, 19—, duly appointed [*or elected*] as [*designate office*] of the above named corporation for the period of ——— years.

The condition of the above obligation is such, that if the said A. B. shall at all times hereafter, during the term for which he has been appointed (or elected), faithfully, honestly, and diligently perform and discharge all the duties of said office, then this obligation shall be void otherwise it shall be and remain in full force and effect.

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1 Caldwell's Ky. Forms, 1003.
2 Caldwell's Forms, 1002.

Provided, that any forbearance on the part of the C. D. company in respect to his failure or neglect in the performance and discharge of his duties as such ——— [*name office*] ——— shall not in any manner operate to release or discharge the said E. F. from his liability under the foregoing obligation.

Witness our hands this ——— day of ———, 19—.

Signed and delivered in the presence of ————.

A. B.
E. F.

Sec. 543. Fifty per cent. of capital stock to be subscribed. At least fifty per cent. of the capital stock of each corporation shall be in good faith subscribed before it shall be authorized to transact any business with the persons other than its stockholders; and 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 the stock when requested by the directors, they may sell a sufficiency of the stock of such delinquent at public sale to pay the amount due, with costs and interest, having first given him twenty days' notice in writing, if he reside 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; if no bidder can be found to pay the amount due on the stock, and it can not be collected, 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 heirs or assigns. (Act of 1893, Ch. 171, Sec. 6.)

Consideration for promise to subscribe. Where several persons jointly undertake to subscribe to the capital stock of a company, organized for the interests of the several subscribers, the promise of each is a good consideration for the promise of the others, and when incorporated

they cannot withdraw, whether business is commenced or not, and an agreement that their subscriptions should be subject to a call of 10% as soon as the company should be organized, obligated the subscribers to pay. (Twin Creek Turnpike Rd. Co. v. Lancaster, 79 Ky. 552.)

Oral promises to subscribe are valid and not within the statute of frauds, if they are to be performed within one year from the making thereof. (Bullock v. Falmouth & Chipman Hall Turnpike Rd. Co., 85 Ky. 184, 3 S. W. 129.)

Delivery of stock is a condition precedent to the bringing of an action for recovery of the agreed price, otherwise the corporation is confined to a suit for such damages as it may have sustained by reason of the failure to pay the subscription price. In this case the Court of Appeals, reaffirmed its decision on the law in the Mt. Sterling Railway case (77 Ky. [14 Bush] 431) but reversed that decision on the law as applied to the facts of that case. (Bullock v. Falmouth & Chipman Turnpike Rd. Co., supra.)

Conditional subscriptions. In the absence of special conditions in the agreement, a subscriber cannot release himself by failure of the corporation to lay a road where he had anticipated, i. e., on a particular route unless such subscription was superinduced by fraud. (Lackey v. Richmond & Lancaster Turnpike Co., 56 Ky. [17 B. Mon.] 43.)

Question of intent. Intention to become a stockholder should be indicated in the agreement. (Fry's Exr. v. Lexington & Big Sandy R. Co. 59 Ky. [2 Metc.] 314.)

The non-completion of a railroad is no defense to an action for the amount suscribed to the railroad company's capital stock. The non-delivery or non-tender of stock certificates is no defense. This latter holding would seem to be overruled by the Bullock case, supra. (Smith v. Gower, 63 Ky. [2 Duv.] 17.)

Subscriptions before incorporation are not mutually binding upon the subscribers and they cannot be made liable upon any subscriptions for corporate debts contracted by the corporators. This case was decided when incorporation by special legislative enactment was permitted in Kentucky. Certain defendant subscribers took no part in procuring the act to be passed and no organization meeting had been held, but nevertheless the incorporators incurred liabilities for the purchase of real estate. (Goff v. Winchester College, 69 Ky. [6 Bush] 443.)

False representation. Subscriptions obtained by a misrepresentation as to the object for which the money subscribed was being obtained, cannot be enforced. (Louisville & N. R. Co. v. Literary Society, 91 Ky. 395, 15 S. W. 1065.)

Fraudulent issuance of stock is ultra vires, but steps must be taken at once by the corporation or one of its stockholders, to annul such issuance or otherwise equity will not interfere. This is an application of the doctrine of laches. (American Wire & Nail Co. v. Bayless, 91 Ky. 94, 15 S. W. 10; see also Southern Pac. Co. v. Bogert, 250 U. S. 483.)

Liability of sole owner of corporation. A subscription and purchase by one person of all the capital stock of a corporation does not affect the dissolution of the company but suspends its franchise until transfer of some of the stock is made to others. The sole stockholder remains subject to liability to creditors for corporate debts. (Louisville Banking Co. v. Eisenman, 94 Ky. 83, 21 S. W. 531, 1049; Lincoln Court Realty Co. v. First National Bank, 187 Ky. 288, 219 S. W. 158.)

False representations—fraud. It is a general rule that when one is induced to take stock in a corporation, by false representations of an agent, or by fraudulent concealment of material facts from him, touching the condition of the company, the contract is voidable at the option of the subscriber. But where they concern the corporate powers of a corporation under its charter, such representations are matters of law, and they will not vitiate the contract to subscribe. (Oil City Land v. Porter, 99 Ky. 254, 35 S. W. 643.)

Conditional subscriptions. When the condition, the terms of which required the subscription in good faith of a certain amount, is complied with, an action may be maintained in the name of the corporation, on the subscription agreement, in the absence of fraud. (Stone v. Monticello Construction Co., 135 Ky. 659, 117 S. W. 369.)

Conditional subscriptions generally. Until the condition is fulfilled, no rights or liabilities at all arise out of the subscription agreement. (Clark on Corporations, 287.)

Suits in equity to compel payment of subscriptions, against those whose names appear on the books of the corporation as stockholders, principles involved. (7 R. C. L. 383.)

This section does not apply to transactions with stockholders, and its requirement of subscription of 50% of the capital stock of the company before commencement of business is no defense as to the subscriber and does not defeat his stock subscription. (Hauger v. International Trading Co., 184 Ky. 795, 214 S. W. 438.)

Release of stock subscription. A material alteration in the subscription contract, without the consent of the subscriber, will release his obligation. One who subscribes under an understanding as to the amount, nature of the capital stock, the corporate business, or the location thereof, is not liable upon his subscription if the corporation, when organized, is different in those respects from that contemplated in the subscription contract, in the absence of facts estopping him from denying his liability. (Owensboro Seating Co. v. Miller, 130 Ky. 310, 113 S. W. 423.)

Right to vote—management. A mere subscriber for capital stock before its issuance or payment therefor, has no right to vote and cannot participate in the management of the corporation. (Owensboro Seating Co. v. Miller, supra.)

A share of stock is a chose in action and a certificate is the personal property of the owner. (Spaulding v. Paine's Admr., 81 Ky. 416; Will v. George Wiedemann Brewing Co., 171 Ky. 681, 188 S. W. 778.)

Subscription paid for by note—consideration upheld. (Simpson v. Blaine, et al., 191 Ky. 465, 230 S. W. 934.)

Cooperative associations organized under Chapter 159 of the Acts of 1918, shall conform to the requirements of this section. (Acts of 1918, Ch. 159, sec. 4.)

Subscriptions for stock—right to rescind for fraud. Representations made by an agent of a corporation to induce a person to subscribe for stock where they consist merely of expressions of opinion as to the future prospects of the company and the future value of the stock, are not sufficient to authorize a cancellation of the subscription for fraud, although the future condition of the corporation does not fulfill the promises of the agent. (Southern Insurance Co. v. Milligan, 154 Ky. 216, 137 S. W. 37; Preston v. Jeffers, 179 Ky. 384; Smith v. Jones, 173 Ky. 776.)

False representations in circulars. Where a corporation issues public statements concerning its assets and liabilities and on the faith of these statements a person, who is induced to subscribe for stock, may obtain a cancellation of his contract, if it turns out that the representations contained in the paper were false or misleading in material respects. (Southern Ins. Co. v. Milligan, supra.)

False statements in the subscription paper as to surplus will justify a recision of the contract. (Southern Ins. Co. v. Milligan, supra.)

Agency. Statements relative to the corporation by soliciting agents are binding upon the corporation. (Southern Ins. Co. v. Milligan, supra.)

Estoppel of subscriber. One who subscribes for stock with knowledge that the agent's representations are untrue is estopped from cancellation of his contract. (Southern Ins. Co. v. Milligan, supra.)

Pleading. Where plaintiff's petition in an action to set aside a contract on the ground of fraud specifies the particular fraud relied upon, the plaintiff will be confined to evidence in support of his specifications. (Southern Ins. Co. v. Milligan, supra.)

Sec. 544. Capital stock—Limitation on purchase of, by corporation. No corporation shall take, as security for any debt, 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; and stock so purchased shall in no case be held by the corporation for a longer time than one year. (Act of 1893, Ch. 171, Sec. 7.)

Stock issued pursuant to the company's articles of incorporation, as preferred stock, and by its terms due and payable, was redeemable by the company, and was not such a purchase as is prohibited by this section, and the company was bound to redeem, the rights of no credi-

tors being involved (citing 7 R. C. L. 200; 10 Cyc. 571; 31 L. R. A. [N. S.] 1007; Gunther v. Hazel, 179 Ky. 775 at 783, 201 S. W. 336. See also, Rider v. Delkar & Sons, 145 Ky. 634, 140 S. W. 1011; Hancock Co. v. City of Mt. Sterling, 170 Ky. 207, 185 S. W. 856.)

Retirement or redemption of preferred stock. This section does not prevent the retirement of preferred stock as provided by K. S. sec. 564.)

It seems that this section prohibits a corporation from creating a lien upon its own stock for debts contracted after transfer of the stock (Fitzhugh v. Bank, etc., 3 T. B. Mon. 126, 16 Am. Dec. 90; Bank of Kentucky v. Bonnie Bros., 102 Ky. 343; Kenton Ins. Co. v. Bowman, 84 Ky. 430, 1 S. W. 717; 5 Fletcher's Cyc. 5962.) Also, contrary to the general rule in this country, it prohibits a corporation from purchasing its own stock, a doctrine based upon protection to creditors of the corporation. (2 Fletcher's Cyc. 2090.)

FORM FOR STOCK SUBSCRIPTION CONTRACT

(Approved by the Court of Appeals in Owensboro Seating & Cabinet Co. v. Miller, 130 Ky. 310, 113 S. W. 423.)

We, the undersigned, hereby subscribe for the number of shares of stock in the ——— company, of the kind that is set opposite our respective names, and we agree to pay for the same twenty five per cent cash, balance in one, two and three months, at one hundred dollars per share.

This subscription is not to be binding unless $——— or more is subscribed.

This ——— day of ———, 19—.

Witness:

_____ _____

_____ _____

_____

FORM FOR NOTICE OF OPENING STOCK BOOK

To the Public: **To receive subscriptions**

Notice is hereby given by the incorporators of the ——— company, that the books for subscriptions to the capital stock of said corporation will be opened at the office of the company in the City of ———, County of ———, and State of Kentucky, on the ——— day of ———, 19—, at — a. m.

_____

_____

_____

Incorporators

FORM FOR NOTICE TO SECRETARY OF STATE

———, Ky., ———, 19—.

Hon. ———, Secretary of State, Frankfort, Ky.

Sir: We, the undersigned, incorporators of the ——— company, do hereb certify that pursuant to due notice the stock subscription books of the

said company were opened at the office of the said company in the City of ———, County of ———, Kentucky, at — a. m., and that 50% of the capital stock of said company has been in good faith subscribed.

Witness:

_____ _____

_____ _____

_____

Sec. 545. Transfer of shares upon the books. The shares of stock shall be transferred on the books of the corporation in such manner as the by-laws thereof may direct, and every person becoming a stockholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of prior stockholders. (Act of 1893, Ch. 171, Sec. 8.)

Law governing. Husband v. Linehan, 168 Ky. 304, 181 S. W. 1089.

Failure to record—effect as to subsequent creditors. A written assignment of corporate stock, although unaccompanied by a transfer upon the books of the corporation to a purchaser for value and without notice of fraud on the part of the vendor, is valid as to subsequently attaching creditors. (First Nat. Bank v. Bowman, 168 Ky. 433, 182 S. W. 195.)

Transfer of stock. The transferrer remains liable to the creditors of the corporation until he has the transfer put upon the books of the company, but where the transferrer is bankrupt and the transferee who is the real owner of the stock fails to enter the transfer on the books to avoid any liability, the purpose of the statute would be defeated if the transferee were not held liable. (Robinson v. Sapp, 160 Ky. 447, 169 S. W. 869; citing, Cook on Corp. secs. 260, 261; 10 Cyc. 717.)

Transfer of stock in writing—power of attorney. Where the stock is assignable by transfer on the books of the corporation, the assignment of the certificate with a written power to the assignee to transfer the stock to himself on the books of the company, is a symbolical delivery affecting those who have notice thereof, as if the transfer had actually been made. (Bank of America v. McNeil, 73 Ky. [10 Bush] 55).

Charter provision against transfer. Where the charter of a corporation provides that no transfer shall be made by any stockholder indebted to the company, until his debt shall have been paid or secured, the corporation has a lien upon the stock and such lien can not be defeated by transfer of the stock, except as prescribed by the charter. (Kenton Insurance Company v. Bowman 84 Ky. 431, 1 S. W. 717; see briefs of counsel, reported).

Creditors of stockholders, effect as to. This section is for the protection of the corporation and purchasers, and not for the protection of creditors of the stockholders. (Thurber v. Crump, 86 Ky. 408, 6 S. W. 145; see briefs of counsel, reported).

Suit to compel transfer upon the books of the company may be maintained by the vendee. (Am. Wire Nail Co. v. Bayless, 91 Ky. 105, 15 S. W. 10.)

National bank stock. Title to shares of national bank stock passes when the owner delivers his stock certificate to the purchaser, with authority to him, or to anyone whom he may name, to transfer it upon the books of the bank. (Johnson v. Laflin, 103 U. S. 800.)

Purchase in good faith of bank stock. A good faith purchaser or pledgee of the stock of a banking corporation, to whom the certificates have been assigned and delivered has an equity in such stock although the certificates may not have been entered upon the books of the bank. (Eubank v. Bryan County State Bk., 216 Fed. 833.)

Sec. 546. Stock transfer books to be kept. A book shall be kept by every corporation in its principal office, in which shall be entered the name, post office address and number of shares of stock held by each stockholder, and the time when each person became a stockholder; also all transfers of stock, stating when, the number of shares transferred and by whom and to whom. This book shall, at all times during business hours, be subject to the inspection of all stockholders and persons doing business with the corporation. (Act of 1893, Ch. 171, Sec. 9.)

Evidence. A copy of the books, or an itemized statement of the entries therein, is competent when the correctness of its items is shown by the testimony of the officer or agent in charge of such books.

When competent in case of fire. If the adverse party fails to demand the original books, he cannot complain of non-production nor render incompetent a copy of the same for failure to produce the original books. (Barnes v. Scott, 168 Ky. 121, 181 S. W. 984, 1199; Jones on Ev. sec. 516.)

Liability of transferee, when not entered on books. (See, Robinson v. Sapp, annotated, supra; Husband v. Linehan, 168 Ky. 304.)

Stock held by one not appearing on the books. Such a stockholder will not be permitted to defend a suit against the corporation upon a contract to which he, and all the stockholders appearing on the books, consented, and when he also consents to permit such stock to stand in the name of others, even though the contract be ultra vires. (Lincoln Court Realty Co. v. Kentucky Title, etc., Co., 169 Ky. 840, 185 S. W. 156; citing, Perkins v. Trinity Realty Co., 69 N. J. Eq. 723, 61 Atl. 167.)

Transfer—good faith. A stockholder, although a director, who sells his stock in good faith and requests a transfer on the books of the company, will be relieved of his liability even though the officers wholly fail to comply with his request. (Bracken v. Nicol, 124 Ky. 628, 30 Ky. L. R. 864, 99 S. W. 920.)

Right of minority stockholder to inspect correspondence. When proper and lawful this right may be enforced by mandatory injunction. (Otis Hidden Co. v. Scheirich, 187 Ky. 423, 219 S. W. 191.)

Sec. 547. Liability of stockholders—How enforced. The stockholders of each corporation shall be liable to creditors for the full amount of the unpaid part of stock subscribed for by them, and no stockholder shall be liable because of being a stockholder, for any sum more than to the amount of the unpaid part of stock held by such stockholder of any company, except stockholders in banks, trust companies, guaranty companies, investment companies and insurance companies shall be liable equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estates in their hands shall be liable, in the same manner and to the same extent as the property of other stockholders, and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer: *Provided,* the action to enforce such liability shall be commenced within two years from the time of transfer. (Act of 1893, Ch. 171, Sec. 10; section as amended by act of March 10, 1902.)

See, Ky. Const., sec. 193, ante, annotated; Ky. Stat., secs. 568, 595, 613, post.

Stockholder's liability—when more than par. The stockholders are liable to creditors for the full amount of the unpaid part of the stock subscribed by them, and where the stockholder agrees to pay more than par, the measure of liability is the contract price, and not the par value of the stock. (Levassor et al. v. Metropolitan Fire Ins. Co's. Receiver, 188 Ky. 23, 220 S. W. 752.)

FORM FOR POWER OF ATTORNEY TO TRANSFER STOCK

KNOW ALL MEN BY THESE PRESENTS:

That I, ——— of ———, Ky., for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign, and transfer, unto ——— of ———, Ky., ——— (No. of shares) of the capital stock of the ——— company, all of which said shares stand in my name upon the books of said corporation, and do hereby constitute

and appoint ——— of ——— Ky., my true and lawful attorney-in-fact, irrevocable, for me and in my name and stead, but to my use and benefit, to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that my said attorney-in-fact shall lawfully do by virtue thereof.

———

STATE OF ———
COUNTY OF ——— } ss:

Be it remembered that on this ——— day of ———, 19—, before me, the undersigned, a Notary Public, in and for the county and state aforesaid, personally appeared ———, known to me to be the same person who executed the foregoing power of attorney, and as such person, duly acknowledged that he executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

———

Notary Public ——— County, State of ———.

My commission expires the ——— day of ———, 19—.

FORM FOR CERTIFICATE[1]

STUB	CERTIFICATE
Certificate No.—— for—— shares.	Incorporated under the Laws of the State of Kentucky
Issued to ———	No.——— ———Shares
Dated ———, 19—	THE ——— COMPANY
Transferred from ———	Capital $———
Original certificate No.—— for—— shares.	Shares $——— each
Dated ———, 19—	This certifies that ——— is the holder of——— shares of $——— each, fully paid, of the capital stock of the ——— company, transferable only on the books of the corporation in person or by attorney on surrender of this certificate. (The corporation shall have a first lien upon all shares registered in the name of each stockholder and upon all dividends declared upon the same, for any indebtedness of the respective holders thereof to the corporation.) [2]
No. shares transferred ———	In witness whereof the duly authorized officers of this company have hereunto subscribed their names and caused the corporate seal to be hereto affixed at ———, Ky., the ——— day of ———, 19—. (SEAL)
Received certificate No. ——— for—— shares	———, President.
———, 19—	———, Secretary.
———	

[1] Caldwell's Ky. Forms, 1006.

[2] This special clause may be added in pursuance to Section 4 of Article I of the by-laws, or any other special clause which the company may desire to insert, providing it does not conflict with the statute.

ASSIGNMENT TO BE ENDORSED ON CERTIFICATE

For value received, ——— hereby sell, transfer and assign to ——— (all, or specify number) of the shares of stock within mentioned, and hereby authorize the secretary to make the necessary transfer upon the books of the corporation.

Witness ——— hand this ——— day of ———, 19—.

Witnessed by ———

Note—The person to whom the certificate is issued, or his duly authorized agent or attorney, should sign the receipt on the corresponding stub.

FORM FOR PREFERRED STOCK CERTIFICATE[1]

STUB	
Preferred Stock Cert. No. ——— for ———, etc. (same as in preceding form.)	Incorporated under the Laws of the State of Kentucky No. ——— ——— Shares THE ——— COMPANY Capital Stock ..$——— Common Stock $——— Preferred Stock $——— This certifies that ——— is the holder of ——— shares of $———, each fully paid, of the preferred stock of the ——— company, transferable only upon the books of the corporation, in person or by attorney, on the surrender of this certificate. The holder of this certificate is entitled to cumulative dividends in each year at the rate of —— per cent. per annum payable out of the net earnings of said company, in preference to any dividend on the common stock. (Clause as to lien upon all stock taken from by-laws may be here inserted as in preceding form.)[2] (SEAL) In witness whereof the duly authorized officers of this company have hereunto subscribed their names and caused the corporate seal to be here affixed, at ———, Ky., this ——— day of ———, 19—. ———, President. ———, Secretary.

See K. S. sec. 564, with annotations, post, p. 122.

1 Caldwell's Ky. Forms, 1007.

2 In addition, clauses limiting dividends to a specified rate of interest; or making them non-cumulative; or permitting preferred stockholder to participate in excess dividends; or withholding the voting power on preferred shares; or the option of the corporation to redeem on payment of a specified sum, and on a date fixed; or giving holder option to convert preferred shares into common, on surrender of this certificate, may be inserted in the text.

FORMS FOR PREFERRED STOCK CLAUSES

(Participation in excess dividends.) When dividends of ———% have been paid for any year on the entire preferred and common capital stock, issued and outstanding, further dividends for that year shall be paid on all stock without distinction.

(Voting power excluded.) The holders of preferred stock shall not be entitled to vote thereon at meetings of the stockholders of said corporation.

(Redemption of stock.) Such preferred stock may be redeemed at the option of the corporation on the ——— day of ———, 19—, or on the ——— day of ——— of any year thereafter, upon payment of ——— dollars ($———) per share and all accumulated dividends.

(Conversion privilege.) The holder of any number of shares of preferred stock at his election, may, on surrender of his certificate thereof, convert the same into an equal number of shares of common stock.

PETITION TO ENFORCE LIABILITY OF STOCKHOLDERS

No. ——— ——— Circuit Court

A. B.

Plaintiff

vs.

B. C. COMPANY, Inc.,
D. E. and F. G.

Defendants

PETITION IN EQUITY

Plaintiff, A. B., states that the defendant B. C. company is now, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the state of Kentucky, with right and power to sue and be sued; that on the ——— day of ———, 19—, he recovered a judgment in the ——— Circuit Court against the defendant corporation, in the sum of $———, together with interest thereon from the ——— day of ———, 19—, and the costs of the action; that execution thereon was duly issued and returned no property found; that the said judgment is still in force and remains wholly unpaid; that the defendant corporation is wholly insolvent and has no property of any kind with which to satisfy judgment herein; that is, that the following defendants, D. E. and F. G., were stockholders of defendant corporation at the time the indebtedness, upon which aforesaid judgment was rendered, was contracted; that the said D. E. owned ——— shares of capital stock of $——— each; upon which date he owed the defendant corporation, a balance of $——— for unpaid subscription; that the said F. G. owned ——— shares of capital stock of $——— each, upon which date he owed the defendant corporation a balance of $———, for unpaid subscription; that both of said defendants are liable to pay the above named judgment creditor toward satisfying said judgment an amount equal to the amount of the unpaid portion of the

stock, subscribed for by them, in the defendant corporation; that the plaintiff is not informed as to whether or not there are any other creditors of the said corporation; that he is not informed as to whether or not there are any other stockholders of the said corporation, liable for the debts of the corporation, in the manner aforesaid, nor whether, if there be such, they are now within the jurisdiction of this court.

WHEREFORE, plaintiff, A. B., prays the court to ascertain the amount due him by reason of said judgment and costs, to determine the names and number of other creditors, if any there be, and the amounts due them; to determine the names and number of other stockholders residing within the jurisdiction of this court, and whether or not the same are insolvent; that the court may order each solvent stockholder within its jurisdiction, and liable for the debts of the corporation in the manner aforesaid, and the parties hereto, to pay his or her ratable share toward the satisfaction of plaintiff's judgment recited herein; and also the ratable amounts due the other creditors of the corporation, if any there be, and an award ratably, to this plaintiff, for the costs of this special proceeding, and for such other and further relief as to the court may seem equitable and just.

————, Attorney for Plaintiff.

FORM FOR FIRST PARAGRAPH OF PETITION [1]

———— CIRCUIT COURT

A. B., Plaintiff
vs.
D. & E. COMPANY, Inc., Defendant.
} PETITION [2]

Plaintiff, A. B., states that the defendant, D. & E. company, is a corporation organized and existing under and by virtue of the laws of the state of Kentucky, with right and power to sue and be sued; [3] to contract and be contracted with.[4]

That on the ——— day of ———, 19—, and at all times hereinafter mentioned the defendant was engaged in the operation and control of ———, etc.

---

1 For omission to plead following allegations special demurrer will lie to the petition, but the point cannot be raised by general demurrer.

2 The word "petition" standing alone indicates an "ordinary or common pleas action." If in chancery, the petition must read "petition in equity."

3 The allegation of the right and power of defendant corporation "to sue and be sued" seems to be a necessary one in Kentucky, and a special demurrer will lie to the petition if omitted.

4 If defendant is a bank or trust company, and its power to act in a fiduciary capacity is involved in the action, the petition should set out defendant's right and power to act as such.

Stockholder—when not liable for unpaid subscription. Where a stockholder, when the corporation was solvent, in good faith sold his stock therein to another, and delivered it to the corporation in exchange for his note, for half thereof, which it held, to be issued by it to the purchaser, in exchange for her note of like amount, upon its becoming bankrupt he is not liable to the creditors of the corporation upon a suit by the trustee in bankruptcy under Section 547, for the unpaid part of his capital stock, although by mistake the corporation issued to the purchaser only half the stock. (Boulware-Allen Shoe Co's. Trustee v. Morris, 168 Ky. 426, 182 S. W. 225.)

Law and equity jurisdiction—suits by receivers—suits by creditors—venue. (1) A receiver may sue for unpaid stock subscriptions, for they constitute assets of the insolvent corporation, and may be subjected to the demands of creditors, but a receiver is without power to collect of the stockholders of an insolvent corporation, the "double liability" imposed by this section. The "double liability" is in the nature of a security to creditors and not an asset of the corporation, and can only be enforced by the creditors. (2) Suits to enforce this section may be brought at law, but equity will have jurisdiction to avoid a multiplicity of suits. (3) The relief sought may be granted although the delinquent subscribers may reside in counties other than the one in which the suit is brought. (Lock v. Stout, Judge, 173 Ky. 304, 191 S. W. 90.)

NOTE: In this case a receiver brought suit for an insolvent insurance company. See also White v. Harbeson, 169 Ky. 224, 183 S. W. 475.

Bankruptcy trustee—authority to sue—unpaid stock liability and double liability distinguished. A trustee in bankruptcy may without direction or order of the court sue to enforce the collection of unpaid stock subscriptions of stockholders in a bankrupt corporation, but he cannot sue to recover stockholder's individual double liability, without any call having been made therefor by the board of directors or by order of the bankruptcy court. The obligation on the part of the stockholder to pay the stock subscribed for by him, is a direct undertaking on his part, and such unpaid subscriptions are in the nature of a trust fund for the benefit of the corporate creditors, but the liability for an amount equal to the value of his stock is a collateral and secondary obligation in the nature of a security. (Tiger Shoe Mfg. Co's. Trustee v. Shanklin, 31 Ky. L. R. 298, 102 S. W. 295; Farmers' Bank v. Scott, 144 Ky. 575, 139 S. W. 801; Runner v. Dwiggins, 36 L. R. A. [Ind.] 645.)

Judgment, effect of—law and equity—limitations. Where an act incorporating a company provides that every individual shareholder shall be liable, in proportion to his interest, for all debts contracted by the corporation while he holds the stock, upon failure of the corporate funds to discharge the same, held, that a judgment, execution and return of no property, against a corporation, is sufficient ground for proceeding against shareholders; being liable, not *in solido* (i. e., for the whole), but distributively, and also being multitudinous, a court of equity has jurisdiction of the bill of a creditor to enforce the liability against them

collectively as a court of law has, of separate actions against them severally.

Any limitation which would bar an action at law, would bar a bill in equity. (Bank of the United States v. Dallam, 34 Ky. [4 Dana] 574; Op., per Robertson, Ch. J.)

Interest on judgment to enforce "double liability" runs from the date the ation is instituted. (Senn v. Levy, 111 Ky. 318; 23 Ky. L. R. 662, 665, 63 S. W. 776; see also dissenting opinion.)

Reorganization subsequent to passage of "double liability" act—effect of. (Senn v. Levy, supra.)

Special agreement of stockholder to pay more than par measure of stockholders liability. (Levassor v. Metro. F. Ins. Co's. Receiver, 188 Ky. 24, 220 S. W. 752.)

Construction of words. In a suit to recover on the "double liability" imposed by this section held that the word "liability" is a very broad one, and the words "liability existing at the time of such transfer" refer to the previous part of the section, and mean the same thing as the words "all contracts and liabilities of such corporation," used on the ninth and tenth lines. (Hyatt v. Anderson' Trustee, 25 Ky. L. R. 132, 74 S. W. 1094.)

Construction of exceptions. The "double liability" being in contravention of the common law, the exceptions made applicable to certain corporations which come within the "double liability" clause must be strictly construed. Therefore only stockholders in corporations specifically excepted, come within the provision as to "double liability." (Gamewell v. Fire, etc., Tel. Co., 25 Ky. L. R. 1010, 76 S. W. 862.)

NOTE 1. Both the above cases in 25 Ky. Law Reporter, are based on the construction of this section prior to its amendment by Act of 1902, but the section was not amended so as to affect the principles involved in these cases. The original section contained exceptions as to turnpike companies etc., while the amendment of 1902 substituted the exceptions now contained in this section leaving the balance of the section unchanged.

Creditors' action—insolvency parties—contribution. (1) It is not necessary for a creditor before suing a stockholder of an insolvent corporation, to recover from him his unpaid subscription or that such creditor shall have prosecuted the corporation to insolvency, if he allege that the corporation *is* insolvent and has no property nor assets of any kind. (2) Creditors may sue one or more delinquent stockholders without joining the others for contribution. (3) The liability of stockholders is several, and fixed by the amount of his unpaid subscription and no further, but if such stockholder is compelled to pay more than this share of the corporate debts, he may sue the others for contribution, or join them as parties to the action in which he is being sued. In the matter of contribution the creditors have no concern, and they may sue although no account is taken of the other indebtedness of the company.

(Williams Exr. v. Chamberlain, 29 Ky. L. R. 606, 94 S. W. 29; Louisville & N. R. Co. v. Nield, 186 Ky. 17, 216 S. W. 62.)

What law governs. In a case involving the contractual and statutory liabilities of a stockholder, the statute and the decision of the highest court of the state wherein the corporation is organized, control and govern the controversy. (Second Nat. Bank v. Georger, 246 Fed. 517; 7 R. C. L. 335 n. 10.)

Equity jurisdiction. That liability of stockholders may be enforced in equity is an ancient rule. (Castleman v. Holmes, 27 Ky. [4 J. J. M.] 1.)

By-laws limiting liability. A by-law of a corporation purporting to limit the liability of its stockholders, if it contravenes the constitution or statutes of the state, must be held to be void. (7 R. C. L. 345, n. 5; Wells v. Black, 117 Cal. 157, 48 Pac. 1090, 37 L. R. A. [N. S.] 619.)

Contribution for ultra vires debt. If a stockholder contract debts against the corporation, in excess of the debt limit prescribed by the articles, he cannot recover of the other stockholders on the theory of contribution, unless such ultra vires debt be contracted by unanimous consent of the stockholders. (Haldeman v. Ainslie, 82 Ky. 395.)

Waiver by creditor. A creditor may waive his right to enforce individual liability by special contract and parol testimony is admissable to show such a contract. (Bush v. Robinson, 95 Ky. 492, 26 S. W. 178.)

Bonus stock—liability of stockholders for. The liability of stockholders to creditors for unpail stock subscriptions is absolute under this section, and Section 193 of the Kentucky constitution, and is not affected by the creditor's knowledge or want of knowledge when credit was extended, that the stock was issued with the understanding that it was not to be paid for. In other words "bonus stock" is unpaid stock for which stockholders may be held liable to creditors for the full amount thereof. (Stoecker v. Goodman, 183 Ky. 331, 209 S. W. 374.)

NOTE 2. This decision, and the decision of the Court of Appeals in the case of Rice v. Thomas, 184 Ky. 168, (annotated under Sec. 193 Ky. Const., ante) is of importance to investors because of the modern custom of issuing "bonus" common stock with each share of preferred, and in most cases as an inducement for the purchase of preferred stock.

NOTE 3. Upon the question of the creditor's knowledge as to whether or not corporate stock was, at the time he extended credit, issued with the understanding that it was not to be paid for there is considerable conflict of authority, and some courts have held that where the creditor had such knowledge, he is estopped from claiming payment upon the stock so issued, but the courts of Kentucky have held that the creditor's knowledge is immaterial, and this rule is not without weight. (Williams v. Chamberlain, 29 Ky. L. R. 606, 94 S. W. 29; Hatch v. Dana, 101 U. S. 205; see also, Easton Nat Bank v. American Brick Co., 70 N. J. Eq. 732, 64 Atl. 917, with an extensive note in 8 L. R. A. [N. S.] 271, Op., per Mr. Justice Pitney.)

Liability, how computed. One who obtains stock from a Kentucky corporation, without paying full par value therefor, is liable to creditors of the corporation for the difference between the price paid, and the par value of the stock, under Section 547, or else the holder may, at suit of the corporation, be required to surrender for cancellation all stock, the par value of which is in excess of the price paid therefor, under Section 568, post. (Taylor v. Citizens Oil Co., 182 Ky. 350, 206 S. W. 644.)

Payments for stock subscriptions may be made either in money or property, but if made in property its market price must be the cash equivalent of the par value of such stock. The same is true of labor done in payment for subscriptions. (Jones v. Bowman, 181 Ky. 722 at 724, 205 S. W. 923; Altenberg v. Grant, 85 Fed. 345; 7 R. C. L. 245; see Ky. Const., Sec. 193, and annotations, ante. K. S. Sec. 568, post.)

Common law—limitations. Existing creditors may compel one who subscribes for stock, to pay his subscription, as other debtors, and have that amount applied to the satisfaction of the debts of the corporation, if suit be brought within two years from the time of the transfer. This remedy abrogates the common law rule, by which a stockholder could relieve himself of liability by transfer of his stock at any time, and the statute must therefore be strictly construed. (Fidelity & Columbia Trust Co. v. Edelen, 176 Ky. 377, 195 S. W. 447; Weakley v. McClarty, 136 Ky. 837, 125 S. W. 265.)

Banks—equity—contribution between stockholders. In a suit by the depositors of an insolvent bank to subject its stockholders to the liability for their claims imposed by this section, two of the latter who had paid to the depositors what was due them, from the bank, and who received an assignment of the claim so paid, were entitled to recover of the other stockholders, ratably, the amounts so paid. But the stockholders of an insolvent bank, when sued by a depositor who is not a stockholder, to enforce liability against them, cannot offset against the claim of such depositor, any demand, they, the stockholders, may have held as depositors, against the bank, when it became insolvent. (Barnes v. Scott, 168 Ky. 121, 181 S. W. 984, 1199; Op. on rehearing, Ibid, 640, citing Stone & Sand Co. v. Rosedale Jockey Club, 25 Ky. L. R. 963.)

Retroactive effect of "double liability" act. Under the power granted to the legislature by section 3 of the Kentucky Constitution, to revoke, alter or amend every grant of a franchise, privilege or exemption, it has been held by the Court of Appeals that a corporation organized prior to the date of the enactment of section 547 (1893) which continued to do business, is assumed to have accepted the provisions of this section, section 3 of the constitution, being applicable to corporate franchises. (Williams v. Nall, 108 Ky. 21, 155 S. W. 706; 21 Ky. L. R. 1526.)

Fraudulent representations—inducing subscriptions—effect of. (Kentucky Mutual Investment Co's. Assignee v. Schaefer, 27 Ky. L. R. 657, 85 S. W. 1098; See also, annotations under Sec. 543, ante.)

Surrender of old stock. Liability is not affected by the fact that subscriptions are paid by surrender of old stock, but such stockholders should be held liable for the difference in the amount they actually paid and the amount they received at its par value. (Kentucky Mutual Investment Co's. Assignee v. Schaefer, supra.)

Sole owner of stock—liability. The sole stockholder is individually liable for debts he may contract in behalf of the corporation. A corporation sole is non-extant in Kentucky (except in one instance, i. e. the Roman Catholic Bishop of Louisville) and hence sole ownership of the stock suspends the corporate franchise. (Louisville Banking Company v. Eisenman, 94 Ky. 83, 14 Ky. L. R. 705, 21 S. W. 534, 1049, 19 L. R. A. 684,, 42 Am. St. Rep. 335; cited in Northern Assurance Co. v. Ohio Valley Dry Goods Co's. Trustee, 160 Ky. 255, 169 S. W. 724; Lincoln Court Realty Co. v. First Nat. Bank, 187 Ky. 288, 219 S. W. 158.)

Stockholders liability to corporation. Where land held by stockholders is trasferred to the company in consideration of the issuance of "fully paid stock" the corporation cannot assess such stockholders to meet deferred payments or other obligations to pay for the purchase price of the land. (Proctor Land Co. v. Cook, 103 Ky. 96, 19 Ky. L. R. 1734, 44 S. W. 391.)

Summary—stockholders liability—general rule—exceptions. The remedy to enforce the legal liability of the corporation must be exhausted by obtaining a judgment of "no property found" before the secondary and equitable liability of the stockholder can be enforced.

(1) The equitable liability becomes primary when the corporation is legally dissolved and stockholders may be proceeded against directly without prior judgment and exhaustion of the legal remedies.

(2) The equitable liability becomes primary when one stockholder acquires all the stock and converts to his own use corporate funds which should be applied to the payment of debts. In such cases the corporation is a proper party to the suit but not a necessary one, and it is error to dismiss a petition for the want of such party defendant. (Louisville & Nashville R. R. Co. v. Nield, 186 Ky. 17, 216 S. W. 62.)

NOTE 4. The stockholders liability upon the unpaid portion of the stock subscribed for by him is in the nature of a common law liability, and would exist independent of the statute. Such liability rests, according to the authorities in Kentucky, upon the theory that unpaid stock subscriptions constitute a "trust fund" for the benefit of creditors, who are to a large extent induced to extend credit to a corporation on the strength of its stock sales. The trust fund theory involves no little conflict of authority outside of Kentucky, is doubted by the leading text writers, and in some jurisdictions it is altogether repudiated, on the ground that capital stock as well as other assets belong to the corporation, when doing business, in law as well as in equity. They argue that inasmuch as the corporation has legal title it is inconsistent therefore to create an equitable trust in property to which the corporation has legal title. In Kentucky the "trust fund" theory, at least insofar

as it relates to unpaid stock subscriptions, is still the law. The so-called "double liability" is wholly the creation of the statute and being in contravention of the common law, all statutes providing for the "double liability" must be strictly construed. Under this section the liability for unpaid stock subscriptions is general and exclusive, except as to stockholders in banks, trust companies, investment companies, guaranty companies, and insurance companies, and as to them the "double liability" applies.

Trust fund doctrine. The double liability of stockholders of a bank created by K. S. sec. 547 constitutes a trust fund for the benefit of creditors. (Conway v. Owensboro Savings Bank & Trust Co., 165 Fed. 950, 185 Fed. 950, 188 Fed. 566; In re Howe, 193 Fed. 527.)

For citations on "Trust Fund" theory, see Clark on Corp. 526, 532; Cook on Corp. 199; Thompson on Corp. 2952; Bispham's Equity, p. 706.

Sec. 575. Directors defined. The word "directors," used in this article, includes managers or trustees. (Act of 1893, Ch. 171, Sec. 38.)

Sec. 548. Directors, liability of. If the directors of any incorporated company shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally individually liable for all debts of the corporation then existing, and for all that shall be thereafter incurred while they, or a majority of them, continue in office. (Act of 1893, Ch. 171, Sec. 11.)

Duty and liability of directors—banks. Directors of banks are under a duty to exercise ordinary care in the arrangement and control of the affairs of the bank (and this rule applies to all private corporations), and if they fail to exercise this degree of care, and declare and pay dividends when the bank is insolvent, all the directors who receive the dividends so declared and paid, are liable under this section and K. S. Sec. 596 for all the debts of the bank. (Cunningham v. Shellman, 164 Ky. 584, 175 S. W. 1045); a less degree of care than this is no care and manifests a reckless disregard of the rights of depositors. (Ibid.; cases collated at p. 597.)

Parol agreements. Parol agreements made by directors of a corporation are not binding. (Hughes v. Bank of Somerset, 15 Ky. [5 Littell] 46; Op., per Owsley, J.)

Dividends. Directors have exclusive power to declare dividends and control the distribution of the profits. (Grant v. Ross, 100 Ky. 44, 37 S. W. 263; see briefs of counsel reported.)

Officers—implied contract—suit against—equity jurisdiction. There is an implied contract on the part of officers who assume corporate duties, to use ordinary care and act honestly in the management of the affairs of the corporation. The corporation itself must sue officers for misconduct, but if the corporation be in the hands of such officers at the time, suit may be brought by the stockholders in behalf of the corporation. Equity has exclusive jurisdiction in such suits. (Jones v. Johnson, 73 Ky. [10 Bush] 649, also second suit on appeal, 86 Ky. 530, 6 S. W. 582; Robinson v. Smith, 3 Paige [N. Y.] 230; Bispham's Eq. p. 706.)

Fraud. A director is not liable for the fraud of the directory unless he personally sanctioned and participated in the same. (Arthur v. Griswold, 55 N. Y. 406.)

Criminal and civil liability. This section governs the civil liability only of directors and does not affect their criminal liability. As to criminal liability, see Taylor v. Commonwealth, 119 Ky. 731, 25 Ky. L. R. 374, 75 S. W. 244.

Criminal law—fraudulent dividends—embezzlement. Where under the guise of declaring dividends, the officers of a corporation fraudulently misappropriate the funds of a corporation, they commit embezzlement and not merely the statutory misdemeanor described in K. S. sec. 550. (Gregory's Ky. Crim. Law, p. 312; citing Taylor v. Commonwealth, supra.)

Knowledge. Directors cannot shield themselves on the ground that they did not knowingly violate this and other sections relative to the liability of directors. (City of Franklin v. Caldwell, 29 Ky. L. R. 935.)

Common law—basis of liability. The liability of officers and directors rests on the common law rule which renders every agent liable who violates his authority or neglects his duty to the damage of his principal and also on the equitable theory that they are trustees for the corporation and its stockholders. (7 R. C. L. 454, etc.)

Extent of duty. A director is required to exercise such diligence to understand the condition of the corporation as an ordinarily prudent man would use in his own business under similar circumstances. (Long v. Douthitt, 142 Ky. 427, 134 S. W. 453.)

Dividends—apportionment as between life tenant and remainderman. The Kentucky rule is that a dividend declared out of earnings whether of stock or cash, ordinary or extraordinary, and regardless of the time with reference to the inception of the trust in the stock, the fund from which the dividends was earned, goes to the one entitled to the income at the time the dividend is declared. (14 C. J. 834; Hite v. Hite, 93 Ky. 257, 265, 20 S. W. 778, 19 L. R. A. 173, 40 Am. St. 189.)

FORM FOR DIVIDEND ORDER

————————, 19—.

To the Treasurer of the ——— Company:

Pay to ———, or order, dividend due ———, 19—, on ——— shares of stock in your company, standing in my name, and this shall be your sufficient voucher.

————————

FORM FOR PERMANENT DIVIDEND ORDER

————————, 19—.

To the Treasurer of the ——— Company:

Until this order is revoked in writing please remit by mail to ——— at ———, all dividends now due or which may hereafter be declared on all shares of capital stock of the ——— company, now or hereafter standing in the name of ———.

Witness:

————————

————————

FORM FOR RESOLUTION DECLARING DIVIDEND [1]

"*Resolved*, that the sum of ——— ($———) dollars be and is hereby appropriated and set aside out of the surplus earnings arising from the business of this company, for the payment of (annual, semi-annual, or quarterly) dividend of ——— per cent upon its issued and outstanding capital stock; the same to be due and payable on the ——— day of ———, 19—, to stockholders as shown on the books of the company, at the close of business on the ——— day of ———, 19—; and that the treasurer of this company shall be authorized to give notice of said dividend and to pay the same on the said date."

FORM FOR RESOLUTION DECLARING STOCK DIVIDEND

"Whereas, the surplus profits of this company amounting to more than $———, have from time to time been invested in the extensions and betterments to the plant and property of the company and in providing additional facilities for its business, and in that manner a large addition has been made to the value of the assets of the company by withholding from the stockholders moneys which have been fairly earned, and, but for the above mentioned expenditure would have been paid to them; and

"Whereas, upon a just and fair estimate the assets of the company, have been, in such manner, increased in value over the amount of the capital stock, now issued and outstanding, by at least the sum of $———; and

"Whereas, the stockholders desire to realize, without impairing the property of the company, or profits which have been so invested, and to make the same more available;

[1] To be incorporated as a part of the minutes of directors.

"Now, therefore, be it resolved, that from the surplus profits so invested a dividend of $———, for each share of the present issued and outstanding capital stock of this company be and is hereby declared, payable on the ——— day of ———, 19—, in the capital stock of this company, to stockholders as shown on the books of the company at the close of business on the ——— day of ———, 19—; and that the president and secretary be directed to issue proper stock certificates representing the same to such stockholders on said date."

FORM FOR POWER OF ATTORNEY TO COLLECT DIVIDENDS

KNOW ALL MEN BY THESE PRESENTS:

That, I ———, of ———, do hereby, make, constitute and appoint ——— of ———, my true and lawful attorney in fact, for me and in my name, place and stead to receive all dividends which are or shall be payable on the ——— shares of stock of the ——— company, now standing in my name on the books of said company, and to give a proper receipt therefor.

———

FORM FOR DIVIDEND NOTICE

———, 19—.

The ——— company has declared a semi-annual dividend of three (3) per cent, out of the net earnings of the said company for the past six months, payable by the treasurer on the ——— day of ———, 19—, to such stockholders as stand upon the books at the close of business on the ——— day of ———, 19—.

———

Treasurer [*or Cashier.*]

RESOLUTION RATIFYING UNAUTHORIZED ACT

Resolved, that the act of ——— president [*or other officer or agent*] of this company, in ——— [*recite nature of action*] be and the same is hereby ratified, approved, and in all respects confirmed as the act of this corporation.

Sec. 549. False report, when issued by directors or officers, penalty. If the directors or officers of any corporation shall knowingly cause to be published or given out any 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. (Act of 1893, Ch. 171, Sec. 12.)

Pleadings held insufficient to bring directors within this section, but no reason assigned. (Clark v. Wallace, 155 Ky. 837, 160 S. W. 506.)

Publication of cashier's statement. A publication of a cashier's statement signed by the president and directors is within the statute. False statement, defined. (Prewitt v. Trimble, 92 Ky. 177, 17 S. W. 356.)

Presumption as to false statements. Officers must be presumed to know all the facts which ordinary diligence would have made known to them. (Allen v. Neale, 134 Ky. 690, 121 S. W. 612.)

Suits by purchasers of stock. Purchasers may sue the directors for false representations. (Long v. Douthitt, 142 Ky. 427, 134 S. W. 453; Lignon v. Minton, 125 S. W. [Ky.] 304.)

Officers—powers of. Ordinarily an agent cannot delegate his authority to, or employ a subagent, his employment being in the nature of a personal confidence or faith which the principal reposes in the agent, and therefore, not to be delegated, and if the agent attempts to employ a subagent without authority, the principal is not bound nor is the knowledge of the subagent imputed to the principal. An officer of a corporation can deal with it, if he does so fairly and honestly, and if the corporation was represented by other competent and authorized officers or agents. The secretary of a company is merely a ministerial officer, and has no authority to act for the company in the purchase of property, in the absence of special authority; and the presumption being that the secretary performs only the usual and customary duties of such an official. (Citizens' Development Co. v. Kypawva Oil Co., 191 Ky. 183, 229 S. W. 88.)

Sec. 550. Liability of directors and officers. If the directors or officers of any corporation shall fail or refuse to comply with, or shall violate any of the provisions of this article, those so failing, refusing or violating shall be jointly and severally individually liable for any loss or damage resulting to any person from such failure, refusal or violation, and, in addition thereto, the persons so liable shall be each punished with a fine of not less than one hundred nor more than one thousand dollars. (Act of 1893, Ch. 171, Sec. 13.)

Directors—individual and criminal liability. For failure to perform the duties of their office, as prescribed by statute, directors and officers are personally liable in damages and criminally liable for the misdemeanor prescribed in this section, and this is so both for malfeasance and non-feasance. (Randolph v. Ballard Co. Bank, 142 Ky. 145, 134 S. W. 165; Croninger v. Bethel Grove Camp Ground Ass'n., 156 Ky. 356, 363, 161 S. W. 230; Gregory's Ky. Crim Law, p. 312.)

Debt limit. To willingly and knowingly exceed the debt limit is to violate the statute. (Nuckels v. Robinson-Pettett Co., 159 Ky. 214, 166 S. W. 972.)

Officers, liability for corporate torts. Aubrey v. Stimson, 160 Ky. 563, 169 S. W. 991, L. R. A., 1915C 874, with note.

Directors—compensation—liability. The services of directors are usually gratuitous. They are entitled to no compensation in the absence of a contract, and unless guilty of gross negligence they cannot be held personally liable for mismanagement. (Brannin v. Loving, 82 Ky. 370, 6 Ky. L. R. 328; Paine v. Kentucky Ref. Co., 159 Ky. 270, 167 S. W. 375.)

Sec. 551. Election of directors. The affairs of each corporation shall be managed by a board of not less than three directors, 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. All elections for directors shall be by ballot, and shall be held in this State; 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 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 to each stockholder, in person or by letter mailed to his last known address. A stockholder may vote at any meeting by proxy, in writing, signed by him, and attested 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. The directors of any corporation 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 election next ensuing, of the second class one year thereafter, of the third class two years thereafter; and at each annual election held after such classification, directors shall be chosen for two or three years, as the case may be to succeed those whose terms expire. But each director of a banking, trust or insurance

company, or building and loan association, must own in his own right five shares of capital stock, and a majority of them must be residents of Kentucky during their terms of office: *Provided, however,* that the above mentioned clause, declaring that all elections for directors shall be by ballot, and shall be held in this State, shall not apply to corporations created and organized for educational purposes only, and having no capital stock, and in which tuition to students is free. (Act of 1893, Ch. 171, Sec. 14, except proviso.)

Directors—corporate liability for acts of. A corporation is bound by the acts of its agents, officers and directors where their acts are within the apparent authority conferred upon them by the corporation, as shown by the corporation's custom of dealing, and permission given to such officer or agent, by the board of directors in the usual course of business to act for the corporation in a certain way, or to a certain extent. But under this section the board of directors cannot bind the corporation except when acting as a body, and agreements between individual members of the board are not binding on the corporation. (Caddy Oil Co. v. Sommer, et al., 186 Ky. 843, 218 S. W. 288.)

Directors—mismanagement—when court will interfere. See annotations under K. S. sec. 542, ante, also Bernheim v. Louisville Property Co., 185 Ky. 63, 214 S. W. 801; Bernheim v. Wallace, J., 186 Ky. 459, 217 S. W. 916.

Directors—dealings with corporation—when permissible. See Reinhardt v. Owensboro Planing Mill Co., 185 Ky. 600, 215 S. W. 523; Citizens' Development Co. v. Kypawva Oil Co., 191 Ky. 183, 229 S. W. 88; also other annotations under K. S. sec. 542, ante.

Directors—as trustees and agents. A principle often invoked by corporations or their stockholders is that a trustee, in dealing with trust property, cannot claim for himself, but must yield to the beneficiary any profit [1] which he makes, and this principle is universally recognized (4 Fletcher Cyc. Corp. 2303). A director is a trustee for the entire body of stockholders and must account for profits made by the use of the corporate assets. The rule with regard to corporate directors is more correctly stated by Pomeroy: "In fact, directors are clothed at the same time with a double character—that of quasi-trustees and that of agents. * * * From their function of agency are derived their powers to act for the corporation as a legal entity; it measures the extent of these powers in the management of both the external and internal affairs. * * * Directors, in addition to their functions as mere agents, are trustees for the corporation with respect to corporate property." (3 Pomeroy Eq. Juris. 1090-1, 3rd Ed.) The fact that directors do not hold legal title to corporate property is one of the reasons usually advanced for holding

[1] Jasper v. Appalachian Gas Co., 152 Ky. 68, 153 S. W. 50.

that a director is not, technically speaking, a trustee, but as Pomeroy states it, a quasi-trustee. However, under some circumstances, an officer or director may hold corporate property under an express or implied trust for the benefit of the corporation, as where he used corporate property in his own name. Certainly this would be true of the purchase of the stock of a subsidiary company with the corporate funds of the parent company. (4 Fletcher Cyc. Corp .2275.) Where a director acts as agent for the company and has received the legal title to property or funds equitably belonging to the principal, the principal may charge the agent in equity as a trustee. (1 Morawitz on Pvt. Corps. sec. 550.)

Directors—duty to know financial condition—extent of. A director must exercise reasonable care to know the financial condition of the company and to know the truth of financial statements issued by it, and is liable to those relying on false statements issued even without knowledge of the falsity, but without the exercise of reasonable diligence to know the facts. (Marksberry v. First National Bank of Owensboro, 194 Ky. 401, 239 S. W. 462.)

Construction—election of directors. The legislature intended by this section to prevent incorporators from getting initial control of the corporation by designating a board of directors without holding an election by the stockholders. (Lebus v. Stansifer, 154 Ky. 444, 157 S. W. 727.)

Equity jurisdiction. Courts of equity will not as a rule interfere in the management of private corporations. Sec. 551, cited. (Lebus v. Stansifer, supra; Haldeman v. Haldeman, 176 Ky. 635, 197 S. W. 376; annotated under Sec. 542, ante.)

Resignations of directors—terms of office. Until resignations are accepted by the board of directors and recorded in the minutes they continue in office and hold over until their successors are elected and qualified. (Lincoln Court Realty Co. v. Kentucky Title, etc., Co., 169 Ky. 844; LaRue v. Bank of Columbus, 165 Ky. 670, 178 S. W. 1033.)

Notices of meetings. To be valid, notices of meetings, of time and place of holding the same, must be in the manner and form prescribed by the by-laws and charter. (Stockholders of Shelby R. Co. v. Louisville, etc., R. Co., 75 Ky. [12 Bush] 62; Johnson v. York Coal Co., 182 Ky. 303, 206 S. W. 611.)

Method of voting. The by-laws may provide that "at stockholders meetings each stockholder shall cast one vote for each share of stock owned by him" providing such provision is not in conflict with the charter or the general law. (Proctor Coal Co. v. Finley, 98 Ky. 405, 17 Ky. L. R. 950, 33 S. W. 188.)

Proxy. The holder of a proxy is a mere agent. A proxy is always revocable even when by its terms it may be irrevocable. The law always allows the stockholder to revoke a proxy. (Schmidt v. Mitchell, 101 Ky. 583, 19 Ky. L. R. 763, 41 S. W. 929.) To be valid a proxy must have affixed to it a ten cent **U. S. internal revenue stamp. (1918 U. S. Comp. Stat. 6318h-11.)**

Equity—elections. Mandatory injunction will lie in a proper case to compel elections. (Orr v. Bracken Co., 81 Ky. 395.)

Directors, qualifications. Johnson v. York Coal Co., 182 Ky. 303, 206 S. W. 611.

Sec. 552. Method of voting—Cumulative voting permitted. 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 the right to vote be expressly given in writing to the pledgee; and in all elections for directors or managers of any corporation each stockholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors shall not be elected in any other manner. (Act of 1893, Ch. 171, Sec. 15.)

See Ky. Constitution Sec. 207.

"Cumulative voting." This section provides for what is commonly known as the system of "cumulative voting" and is designed for the purpose of protecting the rights of minority stockholders. (Haldeman v. Haldeman, 176 Ky. 644, 197 S. W. 376.)

Cumulative voting optional. Under the cumulative system stockholders are entitled to vote in the mode prevailing before the adoption of that system if they so desire. That is to say, a man holding ten shares of stock may cast ten votes each for nine candidates, for election to the board of directors, or he may cast ninety votes for one candidate, where no objection is raised as to the method of voting. (Schmidt v. Mitchell, 101 Ky. 570, 41 S. W. 929.)

Minority directors. By this system the minority stockholders may have representation on the board of directors. For instance any minority holding one-ninth of the stock, acting together, may elect one member of a board of nine members. A larger minority might by this means elect two members and so on increasing as the minority increases, without it ever becoming possible for a minority on a full vote to secure more than its equitable share or proportion of the whole board. (Cook on Corp. 609a.)

Right to vote. The right to vote cumulatively is absolute by constitutional provision and no notice of intent to so vote is required. (Pierce v. Commonwealth, 104 Pa. St. 150.)

Danger to majority stockholders. If the minority cumulate their votes and the majority fail to, but distribute theirs among a full list

of candidates it would be mathematically possible for a minority to elect, say, five out of nine directors. (2 Cook on Corp. 609a, notes p. 1651; citing, Schwartz v. State, 61 Ohio St. 497.)

Voting trusts. Question whether or not voting trusts are in violation of this section and section 207 of the Kentucky Constitution raised but not decided in Lebus v. Stansifer, (154 Ky. 450, 157 S. W. 727.)

Voting trusts generally. 2 Cook on Corp. 622; N. Y. Voting Trust statute, General Corp. Law, Sec. 25; White on Corp. (N. Y.) p. 82; New Jersey voting trust cases collated in 2 Cook on Corp. 622f. The general trend of modern authority seems to be that voting trusts or agreements are not in themselves invalid. Their validity depends largely upon the purpose for which they are created in each case. (7 R. C. L. secs. 329-331 inc.)

Voting trust defined. A voting trust may be comprehensively defined as one created by an agreement between a group of stockholders of a corporation and the trustee, or by a group of identical agreements between individual stockholders and a common trustee, whereby it is provided that for a term of years, or for a period contingent upon a certain event, or until the agreement is terminated, control over the stock owned by such stockholders, either for certain purposes, or for all, shall be lodged in the trustee, either with or without a reservation to the owners, or persons designated by them, of the power to direct how such control shall be used. (3 Fletcher's Cyc. Corps. 2871.)

Validity. There is no little conflict of authority on this subject and the validity of voting trust agreements has frequently been upheld and as frequently denied in various jurisdictions. The matter has never been directly passed upon by the courts of Kentucky, but it seems that the validity of such agreements depends, to a large degree, on the precise objects which the agreement purports to accomplish. For instance, where the purpose of shareholders entering into an agreement for concerted voting is for the betterment of the corporation and the advantage of all the stockholders of the company, the courts generally hold the agreement valid, but on the contrary, a voting agreement by which one of the parties to the agreement is to receive an office in the corporation, or where the arrangement is made for the sole benefit of the parties to the agreement and not for the general welfare of the corporation and all of its stockholders, such an agreement is ordinarily held invalid. (7 R. C. L. 350, 351.) But the motives of the parties to the trust agreement are not the criteria, by which the validity of voting trust agreements is determined. The controlling question is what the agreement permits to be done, not what those exercising the power under it intend to do. (3 Fletcher's Cyc. Corps. 2880, citing Morel v. Hoge, 130 Ga. 625, 10 L. R. A. [N.S.] 1136.) In some jurisdictions such agreements have been held invalid as against public policy. (3 Fletcher's Cyc. Corps., 2881, citing Bostwick v. Chapman [Shepaug Voting Trust cases], 60 Conn. 553, 24 Atl. 32, Bridgers v. First Nat. Bank, 152 N. C. 293, 31 L. R. A. [N.S.] 1199, 67 S. E. 770.) The voting trust must have a legal object for its purpose,

it must not be designed to discriminate against other stockholders and it must be reasonable as to duration and terms. (Corporation Procedure, Conyngton, Bennett & Pinkerton, page 472.) A voting trust for a period of five years has been held valid and one for ten years has been held invalid, but it seems that the period of time is not the criterion by which the validity of these agreements are determined. The Illinois authorities are not favorable to voting trust agreements. (Luthy v. Ream, 270 Ill. 170.)

New York rule as to voting trusts. As stated above there is a statute in New York specifically authorizing voting trusts, and in a recent case the New York Court of Appeals has held that "shareholders have the right to combine their interests and voting powers to secure such control of the corporation and the adoption of and adhesion by it to a specific policy and course of business. Agreements upon a sufficient consideration between them, of such intendment and effect, are valid and binding, if they do not contravene any express charter or statutory provision, or contemplate any fraud, oppression or wrong against the other stockholders or other illegal object. (Manson v. Curtis, 223 N. Y. 320, 119 N. E. 559.)

Kentucky rule as to voting trusts. The right of the stockholders in a corporation to create a voting trust for a lawful purpose has been approved by the Court of Appeals in a case where the stockholders created a committee to control the corporation until the claims of creditors were satisfied. Such an agreement was held to be "perfectly proper and legitimate." (Ecker v. Kentucky Refining Co. et al., 144 Ky. 264, 138 S. W. 264.)

Nature and form of agreements. There are numerous types of voting trust agreements but the usual agreements contain one or more of the following provisions. (See Form for Agreement in Appendix.)

Collective voting control of the majority stock entered into by the larger stockholders for the purpose of insuring the continuance of a definite administrative or financial policy covering a period of years, giving one of their number, as trustee for the others, irrevocable power to vote the stock according to the instructions of all the parties to the agreement. This is the simplest form of agreement and is effected by a mere assignment by means of the trust instrument.

Trustee, appointment of. The trustees may be one or more in number. Usually a trust company is made either sole trustee or joint trustee with certain stockholders, or several of the stockholders may act as trustee and the trust company may be designated as transfer agent for the purpose of receiving and holding in escrow the respective shares of stock owned by the parties to the trust agreement.

The transfer agent or the trustee may issue in lieu of the shares escrowed, trust certificates which are evidence of the ownership of the stock so escrowed, and these trust certificates may be made transferable in the same manner as shares of stock are transferred, subject of course to the terms of the trust instrument. (See 3 Fletcher's Cyc. Corps., 2873,

7 R. C. L. 349, 14 C. J. 915, etc.; Conyngton-Bennett-Pinkerton's Corporation Procedure 467; 2 Cook on Corporations 1719; Form for Voting Trust Agreement, Byers on Kentucky Corporations, Appendix.)

Reducing board of directors. Held not to be restrained even to render less effective cumulative voting. (Bond v. Atlantic Terra Cotta Co., 137 App. Div. (N. Y.) 671.)

Sec. 553. Increase or reduction of capital stock. Any corporation may increase or 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 increase or 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 increase or reduction shall be signed and acknowledged by the president and a majority of the directors, and filed and recorded in the same manner as articles of incorporation; but no increase of the capital stock of a banking or trust company shall be valid until the amount thereof has been *bona fide* subscribed, and one-half thereof actually paid in, and the remainder shall be paid in within one year. (Act of 1893, Ch. 171, Sec. 16.)

This section provides for the method of increase or reduction of capital stock. (Rice v. Thomas, 184 Ky. 174, 211 S. W. 428; Commonwealth v. Southern Pacific Co., 164 Ky. 818, 176 S. W. 375.)

Pleading. A petition which stated that a majority of the stockholders had voted to increase the capital stock did not state a cause of action, since by this section a corporation can increase its capital stock only by a vote or by written consent of stockholders representing two-thirds of the capital stock. (Sandy Valley Hardware Co. v. Allen, 175 Ky. 433, 194 S. W. 351.)

Evidence—parol evidence when inadmissable. Where the records show that the proposition to increase the capital stock was defeated by a vote of more than two-thirds of the capital stock of the company it cannot be shown by parol that the corporation had in fact increased its capital stock. (Sandy Valley, etc., v. Allen, *supra.*)

Statutory requirements necessary. The capital stock of a corporation cannot be increased except in the manner provided by this section, otherwise the issuance of capital stock in excess of the amount prescribed by the corporate charter is void, and one who in good faith purchases outstanding stock certificates issued in excess of the authorized capital

may maintain an action against the corporation or its officers to recover the loss sustained by the wrongful issual of such stock. (Leffingwell v. Evans, 185 Ky. 351, 216 S. W. 58; citing leading authorities on the question of *ultra vires* issuance of capital stock.)

Certain proceedings to reduce the stock of a corporation were held to follow strictly the statutory provisions in the case of Ecker v. Kentucky Refining Co., 144 Ky. 264, 138 S. W. 264.

Sec. 554. Reorganization of old corporations. Any corporation created by, and existing under, the laws of this State, may organize under the provisions of this chapter by executing and recording as provided, articles of incorporation; and when the requirements of this chapter, and other laws relating to it, are complied with, it may commence business, and become a corporation under this chapter, and thereupon all business effects, assets and property, real and personal, of such corporation, shall be vested in, and become, without deed or transfer, the property of the new corporation, subject to all liabilities existing against the corporation, its officers or stockholders, at the time of their reorganization; but no corporation reorganized under this act shall ever charge, exact or receive any greater toll fare or compensation than permitted by its charter before such reorganization, and all penalties denounced by such charter for exacting more toll, fare or compensation than permitted by such charter may be enforced notwithstanding such reorganization. (Act of 1893, Ch. 171, Sec. 17.)

Construction. This section permits an old corporation to organize and become a "new corporation," that is, the section permits an old corporation to cease to exist and a new corporation to come into existence "and become a corporation under this chapter." But the old corporation must execute and record its articles of incorporation just as a new corporation is required to do. (Commonwealth v. Southern Pacific Co., 164 Ky. 819 at 831, 176 S. W. 375.)

Reorganization as affecting taxation. (See K. S. 4225 and annotations under that section, *ante*, p. ——; Crecelius v. Carrollton Savings & Loan Assn., 167 Ky. 817, 181 S. W. 635.)

Building and loan associations. Where a building and loan association is reincorporated before its prior charter terminates and the amount of permissible indebtedness is changed, a new corporation is created, which is liable for the corporation tax. (Commonwealth v. Licking Valley Building & Loan Ass'n., 118 Ky. 791, 82 S. W. 435.)

FORM FOR AGREEMENT TO INCREASE CAPITAL STOCK [1]

We, the ———, being holders of shares, representing two-thirds of the capital stock of the ——— company, and being this day present in person or by proxy, at a meeting called by a majority of the directors, to consider the subject of increasing the capital stock of said company, agree in writing that the capital stock of said company may be increased from $———, its present capital stock, to $———, divided into ——— shares of $——— each.

Name of Stockholder	Name of Proxy	No. of Shares
———	———	———
———	———	———
———	———	———
———	———	———

FORM OF NOTICE [2] (Twenty Days)

Notice is hereby given that a meeting of the stockholders of the ——— company will be held at ———, on the ——— day of ———, 19—, at ——— o'clock, — m., for the purpose of considering a proposed increase in the capital stock of said company from $——— to $——— or such other amount as may be fixed at said meeting.

———, Ky., ———, 19—.

———
———
———
———
———

Directors.

CERTIFICATE OF INCREASE [1]

——— president, and ——— directors of the ——— company duly authorized in the premises and acting on behalf of the said company, do hereby certify, that on the ——— day of ———, 19—, by a vote of the stockholders of two-thirds of the capital stock of said company, at a meeting called by a majority of the directors thereof, and held at the office of the said company in the City of ———, County of ———, Ky., and at which meeting the holders of two-thirds of the capital stock were present in person or by proxy, after written notice of the time, place, and object of the meeting had been mailed to each stockholder, twenty days prior to said meeting, and the owners of more than two-thirds of the capital stock of said company agreed in writing to increase the capital stock as hereinafter set forth. It was then on motion resolved:

"That the capital stock of the ——— company, be increased from $———, its present capital stock, to $———, divided into ——— shares of $——— each; and further that the president and directors of said

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1 Caldwell's Ky. Forms, 988, 989, 990.

2 Caldwell's Ky. Forms, 988, 989, 990.

company be instructed to file a statement of such increase with the ——— county clerk and the secretary of state of Kentucky which is accordingly done.[1]

(To be signed and acknowledged before Notary Public.)

FORM FOR PROXY

KNOW ALL MEN BY THESE PRESENTS:

That I ——— do hereby constitute and appoint ——— as my attorney and substitute (with power of substitution) for me and in my name, place and stead, to vote as my proxy at the ——— meeting of the stockholders of the ——— company for the election of directors, and upon such other questions as may come before such meeting, according to the number of votes I should be entitled to cast were I personally present; (or the number of votes may be limited and more than one proxy issued to one or more persons.)

In witness whereof I have set my hand this ——— day of ———, 19—.

———————

Sworn to before me this ——— day of ———, 19—.

———————

Notary Public, ——— Co., Ky.

(My commission expires ———, 19—.)

(Attach U. S. Internal Rev. Stamp, 10c.)

FORM FOR NOTICE OF ANNUAL OR SPECIAL MEETING

———, Ky., ———, 19—.

To the Stockholders:

Please take notice that an annual meeting (or special meeting) of the stockholders of the ——— company, will be held at the office of the said company at No. ——— [*street*] ———, in the City of ———, Ky., on the ——— day of ———, 19—, at — m., for the election of ——— directors [*or such other business as may come before the meeting*].

———————, Secretary.

Time and place governed by the by-laws of the corporation, as well as time of notice. If no notice be given then waivers of notice must be filed and signed by all the stockholders not receiving notice.

If an annual meeting this clause should be added for the protection of the stockholders:

"The stock transfer books of the company will be closed from ———, 19—, to ———, 19—, inclusive." (Preferably covering a period of ten days prior to the meeting.)

Sec. 555. Merger and consolidation. Any two or more corporations organized under this chapter, or the laws of this or any other State, may consolidate into a single corporation;

[1] Note provisio as to banks and trust companies.

the directors or a majority of them, of such corporations as desire to consolidate may enter into an agreement signed by them, prescribing the terms and conditions of consolidation, the mode of carrying same into effect, and stating such other facts as are necessary to be set out in articles of incorporation as herein provided (except the facts required by subdivision 5, section 2, hereof) as well as the manner of converting shares of the old corporation into the new, with such other details and provisions as are deemed necessary: *Provided,* that such consolidated corporations shall become and be a domestic corporation of this Commonwealth for all purposes, and shall be subject to the jurisdiction of the courts of this State and to all laws of this State regulating corporations organized thereunder and this law shall not be construed as altering or repealing any law regulating the taxation of bridges over streams forming the boundary line of this State.

Written notice of the intention to consolidate shall be mailed to the address of each stockholder of each corporation at least twenty days previous to entering into such agreement, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of its principal place of business, 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 of such agreement. (Act of 1893, Ch. 171, Sec. 18, as amended by Act of 1902, Ch. 58.)

Sec. 555a. That all charters or articles of incorporation, heretofore taken out by two or more companies organized under the laws of this Commonwealth consolidating, are hereby declared to be valid, regardless of whether the names and addresses of the stockholders in the consolidating companies be inserted in the articles of consolidation or not; and that all articles of consolidation heretofore taken out are hereby declared to be valid without having the names and addresses of the stockholders inserted therein; and said charters shall be as valid and legal as if each and every stockholder in the

companies composing the consolidated company was set out in such articles of consolidation. (Act of 1906.)

Kentucky Constitution, Sec. 200, Foreign Consolidations.

Consolidation. This section is cited as the first of the statutory provisions relative to consolidation of corporations existing. (LaRue v. Bank of Columbus, 165 Ky. 669, 178 S. W. 1033.)

Rights of creditors in consolidating corporations. (Chesapeake Ohio & Southern R. Co. v. Griest, 85 Ky. 619, 4 S. W. 323; Louisville, etc., R. Co. v. Central Kentucky Traction Co., 147 Ky. 513, 144 S. W. 739.)

Foreign corporations—consolidation with. A domestic corporation does not become foreign by consolidation with a foreign corporation. (Kentucky Constitution, Sec. 200, *ante.*)

Assumption of liabilities by purchasing corporation. A corporation purchasing the assets of another corporation, without assuming payment of the other corporations debts, will nevertheless be liable therefor, if there was a merger or consolidation of the corporations, or if the purchasing corporation took over all the stock of the selling corporation, except where the purchase is made by a bona fide transaction, in which the selling corporation receives money to pay its debts. (American Railway Express Co. v. Commonwealth, 190 Ky. 636, 228 S. W. 433.)

FORMS FOR CONSOLIDATION [1]

————, 19—.

To ——— (stockholders):

You are hereby notified that pursuant to a written agreement signed by the owners of at least two-thirds of the capital stock of each corporation,[2] the ——— company and the ——— company, said two corporations will on the ——— day of ———, 19—, at — m., proceed through their directors to effectuate a consolidation of said corporations into one corporation, under the name of ———.

(Signed by secretaries of both companies.)

Notice must be given twenty days prior to entering into such agreement; see also, statutory provision as to newspaper publication.

FORM FOR CONSENT [3]

The undersigned, holders of the number of shares of stock in the ——— company, set opposite our respective names, being two-thirds (or more) of the capital stock in said company, hereby consent in writing that said corporation may consolidate with the ——— company.

Names of stockholders	No. of shares
_____	_____
_____	_____
_____	_____
_____	_____

1 Caldwell's Ky. Forms, 994.

2 Agreement may be proposed and made by the directors or a majority of them.

3 Caldwell's Ky. Forms, 994.

Sec. 556. Merger not to affect rights and liabilities—Tax. When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, and subject to all the provisions of this chapter and other laws relating to it, and shall be vested with all the rights, privileges, franchises, exemptions, property, business, credits, assets and effects of the constituent corporations without deed or transfer, and shall be bound for all their contracts and liabilities: *Provided*, that no consolidated company formed under this chapter or the laws of this State shall be required to pay any organization tax on the amount of capital stock on which the organization tax has been paid by the constituent companies prior to the consolidation, and when a foreign corporation consolidated with one or more corporations in this State the organization tax as required by the laws of this State shall be paid on the amount of capital stock of such foreign corporation and the organization tax shall be paid on any increase of the capital stock of the consolidated corporation over the aggregate capital stock of the constituent corporations prior to consolidation. (Act of 1893, Ch. 171, Sec. 19, as amended by Acts 1916, Ch. 46.)

Taxation of consolidating corporations. Corporations consolidating under sections 555 and 556 are not subject to the collection of an organization tax, under section 4225 (see annotations under sections 4224, ante at p. —) upon the capital stock of constituent corporations, except where the articles so radically change the character of the old corporation as to amount to a dissolution of the old company or companies and the creation of new corporations. The absence of a purpose to levy such a tax upon old corporations is evidenced by sections 555 and 556, but an organization tax must be paid upon the increase of capital stock and upon the stock of foreign corporations, organized under the laws of a state where no tax is required to be paid, or where a tax less than that prescribed by the statutes of Kentucky is in force. It seems that in the latter case the difference in the amount of the foreign tax and the Kentucky tax should be paid. (Southern Pacific Co. v. Commonwealth, 164 Ky. 825, 176 S. W. 375; Louisville Gas & Electric Co. v. Bosworth, 169 Ky. 824 at 828, 185 S. W. 125.)

Sec. 557. Merger not to affect suits pending. 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. (Act of 1893, Ch. 171, Sec. 20.)

Sec. 558. Stockholders objecting, to be paid. If any stockholder in either corporation consolidating, who objected thereto in writing, shall, within twenty days after the agreement of consolidation has been recorded, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the market value of the stock at the date of consolidation; and stock so purchased shall be disposed of within the time hereinbefore provided. (Act of 1893, Ch. 171, Sec. 21.)

See form under K. S. Sec. 565, ante.

FORM FOR OBJECTION [1]

To the Secretary of ——— Company:

You are hereby notified in writing that I, as the holder of ——— shares of the capital stock of the ——— company, do object to the consolidation of that company with the ——— company [2].

———, 19—.

FORM FOR DEMAND FOR PAYMENT [3]

To the Secretary of the ——— Company:

Whereas, the ——— company and the ——— company did on the ——— day of ———, 19—, cause said articles of incorporation to be recorded as required by law, and whereas, on the ——— day of ———, 19—. I gave said company written notice of my objection to consolidation of the two companies, and I hereby demand of the ——— company, that it pay to me, within three months, after date of recording said consolidation agreement, the sum of $———, being the value of my stock in the ——— company, on the day upon which said consolidation took place.

Dated ———

1 Caldwell's Ky. Forms, 996, 997, 998.

2 Objections in writing must be made within twenty days after recording (K. S. Sec. 558) and the corporation shall pay said objector within three months thereafter.

3 Caldwell's Ky. Forms, 996, 997, 998.

Sec. 559. Amendment of articles how effected. Any corporation may, by the consent in writing of the owners of at least two-thirds of its capital stock, change or amend any of the articles of its incorporation, and such alteration or amendment shall be signed and acknowledged by the directors, or a majority of them, and filed and recorded as articles of incorporation are required to be. (Act 1893, Ch. 171, Sec. 22; see K. S. Sec. 574.)

Amendment of articles. The articles must state, the name and place or location of the business, and should be so amended as to show a change from the place of business originally set out, if any such change from the place of business originally set out, if any such change subsequently takes place. (Milliken v. Southern National Life Insurance Co., 155 Ky. 530, 159 S. W. 1141.)

Organization tax. (Commonwealth v. Southern Pacific Co., supra.)

Construction of Sec. 574. This section provides that articles may be amended as provided in the above section (559) by the stockholders without the consent of anyone else. (Bentler v. Covington, C. & E. R. Co., 180 Ky. 504, 203 S. W. 199.)

Acceptance of amendments. The acceptance of a charter amendment like the acceptance of the original charter, may be proved by showing that the corporation has done corporate acts authorized by the amendment without which it would have been unauthorized. (Kenton County Ct. v. Bank Lick Turnpike Co., 73 Ky. [10 Bush) 529.)

Acceptance of amendments—records not necessary. It is not indispensible that the vote of acceptance of a charter amendment should appear of record on the books of the company but such acceptance may be inferred from the acts of the corporation through its officers or otherwise. (City of Covington v. Covington & Cincinnati Bridge Co., 73 Ky. [10 Bush] 76.)

Amendments generally. It is well settled by an unbroken chain of authority that the charter of a private corporation may vest such rights in the corporation and its stockholders that no subsequent legislation can impair or diminish (subject now to section 3 of the Kentucky Constitution), and it is equally well settled that such amendments of a charter may be made as are necessary to carry into effect or accomplish the purposes for which the charter was obtained. (City of Covington v. Covington, etc., Bridge Co., supra; citing Fry's Exr. v. Big Sandy & Lexington Ry. Co., 2 Met. [Ky.] 321.)

Amendments—conflict of laws. The fact that an amendment to the charter of a corporation by the state creating it, is in conflict with some law or constitutional provision of the state licensing it to exercise cer-

tain powers within its limits, cannot be held to destroy its validity. (City of Covington v. Covington, etc., supra.)

Amendments after termination of corporate existence. When the articles of a corporation have expired it is too late to adopt an amendment extending the life of the corporation, for the corporation having expired, this would amount to the creation of a new corporation. The refusal of the secretary of state to accept and file such amendment was proper. (Home Building Assn. v. Brunner, Secretary of State, 134 Ky. 361, 120 S. W. 306.)

Sec. 574. Reorganization of old corporations. The charter or articles of incorporation of any corporation heretofore created or organized under or by the laws of this State may, after such corporation has accepted, as herein provided, the provisions of the Constitution, be amended in the manner provided for the amendment of the articles of incorporation of corporations organized under this chapter and the laws relating to such corporations. (Act 1893, Ch. 171, Sec. 37; see, further, as to amendments, Sec. 559.)

See Commonwealth v. Southern Pacific Co, 164 Ky. 820, 176 S. W. 375. 375.)

FORMS FOR AMENDING ARTICLES [1]

————, Ky. ———, 19—.

A meeting of the stockholders of the ——— company was held at ———, on the ——— day of ———, 19—, at ——— o'clock, — m., president ——— in the chair.

Mr. ———, presented the following resolution:

RESOLUTION FOR AMENDMENT OF ARTICLES OF INCORPORATION

Resolved, That the articles of incorporation of the ——— company be and the same are hereby amended so as to,

[*Copy proposed amendment, as "change the corporate name from the ——— company to the ——— company;" or, "change the place where said corporation is to be located and transact its business from ——— County, Ky., to ——— County, Ky.;" or, any other proposed change.*]

Mr ———, moved the adoption of said resolution. The motion was duly seconded and a vote thereon was held by ballot. ———shares of the capital stock of the said company were cast in favor of the adoption of said resolution, and ——— shares were cast against its adoption.

Two-thirds (or more) of the capital stock of said corporation having been voted in favor of the adoption of said resolution the same was duly

[1] Caldwell's Ky. Forms, 985, 986.

declared adopted. Thereupon the following written assent was executed by the stockholders of said corporation.

We, ———,[1] being stockholders of two-thirds of the capital stock of said corporation, do hereby consent in writing that the articles of incorporation of said corporation may be amended as follows:

[*Here set out proposed amendment.*]

Names of stockholders	No. of shares	
_____	_____	_____
_____	_____	_____
_____	_____	_____

CERTIFICATE OF AMENDMENT OF ARTICLES[2]

We, the undersigned, being a majority of the directors of the ——— company, a corporation duly organized under the laws of the state of Kentucky, on the ——— day of ———, 19—, do hereby certify that the following stockholders representing two-thirds of the capital stock in said corporation, as herein set out opposite their respective names:

Names of stockholders	Shares
_____	_____
_____	_____
_____	_____
_____	_____

have consented in writing that the articles of incorporation of said company, be amended as follows:

[*Here set forth amendment.*]

Said amendment being embodied in a resolution which was carried by a vote of ——— shares to ——— shares (or unanimously carried) at a meeting of the stockholders regularly called, and held at the office of the ——— corporation on the ——— day of ———, 19—.

_____
_____
_____
Directors.

Acknowledgement must be made by directors before a Notary Public.

NOTICE OF MEETING

Notice is hereby given to the stockholders that on the ——— day of ———, 19—, at ———, there will be a meeting of the stockholders of _____

1 Form for consent of two-thirds of stockholders.
2 Caldwell's Ky. Forms, 987.

the ——— company to consider the subject of amending [1] the articles of incorporation of the said corporation [2].

_____

_____

_____

Directors.

Extension of time of corporate existence. There are no statutory provisions in Kentucky as to the manner in which the limitation of corporate existence, required to be stated in the charter, may be extended. The charter or articles of incorporation therefore should be amended before the expiration of the time therein provided, in the manner provided for the adoption of any other amendment to the articles of incorporation.

Sec. 560. Sale, merger, or amendment not to affect liabilities. Any liability of corporations, or the stockholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporations, 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 corporations, or by the consolidation, of two or more corporations, or by any change of amendment in the articles of incorporation. (Act of 1893, Ch. 171, Sec. 23.)

Sec. 561. Proceedings for dissolution. Any corporation organized under this chapter may, by the consent in writing of the owners of the majority of its shares of stock, unless otherwise provided in the articles of incorporation or amendments thereto, close its business and wind up its affairs; and when any corporation expires by the terms of the articles of incorporation, or by the voluntary act of its stockholders, it may thereafter continue to act for the purpose of closing up its business, but for no other purpose; and it shall be the duty of the officers to settle up its affairs and business as speedily as possible; and they shall cause notice to be published, for at least once a week for four consecutive weeks, in some news-

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1 Amendment may be set forth in notice but that is not necessary, unless required by the by-laws.

2 Time of notice must be as prescribed in by-laws.

If no notice of meeting be given, the waiver of all the stockholders of the corporation, if present at the meeting which adopted the by-laws, will cure this defect.

paper printed and published in the county, if any, of the fact that it is closing up its business; and all debts and demands against the corporation shall be paid in full before the officers receive anything. (Act of 1893, Ch. 171, Sec. 24.)

Dissolution—rights of creditors. When a corporation has sold all of its property and franchises, etc., and then in effect been dissolved, its creditors may enforce their demands in equity, the proceeds of its property being regarded as assets in the hands of the stockholders for the payment of debts. (Chesapeake, Ohio & Southern R. Co. v. Griest, 85 Ky. 619, 9 Ky. L. R. 177, 4 S. W. 323; see briefs of counsel, reported.)

Dissolution. A corporation may be dissolved as provided in this section. (Eminence Building & Loan Assn. v. Bohannan, 21 Ky. L. R. 1589, 55 S. W. 1074.)

Failure to comply with this section—partnership liability. Failure to comply with this section, when the life of the corporation had expired, and a continuance of the business had the effect of creating a liability upon the stockholders as partners. (Op. per Kirby, C. J., in Ewald's Exr. v. City of Louisville, reported in memoranda, 145 Ky. 591, 140 S. W. 1034.)

Expiration of term—partnership—taxation. When a corporation continues to act after its articles of incorporation have expired, the stockholders simply do business as partners, and are personally liable for all debts made; and acts done are not the acts of the corporation, but of the stockholders, and its property should be listed for taxation in that county where it would be given in, if the parties had done business under the firm name and not under the corporation. After the expiration of a reasonable time for closing up the business of a corporation, it is not in business under the statute, and the title to the property vests in the stockholders for the purpose of taxation. Two years is a reasonable time for closing up the business of a corporation, and where the provisions of the statute have been disregarded the parties will not be heard to say that two years is not a reasonable time. (Ewald Iron Co. v. Commonwealth, 140 Ky. 692, 131 S. W. 774.)

Assignment for the benefit of creditors. This section does not apply to a case of voluntary assignment for the benefit of creditors. It seems to have been intended merely to authorize the holders of the majority of the stock to close out the corporation, and withdraw their capital, without respect to its solvency or insolvency. (United States Building & Loan Assn. v. Reed, 110 Ky. 874, 23 Ky. L. R. 342, 62 S. W. 1030.)

Extension of corporate existence—generally. (Owensboro v. Owensboro Water Works, 243 U. S. 166, including dissenting opinions of Clarke, Brandeis and Day, JJ.)

Dissolution—effect of, upon process. One upon whom process has been served, as its president, may show that the corporation has been dis-

solved so as to absolve it from suit. (Economy Building & Loan Assn. v. Paris Ice Mfg. Co., 113 Ky. 246, 68 S. W. 21.)

Debts of corporation. The corporation continues until its debts are paid for purposes of creditors' suits. (Economy, etc. v. Paris, etc., supra.)

Affidavit of dissolution. For purposes of record, an affidavit of dissolution must show that the corporation has fully complied with every detail of the statute, because without such compliance no dissolution can be effected by the members of the corporation. (Economy, etc. v. Paris, etc., supra, citing 5 Thomp. on Corp. 6688.)

Publication. The required newspaper publication of four weeks is a condition precedent to the voluntary dissolution of a corporation. (Economy, etc. v. Paris, etc., supra.)

Modes of dissolution. (1) By act of the legislature, (2) by death of all the members, (3) by forfeiture of the franchise, (4) by surrender of the charter or voluntary dissolution. (Economy, etc., v. Paris, etc., supra.)

Historical—dissolutions—common law. A corporation created by special act of the legislature before the present constitution can not be dissolved so as to avoid the claims of creditors, as was the case at common law. (Bank v. Lockwood's Admr., 2 Har. 8; Fox v. Horah, 36 N. C. 358, 36 Am. Dec. 48.) At common law the charter was a compact between the crown, or in the legislature this country, and the corporation, and as said by Mr. Justice Morton in the Langdon case, 12 Pick. (Mass.) 49, 35 Am. Dec. 292, it was obligatory upon both parties, and the consent of both parties was necessary to effect a dissolution by surrender of the charter. (Economy Building & Loan Assn. v. Paris Ice Mfg. Co., supra.)

Common law. In England a corporation could not dissolve itself but by a surrender of its franchise to the king and by analogous principle the surrender in this country should be made to and accepted by the legislature. However, in the absence of statute permitting voluntary dissolution the court doubted whether this could not be effected in this country, but that if it were, such dissolution could not be an avoidance of the claims of creditors. (Portland Dry Dock & Insurance Co. v. Trustees of Portland, 51 Ky. [12 B. M.] 77; Op., per Marshall, J.)

Statutory authorization for voluntary dissolution—modern rule. At the present time there are statutory provisions in many jurisdictions in this country and in England which expressly provide for the voluntary dissolution of business corporations at the instance of the directors usually with the consent of a certain proportion of the stockholders. Such a statutory provision enters into every charter, and every stockholder takes and holds his stock subject to this power of voluntary dissolution, and when the board of directors have determined, in their best judgment, that the corporation should be dissolved and are pursuing the methods specified by the statute, it is only in rare and exceptional cases that their action will be stayed or interfered with by the courts. On the other hand, if it clearly appears that the action is in bad faith, that a resolution for dissolution has been superinduced by fraud or undue influence, or if it is

clear that the resolution was not taken for the benefit of the corporation, or in furtherance of its interest, but for the mere purpose of unjustly oppressing the minority of the stockholders or any of them, and causing a destruction or sacrifice of their pecuniary interests or holdings, giving clear indication of a breach of trust, such action may be restrained. (7 R. C. L. 714; citing White v. Kincaid, 149 N. C. 415, 63 S. E. 109, 23 L. R. A. [N. S.] 1177, with note.)

Minority stockholders. Dissolution can not be had by a minority of the stockholders The right of dissolution is vested in the corporation itself. (Williams v. Nail, 108 Ky. 21, 21 Ky. L. R. 1526, 55 S. W. 706.)

Stock subscriptions—effect of dissolution upon. A suit by a foreign corporation having its principal place of business in this state, to recover a stock subscription, is not precluded because plaintiff's charter had previously been revoked by the state in which it was created. The common law rule that the debts and liabilities of a corporation are extinguished by its dissolution, has been changed by statute which applies to domestic, and also to foreign corporations having their principal place of business in this state, and continues their legal existence for the purpose of winding up their affairs. (Hauger v. International Trading Co., 184 Ky. 749, 214 S. W. 438; citing, Castle's Admr. v. Acrogen Coal Co., 145 Ky. 591, 104 S. W. 1034.)

FORMS FOR DISSOLUTION

(Prescribed by the Secretary of State)

(Sign, acknowledge, record in county court clerk's office and forward attested copy with fee of $1.00 to secretary of state.)

DISSOLUTION

Amendment to the articles of incorporation dissolving or terminating the existence of ——— (name of corporation.)

KNOW ALL MEN BY THESE PRESENTS:

That pursuant to the consent in writing of the stockholders owning two-thirds of the shares of the capital stock of ———, (name of corporation), a Kentucky corporation, organized ——— day of ———, the articles of incorporation of said corporation are hereby amended so as to terminate the existence of said corporation and dissolve same immediately.

In testimony whereof, witness the signature and official seal of said corporation, duly affixed by president and directors, who constitute all of the directors of said corporation at ———, Kentucky, this ——— day of ———, 19—.

——————— (Name of corporation.)

By ———————, president and director.
By ———————, director.
By ———————, director.
By ———————, director.

STATE OF KENTUCKY
COUNTY OF ——— ss.

I, ———, clerk of the county court in and for the county and state aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me by ———, president and director, ——— director, ——— director, ——— director, ——— director, ——— (name of corporation) to be the acts and deed of said corporation dissolving and terminating its existence, and I have recorded the same, and the foregoing certificate in my said office.

Witness my hand this ——— day of ———, 19—.

———, Clerk.

By ———, D. C.

A copy attest:

———, Clerk.

CONSENT OF STOCKHOLDERS

We, the undersigned, owners of the numbers of shares of capital stock in the ——— company, set opposite our respective names, being in all a majority of the stock of said company, viz: ——— shares out of a total of ——— shares, and the articles of incorporation of said company, not providing otherwise, and said company, being organized under the general corporation law of the state of Kentucky, on the ——— day of ———, 19—, by filing its articles of incorporation in the offices of the county clerk of ——— County and of the Secretary of State of Kentucky, being desirous of terminating, winding up the affairs of the said company and causing a dissolution of the same, hereby consent and agree that [*naming officers of company*] shall settle up its affairs and business as speedily as possible and dissolve the corporation according to law.

Dated ———, Ky., the ——— day of ———, 19—.

(Names of stockholders)	(No. of shares)
———	———
———	———
———	———

RESOLUTION APPOINTING LIQUIDATOR

(See Knot v. Evening Post Co., 124 Fed. 342.)

WHEREAS, the charter of the ——— company will expire on the ——— day of ———, 19—, and whereas it has become necessary to have all the assets of every character of the company sold for the purpose of paying its debts and distributing the surplus, if any among the stockholders; and whereas it is impossible to properly advertise and sell said property by the ——— day of ———, 19—;

Therefore, be it resolved: First, that the ——— be, and ——— is hereby appointed liquidator of the affairs and business of said corporation as they have been operated until the property can be properly advertised and sold, and the possession thereof delivered to the pur-

chaser. Second, that prior to the said sale the liquidator shall cause to be made for the use of the stockholders, a comprehensive statement of the assets and liabilities of the corporation, and furnish said stockholders with a copy of said statement. Third, that the said liquidator shall in the advertisement, specify the nature of the articles to be sold, and shall make such sale for cash, to be paid on delivery of possession and shall require of the purchaser that he deposit a certified check for an amount equal to one-third of the total purchase price, which the liquidator shall hold and credit upon the purchase price when the sale is consummated, or, if for any reason it shall be set aside, return to the bidder. Fourth, said liquidator may in his discretion employ an auctioneer or other agent necessary or proper, to be used in the sale of the said property. Fifth, until said sale, and during the operation of said property, said liquidator is given full authority to employ such agents and persons as may be necessary to properly, conveniently and economically operate the property and keep an account of all expenses, and take vouchers therefor. And after the property has been fully administered, said liquidator shall make out a comprehensive account of its acts, and shall furnish a copy thereof to each of the stockholders. Sixth, said liquidator shall from the proceeds of the sale, pay all debts of the corporation and the balance, if any, shall be legally distributed among the stockholders.

Sec. 562. Sale of franchise and property under judgment of court—Reorganization of. If the franchise and property of any corporation is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation of the construction, 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 chapter. 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 section five hundred and thirty-nine of this article, set forth a description of the property sold, and the decree under which the sale was made, if it was sold under a judgment, or if not, the deed conveying the property, the amount paid or to be paid, and to 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 a copy thereof recorded in the office of the Secretary of State; and if a railroad, in the office of the Railroad Commission; 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 chapter. (Act 1893, Ch. 171, Sec. 25.)

See K. S. Sec. 883b.

Rights of bona fide purchasers. Where one corporation sells to another all its property, franchises, etc., under authority conferred by its charter or under legislative authority, a bona fide purchaser for value takes the property free from the claims of the creditors of the vendor, the creditors having no lien upon the property, the same as if it were an individual transaction. (Chesapeake, Ohio & Southern R. Co. v. Griest, 85 Ky. 619, 9 Ky. L. R. 177, 4 S. W. 323; Board of Trustees v. Chesapeake, Ohio & Southern R. Co., 94 Ky. 377, 15 Ky. L. R. 313, 22 S. W. 609.)

Sec. 563. Judgment of sale. Sale of the property and franchises of corporations that may be sold under 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 or deeds of trust, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such deeds of trust or mortgage; or if the property and franchises will produce so much, then for the amount of interest due under said deed or deeds of trust or mortgage, or any of them, 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 where 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 incumbrances. Sales

under this section shall be made on such credits as the court may deem proper. (Act of 1893, Ch. 171, Sec. 26.)

Sale under mortgage decree. The sale of property and franchises of a corporation under a decree to satisfy a mortgage, does not pass to the purchaser debts due the corporation, nor destroy its corporate existence. The corporate existence continues for more than one purpose and certainly for the purpose of paying and collecting its debts. (Smith v. Gower, 63 Ky. [2 Duv.] 17.)

Sec. 883b. (1) **Voluntary sale of corporations.** Any corporation now or hereafter organized under the laws of this State or of any other State or Territory of the United States, shall have power to sell and convey all of its property, rights, privileges, franchises, easements, rights of way, and all other property and property rights it may use or possess. (Act of 1918, Ch. 15.)

(2) **Voluntary purchase of corporations.** Any such corporation shall be authorized to purchase the corporate assets of any other corporation organized under the laws of this State or of any other State or Territory of the United States and engaged in the same character of business. (Ibid.)

(3) **Stockholders objecting to be paid on demand.** No such sale shall be valid unless consented to by the holders of not less than three-fourths (¾) of the capital stock of the vendor corporation, which consent shall be given either in writing or by vote at a special meeting of the said stockholders called for that purpose upon the same notice as that required for the annual meetings of the corporation, which notice shall clearly state the purpose for which the meeting is called. Any stockholder of the vendor corporation may notify its secretary in writing on or before that date of such meeting that he objects to the proposed sale. If the proposed sales shall be consummated, the vendor therein, thirty (30) days thereafter, upon demand of such dissenting stockholder and upon his surrender of his stock therein to the vendor corporation for cancellation, shall pay to such dis-

senting stockholder the market value of his stock, which shall in no event be less than the book value of said stock, according to the last balance sheet of the selling corporation. Any amount so paid by the vendee to dissenting stockholders shall be deducted from the purchase price of the property in question. (Ibid; see also K. S. Secs. 581 and 609.)

Purchase of corporations—effect of as to liabilities. A corporation purchasing the assets of another corporation assumes the debts and liabilities of the latter, even though not expressly assumed, unless the purchase was made by a bona fide transaction in which the selling corporation receives money to pay its debts. (American Railway Express Co. v. Commonwealth, 190 Ky. 636, 228 S. W. 433.)

Rights of creditors. A corporation cannot dispose of property to defraud creditors, but a transfer of all the company's property to another on adequate consideration cannot be attacked by creditors. (Moss Jellico Coal Co. v. Jones, 190 Ky. 53, 226 S. W. 121.)

Consent of stockholders—reorganization—waiver of rights. A party to a proposed reorganization waived his rights to stock under his proposed subscription by stopping payment on the check given by him in payment for the stock in the new corporation. Where a party to a proposed reorganization repudiates it, held, that he was not a stockholder, and was not interested in a sale by the stockholders of all the stock and holdings of the company. (Elkhorn By-Product Coal Co. et al., v. Tynes, 188 Ky. 269, 221 S. W. 514.)

Transfer of all corporate property. The general rule is that as long as a corporation is solvent, and remains in control of its property and assets, it may dispose thereof the same as an individual, subject only to charter limitations. * * * A going concern may dispose of its assets in good faith, since the trust fund doctrine applies only to insolvent corporations, according to the better rule. In any event, as against a general creditor a corporation may dispose of its property essential to its continuance in business where it receives full consideration therefor and has the same available in its treasury for the payment of corporate debts. The question of the rights of creditors arises only where the sale is for stock of the purchasing company. (2 Fletcher Cyc. Corps. 2154-55.)

Statutory provisions—assent of stockholders. A statute authorizing the sale of the property, rights and franchises of a corporation, providing a certain percentage of the stockholders consent thereto, requires such consent where a sale is made of an independent and important branch of a business, including the good will and right to exercise the corporate franchise in such branch of the business. (2 Fletcher Cyc. Corps. 2161.)

Statutory authorization and effect of. Private corporations are often authorized by statute to sell all of their property. A transfer of all the

property and franchises of a corporation does not necessarily dissolve the corporation, and the purchaser does not become a corporation merely by virtue of the purchase and transfer, unless a statute expressly so provides. (2 Fletcher Cyc. Corps. 2165-66.)

Inter-company stock holdings. This section of the Kentucky Statutes would seem to authorize a corporation to purchase the stock of another corporation, being a part of the assets of the selling corporation, but of course not without the consent of three-quarters of the stockholders of the selling corporation. This statute evidently contemplates the purchase or sale of all or of a majority of the stock of another corporation, so that the one should become the subsidiary, or under the actual control of the other, and would not apply to the possible purchase of a few shares of some other company or of less than a majority. See also, "Stock of purchasing corporation as a consideration." (2 Fletcher Cyc. Corps. Sec. 1211.)

FORM FOR NOTICE OF SALE[1]

(K. S. Sec. 883b,)

To the Stockholders of the ——— [*corporate name*] ———:

Notice is hereby given that a meeting of the stockholders of the ——— company will be held at its office in the City of ———, county of ———, and State of Kentucky, on the ——— day of ———, 19—, at — m., and that the object of such meeting is to consider the sale (or purchase) and transfer of the ——— company and all of its property, rights, privileges, franchises, easements, rights of way, and all other property and property rights it may use or possess.

FORM FOR WAIVER OF NOTICE

We, the undersigned, being the holders of all the capital stock of the ——— company and being all present, in person or by proxy, as appears below, at a meeting of stockholders called by the board of directors for the purpose of considering a proposed agreement for the sale of the entire property and assets of said corporation, do hereby waive notice of said meeting required by law.

Dated, ———, Ky., ———, 19—.

Stockholders in person	No. of shares
_____	_____
_____	_____
_____	_____

Stockholders by proxy	No. of shares
_____, by _____	_____
_____, by _____	_____

[1] Notice of meeting to be given in same manner as prescribed in the charter for notices of annual meetings.

Sec. 564. Classification of capital stock into common and preferred shares. Any corporation organized under this law may divide its shares into classes, such as preferred, common and deferred shares, or as may be otherwise designated, and it may give to each of the several classes such priority of right in the payment of the dividends and in the redemption of the shares as may be prescribed in the rules and regulations adopted by the shareholders; and may provide that the holders of its bonds shall be entitled, upon terms prescribed by it, to convert the same into the stock of the corporation, whether common or preferred, and that holders of its preferred stock shall be entitled, upon terms prescribed by it, to convert the same into the bonds or other obligations of the corporation. No preferred stock shall be issued except for cash or its equivalent, nor for less than the par value of the shares, which shall be stated in the certificates representing the preferred and common stock respectively. Any such corporation, all of whose outstanding stock is common stock, may, by a resolution adopted by the vote of the holders of not less than two-thirds in amount of its outstanding capital stock, cast in person or by proxy, at a special meeting of stockholders called for the purpose and of which notice shall have been given as provided in the by-laws of the company, at least twenty days before the date of the meeting, or at the annual meeting of the stockholders of the company, or by the written consent of the holders of not less than two-thirds in amount of its capital stock, distribute or convert its outstanding capital stock into preferred and common stock in such proportion as shall be fixed by such resolution or written consent. *Provided,* that all holders of stock of the company at the time of such distribution shall be entitled to the same *pro rata* proportions of such preferred and common stock. And by a resolution adopted by the like vote or by such written consent, the capital stock of any corporation may be increased and the increased stock may be common or preferred stock, or partly one and partly the other, as may be fixed by such resolution or written

consent. Any such preferred stock hereinbefore referred to shall be entitled to receive quarterly, semi-annual or annual dividends thereon at such rate as may be prescribed by the resolution or written consent under which the same was issued and such dividends shall be payable as provided in the said resolution or written consent, before any dividends shall be declared on the common stock; and on the dissolution of the company, voluntary or otherwise, the holders of preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the company shall be made to the holders of the common stock. (Act 1893, Ch. 171, Sec. 27; as amended by the Act 1910, Sec. 231.)

See, Form for Certificates, K. S. sec. 545.

Issuance of preferred and common stock. Where a corporation increased its capital stock with right to classify the increased issue into preferred and common shares, it was not such a radical change as to make it a new corporation and to subject its original capitalization to the organization tax. (Commonwealth v. Southern Pacific Co., 164 Ky. 819, 176 S. W. 375.)

Preferred and common stock—distinction. Except as to the preference in the payment of dividends and distribution of the assets as provided by the certificate and the charter, and when authorized by statute, the holders of preferred and common stock have the same rights and are subject to the same liabilities. (Smith v. Southern Foundry Co., 166 Ky. 211, 179 S. W. 205.)

Issual of stock—priority. Section 564 authorizes the issual of preferred stock, having a preference over the common stock as to dividends and assets, but such preferred issues have no priority over corporate creditors and the entire capital stock is, at all times, subject to and liable for the corporate debts, without regard to any arrangement which may exist between preferred and common stockholders. (Smith v. Southern Foundry Co., supra; Rider v. Delker & Sons Co., 145 Ky. 634, 140 S. W. 1011, 39 L. R. A. [N. S.] 1007, with note.)

Rights of creditors. As against creditors a preferred stockholder has no greater rights than a common stockholder and the corporation cannot give them greater rights in the assets of the corporation, as against creditors, unless by virtue of an express statutory provision. (2 Clarke & Marshall on Private Corporations, Sec. 413, approved in Fryer v. Wiedem, 148 Ky. 379, 146 S. W. 752.)

Preferred stockholders as creditors. A certificate of preferred stock in a Kentucky corporation is not an evidence of indebtedness, and the

holder thereof is simply a stockholder and not a creditor. (Smith v. Southern Foundry Co., supra.)

NOTE: In some jurisdictions, and also by some text writers, it is held, that preferred stock issued without the power to vote, is in the nature of a certificate of indebtedness, such stockholders being treated as creditors, but this is not the rule in Kentucky. However, where preferred stock is issued pursuant to the charter and is by its terms redeemable in six years, it becomes an indebtedness after maturity, which may be enforced against the corporation, the rights of no creditors being involved. (Gunther Grocery Co. v. Hazel, 179 Ky. 775, 201 S. W. 336.)

Redemption of preferred stock—effect of. (See Gunther Grocery Co. v. Hazel, and note supra.) A corporation is authorized by this section to make a valid contract that it will redeem and retire its preferred stock, and that contract will govern the rights of preferred and common stockholders, providing always that such agreement will not be detrimental to the interests of corporate creditors, and being thus authorized by statute, such a contract cannot be held to be contrary to public policy. (Westerfield-Bonte Co. v. Burnett, 176 Ky. 189, 195 S. W. 477; citing, 78 Fed. 670.)

Power to vote preferred stock. Preferred stockholders, in the absence of any agreement or statute to the contrary, are entitled to vote the same as any other holders of stock. (7 R. C. L. 325; citing, 2 L. R. A. [N. S.] 121.)

Sec. 565. Limitation as to time for commencement of business. Any corporation organizing under this chapter 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; but the rights, privileges or franchises shall not be forfeited by the failure to elect officers or hold meetings at the time specified. (Act of 1893, Ch. 171, Sec. 28.)

Sec. 566. Defective organization not a defense. No corporation organized under this chapter 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. (Act of 1893, Ch. 171, Sec. 29.)

Railroads—condemnation by. The owner of land sought to be condemned by a railroad may deny the inorporation of said company under K. S. sec. 763. (Warden v. Madisonville, H. & E. R. Co., 125 Ky. 644, 101 S. W. 914.)

Defense of non-existance. It has been repeatedly held in Kentucky that where a person executes an obligation to a corporation, he cannot, in an action on it, by the corporation, deny that such corporation had an existance, nor can he set up as a defense that it had no power to contract, unless the contract be expressly forbidden by law. (Yellow Chief Coal Co. Trustee v. Preston, 166 Ky. 669, 179 S. W. 602.)

Pleading. Upon an unconditional promise to pay a corporation, it is unnecessary to aver in a petition that the requisite amount of capital stock has been subscribed for, in order to state a good cause of action, such a plea being mere surplusage. The petition is not only good on demurrer, but a general traverse by plea that no such corporation existed would be bad on demurrer. (Lail v. Mt. Sterling Coal Road Co., 76 Ky. [13 Bush] 33, 35; Huffaker v. National Bank of Monticello, 75 Ky. [12 Bush] 287; Henderson & Nashville R. Co. v. Leavell, 55 Ky. [16 B. M.] 358.)

Pleading. The execution of a note payable to a corporation is an admission of the existance of such a corporation, at the date of the note (Bank of Gallipolis v. Trimble, 45 Ky. [6 B. M.] 601, cited) and a plea that the corporation is not in existance is substantially a matter of abatement and cannot be relied on as a plea in bar. (Jones v. Bank of Tennessee, 47 Ky. [8 B. M.] 123; Woodson v. Bank of Gallipolis, 43 Ky. [4 B. M.] 203.)

Common law. This section is declarative of the common law. Authorities collated. (Johnson v. Mason Lodge, 106 Ky. 845, 46 S. W. 674; overruled in Oliver v. Louisville Property Co., 156 Ky. 628, on another point; see also, Wood v. Friendship Lodge, 106 Ky. 424, 20 Ky. L. R. 2002, 50 S. W. 836.)

Collateral attack—existance of corporation. The question whether an incorporated company has been regularly organized, so as to give it power to act, cannot be inquired into collaterally. It must be by a direct proceeding. (Wight v. Shelby R. Co., 55 Ky. [16 B. M.] 5; Gill's Admx. v. Kentucky & Colorado Gold & Silver Mining Co. 7 Bush 635.)

Taxation—pleading—not retroactive. The simple allegation that the corporation is created under the laws of this state in a petition to recover an organization tax under Sec. 4225 K. S., is held sufficient to meet the requirements of this section (556.) This section is not retroactive but applied to all corporations organized after this act took effect. (Commonwealth v. Licking Valley Building Assn., 118 Ky. 798, 26 Ky. L. R. 730, 82 S. W. 435.)

NOTE: If as stated above, this section is merely declarative of the common law, then the rule of pleading denounced by the statute would apply at common law, to all corporations organized before the act took effect.

Insurance policies—rule applied to. Where a policy was issued to a corporation for a valuable consideration, the insurance company will not be permitted to claim that the corporation with which it dealt was not in fact a corporation. (Hamburg-Bremen Fire Ins. Co. et al., v. Ohio Valley Dry Goods Co's. Trustee, 160 Ky. 252, 169 S. W. 724.)

Insurance policy holders—rule applied to. A member of a cooperative or assessments life insurance company cannot plead irregularity in its organization, or that his policy is an ultra vires contract, to defeat a cause of action against him by the company or its receiver. (Darnell v. Equity Life Insurance Co., 179 Ky. 465.)

Failure to comply with K. S. sec. 571, may be relied upon. (Fruin-Colnon Contracting Co. v. Chatterson, 146 Ky. 504, 143 S. W. 6.)

Sections 571-566 distinguished—construction of. These two sections are not companion sections and have not the remotest connection with each other. Section 566 relates to defects in organization and so states, while section 571 relates exclusively to the matter of a corporation doing business in this state without having an agent and place of business in this state. The court in the case of Johnson v. Mason Lodge, supra, seems to have confused an ultra vires contract with an unlawful contract, and to have erred in treating these two sections of the statute as companion sections. Johnson v. Mason Lodge is therefore overruled. (Oliver v. Louisville Realty Co., 156 Ky. 628, 161 S. W. 570; annotated in full under K. S. Sec. 571; see, Code provisions, p. 396.)

Sec. 567. Ultra vires acts—Limitation as to holding real estate. No corporation shall engage in business other than that expressly authorized by its articles of incorporation or amendments thereto; nor shall any corporation, directly or indirectly, engage in or carry on in any way the business of banking, or insurance of any kind, unless it has become organized under the laws relating to banking and insurance; nor shall any corporation hold or own any real estate, except such as may be necessary and proper for carrying on its legitimate business for a longer period than five years under penalty of escheat. (Act of 1893, Ch. 171, Sec. 30.)

Limitation as to holding real estate. See provisions of the Kentucky Constitution, section 192, with annotations.

Ultra vires acts, defined. American Sou. Nat. Bank v. Smith, 170 Ky. 512, 186 S. W. 482.

Powers and limitations. All corporations derive their powers from legislative grant, and cannot do any act for which authority is not expressly given or which may not be reasonably inferred, and has only the power conferred by its charter, eg. a bank cannot conduct a glass manufacturing plant, there being no such power conferred upon it by its charter, and no authority under the national bank act. (Blitz & Co. v. Bank of Kentucky, 21 Ky. L. R. 1554, 55 S. W. 697.)

Ultra vires contract when not a defense. The rule is now quite general in most of the states, including Kentucky, that ultra vires cannot be urged where the other party to the contract has fully performed his part of the contract. (Albin Co. v. Com., 33 Ky. L. R. 367, 108 S. W. 299.)

Ultra vires contracts. Though a charter of a corporation may not confer the power of banking, or issuing checks to pass as currency, and it may be a penal offense to issue such checks or notes, yet the corporation is bound to pay for plates and notes or checks procured to be made by the officers of such corporation. (Underwood, etc., v. The Newport Lyceum, 5 B. Mon. (44 Ky.) 129, 41 Am. Dec. 260.)

Ultra vires contract—pleading. An ultra vires contract cannot be relied upon as a defense collaterally. (Darnwell v. Equity Life Ins. Co., 179 Ky. 472, 200 S. W. 967; see also notes under preceding section.)

Ultra vires contracts—estoppel. It has been adjudicated in a number of cases decided by the Kentucky Court of Appeals, and is a well settled doctrine, that a person who contracts with a corporation is estopped to deny its corporate existance, or its charter power to contract, in an action brought by it to enforce the contract; citing Bank of Gallipolis v. Trimble, 6 B. Mon. 601; Jones v. Bank of Tennessee, 8 B. Mon. 122; 46 Am. Dec. 540; Henderson R. Co. v. Leavell, 16 B. Mon. 359; Lail v. Mt. Sterling Coal R. Co., 13 Bush 32; Fruin-Colnon Contracting Co. v. Chatterson, 146 Ky. 504, 143 S. W. 6, 40 L. R. A. [N. S.] 857.)

Ultra vires act—estoppel. Where a corporation receives money or property of another under an agreement or duty to account therefor, it may be compelled to perform such duty, although the transactions were ultra vires. (Laurel County v. Howard, 189 Ky. 221; 224 S. W. 762; Walker v. Richmond, 173 Ky. 26, 189 S. W. 1122.)

Escheat. An escheator cannot sue under this section and section 192 of the constitution. These sections do not provide a remedy for having lands forfeited to the state. (Com. v. Wisconsin Chair Co., 119 Ky. 501, 84 S. W. 535; see annotations under Sec. 193 Ky. Const.)

Echeat—who may enforce. The Commonwealth itself must enforce the escheat provided for by this section. (Com. v. Louisville Property Co., 128 Ky. 790, 109 S. W. 1183.)

Officers liability for sale of land. The president is liable to an agent for his commissions in obtaining a purchaser for lands of the corporation, even though such sale was unauthorized by the corporation. (Mueller v. Nugent, 187 Ky. 61, 218 S. W. 730.) However the unauthorized act of an agent must not be confused with an ultra vires contract, which is a contract which the corporation itself has no power to enter into.

Ultra vires—rule in Federal Courts. The United States Supreme Court has held that a contract with a corporation which is beyond its powers, or ultra vires, though it may not be otherwise illegal, is absolutely void, on the ground that a corporation by reason of its limited powers, is incapable of making such a contract; that the fact that the contract has been executed by one of the parties, and the other has thus received the consideration for his or its promise, cannot give the contract any validity; that such performance by one of the parties, and receipt of the consideration by the other, does not estop the latter from setting up that the contract is ultra vires, since all persons are chargeable with knowledge of the powers of a corporation. (Central Transportation Co. v. Pullman's Palace Car Co., 139 U. S. 24, 35, L. Ed. 55; Pittsburgh, C. & St. L. R. Co. v. Keokuk & H. Bridge Co., 131 U. S. 371, 33 L. Ed. 157; 3 Fletcher's Cyc. Corps., 2600.)

Sec. 568. No corporation shall issue stock or bonds except for value. No corporation shall issue stock or bonds except for an equivalent in money paid or labor done, or property actually received and applied for the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time said labor was done or property delivered; and all fictitious increase of stock shall be void. (Act of 1893, Ch. 171, Sec. 31.)

Bonus stock. This section makes invalid bonus or promotion stock, and the holders thereof are liable to creditors for the value of such stock.

Annotations. For annotations under this section, see, Ky. Con., section 193, including the case of Rice v. Thomas, 184 Ky. 168, 211 S. W. 428; see also Johnson v. Belle Point Lumber Co., 196 Ky. 436.

Sec. 569. Quo warranto proceedings. Whenever any corporation has failed, or shall fail, to perform or comply with any requirement or provision of its charter under which it does business in this State, or shall be guilty of an abuse or misuse of its corporate powers, privileges or franchise, or shall become detrimental to the interest and welfare of the Commonwealth or its citizens, it shall be the duty of the Attorney General of the State to institute such proceedings as may be proper and necessary to have forfeited and revoked the charter, powers, franchises and privileges of such corporation.

(Act of 1893, Ch. 171, Sec. 32; see Secs. 1574a, 1987, and see Civil Code, Sec. 481, also Const., Sec. 205.)

NOTE: Because of the importance of this section in its relation to the code and other sections it will be found annotated under a special part of this book devoted to the subject of quo warranto proceedings. See p. —.

Sec. 570. Acceptance of Constitution by corporation. No law shall be passed for the benefit of, or in the interest of, any corporation heretofore created or organized by or under the laws of this State or any other State, nor shall any corporation avail itself of the provisions of this chapter, unless such corporation shall have previously, by a resolution adopted by its board of directors and filed in the office of the Secretary of this State, accepted the provisions of the Constitution of this State; and such resolution, or a certified copy thereof, shall be evidence for and against such corporation. (Act of 1893, Ch. 171, Sec. 33.)

Purpose and history. "Prior to the present constitution, many corporations secured charters by special acts of the legislature in which they were granted valuable and exclusive privileges. The constitution and legislation enacted pursuant thereto, terminated that character of corporate creation (1891), and formulated a plan which in time will operate to make all corporate charters, old and new, uniform in their essential characteristics. To that end inducements were offered for the surrender of all special and exclusive privileges theretofore granted by special acts of the legislature. In order for an old corporation to avail itself of the inducements it was required to formally accept the provisions of the new constitution . . ." (Op., per Nunn, J. in Commonwealth v. Southern Pacific Co., 164 Ky. 824, 176 S. W. 375.)

See, further, K. S. sec. 573, post.

FORM FOR ACCEPTING NEW CONSTITUTION

(K. S. sec. 570)

At a regular meeting of the board of directors of the ——— company, duly held pursuant to notice and adjournment, at the office of said company at ——— County, Ky., on the ——— day of ———, 19—, a quorum being present the following resolution was adopted by a vote of ——— to ———, being a majority of the board in favor of said resolution.

Resolved, that the ——— company, hereby accepts the provisions of the present constitution of the state of Kentucky ordained September 28, 1891.

A true copy from the minutes.

————,
Chairman of the Board.

Attest:
[SEAL]
————, Secretary.

Sec. 571. Designation of agent upon whom process may be executed. All corporations except foreign insurance companies formed under the laws of this or any other State, and carrying on any business in this State, shall at all times have one or more known places of business in this State, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this State, until it shall have filed in the office of the Secretary of State, a statement signed by its president or secretary, giving the location of its office or offices in this State, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the Secretary of State a statement of such change; and the former agent shall remain agent for the purpose of service until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employe of such corporation, who shall transact, carry on or conduct any business in this State, for it, shall be severally guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense. (Statement to be recorded, Sec. 877; and see further, Civil Code, Sec. 51, and K. S. Sec. 3720d, also Sec. 631; Act of 1893, Ch. 171, Sec. 34.)

See Civil Code provisions, sec. 571, annotated in full.

Sec. 572. Removal of causes to Federal court forbidden. If any foreign corporation shall, without the consent of the

adverse party, remove to a Federal court any action pending against it in any court of this State, or institute an action against a citizen of this State in a Federal court of this State, such action on the part of the corporation shall forfeit its right to transact or carry on any business in this State, and such corporation, and any officer, agent or employe thereof, who shall thereafter transact or engage in any business or employment for such corporation in this State shall be severally guilty of a misdemeanor, and upon indictment and conviction in the circuit court of any county in which such corporation, or any officer, agent or employe thereof transacts or engages in any business, be fined for each offense not less than five hundred nor more than one thousand dollars. (Declared unconstitutional; Act of 1893, Ch. 171, Sec. 35.)

Unconstitutional. This section has been held unconstitutional. (Commonwealth v. East Tennessee Coal Co., 97 Ky. 238, 30 S. W. 608; and similarly so K. S. 631, as to the last clause thereof; see further annotations under K. S. 631, Code Provisions; Removal of Causes, etc.

Sec. 573. Repeal of charters in conflict with this chapter. The provisions of all charters and articles of incorporation, whether granted by special act of the General Assembly, or obtained under any general incorporation law, which are inconsistent with the provisions of this chapter concerning similar corporations, to the extent of such conflict and all powers, privileges or immunities of any corporation which could not be obtained under the provisions of this chapter, shall stand repealed on September 28, 1897; and if the officers, managers or agents of such corporations shall, after said date, exercise any powers, privileges or immunities repealed by this section or inconsistent with the provisions of this chapter, relating to similar corporations, or which could not be obtained under this chapter, the officer, manager or agent so offending, and the corporation for which he acts, shall each be guilty of a misdemeanor, and fined for each offense not less than one hundred nor more than one thousand dollars, and upon the conviction of the corporation, the trial jury may, at their

discretion, direct the forfeiture of its charter or articles of incorporation, in which case the court shall so adjudge. After the twenty-eighth day of September, 1897, the provisions of this chapter shall apply to all corporations created or organized under the laws of this State, if said provisions would be applicable to them if organized under this chapter. (Act of 1893, Ch. 171, Sec. 36.)

Construction. This section not only repealed so much of all charters and articles of incorporation, theretofore granted, which are inconsistent with the present corporation law (Chapter 32), the repeal effective September 28, 1897, but provided that the provisions of this chapter shall automatically apply to all corporations created under the laws of this state the same as if organized under this chapter. Among the benefits which this chapter affords as a condition for the surrender of their special privileges is the power to amend their charter and alter their capital stock. (Commonwealth v. Southern Pacific Co., 164 Ky. 824, 176 S. W. 375.)

Construction. This section in effect says that all provisions of charters and articles of incorporation, which are inconsistent with the provisions of this chapter of the Kentucky statutes, stand repealed to the extent of such conflict. (Clinger's Admx. v. C. & O. Ry. Co., 128 Ky. 742, 33 Ky. L. R. 86, 109 S. W. 315; Williams v. Nail, 108 Ky. 21, 55 S. W. 706.)

History. At the time of the enactment of this section, stockholders in corporations theretofore created, were given an option of four years within which to determine whether or not they would continue their corporation, and accept the benefits of, and liabilities imposed by the new statutes, or dissolve. (Senn v. Levy, 111 Ky. 318, 63 S. W. 776.)

Construction of repealing clause. The general repeal of all special privileges, referred to in the statute, related to exclusive grants, tax exemptions, monopolies and similar immunities, and not to those corporate powers and property rights needed and conferred in order to enable the company to perform the duties for which it had been organized. While charter confers privileges, it also creates obligations in favor of the public, and no attempt was made by the general law to repeal the rights which have vested, nor relieve the company of the burdens imposed. (Mr. Justice Lamar in Louisville v. Cumberland Telephone Co., 224 U. S. 659, citing K. S. sec. 573; Covington v. Kentucky, 173 U. S. 231.)

Sec. 574. Amendment of articles, how effected. (See ante, Sec. 559, where this section is inserted for convenience of the subject matter.)

Sec. 575. Definition of word "director." (See ante, Sec. 547, where this section is inserted for convenience of the subject matter.)

Sec. 576. When word "incorporated" must be used by corporation. Every corporation organized under the laws of this State, and every corporation doing business in this State, 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." Immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, except railroad companies, banks, trust companies, insurance companies and building and loan associations, shall appear in letters sufficiently large to be easily read, the word "incorporated." Any 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. (Act of 1893, Ch. 171, Sec. 39.)

Sec. 576a. (1) **Payment of labor.** That every corporation for pecuniary profit engaged in any enterprise or business within the State of Kentucky shall, as often as semi-monthly, pay to every employe engaged in its business all wages or salary earned by such employe to a day not more than eighteen (18) days prior to the date of such payment. And any employe who is absent at the time fixed for payment, or who, for any other reason, is not paid at that time, shall be paid thereafter at any time upon six days' demand, and any employe leaving his or her employment or is discharged therefrom shall be paid in full following his or her dismissal or voluntary leaving his or her employment at any time upon three days' demand. No corporation coming within the meaning of this act, shall, by special contract with its employes or

by any other means, secure exemption from the provisions of this act. And each and every employe of a corporation coming within the meaning of this act, shall have his or her right of action against any such corporation, for the full amount of his or her wages due on each regular pay day, as herein provided in any court of competent jurisdiction in this State. (March 1, 1916, c. 21, p. 157, Sec. 1.)

(2) Any corporation coming within the meaning of this act violating the provisions of Sec. 576a-1 of this act, shall be deemed guilty of a misdemeanor, and fined in a sum not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) for each separate offense, and each and every failure or refusal to pay each employe the amount of wages due him or her at the time, or under the conditions required in Section 576a-1 of this act shall constitute a separate offense. (Id., Sec. 2.)

Construction—criminal prosecution. The statute requires both the corporate name and the word "incorporated" to be painted or printed as therein designated, and if either of them is not so painted or printed the offense is committed. The statute requires the painting or printing of the designated words on the "principal place or *places* of business, thereby contemplating that there might be more than one "place of business" within the state. (Western Oil Refining Co. v. Commonwealth, 180 Ky. 251, 253, 201 S. W. 473; see also, Commonwealth v. American Snuff Co., 30 Ky. L. R. 1373, 101 S. W. 364; Commonwealth v. Nebro Consolidated Coal and Coking Co., 141 Ky. 493, 133 S. W. 221; what is the "place of business," see Index.)

Sec. 1574a. (1) **Political contributions by corporations prohibited—Penalty.** It shall be unlawful for any corporation chartered under the laws of this State, or authorized to do business therein, by virtue of the laws thereof of itself or by or through its agent, attorney or any employe or officer thereof, to subscribe to, give, procure for or furnish any money, privilege, favor or other thing of value to any political or quasi political organization, or party or any officer or member thereof to be used by such political or quasi political party or organization for any purpose or purposes whatever, or after-

wards to reimburse or compensate in any way or manner any person or persons who shall have subscribed, given procured or furnished any such money, privilege favor or thing of value, to be used by such political or quasi political party or organization for any purposes whatever. And any corporation which shall violate any of the provisions of this act shall be guilty of a misdemeanor, and shall upon conviction, be fined not less than five hundred dollars or more than five thousand dollars for each offense, and its charter or authority to do business in this State shall, upon such conviction, be repealed, revoked and held for naught. (Act of 1900, Ch. 12; part of Election Law.)

(2) **Political contributions by officers or agents prohibited.** Any officer, agent, attorney, servant or employe of any corporation chartered under the laws of this State or authorized by the laws thereof to do business therein, or any person whatever acting for or representing any such corporation who shall disburse, distribute, pay out or in any way handle any money, funds or other thing of value that belongs to or has been furnished by any such corporation, or agent, attorney, employe or servant thereof to be used or employed in any way for the purpose of aiding or assisting or advancing the cause of any political or quasi political party or organization or of any candidate for public office in any way whatever, shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than two hundred and fifty dollars nor more than one thousand dollars, and imprisoned in the county jail at hard labor not less than three months nor more than twelve months for each offense. (Ibid.)

(3) **Influencing vote of employe prohibited.** Any corporation chartered under the laws of this State, or authorized to do business therein, which shall, through any officer, attorney, agent, or employe, or otherwise, directly or indirectly, influence or attempt to influence, by bribe, favor, promise, inducement, threat or otherwise, the vote or suffrage of any employe or servant of such corporation against or in favor of any

candidate, platform or principles or issue in any election held under the laws of the Commonwealth, shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than five hundred dollars nor more than five thousand dollars for each offense, and its charter, or authority to do business in this State, shall upon such conviction, be repealed, revoked, annulled and held for naught. (Ibid.)

Sec. 1987. Repeal of charters granted since 1856. All charters and grants of or to corporations, or amendments thereof, enacted or granted since the fourteenth of February, one thousand eight hundred and fifty-six, and all other statutes, shall be subject to repeal at the will of the General Assembly, unless a contrary intent be therein plainly expressed: *Provided,* that whilst privileges and franchises so granted may be repealed, no repeal shall impair other rights previously vested. (Act of 1856, Ch. 148; Legislative Law.)

See Ky. Constitution, sec. 3, ante; Ky. Statutes, sec. 573, ante.

Construction. A provision in a corporate charter that the corporation "shall have perpetual succession," does not plainly express an intent that the legislation shall not have power to amend the charter. (C. & O. R. R. Co. v. Barren Co., 10 Bush. 604.)

Construction. The statute of 1856, being sec. 1987 of the Kentucky Statutes, and section 3 of the constitution, permit at any subsequent time the repeal or amendment of the charter. (Larue v. Redmon, 168 Ky. 491, 182 S. W. 622; citing, Deposit Bank of Owensboro v. Daviess County, 102 Ky. 174, 39 S. W. 1030; City of Newport v. Masonic Temple Association, 103 Ky. 592, 45 S. W. 881, 46 S. W. 697; Citizens' Savings Bank v. Owensboro, 173 U. S. 644; Central University of Kentucky v. Walters' Exrs., 122 Ky. 65, 90 S. W. 1066.)

GENERAL FORMS FOR PURPOSE CLAUSES

ABSTRACT COMPANY

ARTICLE III. Said corporation is formed for the purpose of making and furnishing abstracts or certificates of title to real property and to do a general business of title examiners and searching of records.

ADVERTISING NOVELTY COMPANY

ARTICLE III. Said corporation is formed for the purpose of manufacturing, improving, buying. selling and dealing in, at wholesale or

retail, calendars, signs, and all kinds of advertising novelties, souvenirs, articles and devices, and the doing of all things necessary and incident thereto.

AGENCY COMPANY

ARTICLE III. Said corporation is formed for the purpose of acting as an agency for general insurance, bonding, negotiating, loans and transfers of real estate, and doing all things necessary and incident thereto.

AMUSEMENT COMPANY

ARTICLE III. Said corporation is formed for the purpose of furnishing to the public facilities for holding musical, theatrical, motion picture, and other entertainments, providing social entertainments and other means of amusement and recreation; to acquire, lease or own and maintain such real estate, buildings, and personal property as may be necessary and proper for the carrying out of the objects and purposes aforesaid, and the doing of all things necessary and incident thereto.

ARCHITECTURAL COMPANY

ARTICLE III. Said corporation is created for the purpose of making plans, specifications and drawings, making estimates, superintending work, designing and building all kinds of structures, and of carrying on and conducting a general architectural and construction business.

AUDIT COMPANY

ARTICLE III. Said corporation is created for the purpose of auditing accounts and books, and appraising and valuing the assets of individuals, firms, partnerships or corporations, both public and private, and for the carrying on of a general accounting business as certified public accountants or otherwise, and the doing of all things necessary and incident thereto.

BAKING COMPANY

ARTICLE III. Said corporation is created for the purpose of manufacturing, buying selling and dealing in bread, crackers, cakes, biscuits, candies, confectionery, and kindred products and all materials, including flour and wheat, for use in connection with the same, either wholesale or retail and the doing of all things necessary and incident thereto.

BUILDING COMPANY

ARTICLE III. Said corporation is created for the purpose of constructing, and maintaining buildings to be used for hotels, storerooms, offices, warehouses, factories, and private residences or other structures, garages, barns, stables, and all kinds of houses, edifices, or buildings, whether public or private, and for the constructing of all out-houses, lawns, equipment, or roadways or other conveniences or necessities which may be used in connection therewith; and to acquire by purchase, lease, or otherwise, all such real estate and personal property as may be necessary for such purposes or objects, and the doing of all things necessary and incident thereto.

BUSINESS COLLEGE.

ARTICLE III. Said corporation is formed for the purpose of conducting a general business college, including instruction in bookkeeping, banking, penmanship, office practice, shorthand, and typewriting, and all branches of study pertaining to a thorough business education.

BROKERS

ARTICLE III. The nature of the business and the objects and purposes proposed to be transacted, promoted, and carried on, are to do any and all of the things herein set forth, as fully and to the same extent as natural persons might or could do, in any state, territory, or district of the United States, or foreign country, subject always to the provisions of law, and not in conflict with the statutes thereof, viz:

(1) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or other evidences of indebtedness, created by any other corporation or corporations of this or any other state, territory, nation, or government;

(2) To purchase, acquire, or in any lawful manner, to hold, own, mortgage, pledge, sell, transfer, or in any lawful manner dispose of, and to deal in goods, wares and merchandise, and property of any and every class and description;

(3) To acquire the good will, rights, and property, and to undertake the whole or any part of the assets or liabilities of any person, firm, corporation, association or partnership; to pay for the same in cash, the stock of this corporation, bonds, or otherwise; to hold or in any manner dispose of the whole or any part of the property so purchased;

(4) To enter into, make and perform contracts of every kind, with any person, firm, association or corporation, municipality, body politic, country, territory, state, government, colony, or dependency thereof; and to sell, buy, exchange, pledge, and generally deal in the stock, bonds, debentures, trust receipts, and other securities or evidences of indebtedness to be issued by the same, whether secured by mortgage or otherwise, as well as to secure the same by mortgage, underwriters agreement or otherwise; and generally to act as broker, factor, agent, trustee or principal, in relation to the same.

COAL COMPANY

ARTICLE III. Said corporation is created for the purpose of leasing, buying, owning, holding, and operating coal mines and coal property in the state of Kentucky, and other states, manufacturing coke, and all the products thereof, and for the purpose of buying, selling, and dealing in, whether wholesale or retail, coal, coke, and the by-products thereof, and the corporation is hereby granted the right and power to own and control, by purchase or lease, or otherwise, all property real and personal necessary and incident to the transaction of its business, and to engage in the transportation, export and import, of coal and coke and its by-product.

CONSTRUCTION COMPANY

ARTICLE III. (See Building Company.)

COOPERAGE COMPANY

ARTICLE III. Said corporation is created for the purpose of manufacturing, buying, selling, and dealing in barrels, boxes, and all kinds of cooperage stock and all things incident thereto.

DRUG STORE COMPANY

ARTICLE III. Said corporation is created for the purpose of carrying on a wholesale and retail drug, cigar, and tobacco business, buying and selling druggist's sundries, cigars, and tobacco, and such other goods, wares and merchandise as are usually bought and sold in connection with a general drug business, and also for the purpose of manufacturing, preparing, compounding, and selling, pharmaceutical and chemical preparations.

DRY GOODS AND NOTIONS

ARTICLE III. Said corporation is created for the purpose of buying, selling and dealing in drygoods, notions, furnishing goods and general merchandise in all their varieties at wholesale and retail; and to conduct a general department store; to own and sell such real and personal property as may be necessary in the carrying on of its business, or which could be conveniently used in connection therewith; and to maintain reading rooms, writing rooms, restaurants, dressing rooms, and telephones, for the use and convenience of its patrons.

GENERAL STORE COMPANY

ARTICLE III. Said corporation is created for the purpose of doing a general merchandise business at wholesale and retail and of buying, selling, and dealing in, at wholesale or retail, dry goods, notions, clothing, gentlemen's furnishing goods, hats, caps, boots, shoes, carpets, groceries, queensware, glassware, wool, live stock, poultry, grain, butter, eggs, and country produce, hardware, furniture, drugs, farm implements, seeds, electrical supplies, and goods, wares, and merchandise, of every description.

GREENHOUSE AND NURSERY

ARTICLE III. Said corporation is created for the purpose of growing, raising, buying, selling, and dealing in any and all kinds of trees, shrubs, vines, plants, flowers, seeds, grains, roots, vegetables, bulbs, fruits, field, flower and garden seeds, and for the purpose of acquiring, holding, owning, and selling all real estate and personal property necessary or convenient in carrying out the objects and purposes as aforesaid.

INTERURBAN RAILWAY

ARTICLE III. (See Railroad, Chap. V, this volume.)

IRON

ARTICLE III. Said corporation is formed for the purpose of manufacturing, buying, selling, and dealing in iron and steel and various products and forms thereof.

LUMBER

ARTICLE III. Said corporation is formed for the purpose of doing a general manufacturing and wholesale lumber business; manufacturing wood products of every description; buying, selling, and dealing in lumber, at wholesale or retail, in its own behalf and as agent, factor, or broker; acquiring by lease, purchase or otherwise, and holding and disposing of, such timber lands and other real and personal property, necessary or convenient for the further purpose of acquiring by purchase or otherwise, buying, selling and dealing in standing timber or timber lands, and to buy, cut, haul, drive, and sell timber and logs, and to saw and otherwise work the same, and to sell or buy and manufacture, lumber, bark, wood, pulp, and all by-products connected therewith.

MINING

ARTICLE III. Said corporation is formed for the purpose of mining, manufacturing, and dealing in any and all kind of ores, minerals and metals, and acquiring and selling any and all real estate and personal property in the state of Kentucky and elsewhere, necessary or convenient for the better transaction of the business of the company, and to do all things necessary or incident to the business of mining.

OIL & GAS

ARTICLE III. (See Miscellaneous Corporations, Chap. VI-7.)

NEWSPAPERS

ARTICLE III. (See Miscellaneous Corporations, Chap. VI-4.)

RAILROADS

ARTICLE III. (See Railroad Law, Chap. V.)

ROAD CONSTRUCTION COMPANY

ARTICLE III. The objects for which the corporation is established are as follows:

(1) To construct and repair roads, streets, pavements, highways, docks, piers, wharves, harbors, canals, reservoirs, watercourses, sewers, drains, conduits, viaducts, tunnels, subways, and all other works of public or private use or utility, and to manufacture or deal in all materials, machinery, tools, appliances, supplies, and other articles or things necessary or convenient in accomplishing the objects and business herein mentioned or any part thereof.

(2) To acquire trademarks, trade names, patents, inventions, patent rights, processes, used in connection with or secured under letters patent of the United States, or elsewhere, and to acquire rights and licenses

under such patents, for any of the purposes enumerated in section 1 above.

(3) To manufacture and sell cement, lime, plaster, brick, concrete, artificial stone, rock asphalt, mixed asphalt, and paving materials of all kinds; and to lay and construct sidewalks, pavements, gutters, and floors, with any of said materials.

STOCK YARD COMPANY

ARTICLE III. Said corporation is formed for the purpose of erecting and maintaining pens, buildings and other structures, for the safekeeping of live stock entrusted to its care, on sale or otherwise, and to purchase or lease such real estate as may be necessary for the carrying out of its objects and purposes.

TOBACCO

ARTICLE III. The business to be conducted by said corporation shall be buying and selling tobacco on commission and otherwise and doing a general tobacco warehouse business.

ARTICLE III. To plant, grow, cultivate, and manufacture tobacco. To export, import, and generally deal in leaf and fine cut tobacco, cigars, cheroots and cigarettes. Also to purchase lease or otherwise acquire, to construct, maintain and operate, tobacco factories, wholesale agencies, and depots for the curing, storing, manufacture, and sale of tobacco, cigars, cheroots, cigarettes, and smoker's supplies. Also to buy, sell, import, export, and generally deal in pipes. cigar and cigarette holders, cigar cutting machines, and smoker's supplies of all kinds.

TELEPHONE & TELEGRAPH

ARTICLE III. (See Telegraph & Telephone, Chap. VI-8.)

WAREHOUSE COMPANY

ARTICLE III. Said corporation is formed for the purpose of establishing, maintaining, and conducting warehouses for the storage, receipt, custody, shipment, and forwarding of personal property and chattels of all kinds; issuing warehouse receipts therefor; acquiring, holding, owning, and selling real estate, and personal property, including trucks and vans, necessary or convenient in the carrying out of said purposes and objects and the doing of all things necessary and incident thereto.

CHAPTER IV

PROVISIONS OF THE KENTUCKY STATUTES RELATIVE TO BANKS AND BANKING

1. Incorporated banks.
2. Banks permitted to act as fiduciaries.
3. Trust companies.
4. Trust, banking and title insurance.
5. State banking department.
6. Credit unions act.

BANKS AND BANKING

INCORPORATED BANKS

Sec. 577. Organization of banks. Any number of persons, not less than five, may associate to establish a commercial bank, or a savings bank, or a bank having departments for both classes of business, upon the terms and conditions, and subject to the liabilities prescribed in this article; but the capital stock of any bank shall not be less than fifteen thousand dollars, and in cities having a population of fifty thousand or more not less than one hundred thousand dollars. (Acts of 1893, Ch. 171, Sec. 40.)

Sec. 578. Execution and recording of articles of incorporation. The articles of incorporation shall be signed and acknowledged by the parties thereto before any officer authorized to take acknowledgments to deeds, and recorded in the county clerk's office of the county in which the bank is to be located, and a certified copy thereof shall be filed in the office of the Secretary of State; and said articles, or a certified copy thereof, may be used as evidence in any action for or against such bank. (What articles shall specify, see Sec. 539; Acts of 1893, Ch. 171, Sec. 41.)

Sec. 579. Corporate powers. When the articles are filed and recorded as above provided, it may commence business, and shall thereupon become a body corporate, and to be known by and carry on its business in its corporate name, and as such shall have power to adopt and use a corporate seal; to make contracts; sue and be sued; to appoint, remove and elect officers, define their duties; and require from any of them a bond for the faithful discharge of their duties; to prescribe, by its board of directors, by-laws for the government of the bank not inconsistent with law; to exercise, subject to law, such powers as may be necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt, and purchasing bonds, receiving deposits, and allowing interest thereon, buying and selling exchange, coin and bullion, and lending money on personal or real security, as provided in this article. (1) Any bank or trust company may accept for payment at a future date drafts or bills of exchange drawn upon it by its customers and issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, not exceeding one year, and may also accept drafts or bills of exchange drawn upon it, having not more than six months sight to run, growing out of transactions involving the importation and exportation of goods, and any bank or trust company may discount acceptances which are based upon the importation or exportation of goods and which have a maturity at the time of discount of not more than three months and are indorsed by at least one other bank or trust company, but no bank or trust company shall accept such drafts or bills of exchange to an amount equal at any time in the aggregate to more than one half of its paid up and unimpaired capital stock and surplus, except by authority of the banking commissioner under such general regulations as said commissioner may prescribe, and in no event to an amount exceeding that capital stock and surplus of such bank or trust company; and such regulations shall apply to all banks or trust companies alike

regardless of the amount of the capital stock and surplus. (2) In addition to the powers heretofore conferred upon and now possessed by banks, trust companies and combined banks and trust companies doing business under the laws of this State, they are hereby authorized and empowered subject to existing statutory or charter limitations to pledge such portion of their assets as may be required by law as collateral security or government deposits made with them, or any of them, by or under the authority of the United States. (Act of 1893, Ch. 171, Sec. 42, as amended.)

NOTE: 1. Amendment by Ch. 31, Acts of 1918.
2. Amendment by Ch. 34, Acts of 1918.
See K. S. sec. 165a, Department of Banking, Commissioner, etc., post.

Branch banks. It is not within the power of state banks to establish branch banks. It may have as many duly appointed agents as its needs require, and these agents may receive and forward money to the bank and transact other business, but banks shall have only one place of business at which to carry on the business of banking and discounting and negotiating notes, drafts, bills of exchange, etc. (Bruner v. Citizens Bank of Shelbyville, 134 Ky. 283, 120 S. W. 345.)

State banks becoming national banks—branches. It shall be unlawful for a state bank having branches, to retain such branches upon becoming a national banking association. (1918 U. S. Comp. Stat. sec. 9695, R. S. sec. 5155.)

Organization and powers. Banks can be lawfully organized only upon terms and conditions prescribed by the banking laws and subject to the limitations therein. The enumeration of powers in such laws excludes all other methods of banking. (Commercial Banking & Trust Company v. Citizens Trust & Guaranty Co. of West Virginia, 153 Ky. 566, 567, 156 S. W. 160.)

Implied powers—deposits—public policy. A bank has no implied power to secure by pledge of its assets, the deposits of one of its depositors to the exclusion and detriment of the others. Public policy will not tolerate such practice which, in the event of financial trouble, would enable a bank to protect the favored few at the expense of the equally deserving many. (Commercial Banking & T. Co. v. Citizens Trust & G. Co., supra.)

Implied powers. To enable a bank to exercise a power not expressly given by its charter or statute, it should be clearly established that such power is necessary to enable it properly to enjoy, use, and carry out its express powers. (Commercial Banking & T. Co. v. Citizens Trust & G. Co., supra.)

Securities—pledge—ultra vires acts. Under a statute conferring on banks "such powers as may be necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidence of debt," the act of a bank, in pledging its liquid assets to secure the deposits of a county treasurer, was ultra vires and void. (Commercial Banking & T. Co. v. Citizens Trust & G. Co., supra.)

Venue of action against bank—Code sec. 71, ante.

Sec. 580. Fifty per cent. of capital stock to be paid in. At least fifty per cent. of the capital stock shall be paid in money, and be in the custody of the directors, before it shall be authorized to commence business, and the remainder of the capital stock shall be paid in money within one year after the bank is authorized to commence business, at such times and in such amounts as the directors may require; and when any stockholder fails to pay any instalment on the stock when requested by the directors, they may sell a sufficiency 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 reside in the county, or, if not, by letter mailed to his last known address, of the time and place where the stock will be sold; or they may collect the amount due by action. If no bidder can be found to pay the amount due on the stock, and it can not be collected, the amount previously paid in by the delinquent on the stock shall be forfeited to the bank, by order of the board of directors, and such stock sold by it within twelve months thereafter; and if not so sold, it shall be canceled and deducted from the capital stock of the bank; if sold before cancellation, any surplus, after the payment of the amount due, and interest and costs, shall be paid to the original stockholder or his assigns. If such cancellation shall reduce the amount of the capital stock below the minimum required by law, the capital shall, within thirty days after cancellation, be increased to the required amount by additional subscriptions, in default of which the Secretary of State[1] shall, with the advice and consent of the Attorney General, take steps to wind up the business of the

[1] Duties of Secretary of State now vested in Banking Commissioner.

bank. (Act of 1893, Ch. 171, Sec. 43; see also K. S. Sec. 586, post.)

Capital stock—trust fund doctrine. The capital stock of a bank is a trust fund for the benefit of depositors and creditors and must be preserved unimpaired. (Corbin Banking Co. v. Mitchell, 141 Ky. 172, 132 S. W. 426.)

Sec. 581. Limitation as to purchase of stock by corporation. No bank shall take as security for any loan or discount a lien upon any part of its capital stock, and the same surety, both in kind and amount, subject to the provisions of Section 583, shall be required from persons, stockholders and those not stockholders; nor shall any bank be the holder or purchaser of any part of its capital stock, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased shall in no case be held by the bank for a longer time than one year; nor shall any person, directly or indirectly, hold or own more than one-half of the capital stock of a bank exclusive of stock held as collateral. (Act of 1893, Ch. 171, Sec. 44.)

Capital stock—by-laws affecting—when valid. Where a bank adopted a by-law to the effect that no transfer of stock should be made while the holder was indebted to the bank, to the prejudice of the lien held by the bank to secure the debt, held that such a by-law is inconsistent with this section which provides that no bank shall take as security for any loan or discount, a lien upon any part of its capital stock, and is therefore invalid. This section is taken from the National Bank Act (Act of Congress, June 3, 1864, 13 U. S. Stat-at Large), and the Supreme Court in the case of Bank v. Lanier, 11 Wall. 369, held that loans by national banks to their stockholders do not give a lien to the bank on the stock of such stockholders. See also case of Buffalo German Ins. Co. v. Third National Bank, 162 N. Y. 163, 48 L. R. A. 107. (Corydon Deposit Bank v. McClure, 141 Ky. 481, 133 S. W. 201.)

Lien given by charter. A bank given a lien by charter granted by the legislature has a power different from that given by a by-law since the bank can pass no by-law inconsistent with the statute. Case of Bank of Kentucky v. Bonnie Bros., 102 Ky. 343, 43 S. W. 407; 19 Ky. L. R. 1372 distinguished. (Corydon Deposit Bank v. McClure, supra.)

Where violation of statute can only be raised by the state. Where a bank in violation of this section took its own capital stock as security for a loan and the contract has been executed and the stock disposed

of, the prohibition against the validity of the transaction can only be urged by the state, and both parties being equally the subjects of legal censure, they will be left by the courts where they have placed themselves. Citing, U. S. Rev. Stat. 5201; First Nat. Bank of Xenia v. Stewart, 107 U. S. 676. (Elsey v. People's Bank, 166 Ky. 386, 395, 179 S. W. 392.)

Sec. 582. Investment of moneys—Limitation as to real estate. No bank shall employ its moneys, directly or indirectly, in any enterprise or business, except as provided in Section 579; but it may hold such personal property as has been transferred to it as collateral for the payment of any debt, and may acquire title to and hold such real estate as may be necessary for the transaction of its legitimate business, and for a period not longer than five years such other real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. (But see Sec. 612a; rates of exchange, Secs. 2222-3; Act of 1893, Ch. 171, Sec. 45.)

Combined banking and trust business. Where the business is that of a combined bank and trust company section 612a K. S. provides that one-half of its capital stock shall be securely invested for the trust business of the corporation, and shall at all times be kept separate and distinct from its other assets, and shall be primarily liable for its fiduciary obligations. See also Com. v. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175.)

Sec. 2218. Legal interest rate. Legal interest shall be at rate of six dollars upon one hundred dollars for one year, and at the same rate for a greater or less sum, and for a longer or shorter time: Provided however, that any regular banking institution, State or National, may charge a minimum sum of one dollar for any loan negotiated at such bank in this Commonwealth. (Act of 1892, Ch. 108, as amended by Act of 1920, Ch. 165.)

Sec. 2222. Rate of exchange. Once in each month, and oftener, if thought proper, the rates of exchange at which all bills shall be purchased shall be fixed by all incorporated banks

and institutions authorized to deal in such paper, and the same entered upon the proceedings of the board, designating the difference, if any be made, on account of the time the bill has to run, a copy whereof shall be posted in some conspicuous place in the public room of the bank. If the rates of exchange be fixed by a branch bank, the same shall not be entered on its records or acted upon by it until corrected, if needful, and approved by the principal bank. Any alteration made in the rates of exchange shall, before acted upon, be noted on the copy posted in the public room. All bank officers shall, in all respects, conform to the rates of exchange so fixed. (Act of 1892, Ch. 108, Sec. 5.)

Sec. 2223. Each banking institution shall transmit monthly to the Governor copies of its rates of exchange for his information and for the information of the General Assembly. (Act of 1892, Ch. 108, Sec. 6.)

Sec. 583. Debt limit. No bank shall permit any of its stockholders, or any person, company, or firm, including in the liability of the company or firm the liability of the individual members thereof, directly or indirectly, to become indebted to it in a sum exceeding twenty per cent. of its capital stock actually paid in, and its actual amount of surplus, unless such borrower pledge with it good collateral security, or execute to it a mortgage upon real or personal estate, which at the time is of more than the cash value of such loan or indebtedness above all other incumbrances; and if the borrower is a director or officer of such bank he shall not be permitted to become indebted to it in excess of ten per cent. of its paid up capital stock, without securing the excess by the mortgage or pledge of real or personal property, double in value the amount of such excess; and in no event shall the indebtedness of any person, company or firm, including in the liability of the company or firm, the liability of the individual members thereof, exceed thirty per cent. of its paid up capital and actual sur-

plus; provided, that the discount of bills of exchange drawn against actually existing value and the purchase or discounting of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness of any person, firm or corporation, selling or negotiating said paper to the bank. (Acts of 1893, Ch. 171, Sec. 46; Acts of 1894, Ch. 30, p. 44, as amended by Acts of 1918, Ch. 47, p. 143.)

Debt limit. Directors of banks who make loans in excess of the statutory limit fixed by this section are personally liable for any part of the excess that is lost to the bank. (Cunningham v. Shellman, 164 Ky. 584, 175 S. W. 1045.)

Directors—liability. The directors of a bank who knowingly allow indebtedness to be created in excess of the statutory limit are liable to a stockholder for any damages he may sustain thereby and he may sue in his own name to recover such damages. (Wickliffe v. Turner, 154 Ky. 571, 157 S. W. 1125.)

Construction. When different clauses of this section have been violated, that clause will be enforced which is most favorable to the bank, its depositors and stockholders. This section is violated by purchase of paper beyond the debt limits no less than where it loans money in excess of the debt limit. (Wickliffe v. Turner, supra; but see, Amendment of 1918, permitting the purchase of certain commercial paper, supra.)

Sec. 584. Reserves—Amount of, exception as to—Federal Reserve Banks. Each bank and trust company, organized under the laws of this Commonwealth and authorized by law to receive deposits shall keep on hand, at all times, at least seven per cent. of its total demand deposits and three per cent. of its total time and savings deposits; and in cities which are (1) reserve or central reserve cities, under the act of Congress of December 23, 1913, known as the Federal Reserve Act, at least ten per cent. in reserve cities and thirteen per cent. in central reserve cities, of its total demand deposits and three per cent. of its total time and savings deposits; one third of which reserve shall be in money and the remainder may be in balances due from other banks and subject to call.

Any bank or trust company incorporated under the laws of this Commonwealth which shall become a member of a Federal Reserve Bank shall be subject to all the provisions of the Federal Reserve Act and its amendments and to regulations of the Federal Reserve Board applicable to such bank or trust company, and shall have all the powers and assume all the liabilities conferred and imposed by said act in regard to State member banks, and any such bank or trust company shall comply with the reserve requirements of the Federal Reserve Act and its amendments and the compliance of such bank or trust company therewith shall be in lieu of, and shall relieve such bank or trust company from compliance with the provisions of the laws of this Commonwealth relating to the maintenance of reserves.

Demand deposits within the meaning of this section shall comprise all deposits payable within thirty days and time deposits shall comprise all deposits payable after thirty days and all savings accounts and certificates of deposit which are subject to not less than thirty days notice before payment. Nothing in this section shall be construed as authorizing to receive deposits or do a banking business in any institution not authorized to do so by other provisions of law. (Act of 1893, Ch. 171, Sec. 47; Act of March 1906, Ch. 155; Act of 1914, Ch. 16, as amended by Act of 1918, Ch. 34, and Act of 1922, Ch. 127.)

FEDERAL RESERVE SYSTEM

1. Louisville is a reserve city, having a branch of the Federal Reserve Bank of St. Louis, and the only reserve city in the state of Kentucky. There are four *central* reserve cities having Federal Reserve Banks, eight other reserve cities, having Federal Reserve Banks, and twenty reserve cities, having branches of the Federal Reserve bank of the District within which they are located, there being twelve Federal Reserve districts, each of which is managed by a governor. The twelve governors together with the Secretary of the Treasury comprise the Federal Reserve Board.

FEDERAL RESERVE ACT

1918 U. S. Comp. Stat. 9785, 38 U. S. Stat. 251, 682, Act of Congress Dec. 23, 1913, ch. 6.

RESERVES PRESCRIBED BY FEDERAL RESERVE ACT

Subscribing members (1) *not* in reserve or central reserve cities, shall hold with the Federal Reserve bank of its district an actual net balance of not less than 7 per cent of demand deposits and 3 per cent of time deposits, (2) member banks *in a reserve city*, 10 per cent of demand deposits and 3 per cent of time deposits, (3) member banks in a central reserve city 13 per cent of demand deposits and 3 per cent of time deposits. (1918 U. S. Comp. Stat., sec. 1901-1, 2.)

Federal Reserve Bank examinations. (See State Banking Department, K. S. sec. 165a, 8; Act of 1918, Ch. 48.)

Sec. 585. Deficiency of reserve fund—Liabilities. Whenever the reserve of any bank shall fall below the amount required, such bank shall not in any way increase its liabilities by making any new loans or discounts otherwise than by purchasing or discounting bills of exchange payable at sight or on demand; and the Secretary of State may notify any bank whose reserve is below the amount required to make good such reserve, and in case the bank shall fail for thirty days thereafter to make good its reserve, the Secretary of State may, with the consent of the Attorney General, institute proceedings for the appointment of a receiver to wind up the business of the bank. (Act of 1893, Ch. 171, Sec. 48.)

Sec. 586. Impairment of capital stock. Should the capital stock of any bank organized under this article become impaired, the Secretary of State shall give notice to the president to have the impairment made good by assessment of the stockholders, or by a reduction of the capital stock to an amount not less than that required to organize; and if such bank shall fail for thirty days after such notice to make good the impairment, the Secretary of State may, with the advice and consent of the Attorney General, institute such proceedings as may be necessary to wind up the affairs of the bank. (When receiver may be appointed, Sec. 616; Act of 1893, Ch. 171, Sec. 49.)

Duty of Secretary of State. The Secretary of State may upon becoming satisfied that any bank has permitted its capital to become impaired and to remain impaired, apply for the appointment of a receiver, with the

approval of the Attorney General. (See K. S. sec. 616, also Quo Warranto proceedings in relation to corporations generally.[1]

Impairment of capital—notice. When it appears that a bank has refused to pay its depositors, and has shown no reason why its overdrafts have not been paid, and has no reserve cash on hand, and no effort made to make good its capital, which has become impaired, the court did not err in appointing a receiver. Thirty days notice must be given before appointing a receiver. This section should be read together with K. S. sec. 616. (Imperial Bank of Olive Hill v. Commonwealth, 140 Ky. 210, 130 S. W. 1074.)

Stockholders—liability to assessment—impairment of capital. A stockholder of a bank takes and holds his stock with the understanding that the capital must not be permitted to become impaired, and when it is impaired the Secretary of State may under this section require the directors to levy an assessment on the stockholders to restore the stock, and the statute is a part of the contract between the bank and its stockholders, and any person to whom stock is sold and transferred, by a stockholder, takes its subject to the statutory burdens. (Corbin Banking Co. v. Mitchell, 141 Ky. 172, 132 S. W. 426.)

Rights of pledgee. A pledgee of bank stock, not being legally bound to pay an assessment levied to make good the impairment of the capital of the bank, may surrender the stock and thus relieve himself of the liability. (Corbin Banking Co. v. Mitchell, supra.)

Amount of assessment. The Secretary of State may order an assessment in any amount deemed necessary, not in excess of the par value of the stock, and the court will not interfere with his determination unless it is clearly shown that he has abused the discretion vested in him. (Corbin Banking Co. v. Mitchell, supra.)

Sec. 587. Minimum reduction of capital stock—Increase. No reduction in the capital stock shall be made to a less amount than is required for organization, nor be valid until such reduction has been approved by the Secretary of State upon a finding by him that the interest of creditors of the bank will not be prejudiced thereby. A statement of any increase or reduction of the capital stock shall be signed and acknowledged by the president and a majority of the directors of the bank, and filed and recorded in the same manner as articles of incorporation. (See as to increase or reduction of stock, Sec. 553; Act of 1893, Ch. 171, Sec. 50.)

Sec. 588. Application for national bank charter. Any State bank desiring to reorganize under the laws of the United

[1] Duties of Secretary of State in relation to banks are now vested in Banking Commissioner.

States as a national bank may, after its dissolution, and as soon as it obtains authority from the comptroller of the currency to commence business, retain and hold any of the assets, real or personal, which it acquired during its existence under this article, subject however, to all liabilities existing against the bank at the time of its reorganization. (Act of 1893, Ch. 171, Sec. 51.)

Organization of state banks as national banking associations. See National Bank Act, 1918 U. S. Comp. Stat. 9694, R. S. 5154, as amended by Act of Congress, 1913, ch. 6, sec. 8; 38 Stat. 258.

Federal reserve system—state banks as members of. See Federal Reserve Act, 1918 U. S. Comp. Stat. 9792-1 to 11; 38 Stat. 259, amended by Act of Congress 1917, ch. 32, sec. 3; 40 Stat. 232.

Sec. 589. Application of national bank for State bank charter. Whenever any national bank is authorized to dissolve, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two-thirds of its capital stock, to execute articles of incorporation as provided herein, which articles shall also set forth the authority derived from the stockholders of such dissolved bank, and upon filing the same in the manner provided when a bank is organized, the same shall become a bank under the laws of this State; and thereupon all assets, real and personal, of such bank shall be vested in and become the property of such State bank, subject to all liabilities existing against the bank at the time of its reorganization (Act of 1893, Ch. 171, Sec. 52.)

Sec. 590. Savings banks to keep separate accounts—Duty of directors. Any bank combining the business of a commercial and savings bank shall keep separate books for each kind of business and it shall be the duty of directors of savings banks, or banks having a savings department, to have posted in a conspicuous place in the business office of the bank the rate of interest allowed depositors, and such other regulations as may be prescribed by the directors. (See rates of exchange, K. S.

Secs. 2222-3, ante p. 146, following Sec. 582; Act of 1893, Ch. 171, Sec. 53.)

Sec. 590a. Banking hours. That the board of directors of each of the banks and trust companies doing business in this State shall have full power and authority to fix the hours of opening and closing said banks and trust companies, and may provide that on Saturday of each week such hour of closing be as early as twelve (12) o'clock noon. (Act of 1906.)

Sec. 591. Deposits by persons under disabilities. When any deposit is made by a married woman or minor, in her or his name, the bank may pay to her or him the amount deposited. (Act of 1893, Ch. 171, Sec. 54.)

Common law. By this section banks are relieved from the common law disabilities of married women and minors, as affecting deposits and withdrawals. (Hall v. New Farmers Bank's Trustee, 98 Ky. 44, 17 Ky. L. R. 702, 32 S. W. 400.)

Joint deposits generally. (Gish Banking Co. v. Leachman's Admr. 163 Ky. 721.)

Sec. 592. Unclaimed deposits to be published in newspaper. Every bank organized under this article, or doing business under any law of this State, shall annually, in January, publish in at least two issues of a newspaper published in the county in which the bank is located, a statement, under the oath of its cashier of all deposits made with it, and of all dividends and interest declared and payable by it which at the date of such statement, shall have remained unclaimed by any person authorized to receive the same for five years, giving the time when, and the name of the person by whom the deposit was made, and the name of the person in whose favor the dividend or interest was declared, and when and from what sources derived. (Act of 1893, Ch. 171, Sec. 55.)

Sec. 593. Fiscal report of bank—Publication of. Every bank shall make reports of its condition to the Secretary of

State[1] once in every three months each year, and oftener if required, and at such times, and according to such forms, as he may prescribe; and shall cause each alternate report to be published, when made, in a newspaper, if any be published in the county in which the bank is located, and which has the largest *bona fide* circulation in the county. The reports shall be signed and sworn to by the president, vice-president or cashier, and signed by at least three of the directors. (Fee for to be paid Secretary,[1] Sec. 877; Act. of 1893, Ch. 171, Sec. 56.)

Officers and directors—liability for filing false report. See K. S. sec. 549, ante, annotated at p—; also Trimble v. Ward, 97 Ky. 748; Foster v. Gibson, 18 Ky. L. R. 716, 38 S. W. 144.)

Deceit, action for, by depositor—pleading. A petition in an action for deceit, the bank having made an assignment for the benefit of creditors, should aver that the published statements were false and that the directors knew they were false, in the absence of which a demurrer should be sustained. (Pieratt v. Young, 20 Ky. L. R. 1815, 49 S. W. 964.)

Banks and trust companies. This section applies to both banks and trust companies. (Anderson v. Commonwealth, 117 S. W. [Ky.] 364.)

Sec. 594. Penalty for violation of preceding section. Any bank failing to make to the Secretary of State[1] any of the reports required within five days after the same is due or demanded, or failing to have the same published as required, shall, for each failure, pay a penalty of two hundred dollars, to be sued for and collected by the Secretary of State, in the name of the Commonwealth, and accounted for by him. (Act of 1893, Ch. 171, Sec. 57.)

Sec. 595. Liability of stockholders in banks. The stockholders of each bank organized under this article shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such bank to the extent of the amount of their stock at par value in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estate in their hands shall be liable in the same manner

1 Reports formerly sent to Secretary of State now required to be sent to the Banking Commissioner.

and to the same extent as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer, provided the action to enforce such liability shall be commenced within two years from the time of the transfer; and the directors of each bank shall, in January of each year, file with the Secretary of State a correct list of the stockholders and officers of such bank. (Act of 1893, Ch. 171, Sec. 58.)

Double liability. See annotations under Ky. Con. sec. 193; also K. S. secs. 547, 595, 613.

FORM FOR ARTICLES OF INCORPORATION

KNOW ALL MEN BY THESE PRESENTS: That the undersigned have associated themselves together and have become an incorporated company in accordance with the laws of the state of Kentucky, with the following provisions to-wit:

ARTICLE I. The name of the corporation shall be the ——— bank.

ARTICLE II. The principal office and place of business shall be at ———, county of ———, and state of Kentucky.

ARTICLE III. Said corporation is formed for the purpose of conducting a commercial bank, savings bank, safe deposit company, and trust company; exercising all the powers which are incident to corporations engaged in such business, and the doing of all things necessary and incident thereto.

(The above form combines all the five classes of banking business authorized by statute. Omit therefrom any such class as is not desired. The powers of the same may be set out more fully in third article.)

ARTICLE IV. The amount of capital stock authorized is $———, divided into ——— shares of the par value of $——— each; the same to be paid at such times and upon such terms and conditions as the board of directors may, from time to time, determine.

ARTICLE V. The stockholders, their addresses and residence and the number of shares subscribed by each are as follows:

(Names)	(Residences)	No. Shares
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ARTICLE VI. The said corporation shall begin business upon the filing of these articles of incorporation with the Secretary of State and as soon as there has been received from the Secretary of State a certificate authorizing it to commence business and shall terminate in ——— years

from said date, unless sooner dissolved by a two-thirds vote of the capital stock issued.

ARTICLE VII. The affairs of said corporation shall be managed by a board of directors, a president, two vice-presidents, a secretary and a cashier and such other officers or agents as the board of directors may appoint. Any of the officers except the president and the first and second vice-presidents may be the same person. The directors shall consist of not less than seven nor more than eleven stockholders, each of whom shall own in his own right, not less than ten shares of the capital stock of the said corporation and the following stockholders are to act as directors until the next annual election, held on the ——— day of ———, 19—. In case of the increase of the directors between annual elections, the newly created offices shall be deemed to be vacancies until the next election, and the same shall be filled by the board of directors. Directors shall be elected after the first meeting of the stockholders annually at the office of the company in ———, Ky. on the (first Monday) in ——— of each year, beginning 19—, and at their first meeting after being elected and qualified, shall elect from their number a president, and two vice-presidents, each of whom shall hold office for a term of one year, or until his successor is elected and qualified; and the directors shall appoint a cashier and a secretary, who need not be stockholders, and such other officers or agents as the necessities of the business may require. All vacancies occurring between elections may be filled by the board of directors.

ARTICLE VIII. The highest amount of indebtedness which the corporation may, at any time incur in excess of its liability on account of trust funds, fiduciary obligations and to depositors, shall not exceed its paid up capital stock.

In testimony whereof witness our hands this ——— day of ———, 19—.

———,
———,
———,
———,
———.

STATE OF KENTUCKY, }
COUNTY OF ———. } ss.

On the ——— day of ———, 19—, before me personally came ——— (names of five incorporators), and produced to me in my office the within articles of incorporation, and duly acknowledged the same to be their act and deed.

Witness my hand this ——— day of ———, 19—.

———,
Notary public in and for the county of ———, state of Kentucky.
My commission expires the ——— day of ———, 19—.

FORMS FOR PURPOSE CLAUSES

FORM 1. (STOCK YARDS BANK, LOUISVILLE.)

ARTICLE III. The nature of the business to be transacted by the corporation is and the objects and purposes of the corporation are to conduct and carry on a general banking business with all the powers and authority conferred upon incorporated banks and with all the powers and authority necessary to effectuate the objects and purposes of the corporation.

FORM 2. (KENTUCKY, TITLE, SAVINGS BANK & TRUST CO.)

ARTICLE III. The nature of the business or objects or purposes proposed to be transacted, promoted, or carried on are as follows: to-wit,

(1) To conduct a bank having departments for savings bank business and for a commercial bank business.

(2) To conduct a trust company business, with power to act as executor or administrator, as guardian of infants, or committee of lunatics, as receiver, assignee or other trustee, or agent whether appointed by deed, or by last will and testament, or by any court within or without this Commonwealth, or in any other manner, not inconsistent with law; to act as fiscal, business or managing agent, factor or broker for persons, firms and corporations, to receive and hold in trust, estates, real, personal and mixed including the notes, bonds, obligations, and accounts of estates and individuals, or companies, or corporations, private or public, and in its fiduciary capacity to purchase, collect, adjust, settle, sell and dispose of the same in this state or elsewhere, and to act as agent or attorney in the leasing or conveying or managing of real and personal estates, receiving and collecting rents and other moneys, in issuing, registering and countersigning of bonds or other obligations of any corporation, association, municipality, state or public authority and to receive and manage any sinking fund therefor, and to accept and execute all such trusts and agencies of every description not inconsistent with the laws of this state, as may be committed to it by any person or persons or by any corporation, or by any court of record in this state, or any other state, or by any department of the government.

(3) To carry on a general banking or trust company business, and in connection therewith to discount, bills, notes, and other evidences of debt, to receive and pay out deposits with or without interest, to receive on special credit money or bullion, or foreign coin, stocks, bonds or other securities, to buy and sell foreign and domestic exchange, gold and silver bullion, foreign coins, bonds, stocks, bills of exchange, notes or other negotiable papers, to lend money on percentage, security of bonds, pledges of bonds or other negotiable securities; to sell or buy on commission, subscribed for, acquire, hold, sell, exchange and generally deal in shares, stocks, bonds, obligations or securities of any public or private corporation, government or municipality, and to guarantee the payment of dividends or interest on any securities aforesaid; to take and receive security by mortgage or otherwise, upon property, real and personal, to invest

money for individuals or corporations, and to act as trustee for any purpose; to do any business and to exercise any and all powers incident to the business of trust companies doing a banking business, and to conduct the business of a safety vault company.

FORM FOR NOTICE UNDER K. S. SEC. 587

To ———

———

Dear Sir:

As a stockholder in the ——— Bank of ———, Ky., you are hereby notified that there will be a meeting of the stockholders of the said bank, to be held in the offices of the bank, for the purpose of considering a proposal to increase (or decrease) its present capital stock from $——— to $———, on the ——— day of ———, 19—, at — m., o'clock.

Dated ——— Ky., ———, 19—.

———, President.

FORM OF APPLICATION FOR CONVERSION[1] OF STATE BANK INTO NATIONAL

To the Hon.———, Comptroller of the Currency, Washington, D. C.

Sir: Notice is hereby given that we, the undersigned, being a majority of the board of directors of the ——— bank, having a paid in and unimpaired capital of $———, intend to convert the said bank into a national banking association, in accordance with the provisions of the National Bank Act, U. S. R. S. sec. 5154; 1918 U. S. Comp. Stat. 9694, under the title "The ——— National Bank" of (name of city) ———, to be located at ———, County of ———, and state of Kentucky with a capital of $———. Population ———.

We request that the title be reserved for a period of sixty days and the necessary conversion papers and instructions sent to ———, at ———, Ky., hereby agreeing that any assets of the state bank which cannot be legally held by a national bank will be disposed of before certificate authorizing conversion and the commencement of business as a national banking association is issued.

Names of Directors	Residences
———	———
Chairman	
———	———
———	———
———	———

[1] No change in the amount of the capital stock, par value of shares, or number of directors, may be made at the time of the conversion, unless effected under the state law prior to the execution of conversion papers other than the application for authority to convert. (See Magee on Banks and Banking, pp. 897, 901.)

FORM FOR STATEMENT UNDER K. S. Sec. 592

————BANK OF ————, KENTUCKY

Statement of unclaimed deposits, dividends and interest.

The undersigned, cashier of the ——— bank, being duly sworn, deposes and says that the list below contains a statement of all deposits made with said bank, and of all dividends and interest declared and payable by it, which at the date of this statement shall have remained unclaimed by any person authorized to receive the same for five years, with a statement of the time when, and the name of the person by whom the deposit was made and the name of the person in whose favor the dividend or interest was declared, and when and from what source derived.

[*Here set out list with information required by the statute.*]

Witness my hand this ——— day of ———, 19—.

————, Cashier.

Sworn to before me this ——— day of ———, 19—.

———, Notary Public, ——— County, Ky.

My commission expires on the ——— day of ———, 19—.

FORM FOR STATEMENT UNDER K. S. Sec. 595

To the Hon. ————, Secretary of State, Frankfort, Ky.

Dear Sir: Pursuant to section 595 of the Kentucky Statutes we herewith transmit to you a list of the stockholders and officers of the ——— bank located at ———, Ky.

[*Make list here.*]

We certify that this is a correct and complete list of all the stockholders and officers of said bank as of this date, the ——— day of January, 19—.

————, Chairman.

————

————

————

————

————

Directors.

Sec. 596. Dividends. The board of directors of any bank or trust company organized under the laws of this State, may declare a dividend of so much of the net profits of the bank or trust company, after deducting therefrom all expenses, losses, bad or suspended debts, interest and taxes *accrued* or due from the bank, as they may deem expedient. Provided, no bank or trust company shall pay a dividend to the stock-

holders thereof until such bank or trust company has a surplus fund equal to ten per cent. of its capital stock, and before any dividend is declared, not less than ten per cent. of the net profits of the bank for the period covered by the dividend shall be carried to its surplus fund until such surplus fund amounts to twenty per cent. of its capital stock. All debts due to a bank or trust company on which interest is due and unpaid for six months, unless the same be well secured or in the *process* of collection, shall be construed bad or suspended debts, within the meaning of this section. (Act of 1893, Ch. 171, Sec. 59, as amended by Act of 1916, Ch. 74; see K. S. Sec. 548, with annotations.)

Duty and liability of directors—dividends. Directors of banks are under a duty to exercise ordinary care in the management and control of the affairs of the bank, and if they fail to exercise this degree of care and declare and pay dividends when the bank is insolvent, all the directors who receive the dividends so declared and paid are liable under K. S. ss. 548 and 596 for all the debts of the bank. (Cunningham v. Shellman, 164 Ky. 584, 175 S. W. 1045.)

Dividends—when unlawful—when may be reclaimed. Dividends declared by the directors and received by the stockholders may be reclaimed by the directors, if illegally declared under a misapprehension of the right to declare them; and if there be an assignment by the corporation to a trustee such right to reclaim dividends improperly declared and paid, passes to the assignee, if the terms of the assignment are sufficiently comprehensive to embrace them. (Lexington Life etc., Co. v. Page & Richardson, 56 Ky. [17 B. M.] 412); and the fact that the stockholders authorized and directed the board of directors to make the distribution, does not change the rule. (Grant, Assignee v. Ross, 100 Ky. 44, 18 Ky. L. R. 597, 37 S. W. 236.)

Directors—powers to declare dividends. It is alone the business of the board of directors of a corporation to declare dividends and control the distribution of profits. (Grant, Assignee v. Ross, supra.)

NOTE: It has been held that where there is a meeting of all the stockholders, including the members of the board, a dividend declared at such a meeting is valid and duly authorized. (14 C. J. 807, Spencer v. Lowe, 198 Fed. 961.)

Dividends—director's liabilities. If the directors of a bank declare a dividend when the bank is insolvent they are personally liable. (Brannin v. Loving, 82 Ky. 370 at 376, 6 Ky. L. R. 328.)

Stockholder's agreement invalid. Where a corporation received a bonus from a town for the location of its plant, an understanding among the

stockholders that the value of the bonus was to be declared as earned dividends on the then existing stock, so that no future stockholders should enjoy the benefits of its acceptance, is not binding on the corporation, the dividend never being, in fact, declared by the board of directors. (American Wire Nail Co. v. Gedge, 96 Ky. 513, 16 Ky. L. R. 663, 29 S. W. 353.)

Discretion of directors. Whether or not a dividend shall be declared is a matter for the sound discretion of the board of directors and in the exercise of their discretion they will not be controlled nor interfered with by the courts unless they act fraudulently, oppressively or unreasonably. (14 C. J. 808, sec. 1229; Smith v. Southern Foundry Co., 166 Ky. 208, 179 S. W. 205; Guthrie v. Akers, 157 Ky. 649, 163 S. W. 1117; City of Franklin v. Caldwell, 123 Ky. 528, 96 S. W. 607.)

FORM FOR DIVIDEND NOTICE, K. S. Sec. 596

Dividend Notice

————, 19—.

The board of directors of the ——— bank has declared a semi-annual dividend of ——— per cent out of the earnings of the bank for the past six months, payable to the stockholders on and after ———, 19—. Checks for dividend will be mailed as per order of the stockholder.

———— Bank.

per ————, Cashier.

Sec. 597. Penalty for receiving deposits when bank is insolvent. Any president, director, manager or cashier, or other officer of any bank, or any individual banker, who shall receive, or assent to the receiving, of deposits, after he shall have knowledge of the fact that such bank or individual banker is insolvent, shall be individually responsible for such deposits so received, and shall be guilty of felony, and, upon conviction, punished by confinement in the penitentiary for not less than one nor more than ten years. **(Act of 1893, Ch. 171, Sec. 60.)**

See Ky. Const. Sec. 204.

Burden of proof—evidence. In a prosecution of a bank president, for receiving a deposit knowing that the bank was insolvent, in violation of this section the state must prove that the deposit described in the indictment was actually received, that at the time it was received the bank was insolvent; that the accused had knowledge of its insolvency, and with such knowledge, assented to receiving the deposit. (Parrish v. Commonwealth, 136 Ky. 77, 123 S. W. 339.)

Construction. The term "insolvency" as used in this section means that all of the bank's property and assets are not sufficient to satisfy its debts and not that it may not have sufficient funds in its vaults to satisfy all of its depositors or any considerable number of them, in the same day, as in the case of a "run" on the bank. The word "knowledge" as used in this section has no technical meaning, but meant that the officer had knowledge of the existing condition, by means of his relation to the bank, his association with it, and his control over it; his direction thereof being such as to give him actual, personal information concerning it. (Parrish v. Commonwealth, supra.)

Notice. What evidence is admissible to show notice to the officer of the insolvency of the bank. (Parrish v. Commonwealth, supra.)

Sec. 598. Directors' liability to creditors and stockholders. If any director or directors of any bank shall knowingly violate or permit any officer or employee of the bank to violate any of the provisions of the laws relating to banks, the directors so offending shall be jointly and severally individually liable to the creditors and stockholders for any loss or damage resulting from such violation; and if any such loss or damage be not made good within a reasonable time, it shall be the duty of the Secretary of State, with the consent of the Attorney General, to institute such proceedings as may be necessary to forfeit the charter of such bank. (Act of 1893, Ch. 171, Sec. 61; see K. S. Secs. 551, 593, ante; Code 480, etc., K. S. Sec. 569, Quo Warranto Proceedings, post.)

Directors—liability of. The joint and several liability of directors for loss resulting from negligence on their part depends on the nature of their trust and the character of their negligence. (Tackett v. Green, et al., 187 Ky. 49, 218 S. W. 468.)

Liability of bank directors for loss occasioned by their negligence. (1) Special deposits are treated as naked bailments and the bank and its directors are required to exercise ordinary care and are liable only for gross negligence and willful inattention. (2) Directors are trustees for the stockholders, and as to those dealing with the bank they not only act for it, but in a qualified sense they are the bank itself. (3) They have a public duty, and the community has the right to assume that a bank directory does its duty in the general supervision of its affairs and the control of its subordinate officers and to hold them personally responsible for neglecting it. (United Society of Shakers v. Underwood, 72 Ky. [9 Bush] 609, 15 Am. Rep. 731.)

Construction. The directors of banks are the only persons who can declare dividends, and section 596 provides when they may declare dividends; and if in violation of this section, a dividend is declared the directors will not be permitted to shield themselves from liability on the ground that they did not knowingly violate its provisions, and where a dividend was innocently declared while the bank was insolvent, such directors were not liable under section 548, for all existing and subsequent debts but were only liable under section 598 for the amount of the dividend so declared. (City of Franklin v. Caldwell, 123 Ky. 528, 96 S. W. 605, 29 Ky. L. R. 935.)

Construction—rule where there is gross negligence. The rule in the Caldwell case, supra, has been modified to this extent, that where ordinary care is exercised by the directors they will be held liable only for the amount of dividends unlawfully but innocently declared, but where there is gross negligence in the management of the affairs of the bank the directors should be made liable under section 548 for all the debts of the corporation then existing and for all that shall thereafter be incurred, while they or a majority of them continue in office. (Cunningham v. Shellman, 164 Ky. 597, 175 S. W. 1045.)

Illegal loans—construction of section. Where the directors permitted an individual to contract a secured debt in excess of the thirty per cent. allowed, they were liable only for the excess, but where they permitted a borrower, whether an officer or not, to contract a debt not secured in the manner provided in excess of the permitted amount, they became liable for the entire debt. K. S. Secs. 583, 598 are for the benefit of the bank, its depositors and stockholders, and will be liberally construed to promote their purpose. (Wickliffe v. Turner, 154 Ky. 571, 157 S. W. 1125; Brannin v. Loving, 82 Ky. 370, 6 Ky. L. R. 328.)

Discounting notes—overdrafts. Where the directors having discovered an overdraft by the cashier, took his notes and those of his father-in-law, secured by mortgage, to the full amount of the overdraft, the court held, that having done this in good faith, no liability attached to them for lack of the utmost diligence, both they and the stockholders having the greatest confidence in the solvency of both parties, so also where the president of a bank is a mere figure head, and the directors receive no salary, in the absence of fraud they are not liable to the stockholders, when they discount certain notes believing the maker and the endorser to be solvent and they prove worthless. (Johnson v. Johnson, 86 Ky. 530, 6 S. W. 582, 9 Ky. L. R. 789.)

Absence of fraud or bad faith. Directors are not liable to the stockholders for losses sustained by the bank, by the fraud and default of the cashier, unless they were guilty of fraud or bad faith, or such gross negligence as would imply bad faith. Directors do not insure the honesty and fidelity of those employed by them. Directors as gratuitous bailees are not responsible for loss unless occasioned by fraud or gross negligence on their part. A president of a bank with a nominal salary should not

be held to a more strict account than that of ordinary care. (Dunn's Adm'r. v. Kyles Exr., 77 Ky. [14 Bush] 134.

Loss occasioned by defaulting cashier. In an action by the depositors in a bank against the directors, personally, for the loss occasioned by a defaulting cashier, who owned a one-fifth interest, and was the leading spirit in the bank, a man of recognized business ability, and as was supposed, a man of the highest integrity, it appeared that for nine years he had been making false entries and had embezzled a large amount; that the services of the directors were gratuitous; that at the time of the merger of the old bank in a new one, no new books were opened, thus enabling the cashier to conceal his former defalcations, but there was nothing to excite suspicion as to the cashier's honesty, the frauds being perpetrated by false entries, which made the weekly statements apparently correct; that the duties of cashier, book-keeper and teller were all performed by the defaulting cashier, the court held that the directors were not liable. (Savings Bank of Louisville's Assignee v. Caperton, 87 Ky. 306, 8 S. W. 885; 10 Ky. L. R. 201.)

Sec. 598a. False statements as to solvency of bank—Penalty. That any person who shall willfully and maliciously make, circulate, or transmit to another or others any false statement, rumor, or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, saving bank or trust company, doing business in this State, or of any domestic or foreign insurance company, or who shall counsel, aid, procure, or induce, another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred nor more than one thousand dollars, or confined in the county jail not less than twenty nor more than one hundred days, or both so fined and imprisoned, in the discretion of the court. (Act of 1914, Ch. 45, as amended by Act of 1918, Ch. 91.)

(Sections 599-602, inclusive, related to private bankers. They are here omitted, having been repealed by Act of March 17, 1906.)

AN ACT AUTHORIZING BANKS TO ACT IN FIDUCIARY CAPACITY

Sec. 598b. 1. **Banks permitted to act in trust and fiduciary capacity.** That all banks created, organized and doing busi-

ness under the laws of the Commonwealth of Kentucky, and all national banks authorized by the Comptroller of the Currency of the United States of America, to engage in the banking business in the Commonwealth of Kentucky, shall be authorized, permitted and are hereby given the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardians of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity when selected, appointed, and authorized so to do by the court, persons, or organizations empowered under the laws of the Commonwealth of Kentucky to appoint trustees, executors, administrators, committees, receivers, assignees, guardians or other fiduciaries; and to act as agent or attorney in fact for the transaction of any business or the management of estates, the collection of rents, accounts, interest, dividends, notes, bonds, and demands of every character; provided however that such bank, either State or national, shall have an unimpaired capital and surplus aggregating $80,000.00 or more. (Act of 1920, Ch. 128.)

2. **Permit to be issued by banking commissioner.** Before such bank shall engage in the business of or act as fiduciary as herein authorized, it shall first obtain from the banking commissioner of the Commonwealth of Kentucky a permit so to do, which permit will be granted by said commissioner upon application and a showing that said bank has an unimpaired capital and surplus aggregating $80,000.00 or more. (Ibid.)

3. **Banking and fiduciary accounts to be kept separate.** Each and all banks herein authorized to act in a fiduciary capacity shall keep accounts showing the fiduciary business separate from the banking business and said account shall be kept on a separate book, which shall at all times be open to the inspection of the State Banking Commissioner, his deputies and assistants; and in addition thereto, said bank shall report and settle their accounts at the time and with

the officer to whom and with whom other fiduciaries are required to report to, and settle with. (Ibid.)

4. **Rights and liabilities when acting as fiduciary.** When acting as executor, administrator, guardian, trustee, receiver, assignee, committee, or curator, or in any other capacity in which the duties, powers, liabilities, rights and compensation are fixed and regulated by law, or under the control or supervision of the court, such bank shall be subject to the same duties and responsibilities, and have the same rights and powers, and receive the same compensation as is allowed the individual holding or exercising similar offices or trusts; except that upon all bonds required to be executed by such corporation in, or before, any court, the capital stock shall be taken and considered as the only security required for the faithful performance of its duties; and no other security shall be required, unless the court or officer, in or before whom the bond is executed, or some party in interest demands it. (Ibid.)

5. **Repealing clause.** All acts or parts of acts in conflict herewith are hereby repealed. (Ibid.)

Hitherto one of the distinguishing features between a bank and a trust company, consisted of the power of the latter to conduct both a banking and a trust business. It will be noted that by this act, all banks having a capital and surplus of $80,000 or more may amend their charters, with the consent of the Banking Commissioner, so as to enable them to carry on a trust business and act in the same capacity which a trust company is empowered to act, by Section 606 of the Kentucky Statutes. Banking institutions having a less capital in order to organize a combined banking and trust business may do so under the provisions of Section 612a of the Kentucky Statutes.

TRUST COMPANIES

Sec. 603. Organization of trust companies. Any number of persons not less than seven may associate to establish a corporation for the purpose of conducting a trust business under the provisions of this article, but the capital stock of any such company shall not be less than fifteen thousand dollars in counties having a poulation of over twenty-five

thousand and less than forty thousand, and not less than one hundred thousand dollars in counties having a population of over forty thousand and less than one hundred thousand, and not less than two hundred thousand dollars in counties having a population of over one hundred thousand: Provided, That where, in any county having a population of twenty-five thousand or more, there is a city of the fourth, fifth or sixth class, a trust company may be organized in either of such cities, in said county, with a capital stock of not less than twenty-five thousand dollars, and a statement of any increase or reduction in the capital stock shall be signed and acknowledged by the president and a majority of the directors, and filed and recorded in the same manner as articles of incorporation.

Any bank now doing business in a county having a population less than one hundred thousand, which has been heretofore organized in a city of the third or fourth class at the time of its organization, and which city since organization of said bank has been incorporated into a city of the second class, may, with the consent, in writing, of a majority in number and interest of its stockholders, organize by amending its article of incorporation, as a bank and trust company with a capital stock of not less than fifty thousand ($50,000.00) dollars, which shall be fully paid in before doing business as a bank and trust company; and its stock, if unimpaired, may be converted into stock in the new corporation. (April 5, 1893, c. 171, p. 612, Sec. 66; March 21, 1896, c. 31, p. 53; March 15, 1898, c. 32, p. 88; March 22, 1904, c. 78, p. 165, as amended March, 1918, c. 156, p. 658.)

Sec. 603a. (1.) **Merger.** Any two or more corporations organized under the laws of this State, for the purpose of conducting the business of trust companies, may consolidate their capital stock, assets and management into one organization. The separate existence of each corporation shall continue and all duties, powers and discretions of the con-

stituent companies as personal representative, trustee, assignee, guardian, agent or otherwise conferred, shall be imposed upon and may be exercised by the consolidated corporation; and such duty, power or discretion, at the time of consolidation or thereafter imposed upon either of the constituent companies, may be performed or exercised by the consolidated corporation in its own name or in the name of the constituent company upon which was imposed or conferred such duty, power or discretion; or by the constituent company upon which was imposed or conferred such duty, power or discretion; but in every case the consolidated corporation shall be liable for the proper performance of such duty and the proper exercise of such power or discretion. (Act of 1912, Ch. 41.)

(2.) The method and effect of such consolidation shall be as now provided by section 555, 555a, 557 and 558 of chapter 32, Kentucky Statutes, except that as above provided, the separate existence of the constituent corporations shall not cease, and the consolidated corporation, and the constituent corporation shall continue to exist, the management of said consolidated corporation and each of said constituent corporations being in the directors and officers of the consolidated corporation. (Ibid.)

Sec. 604. Execution and recording of articles of incorporation. The articles of incorporation shall be signed and acknowledged by the parties thereto before any officer authorized to take acknowledgements to deeds, and recorded in the county clerk's office of the county in which it is to be located; and a certified copy thereof shall be filed in the office of the Secretary of State; and such articles, or a certified copy thereof, may be used as evidence for or against such corporation. (What articles shall specify, see Sec. 539.) (Act of 1893, Ch. 171, Sec. 67.)

Sec. 605. Corporate powers. When the articles are filed and recorded as provided, it may commence business, and shall

thereupon become a body corporate, and be known by, and carry on its business in its corporate name; and as such shall have power to adopt and use a corporate seal; to make contracts; sue and be sued; to appoint, remove and elect officers, define their duties, and require from any of them a bond for the faithful discharge of his duties; to prescribe by its board of directors by-laws for its government not inconsistent with law, and to exercise, subject to law, such powers as may be necessary to carry on its business. (See further, Sec. 608.) (Ibid Sec. 68.)

Sec. 606. Specific powers of trust companies. Any trust company organized under this article may be appointed and act as guardian of infants, executors, administrator or curator of estates of decedents, committees of persons of unsound mind, receiver or trustee for persons or estates; and may act as agent or attorney for the transaction of any business or the management of estates, the collection of rents, accounts, interest, dividends, notes, bonds, securities for money and debts, demands of every character; may receive on deposit and for safekeeping, gold, silver, jewelry, money and other personal property of every kind, and shall have a lien upon all personal property deposited with it for its charges. (Ibid Sec. 69.) (See Sec. 612a.)

Trust companies—incorporation of. A provision in the articles of a company, which had been appointed guardian of an infant's estate, that the nature of its business should be general banking and trust business, as provided by K. S. Sec. 538-616 relating to banks and trust companies, is sufficient compliance with K. S. Sec. 539, Subsec. 3, requiring a statement of the nature of the business to be carried on, since Sec. 612a provides for a corporation to carry on both a banking and trust business, and Sec. 606 provides fully the nature of the business which a trust company may conduct, including the right to act as guardian. (Brown v. Threlkeld's Guardian, 154 Ky. 833, 159 S. W. 575; see also, Phalan v. Louisville Safety Vault & Trust Co., 88 Ky. 25, 10 S. W. 10; 10 Ky. L. R. 663.)

Sec. 607. Fifty per cent of capital to be paid in. At least fifty per cent of the capital stock shall be paid in in money,

and be in the custody of the directors, before it shall be authorized to commence business, and the remainder of the capital stock shall be paid in in money within one year after the corporation is authorized to commence business, at such times and in such amounts as the directors may require; and when any stockholder fails to pay an installment on the stock, when requested by the directors, they may sell a sufficiency of the stock of such delinquent at public sale to pay the amount due, with costs 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 where the stock will be sold, or may collect the amount due by action. If no bidder can be found to pay the amount due on the stock, and it cannot be collected, 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 six months thereafter; and if not sold, it shall be cancelled and deducted from the capital stock of the corporation; if sold before cancellation any surplus, after payment of amount due, and interest and costs, shall be paid to the original stockholder, his heirs or assigns. If such cancellation shall reduce the amount of the capital stock below the minimum required by law, the capital shall, within thirty days after cancellation, be increased to the required amount by additional subscription, in default of which the Secretary of State shall, with the advice and consent of the Attorney General, take steps to wind up the business of the corporation. (Ibid Sec. 70.)

Sec. 608. Commencement of business, when permitted. When the articles of incorporation are filed with the Secretary of State, and he is notified that at least fifty per cent of the capital stock has been paid in, and that the corporation has complied with all the provisions of this article required before it shall be authorized to commence business, he shall, within ten days thereafter, give to such corporation a cer-

tificate authorizing it to commence business; but he may, with the advice and consent of the Attorney General, withhold such certificate, if he has reason to believe that the stockholders have formed the same for any other than the legitimate business contemplated by this article. (Ibid Sec. 71.)

Sec. 608a. Banking hours. That the board of directors of each of the banks and trust companies doing business in this State shall have full power and authority to fix the hours of opening and closing of said banks and trust companies, and may provide that on Saturday of each week such hour of closing be as early as twelve (12) o'clock noon. (Act of March 17, 1906.)

Sec. 609. Limitation as to purchase of capital stock by corporation, when allowed. No trust company shall take as security for any loan a lien upon any part of its capital stock, and the same security, both in kind and amount, subject to provisions of Sec. 610, shall be required from persons, stockholders and those not stockholders; nor shall any corporation be the holder or purchaser of any part of its capital stock unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased shall in no case be held by the corporation for a longer time than one year; nor shall any person directly or indirectly, hold or own more than one half of the capital stock of a corporation exclusive of stock held as collateral. (Act of 1893, Ch. 171, Sec. 72.)

(See similar provision relating to banks, ante, K. S. Sec. 581.)

Sec. 610. Limitation as to maximum indebtedness. No trust company shall permit any of its stockholders, or any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, directly or indirectly, to become indebted to it in a sum exceeding ten per cent of its capital stock actually paid in, and surplus

actually on hand, unless such borrower deposit with it good collateral security, or execute to it a mortgage upon real or personal estate, which, at the time, is of more than the cash value of such loan or indebtedness above all other incumbrances; and if the borrower is a director or officer of such company, he shall not be permitted to become indebted to it in excess of ten per cent of its paid-up capital stock, without securing the excess by the mortgage or pledge of real or personal property, double in value the amount of such excess, and in no event shall the indebtedness of any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, exceed twenty per cent of its paid-up capital and actual surplus. (Ibid Sec. 73.)

Trust company as guardian—bond. Where a trust company is authorized by its charter to act as guardian a bond executed by the company in the name of its president is sufficient. (Johnson v. Johnson, 88 Ky. 275, 10 Ky. L. R. 10, 11 S. W. 5.)

Constitutionality—of statute. A statute authorizing a safe deposit and trust company to qualify and act as statutory guardian of infants, upon the execution of its own bond with the pledge of its capital stock as security for the faithful performance of its duties, is constitutional. The legislature has the power to prescribe the terms upon which the company may act as such guardian. (Johnson v. Johnson, supra.)

Sec. 611. Fiduciary capacity—When acting in. When acting as executor, administrator, guardian, trustee, receiver, assignee, committee or curator, or in any other capacity in which the duties, powers, liabilities, rights and compensation are fixed or regulated by law, or under the control or supervision of the courts, it shall be subject to the same duties and responsibilities, have the same rights and powers, and receive the same compensation as is allowed to individuals holding or exercising similar offices or trusts, except that upon all bonds required to be executed by such corporation in or before any court the capital stock shall be taken and considered as the only security required for the faithful performance of its duties; and no other security shall be required

unless the court or officer in or before whom the bond is executed, or some party in interest, demand it. (Ibid Sec. 74.)

Sec. 612. Limitation as to business and holding real estate. No trust company, hereafter organized, shall engage in a banking business, or buy or sell bills of exchange. It may acquire title to and hold such real estate as may be necessary for the transaction of its legitimate business, and for a period not longer than five years such other real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor; but this shall not prevent such corporation from holding, operating or managing real estate for other persons. (Ibid Sec. 75.) (See succeeding section.)

Sec. 612a. Merger of banking and trust business. Any number of persons, not less than seven, may associate to establish a corporation for the purpose of conducting, and it may conduct, both a banking business and a trust company business. The capital stock of such corporation shall not be less than thirty thousand dollars in counties having a population of twenty-five thousand or less; nor less than fifty thousand dollars in counties having a population more than twenty-five thousand. The whole of said capital stock shall be subscribed and paid in money before said corporation shall commence business. One-half of such capital stock shall be securely invested for the trust business of the corporation and shall at all times be kept separate and distinct from its other assets, and shall be primarily liable for its fiduciary obligations. The remainder of the capital stock of the corporation may be used in its business of banking and its books shall be so kept as to show separately at all times the conditions of its banking business and of its trust business. Any corporation now doing either a banking or trust business in any county or city in this Commonwealth may, with the

consent of a majority, in number and interest, of its stockholders, organize under this section, and the stock, if unimpaired, may be converted into stock in the new corporation. (May 12, 1897, c. 14, p. 17; March 24, 1906, c. 146, p. 491, as amended March, 1918, c. 137, p. 573.) See Act of 1920 Ch. 128, authorizing banks having a capital of $80,000 to act as fiduciaries. Ante, p. 164.

Sec. 613. Liability of stockholders in trust companies. The stockholders of each company organized under this article shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders; but the estates in their hands shall be liable in the same manner, and to the same extent, as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer, provided the action to enforce such liability shall be commenced within two years after the time of the transfer; and the directors of each corporation shall, in January of each year, file with the Secretary of State a correct list of the stockholders and officers of such corporation. (K. S. Sec. 547; Act of 1893, Ch. 171, Sec. 76.)

Sec. 614. Investment of funds. The capital stock of a trust company, and the funds in its possession, not held in a fiduciary capacity, may be invested in such manner as the directors deem prudent and safe; and the funds held in a fiduciary capacity shall be invested under the order of court, or in such manner as may be provided by law for the investment of other trust funds; and the capital stock shall be primarily liable for the obligations of the corporation in its fiduciary capacity. (Ibid Sec. 77.)

Sec. 615. Fiscal reports. Every company organized under this article shall report its condition and business as often and on the same dates, and in the same manner, and publish the same as banks organized under the general laws of the State are required to do; and all such corporations shall be subject to, and under the supervision and inspection of, the Secretary of State,[1] in the same manner that banks are; and each company failing or refusing to make such reports, or publish the same when and as required by the Secretary of State, shall be subjected to the penalty imposed for like offenses against banks. (Fee for to be paid Secretary, Sec. 877; Ibid Sec. 78.)

Sec. 616. Appointment of receiver. The Secretary of State[1] upon becoming satisfied that any bank or corporation has become insolvent, or that its capital has become, and is permitted to remain, impaired, or that it has violated any of the provisions of the law under which it was organized, may, with the approval of the Attorney General, apply to the circuit court, or judge thereof in vacation, of the county in which the bank or corporation is located, for the appointment of a receiver, who, under the direction of the court or judge, shall take possession of books, papers, and assets of every description, and all business of the bank or corporation, and collect all collectible debts and demands, and sell or compound, under the order of the court, all bad debts, and sell all the real and personal property of the bank or corporation, on such terms as the court may direct. The receiver shall be resident of the county in which the action is pending, and give bond, with good surety, to be approved by the court, and settle his accounts under the general laws. (Ibid Sec. 79.)

Notice of receivers appointment as affecting judgment. Only persons who have notice of a proceeding by the Commonwealth, to have a receiver appointed for an insolvent bankrupt, under this section, are bound by the judgment and degree of sale therein. (Ohio Valley B. & T.

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1 Reports formerly sent to Secretary of State now required to be sent to Banking Commissioner, also duties of Secretary of State now vested in Banking Commissioner.

Co. v. City of Henderson, 180 Ky. 21; City of Middlesboro v. Coal & Iron Bank, 108 Ky. 680, 57 S. W. 497; 22 Ky. L. R. 380.)

Notice of receivers appointment in advance. Thirty days' notice must be given before the appointment of a receiver as required in section 586, before a receiver may be appointed under this section on the ground that the capital has been impaired. (Imperial Bank of Olive Hill v. Commonwealth ex rel., Secretary of State, 140 Ky. 210, 130 S. W. 1074.)

TRUST, BANKING AND TITLE INSURANCE

Sec. 883c. 1. **Organization.** That any number of persons not less than thirteen, may associate to establish a corporation for the purpose of conducting, and it may conduct, both a general banking business, a trust company business and a real estate title insurance business. The capital stock of such corporation shall not be less than one hundred and fifty thousand dollars ($150,000), of which at least two-thirds (2-3) shall be subscribed and paid in money before such corporation shall commence business, and the remainder shall be subscribed and paid in within eighteen months thereafter. Not less than fifty thousand dollars ($50,000), and never more than one-third (1-3) or less than one-tenth (1-10) of the total capital stock of any company, organized pursuant to this act, shall be used in its business of real estate title insurance; and one-half of such authorized capital stock, remaining after deducting so much thereof as may be set apart to the department of real estate title insurance, shall be securely invested for the trust business of the corporation, and shall, at all times, be kept separate and distinct from its other assets, and shall be primarily liable for its fiduciary obligations; and the other half of such remainder of the capital stock of the corporation may be used in its business of banking; and its books shall be kept so as to show separately at all times the condition of its trust business, the condition of its banking business and the condition of its real estate title insurance business. (Sec. 883c, 1-3 is an act of 1910, p. 325.)

2. **Merger—How effected.** Any corporation now doing a banking or trust business or a banking and trust business

combined, or a real estate title insurance business may, with the consent of a majority in number and interest of its stockholders, organize under this act, and its stock, if unimpaired, may be converted into stock in the new corporation, or any one of such corporations may so amend its charter or articles of incorporation conformably to this act and the general law, as to permit it to engage in any one or more of the kinds of business herein mentioned not already authorized or provided for in such charter or articles of incorporation; or any two or more of such corporations now in existence may consolidate under this act, into one corporation, stock in which shall be issued for an equivalent amount in value of the stock of the constituent corporations.

3. **Statutes concerning.** The provisions of the act entitled "An act providing for the creation and regulation of private corporations, which became a law April 5, 1893, and known as chapter 32 of the Kentucky Statutes, and the several amendments thereof, (see Corporations Generally, ante) and the provisions of the act entitled, "An act to provide for the creation and regulation of real estate title insurance companies," which became a law March 19, 1894, and now known as Subdivision 7, of Article 4, of chapter 32 of the Kentucky Statutes, and the several amendments thereto, shall, together with this act, govern the formation of, and business conducted by, the corporations provided for by this act: That is, those portions of said acts, and their amendments relating to banks and banking (see Incorporated Banks, ante) shall apply to and govern the banking business, and those portions of said acts, and amendments relating to trusts and trust companies (see Trust Companies, ante) shall apply to and govern the trust business, and those portions of such acts and amendments as relate to real estate title insurance (see Real Estate Title Insurance Companies, post) shall apply to and govern the real estate title insurance business of the corporation organized under and pursuant to this act.

STATE BANKING DEPARTMENT

Sec. 165a. 1. **Department of banking created.** There is hereby established a department to be designated "Department of Banking," which shall be charged with the enforcement of all laws heretofore passed, or which may hereafter be passed, relating to banks, trust companies, saving banks, combined banks and trust companies, organized and doing business under the laws of the Commonwealth of Kentucky. Unless otherwise stated the words "bank" or "banks" herein used shall include all banks, trust companies, savings banks, combined banks, and combined banks and trust companies. (Act of 1912, Ch. 4.)

Cartmell v. Com. Bank, 153 Ky. 798; Smith, Banking Com., ex parte, 160 Ky. 83, 169 S. W. 582; Head v. Com., 165 Ky. 605, 177 S. W. 731. This act is not unconstitutional because limited to cities of the first, second and third classes. (Commonwealth v. Ward, 136 Ky. 146, 123 S. W. 673.)

2. **Banking commissioner—term—salary—deputy.**

3. **Clerks and stenographers.**

4. **Banking commissioner to receive reports.** From and after July 1, 1912, all reports now required to be made by banks to the Secretary of State shall be made to the Banking Commissioner, and the powers and duties now imposed by law upon the Secretary of State with reference to all banks shall terminate, and said duties are hereby imposed upon the Banking Commissioner and his department, as provided under this act. (Ibid.)

5. **Deputy banking commissioner.**

6. **Bank examiners—appointment of.**

7. **Officers of department, qualifications.**

8. **Inspection of banks.** Every bank organized and doing business under the laws of this State shall be subject to the inspection of the Banking Commissioner. Such commissioner shall personally or by the deputy bank commissioner or a State bank examiner visit each bank and examine the cash,

bills, collateral, securities, other assets, books of accounts, and all other books and papers of such bank. On such examination inquiry shall be made as to the condition and resources of the corporation, the mode of conducting and managing its affairs, the action of its directors, the investment and disposition of its funds, the safety and prudence of its management, the security afforded by those by whom its engagements are held, and whether the requirements of its charter and of the laws of this State have been complied with in the administration of its affairs, and as to such other matters as the commissioner may deem necessary. Such examination shall be made of every bank at least once every year, but not to exceed twice in any one year, unless it shall appear from examination or from the report or reports of a bank that such bank has failed to comply with the laws relating to banks, or a regulation of the department of banking.

The Banking Commissioner, Deputy Banking Commissioner and every State bank examiner shall have power to administer an oath to any person whose testimony may be required in the examination of any bank, and to compel the appearance of any such person for the purpose of such examination which shall be made in the presence of one or more of the officers of the corporation being examined. No notice of the intended examination shall be given to the bank to be examined until the examining officer is prepared to proceed immediately with the examination. No officer or employee of the banking department nor the examiner conducting any examination shall impart any information obtained by him during such examination, except so far as may be necessary in the performance of his official duty as provided by law. Provided, that any bank or trust company or combined bank and trust company which shall become a member of a Federal Reserve Bank created and organized under the Act of Congress known as the Federal Reserve Act, shall be subject to the examination required under the terms of the said Federal Reserve Act, and the Banking Commissioner may, in his discretion, accept exam-

inations made by the Federal Reserve authorities in lieu of examinations made under the laws of this Commonwealth; and the Banking Commissioner is further authorized and directed to furnish to the Federal Reserve agent of the district in which such member bank may be situated, copies of reports and examinations made of such member bank. (Act of 1912, Ch. 4, as amended by Act of 1918, Ch. 48.)

Federal Reserve Banks. (See K. S. Sec. 584, Incorporated Banks.)

9. **Fees for reports and examination.** Every bank shall have each report made to the Commissioner and for the filing thereof without recording pay to the Commissioner a fee of one dollar ($1); and for each examination herein provided for shall pay to the Commissioner forthwith the following fees: For the examination of any bank having a capital and surplus of $20,000, or less, the sum of twenty dollars; those having a capital and surplus above $20,000 but less than $50,000, the sum of twenty-five dollars; those having a capital and surplus of $50,000 and up to and including $100,000, the sum of forty dollars; for those having a capital and surplus in excess of $100,000, the sum of ten dollars for each additional $100,000, or fraction thereof; and also $2.00 for each additional $100,000, or fraction thereof of assets in excess of $1,000,000. All monies collected by the Banking Department shall be paid as collected into the State Treasury. (Act of 1912, Ch. 4, as amended by Act of 1922, Ch. 46.)

10. **Report of banks to commissioner.** Every bank, whenever required by the Banking Commissioner, but not to exceed five times in any year, unless for cause the Commissioner deem additional reports necessary to gain complete information, shall make a report in writing to him, verified by the oath of its President or Vice-President and its Secretary or Cashier, or two principal officers. Such reports shall show the actual condition of the bank making the report at the close of business on any date designated by the Commissioner and shall specify the following:

(1.) The amount of its capital stock and the number of shares into which it is divided.

(2.) The names of the directors, and the number of shares of stock held by them.

(3.) The total amount of capital actually paid in, and the total amount of surplus and other reserve funds, if any.

(4.) The total amount due (a) depositors, (b) all other liabilities.

(5.) The total amount and character of (a) overdrafts secured, (b) overdrafts not secured, and (c) all other assets.

(6.) The amount at which the lot and building occupied by the bank for the transaction of its business stands debited on its books, together with the market value of all other real estate held, and whether acquired in settlement of loans or otherwise; the amount at which it stands debited on the books, and where situated.

(7.) The amount loaned on real estate.

(8.) The indebtedness or liability (a) of each officer and, (b) of each director to such bank.

(9.) The amount invested in (a) bonds, and (b) stocks.

(10.) The amount loaned on (a) stocks and bonds, (b) on other securities, (c) commercial paper and (d) other notes and bills.

(11.) The actual amount of money on hand and on deposit in other banks, with the name of such banks where deposited.

(12.) Any other property held, or any amount of money loaned, deposited, invested or placed, not otherwise herein enumerated, and the place where situated and the value of such property, and the amount so loaned, deposited, or placed, and any other information he may require relative to the conduct and affairs of such bank. (Ibid.)

11. Reports and evidence. Every official report made by the commissioner and every report duly verified of an examination made, shall be *prima facie* evidence of the facts therein stated for all purposes in any action or proceedings, wherein such bank is a party; provided that such reports shall not

be made public except when required in proper legal proceedings. (Ibid.)

12. **Reports to be published.** Every bank shall within ten days after call made upon said institution by the State Banking Commissioner, publish a condensed statement of its financial condition, at the close of business on the date named in said call by said Banking Commissioner, which call may be made by him at any time he desires, and he shall make at least two calls in each year. Said condensed statement made on a form to be furnished by the Banking Commissioner, shall be published in some newspaper of general circulation, published in the city or town where its principal place of business is located, and, if no paper is published in such town, then in some newspaper of general circulation in the county where its principal place of business is located. Such published statement shall show the total amount of loans, the total amount of overdrafts, the total amount invested in bonds and other securities, the total amount due from banks, the total amount of checks and other cash items, the total amount of cash on hand, capital paid in, surplus fund; undivided profits less expense and taxes paid due to other banks, individual deposits subject to check, demand certificates of deposit; time deposits, certified checks, cashiers checks outstanding; and such other items as will show the actual financial condition of the bank making the report, and a copy certified to by the publisher shall be sent to the Banking Commissioner as a part of its next succeeding report. (Ibid.)

13. **Penalties.** If the Deputy Banking Commissioner, or any State Bank Examiner, shall have knowledge of the insolvency or unsafe condition of any bank subject to examination under this act, or that it is unsafe, or that it is inexpedient to permit such bank to continue business, and shall neglect to forthwith report such fact in writing over his signature to the Banking Commissioner, or shall disclose contrary to the provisions of this act any information obtained by him by virtue of his office, or shall violate any of the provisions of

this act, or fail to perform any duty herein imposed upon him, he shall forfeit his office and shall be fined for each offense not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000.)

(Second paragraph provides penalty for Banking Commission.)

If any bank shall knowingly fail to make a report required by law or by the Banking Commissioner within the time designated for the making thereof, or to include therein any matter required by law or by the Banking Commissioner, or fail to publish any report within thirty (30) days after the time when it should have been published, or to pay when due the fees for filing reports, or for an examination of the bank, it shall be subject to a penalty of Twenty-five Dollars ($25) for each day which it shall be delinquent for the periods respectively mentioned, the aggregate penalty, however, for such offense not to exceed Two Hundred and Fifty Dollars ($250.)

Every person who, or bank which wilfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of such bank who refuses to be examined under oath touching the concerns of such bank, severally shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500.)

Whenever any such officer, person or bank becomes liable to any penalty imposed by this Act and refuses to pay it, or the Banking Commissioner, Deputy Banking Commissioner or any State Bank Examiner becomes liable to any penalty imposed by this Act, the Attorney General shall institute a penal action against such delinquent person, bank or officer, in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or in the Circuit Court of the county in which such offense is committed, for the recovery of such penalty, and all sums collected in such actions shall be paid into the State Treasury.

If any bank or its officers wilfully refuse after demand by the Banking Commissioner to comply with any of the provisions of this act, the Banking Commissioner shall have power to take charge of its property and assets as provided in Sec. 16 hereof.

14. **Examination of insolvent banks.** The Banking Commissioner shall examine, or cause to be examined, such banks as may hereafter be placed in the hands of a receiver, as other banks, until its affairs shall be wound up, and a copy of such examination shall be filed with the Clerk of the Circuit Court, in the county where such bank is located. The receiver or person in charge of such insolvent bank shall make reports to the Banking Commissioner in the same manner as required in the case of other banks. Any receiver of any insolvent bank who shall fail to comply with the provisions of this section, or who shall refuse to submit the affairs of such bank to an examination as provided by law, or who shall fail to comply with any of the provisions of this Act, shall be subject to the same penalties provided for solvent banks and officers so offending. (Ibid.)

15. **Impairment of capital.** Whenever it shall appear that the capital stock of any bank has been impaired, the Banking Commissioner shall notify such bank and each director thereof, to make such impairment good within thirty days, and it shall be the duty of the officers and directors of any bank receiving such notice from the Banking Commissioner immediately to call a special meeting of its stockholders for the purpose of making assessments on its stock sufficient to cover the impairment of its capital, payable in cash: Provided, That such bank may with the consent of the Commissioner reduce its capital to the extent of the impairment, if such reduction will not place its capital below the amount required by law. (Ibid.)

16. **When banks in unsafe condition, commissioner to take charge.** If from any examination made as provided in this Act, it shall appear that any bank is insolvent or that its

capital has become impaired, and is permitted to remain impaired beyond the period allowed by law, it shall be the duty of the Banking Commissioner in person or by his deputy or by a State Bank Examiner immediately to take charge of such bank and all property and effects thereof.

If an examiner shall find that any bank is pursuing a dangerous and unsafe policy, the examiner shall call the directors and officers of such institution together and advise them fully of the nature of such objectionable practices, and warn them against a repetition thereof, and shall make a full report to the Banking Commissioner of the practices warned against, and the advice given by him, and thereupon the Banking Commissioner, if he deem it proper, shall in person, or by written notice to each director, require an abandonment or cessation of such objectionable practices or policy, and if his directions are not complied with, he may place a State Bank Examiner in charge of such bank, or he may adopt such other policy as may in his judgment seem wise and best calculated to bring the institution back to a safe condition. The officers, directors or stockholders of any bank shall have the right forthwith, upon his declaring his intention of doing so to execute to such commissioner a bond with surety or security approved by him, conditioned to secure the creditors of such bank, and upon the execution of such bond the Banking Commissioner shall leave with, or restore the custody and management of such bank to the officers and directors thereof. The Commissioner may, if he deem necessary, cause a petition to be filed in the Circuit Court of the county where such bank is located, and apply to such court or to the judge thereof when the court is not in session, for the appointment of a receiver of such bank, and thereupon such court or the judge thereof shall set a date for the hearing of the application for the appointment of a receiver, not later than twenty days from the date of such motion is made and of which notice shall be served upon the bank. Upon such hearing the parties may be heard

by affidavits or upon oral examination in court or before the judge and thereupon the judge shall hear and determine the question of the appointment of such receiver, and if the court shall determine that such action or proposed action of the Commissioner was justified, the court shall appoint a receiver, and shall fix the amount of the bond to be given by him.

17. (Omitted.)

18. **Notice to be posted.** Any bank organized under the laws of this State and subject to the provisions of this act, may place its affairs and assets under the control of the Banking Commissioner, by posting a notice on the front door, as follows: "This Bank is in the hands of the Banking Commissioner." The notice must be signed by a majority of the directors in their own handwriting, and they shall forthwith notify the Banking Commissioner, by telegraph, of such act. The posting of such notice, or the taking charge of any such bank by the Banking Commissioner, shall be sufficient to place all its assets and property, of whatever nature, in the possession of the Banking Commissioner.

19. (Omitted.)

20. **Certificate from commissioner necessary for the transaction of banking business.** No bank hereafter organized shall transact any business in this State without the written approval and certificate of the Banking Commissioner, stating that it has complied with the provisions of this act, and with all the requirements of the law, and that it is authorized to transact, within this State, the business specified therein, and that the requisite capital has been in good faith subscribed and paid up in cash. The Banking Commissioner shall not authorize any bank to commence business until it appears from an examination, or other evidence satisfactory to him, that the requisite capital has been, in good faith, subscribed and paid in cash.

SALE OF CORPORATE SECURITIES UNDER JURISDICTION OF BANKING COMMISSIONER

(See Blue Sky Law, p. 312; Act of 1920, Ch. 125.)

CREDIT UNIONS ACT [1]

(Acts of 1922, Chapter 110)

Sec. 1. Incorporation and by-laws. Any eight persons, residents of the State of Kentucky, may apply to the head of the Department of Banking for permission to organize a credit union. Persons uniting to form a credit union shall sign and acknowledge in duplicate articles of incorporation and shall enter into articles of agreement, in which they shall bind themselves to comply with its requirements and with all the laws, rules and regulations applicable to credit unions. The certificate of organization shall contain the following:

(1.) The name of the proposed credit union.

(2.) A statement that incorporation is desired under this particular law.

(3.) The par value of shares, which shall be five dollars.

(4.) The city, town or village in which the business office of the corporation is to be located.

(5.) The names and addresses of the subscribers to the articles of incorporation and a statement of the number of shares of stock subscribed by each.

At the time of filing the said articles of incorporation with the head of the Department of Banking the incorporators shall submit, in duplicate, sets of by-laws (with acknowledgment of their adoption by the incorporators) which shall provide:

(a.) The date of the annual meeting, which shall be in January of each year; the manner in which members shall be notified of meetings; the manner of conducting meetings; the number of members constituting a quorum with regulations as to voting.

(b.)The number of directors, which shall not be less than five, all of whom shall be members of the corporation; their

[1] At this writing this Act has not been compiled in the official Kentucky Statutes.

powers and duties, together with the compensation and duties of officers elected by the board of directors.

(c.) The conditions of residence, occupation or other conditions which shall qualify persons for membership.

(d.) The number of members of the credit committee, together with their powers and duties.

(e.) The number of members of the supervisory committee, together with their powers and duties.

(f.) The conditions upon which shares may be issued, transferred and withdrawn.

(g.) The charges, if any, which shall be made for failure to meet obligations punctually.

(h.) The conditions upon which deposits may be received and withdrawn, and whether the corporation shall have the power to borrow.

(i.) The manner in which the funds of the corporation shall be invested.

(j.) The conditions upon which loans may be made and repaid.

(k.) The method of receipting for money paid in on account or shares, deposits or loans.

(l.) The manner in which the reserve fund shall be accumulated.

(m.) The manner in which dividends shall be determined and paid out.

The certificate of organization shall be approved by the head of the Department of Banking, if he is satisfied that it is in conformity with this Act. He shall approve said by-laws, if he is satisfied that the proposed field of operation is favorable to the success of the corporation and that the standing of the proposed incorporators is such as to give assurance that its affairs will be administered in accordance with the spirit of this Act. Thereupon the said head of the Department of Banking shall issue to the said incorporators a certificate of approval annexed to the duplicate of said articles of incorporation and of said by-laws, which certificate of

approval together with said attached duplicate articles of incorporation and duplicate by-laws, acknowledged by the incorporators to have been adopted by them, shall be filed in the office of the clerk of the county in which the credit union is located. Upon such filing the said incorporators shall become and be a corporation.

Sec. 2. Amendments to the by-laws. The by-laws, so approved, shall be the by-laws of the corporation, and no amendment shall become operative until approved by the head of the Department of Banking and until a certified copy has been filed with the clerk of the county in which the credit union is located.

Sec. 3. Restriction of the term "credit union." The use by any person, corporation, co-partnership or association, except corporations formed under the provisions of this Act, of any name or title which contains the words "Credit Union" shall be a misdemeanor.

Sec. 4. Powers. A credit union may receive the savings of its members in payment for shares or on deposits; may loan to its members or may undertake such other activities relating to the purpose of the corporation as its by-laws may authorize. Deposits may also be received from non-members, subject to the conditions contained in this Act and upon such terms and in such amounts as the board of directors may determine and the by-laws shall provide.

Sec. 5. Membership. The membership of the corporation shall consist of the incorporators and such persons, societies, associations, co-partnerships and corporations as have been duly elected to membership and have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws and have complied with such other requirements as the articles of incorporation may contain.

Sec. 6. Reports—Examination—Supervision. Corporations organized under the provisions of this Act shall be subject to the supervision of the head of the Department of Banking. Every such corporation shall make a report of condition to the head of the Department of Banking (on blank forms to be supplied by said Department) on the dates of the second and fifth calls made to State banks, notice of which shall be sent out by the head of the Department of Banking. They shall be verified by the oath of a majority of the members of the supervisory committee or by the oath of the president, treasurer or secretary, and further reports shall be made as the said head of the Department of Banking at any time shall demand.

Any such corporation which neglects to make reports under call shall forfeit to the Treasury of the State ten dollars for each day of said neglect, unless excused.

Each credit union shall be examined once each year; but the head of the Department of Banking may, in his discretion, order such other examination as he may deem to be necessary; and the examiners appointed by him shall be given free access to all books, papers, securities and other sources of information in respect to said corporation, provided the said head of the Department of Banking shall so order. For the purposes of such examination the head of the Department of Banking, or his duly authorized deputy, shall have the power and authority to subpoena and to examine personally or by one of his deputies or examiners witnesses on oath and documents, whether such witnesses are members of the corporation or not and whether said documents are documents of the corporation or not. Each Credit Union shall pay $5.00 per day to the State Department of Banking for the time actually spent and actual traveling expenses of the Examiner for making such examinations as are necessary for Credit Unions. All such fees collected by the Department shall be turned into the Commonwealth treasury and hereby re-appropriated

to the State Banking Commissioner toward paying the expenses of enforcing this Act.

In the event that any such corporation shall neglect to make its reports as hereinabove provided for more than fifteen days or in the event that any such corporation shall fail to pay such charges as are herein required, including the charges for delay in filing reports, the head of the Department of Banking shall give notice to such corporation of his intention to revoke the certificate of approval of said corporation for said neglect or failure, and if such neglect or failure continues for fifteen days after such notice, then the said head of the Department of Banking may, at his discretion, revoke said certificate, and he, or through one of his deputies shall take possession of the property and business of such corporation and retain such possession until such time as he may permit it to resume business or its affairs shall be finally liquidated.

In the event that it appears to the head of the Department of Banking that any such corporation has violated any of the provisions of this Act, he may, by an order made over his hand and official seal, after hearing or after opportunity for hearing has been given said accused corporation, direct any such corporation to discontinue the illegal methods and practices mentioned in said order. If any credit union is insolvent, or has violated any the provisions of this Act or has failed within a reasonable time to comply with any such order mailed to the last address filed by such corporation the head of the Department of Banking shall immediately or within a reasonable time thereafter, take possession of the business and property of such corporation, and retain such possession until such time as he may permit it to resume business or its affairs are finally liquidated.

Sec. 7. Organization of rural credit unions. To further facilitate the organization of credit unions as provided in this Act among groups of farmers, it shall be the duty of

the Department of Agriculture of the Commonwealth of Kentucky, in addition to its duties now prescribed by law:

(1.) To organize and conduct, in the Department of Agriculture, a bureau of information in regard to credit unions.

(2.) Upon application of three residents of the State of Kentucky to furnish, without cost, such printed information and blank forms as may be approved by the head of the Department of Banking as necessary for the formation and establishment of any local credit union in the State of Kentucky.

Sec. 8. Fiscal year and meetings—Regulations as to voting. The fiscal year of every such corporation shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held in January. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per cent of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all meetings of members a member shall have but one vote, irrespective of the number of shares held. No shareholder may vote by proxy, but a society, association, co-partnership or corporation, having membership in the corporation, may be represented by one person authorized by said society, association, co-partnership or corporation to so represent it. At any meeting the members may decide upon any question of interest to the corporation and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws.

Sec. 9. Elections. At the annual meeting the members shall elect a board of directors of not less than five members, a credit committee and a supervisory committee, of not less than three members each. Unless the number of members of the credit union is less than eleven, no member of the board

shall be a member of either of said committees, nor shall one person be a member of more than one of said committees, and all members of committees and all directors as well as the officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

The oath required of each director, officer and member of committee shall be the oath of the individual taking the same that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual taking it and certified by the officer before whom it was taken and shall immediately be transmitted to the head of the Department of Banking and be filed and preserved in his office.

Sec. 10. Directors—Officers—Compensation. At the first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, a vice-president, a secretary and a treasurer. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person. The board of directors shall have the general management of the affairs, funds and records of the corporation and shall meet as often as may be necessary. Unless the by-laws shall specifically reserve all or any of the duties to the members, it shall be the special duty of the directors:

(1.) To act upon all applications for membership and the expulsion of members.

(2.) To fix the amount of the surety bond which shall be required of each officer having the custody of funds.

(3.) To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

(4.) To fix the maximum number of shares which may be held by and the maximum amount which may be loaned to any one member; to declare dividends and to recommend amendments to the by-laws.

(5.) To fill vacancies in the board of directors and in the credits committee until the election and qualifications of successors.

(6.) To have charge of the investment of funds of the corporation, other than loans to members, and to perform such other duties as the members may from time to time authorize.

No member of the board of directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said board or committee.

Sec. 11. Credit committee. The credit committee shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing on a form prepared by the board of directors and shall state the purpose for which the loan is desired and the security, if any, offered. No loan shall be made unless it has received the unanimous approval of those members of said committee who were present when it was considered, which number shall constitute at least a majority of the members of said committee, nor if any member of said committee shall disapprove thereof; but the applicant for a loan may appeal to the board of directors if it is so provided in the by-laws and in the way and manner therein provided. The credit committee shall meet as often as may be required after due notice has been given to each member.

Sec. 12. Supervisory committee—Audit and report. The supervisory committee shall inspect the securities, cash and accounts of the corporation and supervise the acts of its officers, board of directors and credit committee. At any time, the supervisory committee, by unanimous vote, may suspend the credit committee or any member thereof, the board of directors or any member thereof, or any officer or officers

elected by said board and, by a majority vote, they may call a meeting of the shareholders to consider any violation of this act or of the by-laws or any practice of the corporation which, in the opinion of said committee, is unsafe and unauthorized. Within seven days after the suspension of any member of said board, committee or officer, the supervisory committee shall cause notice to be given of a special meeting of all the members to take action relative to such suspension. The supervisory committee shall fill vacancies in their own number until the next meeting of the members. The fact of the intention to fill such vacancy shall be contained in the call for the meeting.

Sec. 13. Capital—Entrance fee—Transfer fee. The capital of the credit union shall consist of the payments that have been made to it by the several members thereof on shares. Shares may be subscribed for and paid in in such manner as the by-laws shall prescribe. A credit union shall have a lien upon the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues and fines payable by him.

A credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of the said member's indebtedness.

A credit union may, if the by-laws so provide, charge an entrance fee for each share subscribed, to be paid by the shareholder, upon his election to membership.

Fully paid shares of a credit union may be transferred to any person upon election to membership, upon such terms as the by-laws may provide and the payment of a transfer fee which shall not exceed twenty-five cents per share.

Sec. 14. Shares and deposits of minors and in trust. Shares may be issued and deposits received in the name of a minor, and such shares and deposits may be withdrawn by such minor, and in such case payments made on such

withdrawal shall be valid. If shares are held or deposits made in trust the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares and deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, by his legal representative.

Sec. 15. Charges and penalties. For failure by any member of a credit union to meet his payments on shares when due, such charges and other penalties may be imposed upon the delinquent member as the by-laws provide. Such charges shall not exceed one and one-half per cent per month or a fraction thereof on amounts due, except that a minimum charge of five cents may be imposed.

Sec. 16. Deposits. A credit union may receive the savings and deposits of its members and of non-members in such amounts and upon such terms as the board of directors may determine and the by-laws provide.

Sec. 17. Rates of interest. A credit union may lend to its members at reasonable rates, or invest as hereinafter provided, the funds accumulated.

Sec. 18. Power to borrow. If the by-laws so provide, a credit union shall have the power to re-discount, as hereinafter provided; or to borrow money from any source in addition to receiving deposits as indicated in Sec. 16, but the aggregate amount of re-discounts and borrowings shall at no time exceed the sum total of the capital, surplus and reserve fund of such borrowing credit union.

Sec. 19. Investment of funds. The capital, deposits, undivided profits and reserve fund of the corporation, to the extent said resources are not utilized for loans to members as provided in this Act, may be invested in the following ways and in such ways only:

(1.) They may be deposited to the credit of the corporation in the savings banks, credit unions, state banks and trust companies and in national banks.

(2.) Not more than 10% of the capital stock and reserve funds of a credit union may be invested in the stock of other credit unions.

(3.) They may be invested in any investment which is legal for savings banks in the State of Kentucky.

Sec. 20. Loans to members. A credit union may loan to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of fifty dollars. Endorsement of a note or assignment of shares in any credit union shall be deemed security within the meaning of this section.

A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of one sum.

The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from a credit union or becomes surety for any member whose application for a loan is under consideration.

All officers and members of any committee in any way knowingly permitting or participating in making a loan of funds of a credit union to a non-member thereof, shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officer or member of committee who knowingly committed or participated in the making thereof, or from all of them jointly.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

No director or member of the committee shall be allowed to borrow from the corporation or become indorser for a

borrower unless said loan or indorsement has been approved by the members at a meeting called for the specific purpose of passing on the proposed loan or the acceptance of the proposed indorsement.

Sec. 21. Reserve fund. All entrance fees, transfer fees and charges shall, after the payment of the organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year there shall be set apart to the reserve fund twenty per cent of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors the members at an annual meeting may increase, and whenever said fund equals the amount of the capital may decrease, the proportion of profits to be set apart to the reserve fund.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members except upon dissolution of the corporation.

Sec. 22. Dividends. At the close of the fiscal year a credit union may declare a dividend from the net earnings. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which became fully paid during the year shall be entitled to a proportional part of said dividends calculated from the first day of the month following such payment in full.

Sec. 23. Notes—Drafts—Bills of exchange. Notes, drafts, bills of exchange executed for the purpose of this Act, having a maturity not to exceed six months, and indorsed by a national bank, a State bank or a trust company may be re-discounted in the open market. The total of such paper outstanding shall at no time exceed the paid in capital and surplus, provided, however, that the head of the Department of Banking, in his discretion, may extend this limit temporarily, and provided further, that the limitation here fixed shall not be considered money borrowed under Sec. 18.

Sec. 24. Expulsion and withdrawal. At any regular called meeting the members by a two-thirds vote of those present, may expel from the corporation any member thereof. A member may withdraw from a credit union or a non-member may withdraw deposits, as hereinafter provided, by filing a written notice of such intention.

All amounts paid in on shares of an expelled or withdrawing member, with any dividends credited to his shares to the date of expulsion or withdrawal, shall be paid to such member in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by such member. Said member, when withdrawing shares or deposits, shall have no further right in said credit union or to any of its benefits but such expulsion or withdrawal shall not operate to relieve said member from any remaining liability to the corporation.

Sec. 25. Voluntary dissolution. At any meeting specially called to consider the subject, four-fifths of the entire membership of the corporation may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file with the head of the Department of Banking such consent, attested by the secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of such corporation and the name and residences of the officers, duly verified. The head of the Department of Banking, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation in duplicate a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by such corporation in the office of the clerk of the county or municipality in which the corporation has its place of business, and thereupon such corporation shall be dissolved and shall cease to

carry on business except for the purpose of adjusting and winding up its affairs. The said corporation, by its board of directors, shall then proceed to adjust and wind up its business and is empowered to carry out its accounts receivable, and to liquidate its assets and apply the same in discharge of its obligations, and after paying such obligations, each share according to the amount paid thereon, shall be entitled to its proportion of the balance of the assets. Said corporation shall continue in existence for the purpose of discharging its debts or obligations, collecting and distributing its assets, and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up.

Sec. 26. Change of place of business. A credit union may change its place of business on written notice to the head of the Department of Banking.

Sec. 27. Taxation. A credit union shall be deemed an institution for savings, and together with all the accumulations therein shall not be subject to taxation, except as to real estate owned. The shares of credit unions shall not be subject to any stock transfer tax, either when issued or when transferred from one member to another.

Sec. 28. Repeal of conflicting legislation. All laws and parts of laws in conflict herewith repealed. It is intended that this Act shall be valid to the fullest possible extent, and the invalidity of any part or section thereof shall not affect or render the remainder of the Act invalid or inoperative.

Purpose of act. The purpose of this act appears to be the organization of co-operative banking and loan business without complying with all of the provisions of the banking law, although such organizations are under the supervision of the banking commissioner.

CHAPTER V

PROVISIONS OF THE CONSTITUTION AND STATUTES OF KENTUCKY RELATIVE TO RAILROAD CORPORATIONS

I. PROVISIONS OF THE CONSTITUTION (Secs. 209-218 inc.)
II. PROVISIONS OF THE STATUTES.

1. Organization and reorganization of companies.
2. The railroad commission.
3. Rules of practice before railroad commission.
4. Condemnation proceedings
5. Foreign railway companies.
6. Interurban electric railways.

Sec. 209. Railroad commission. A commission is hereby established, to be known as "The Railroad Commission," which shall be composed of three Commissioners. During the session of the General Assembly which convenes in December, eighteen hundred and ninety-one, and before the first day of June, eighteen hundred and ninety-two, the Governor shall appoint, by and with the advice and consent of the Senate, said three Commissioners, one from each Superior Court District as now established, and said appointees shall take their office at the expiration of the terms of the present incumbents. The Commissioners so appointed shall continue in office during the term of the present Governor, and until their successors are elected and qualified. At the regular election in eighteen hundred and ninety-five, and every four years thereafter, the Commissioners shall be elected, one in each Superior Court District, by the qualified voters thereof, at the same time and for the same term as the Governor. No person shall be eligible to said office unless he be, at the time of his election, at least

thirty years of age, a citizen of Kentucky two years, and a resident of the district from which he is chosen one year next preceding his election. Any vacancy in this office shall be filled as provided in Sec. 152 of this constitution. The General Assembly may, from time to time, change said districts so as to equalize the population thereof; and may, if deemed expedient, require that the Commissioners be all elected by the qualified voters of the State at large. And if so required, one Commissioner shall be from each district. No person in the service of any railroad or common carrier company or corporation, or of any firm or association conducting business as a common carrier, or in anywise pecuniarily interested in such company, corporation, firm or association, or in the railroad business, or as a common carrier, shall hold such office. The powers and duties of the Railroad Commissioners shall be regulated by law; and until otherwise provided by law, the Commission so created shall have the same powers and jurisdiction, perform the same duties, be subject to the same regulations, and receive the same compensation, as now conferred, prescribed and allowed by law to the existing Railroad Commissioners. The General Assembly may, for cause, address any of said Commissioners out of office by similar proceedings as in the case of Judges of the Court of Appeals; and the General Assembly shall enact laws to prevent the non-feasance and misfeasance in office of said Commissioners, and to impose proper penalties therefor. (See Secs. 819, 821, K. S.)

Railroad commission—powers. This section of the constitution expressly authorizes the railroad commission to perform the duties which it was empowered to perform by existing laws at the time of the adoption of the present constitution, until it should be otherwise provided by law. Among other powers it then possessed, was to render awards in favor of persons against railroad companies for excess charges. (Louisville & N. R. Co. v. Greenbrier Distilleries Co., 170 Ky. 785, 187 S. W. 296.)

See also, Consolidation of Common Carriers with parrallel lines. (Constitution, section 201, p. 40.)

Sec. 210. Limitation as to business of common carrier. No corporation engaged in the business of common carrier shall, directly or indirectly, own, manage, operate, or engage in any other business than that of a common carrier, or hold, own, lease or acquire, directly or indirectly, mines, factories or timber, except such as shall be necessary to carry on its business; and the General Assembly shall enact laws to give effect to the provisions of this section.

Hotels and restaurants. This section does not prohibit a railroad company from providing suitable hotel and restaurant accomodations along its road, for its passengers. (Louisville Property Co. v. Commonwealth, 146 Ky. 831, 143 S. W. 412.)

Sec. 211. Foreign corporation not to own real estate. No railroad corporation organized under the laws of any other State, or of the United States, and doing business, or proposing to do business, in this State, shall be entitled to the benefit of the right of eminent domain or have power to acquire the right-of-way or real estate for depot or other uses, until it shall have become a body-corporate pursuant to and in accordance with the laws of this Commonwealth. (See K. S. Secs. 765, 841, *post*.)

Construction. This section prohibits a railroad corporation organized under the laws of other states or of the United States and doing business or proposing to do business in this state, from acquiring or operating railroads herein until it shall have become a body corporate under the laws of this Commonwealth and section 841 of the Kentucky Statutes was passed pursuant to this requirement of the constitution. (Newport News & M. V. Co. v. McDonald Brick Company's Assignee, 109 Ky. 418, 22 Ky. L. R. 934, 59 S. W. 332.)

Eminent domain—exercise of. This section provides that the right of eminent domain by condemnation proceedings may not be exercised by any foreign railroad corporation, until it shall have become a body corporate under the laws of this Commonwealth and section 765 of the Kentucky Statutes was enacted pursuant to this section of the constitution. (Plummer v. Chesapeake & Ohio Ry. Co., 143 Ky. 102, 136 S. W. 162.)

Eminent domain—exercise of. As condition precedent to the exercise of the right of eminent domain a foreign railroad corporation must become "a full Kentucky corporation" by organizing under section 763

of the Kentucky Statutes. A compliance with K. S. Sec. 841, by filing its articles of foreign incorporation in the secretary of state's office will permit a corporation to maintain and operate its lines in the state but it does not give it the right of eminent domain. (Evansville & Henderson Traction Co. v. Henderson Bridge Co., 141 Fed. 51, aff'g. 134 Fed. 973.)

Foreign corporations—effect upon—taxation. The effect of this section and K. S. Sec. 765 is to confer upon the foreign corporations complying with these provisions, the power to own real estate and to exercise the right of condemnation, but the foreign company neither loses its identity as such nor is it required to pay the organization tax imposed upon the organization of domestic corporations by K. S. Sec. 4225. This section of the constitution and K. S. Sec. 765 only confers upon the corporation the powers above referred to. They do not pretend to confer all of the corporate powers usually given to and exercised by newly created corporations. (Vaughan, Secretary of State v. Nashville, C. & St. L. Ry., 192 Ky. 137, 232 S. W. 411; citing Louisville, N. A. & C. Ry. v. Louisville Trust Co., 174 U. S. 552.)

Sec. 212. Rolling stock liable to execution and attachment. The rolling stock and other movable property belonging to any railroad corporation or company in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals. The earnings of any railroad company or corporation, and choses in action, money and personal property of all kinds belonging to it, in the hands, or under the control, of any officer, agent or employe of such corporation or company, shall be subject to process of attachment to the same extent, and in the same manner, as like property of individuals when in the hands or under the control of other persons. Any such earnings, choses in action, money or other personal property may be subjected to the payment of any judgment against such corporation or company, in the same manner and to the same extent as such property of individuals in the hands of third persons. (See Sec. 814, K. S.)

Sec. 213. Transportation of freight and cars. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or

doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business.

Sec. 214. Exclusive or preferential contract prohibited. No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation, for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier. (See Secs. 817, 819, K. S.)

Constitutionality. A provision in a state constitution that a carrier must deliver its cars to connecting carriers without providing adequate protection for their return, or compensation for their use, amounts to a taking of property without due process of law within the meaning of the Fourtheenth Amendment to the Federal constitution; and so held as to sections 213, 214 of the Kentucky constitution. These sections are therefore unconstitutional as construed by the Court of Appeals. (Louisville & N. R. Co. v. Central Stock Yards Co., 212 U. S. 132; reversing, 133 Ky. 148, 97 S. W. 778, 30 Ky. L. R. 19.)

Construction. Section 213 or other provisions of the Kentucky constitution do not impose an obligation upon a railroad having its own stockyards in Louisville, under a lease from a stock yard company to accept live stock from other states for delivery at the stockyards of another railroad in the same city although their is a physical connection between the two roads. (Central Stockyards Co. v. Louisville & N. R. Co., 192 U. S. 586; reversing, 118 Fed. 113.)

Contracts with railroad companies for preferential rates are void. (C. & O. R. Co. v. Maysville Brick Co., 132 Ky. 643, 116 S. W. 1183; Louisville & N. R. Co. v. Allen, 152 Ky. 145, 153 S. W. 198.)

Contracts in violation of the Inter-State Commerce Act are not enforcible. (Louisville & N. R. Co. v. Coquillard Wagon Work's Assignees, 147 Ky. 530, 144 S. W. 1080.)

Sec. 215. Transportation of freight without discrimination. All railway, transfer, belt lines or railway bridge companies shall receive, load, unload, transport, haul, deliver and handle freight of the same class for all persons, associations or corporations from and to the same points and upon the same conditions, in the same manner and for the same charges, and for the same method of payment. (See K. S. Secs. 817, 819.)

This and section 217 are self executing enactments. (Louisville & N. R. Co. v. Commonwealth, 105 Ky. 179, 20 Ky. L. R. 1099, 48 S. W. 416; Louisville & N. R. Co. v. Commonwealth, 108 Ky. 661, 46 S. W. 702.)

Charges on coal may vary. A railroad company may charge one rate for hauling coal for manufacturing purposes and another for coal for domestic consumption. (Louisville & N. R. Co. v. Commonwealth, 108 Ky. 628, 22 Ky. L. R. 328, 57 S. W. 508; Commonwealth v. Louisville & N. R. Co., 24 Ky. L. R. 509, 68 S. W. 1103.)

Charges for through and local shipments may vary. It is not a violation of this section to charge one rate for a "through" shipment and another for a "local" shipment. (Southern Railway v. Commonwealth, 116 Ky. 907, 25 Ky. L. R. 1078, 77 S. W. 207.)

Interstate and intra-state commerce. It is not an unreasonable burden on the interstate business of a carrier to require the company to obey the state laws with reference to purely intra-state shipments. (Louisville & N. R. Co. v. Higdon, 149 Ky. 321, 148 S. W. 26.)

Indictment. An indictment under this section is insufficient unless it charges that the services were made "upon the same condition." (Commonwealth v. Chesapeake & Ohio Ry. Co., 24 Ky. L. R. 1886, 72 S. W. 360; Commonwealth v. Chesapeake & Ohio Ry. Co., 115 Ky. 57, 24 Ky. L. R. 1883, 72 S. W. 758.)

Sec. 216. Intersection and crossing of tracks permitted. All railway, transfer, belt lines and railway bridge companies shall allow the tracks of each other to unite, intersect and

cross at any point where such union, intersection and crossing is reasonable or feasible.

This section applies to both steam and electric railways. (Owensboro City Ry. Co. v. Louisville, Henderson & St. Louis Ry. Co., 165 Ky. 683, 178 S. W. 1043; Elizabethtown etc., R. Co. v. Ashland Street Ry. Co., 96 Ky. 347, 26 S. W. 181; Louisville & N. R. Co. v. Bowling Green Ry. Co., 110 Ky. 789, 23 Ky. L. R. 273, 63 S. W. 4.)

Indictment. A grand jury may return an indictment under this section without action by the railroad commission. A railroad company will not be held responsible for a nuisance caused by the intersection of switches and tracks across its line pursuant to Sec. 216 of the constitution. (Louisville & N. R. Co. v. Commonwealth, 112 Ky. 75, 23 Ky. L. R. 1382, 65 S. W. 158; Louisville & N. R. Co. v. Commonwealth, 31 Ky. L. R. 65, 101 S. W. 382.)

Compensation, when required. Under section 216 of the constitution a street railway line is not authorized to cross a railroad track without making just compensation to such railroad for the right of way, where such crossing is not on a street or public highway. (Owensboro City Ry. Co. v. Louisville & N. R. Co., 29 Ky. L. R. 596, 94 S. W. 22.)

Sec. 217. Violation of laws, penalties for. Any person, association or corporation, wilfully or knowingly violating any of the provisions of sections two hundred thirteen, two hundred fourteen, two hundred fifteen, or two hundred sixteen, shall, upon conviction by a court of competent jurisdiction, for the first offense be fined two thousand dollars; for the second offense, five thousand dollars, and for the third offense, shall thereupon, *ipso facto*, forfeit its franchises, privileges or charter rights; and if such delinquent be a foreign corporation, it shall, *ipso facto*, forfeit its right to do business in this State; and the Attorney General of the Commonwealth shall forthwith, upon notice of the violation of any of said provisions, institute proceedings to enforce the provisions of the aforesaid sections.

Sec. 218. Short and long haul clause. It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transpor-

tation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Railroad Commission, such common carrier, or person, or corporation owning or operating a railroad in this State, may in special cases, after investigation by the Commission, be authorized to charges less for a longer than for shorter distances for the transportation of passengers or property; and the Commission may, from time to time, prescribe the extent to which such common carrier, or person or corporation, owning or operating a railroad in this State, may be relieved from the operations of this section.

See K. S. Sec. 820 post. Held not to be in conflict with this section of the constitution. (L. & N. R. Co. v. Com. 104 Ky. 226, 20 Ky. L. R. 1380, 47 S. W. 598.)

Awards by railroad commission. The enforcement of a reparation award or the rate order upon which it is based is not in violation of section 218 of the constitution, in that it compels a discrimination denounced by that section of the constitution. (Louisville & N. R. Co. v. Greenbrier Distilleries Co., 170 Ky. 778, 187 S. W. 296.)

Commission's indictment, effect of. An order of the railroad commission recommending an indictment in certain cases will not authorize an indictment as to later shipments. (Louisville & N. R. Co. v. Commonwealth, 114 Ky. 787, 24 Ky. L. R. 1593; 71 S. W. 910.)

This section is not self executing. (Illinois Central R. Co., v. Commonwealth, 23 Ky. L. R. 1159, 64 S. W. 975.)

Commission's powers not retroactive. The action of the railroad commission in exonerating a carrier from the operation of section 218 of the constitution and section 820 of the statutes, forbidding a carrier to charge more for short than a long haul, is not retrospective, and does not therefore affect the liability which the carrier had previously incurred to shippers by a violation of the law. (Louisville & N. R. Co. v. Vancleave, 110 Ky. 968, 23 Ky. L. R. 479; 63 S. W. 22.)

Constitutional law—commission's powers. Section 218 of the Kentucky Constitution and Sec. 820 of the statutes, are not in conflict with the Federal constitution. The power of the railroad commission under

Section 218 of the constitution of Kentucky is not to be construed as giving it the power to pardon offenses already committed in violation of the constitution and statute in question. (Illinois Central R. Co. v. Commonwealth, 23 Ky. L. R. 544, 63 S. W. 4487; Louisville & N. R. Co. v. Vancleave, supra.)

Construction. Section 218 is commonly known as "the long and short haul" provision of the state constitution. It confers upon the railroad commission the power to relieve carriers from the operation of its own provisions, but it does not give the commission any such powers with reference to the preceding sections. (Commonwealth v. Louisville & N. R. Co., 112 Ky. 82, 65 S. W. 158.)

Rate regulation—intra-state commerce. In prescribing intra-state rates the legislature of a state may act directly or, in the absence of constiutional restriction, it may commit the authority to do so to a subordinate body. Held, that the Legislature of Kentucky by the McChord Act (K. S. Sec. 820) of 1900, properly authorized the railroad commission under certain conditions, to fix reasonable intra-state rates for railroad transportation in conformity with the provisions of the state constitution (Sec. 218) and such commission may use judicial methods without invading the province of the judiciary. (Louisville & N. R. Co. v. Garrett, et al., Railroad Commission of Kentucky, 231 U. S. 299, aff'g. 186 Fed. 176.)

Competition. Unless the railroad commission relieves from the operation of this section the fact that competition exists at one point and not at another is no defense for a violation of this section. (Louisville & N. R. Co. v. Commonwealth, 106 Ky. 633, 21 Ky. L. R. 232, 51 S. W. 164; Hutchinson v. L. & N. R. Co., 108 Ky. 615, 22 Ky. L. R. 361, 1871; 57 S. W. 251.)

Long and short haul—rates. (Louisville & N. R. Co. v. Walker, 110 Ky. 961, 23 Ky. L. R. 453, 63 S. W. 20.)

PROVISIONS OF THE KENTUCKY STATUTES IN RELATION TO RAILROAD CORPORATIONS

Sec. 763. Organization. Any number of persons, not less than seven, may associate to form a corporation for the purpose of constructing, operating and maintaining a railroad. Such persons shall execute articles of incorporation, which shall specify the name of the proposed railroad, the number of years the corporation is to continue, the amount of its capital stock, and the number of shares into which the same shall be divided; the number of directors, which shall not be less than five nor more than fifteen, and their names; the

places from and to which, and the name of each county into or through which it is intended to be constructed, and its length as near as may be. Each subscriber to such articles shall set opposite his name his place of residence and the number of shares subscribed by him. Whenever two hundred and fifty dollars per mile has in good faith been subscribed, and twenty per cent thereof paid in in cash, to the persons named in the articles as directors, and an affidavit made to that effect by two of said named directors and attached thereto, a copy of said articles and affidavit shall be filed in the office of the Railroad Commissioners, and in the office of the Secretary of State; and when a certificate of such fact is delivered by the said officers to the incorporators, the persons who have subscribed such articles shall be a body-corporate by the name specified in the articles, and as such may sue and be sued, contract and be contracted with, have a seal, and change the same at pleasure; may elect or appoint directors, who shall choose from their number such officers as may be necessary; may require from any officer or employe a bond for the faithful discharge of his duties, and prescribe such by-laws for its government, and exercise such powers as are necessary to the conduct of its business not inconsistent with law. (Further requirements as to execution of articles, Secs. 539, 540; Act of 1893, Ch. 171, Sec. 182.)

Articles of incorporation. If the articles of incorporation or the statutes relating to railroad corporations, in terms or by reasonable implication, lay the duty upon a railroad corporation to construct a road, for the construction, maintenance and operation of which it was organized, from one of the termini designated in the articles of incorporation to the other, or to a point designated in the proposed route, a mandatory injunction will lie to compel it to do so, but not otherwise. (Bentler v. Cincinnati, Cov. & E. Ry. Co., 180 Ky. 497, 203 S. W. 199.)

Presumption of incorporation. Unless the contrary appears it will be presumed that a railroad company is a corporation. (Madisonville, H. & E. R. Co. v. Commonwealth, 140 Ky. 255, 130 S. W. 1084.)

Foreign railroad corporations when required to file articles of incorporation in this state. (See Constitution, sec. 211, ante., with cases annotated.)

Business—when to commence. A copy of the articles of incorporation filed as directed by section 763 and duly certified is prima facie

evidence of the matters therein stated, but the corporation does not have the right to transact business until the certificate provided for by this section is delivered. (Warden v. Madisonville, H. & E. R. Co., 125 Ky. 651, 31 Ky. L. R. 234, 101 S. W. 914.)

Taxation. A railroad corporation organized under this section must pay the organization tax prescribed in K. S. section 4225. (C. N. O. & T. P. Ry. Co. v. Commonwealth, 119 Ky. 196, 83 S. W. 562.)

Service of process on common carriers, Civil Code, Secs. 51-4.

Sec. 764. Amendment of articles. The articles of incorporation may be amended and changed in the manner provided in Article One of this Chapter; (see Corporations generally) and a copy of any amendment or alteration attested by the president and secretary of the corporation, shall be filed in the office of the Railroad Commissioners and the Secretary of State within thirty days after its adoption by the corporation; and when so filed, and a certificate of that fact is delivered to the president or secretary, the corporation shall have the right to make such alterations and changes in its business as are authorized by the amended articles. (*Ibid*, Sec. 183; Amendment of Articles, see Sec. 559.)

Amendments by stockholders. This section provides that the articles may be amended or altered as provided in K. S. section 559, which may be done by the stockholders without the consent of any one and the articles may describe the route proposed. (Bentler v. Cincinnati, Cov. & E. Ry. Co., 180 Ky. 497, 203 S. W. 199.)

Amendments generally. (See corporations generally, K. S. 559 and 574; Commonwealth v. Southern Pacific Co., 164 Ky. 820, 176 S. W. 375.)

Sec. 765. Acceptance of constitution by foreign corporation. No railroad corporation, organized or created by or under the laws of any other State, shall have the right to condemn land for, or acquire the right-of-way for, or purchase or hold lands for its depots, tracks or other purposes, until it shall have first filed in the office of the Secretary of State of this State, in the manner provided in the first article of this chapter, its acceptance of the constitution of this State, and shall have become organized as a corporation under the laws of this State, which it may do by filing in the offices of the Secretary of

State and the Railroad Commission articles of incorporation in the manner and form provided in Sec. 763 of this article. (Ibid, Sec. 184.)

Acceptance of the constitution. (See K. S. Sec. 570, corporations generally; Commonwealth v. Southern Pacific Co., 164 Ky. 820, 176 S. W. 375; and the constitution section, 211, ante.)

Construction of section. This section prohibits a foreign railroad corporation from operating a railroad within the state, as owner, without complying with its provisions. This section is not unconstitutional as an attempted interference with interstate commerce. (Plummer v. Chesapeake & Ohio Ry. Co., 143 Ky. 103, 136 S. W. 162; Vaughan, etc., v. Nashville, C. & St. L. Ry., 192 Ky. 137, 232 S. W. 411; Cincinnati, N. O. & T. P. Ry. Co., 119 Ky. 196, 83 S. W. 562.)

Reincorporation, effect of. The reincorporation of a foreign railroad corporation in Kentucky, as required by this section, as a condition precedent to operating a domestic railroad, as owner, does not deprive it of any right or privilege it enjoyed as a foreign corporation. (Plummer v. Chesapeake & Ohio Ry. Co., supra.)

Sec. 766. Certified copies as evidence. A copy of any articles of incorporation, or any amendments thereto, filed in the offices mentioned, and certified by the Secretary of State, shall be admitted as evidence for or against the corporation, and shall be *prima facie* evidence of the matters therein stated. (*Ibid*, Sec. 185.)

Warden v. Madisonville, H. & E. R. Co., 125 Ky. 651, 31 Ky. L. R. 234; 101 S. W. 914.

Sec. 767. Location of road to be recorded. Every corporation proceeding to construct its road in or through any county shall file and have recorded at its expense, in the county clerk's office of such county, a map of the route, showing the center of said proposed road, and the width thereof; and if after a road is located, it is desired to change its location, or the proposed route is changed, as it may be, a map showing such change, as well as the center and width thereof, shall be filed and recorded at its expense in the county clerk's office of the county in which the change is made. If the proposed route, as indicated by the map, crosses the

line of any other railroad, notice of such fact, shall before the construction of the road is commenced near the point of crossing, be given to the Railroad Commission, who shall give notice to the corporation whose road it is proposed to cross, as well as the other corporation, of the time and place it will meet to consider the question of approving the crossing if objection be made thereto; and the Commission may determine the manner in which the crossing shall be made to protect against accidents thereat. (*Ibid*, Sec. 186.)

Change of route. A change in the route must be recorded by filing a map indicating the change in the office of the county clerk of the county through which the change is made. (Beatty v. Louisville & N. R. Co., 176 Ky. 102, 195 S. W. 487.)

Conflicting surveys. Where a railroad making a second survey had notice of a prior survey by another railroad, the rights of the company making the prior survey will not be prejudiced by its failure to file or record a map showing its location. (Cumberland R. Co. v. Pike Mountain Ry. Co., 28 Ky. L. R. 574, 96 S. W. 199.)

Power of railroad commission. The permit of the railroad commission to permit the construction of a switch was held to be conclusive. (Chicago, St. L. & N. O. R. Co. v. Louisville & N. R. Co., 22 Ky. L. R. 658, 58 S. W. 799.)

Street railways. This section does not apply to street railways, as they are by section 821 expressly excepted from the jurisdiction of the railroad commission (Louisville & N. R. Co. v. Bowling Green Ry. Co., 110 Ky. 788, 23 Ky. L. R. 273, 63 S. W. 4.)

Sec. 768. Liabilities and restrictions. Every company shall possess the following powers, and be subject to the following liabilities and restrictions:

1. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for such road; and, for such purposes, by its officers, agents and servants, to enter upon lands or waters of any person, but subject to liability for all damages which they shall do thereto.

2. To receive, hold, enter upon, and take possession of such voluntary grants and donations of real and other property as shall be made to it, to aid in the construction and

maintenance and operation of such road; but the real property thus received shall be held and used for the purposes of such grant or donation only.

3. To purchase, hold, enter upon, take possession of, and use all such real estate, franchise and other property, as may be necessary for the construction, maintenance and accommodation of its line of road; but the same shall not be taken or appropriated without the consent of the owner until the compensation to be made therefor is agreed upon or ascertained, and paid or deposited as provided by law.

4. To lay out its road not exceeding one hundred feet in width, and if more than one track is laid, fifty feet additional for each track, and construct the same; and for the purpose of cuttings or embankments, and procuring stone, gravel or other material, or for the purpose of draining its road-bed, to take, in the manner herein provided, such other lands in the vicinity of or adjacent to its road as may be necessary for the proper construction, operation and security of its road; and to change, when it deems proper, the gauge of its road; and may, for the purpose of avoiding annoyance to public travel or dangerous or difficult grades or curves, or unsafe or insecure grounds or foundations, or for other reasonable cause, change the location or grade of any portion of its road; but shall not, except as otherwise provided, depart from the general route prescribed in the articles of incorporation.

5. To construct its road upon or across any water-course, private or plank road, highway, street, lane or alley, and across any railroad or canal; but the corporation shall restore the water-course, private or plank road, highway, street, lane, alley, railroad or canal to its former condition, as near as may be, and shall not obstruct the navigation of any stream, or obstruct any public highway or street, by cars or trains, for more than five minutes at any one time; and shall construct suitable road and street crossings for the passage of teams by putting down planks or other suitable material

between and on each side of the rails, the top of which shall be at least as high as the top of the rails of such road or street; and in case the road is constructed upon any public street or alley, the same shall be upon such terms and conditions as shall be agreed upon between the corporation and the authorities of any city in which the same may be, but such road shall not be constructed upon any public street or alley until compensation shall be made by the corporation therefor to the owner of the property adjoining such street or alley, and opposite where such road is to be constructed, either by agreement or in the manner provided by law. (Condemnation of land, Sec. 835; *Ibid*, Sec. 187.)

Removal of depot—damages. If a railroad company removes its track or depot, as contemplated by this section and in the manner therein provided for, one who owns property contiguous to the abandoned track or depot cannot recover consequential damages he may have sustained by reason of such abandonment. (Beatty v. Louisville & N. R. Co., 176 Ky. 101, 195 S. W. 487.)

Construction of words. The construction of the words "upon or across" a public highway do not authorize a railroad corporation to lay its tracks longitudinally along the highway. (County of Jefferson v. Louisville & Interurban R. Co., 155 Ky. 810, 160 S. W. 502.)

City streets. A railroad company cannot construct its line across a street or sidewalk without the consent of the city, notwithstanding the fact that steam railroads are omitted from the text of the constitution, section 163. (City of Covington v. Louisville & N. R. Co., 158 Ky. 136, 164 S. W. 329.)

Obstruction of highways. No penalty is attached to the provision prohibiting the obstruction of highways or streets longer than five minutes, but the statute is merely declarative of the common law forbidding unreasonable obstruction of highways, and special damages may be recovered if the statute is violated to the injury of another. (Louisville & N. R. Co. v. Cooper, 164 Ky. 489, 175 S. W. 1034; Harvey v. Illinois Central R. R. Co., 150 Ky. 492, 167 S. W. 875; Griffin v. Chesapeake & Ohio Ry. Co., 169 Ky. 522, 184 S. W. 888; Illinois Central R. Co. v. Commonwealth, 20 Ky. L. R. 115; Dulaney v. Louisville & N. R. Co., 100 Ky. 628, 38 S. W. 1050.)

Nuisance—damages caused by operation of trains. (Willis v. K. & I. Bridge Co., 104 Ky. 186, 46 S. W. 488.)

Restoration of highways. Under subsection 5 of this section a railway company, upon crossing a highway with its tracks, must restore the highway to its original condition, as near as may be, and construct

and maintain such approaches as will make the crossing reasonably safe and convenient for the travelling public and such duty cannot be delegated by the railroad company to overseers and other officials of the county. (Louisville & N. R. Co. v. Speckman, 169 Ky. 385, 183 S. W. 915; Cincinnati, N. O. & T. P. Ry. Co. v. Dugan, 162 Ky. 36, 171 S. W. 1070; Husbands v. Paducah & Ill. R. R. Co., 176 Ky. 296, 195 S. W. 831.)

Failure to keep crossing in repair. A railroad company which fails to keep in repair the approaches to a highway crossing to the extent of its right of way is guilty of maintaining a nuisance whether the railroad or the highway was first constructed. (Commonwealth v. Louisville & N. R. Co., 109 Ky. 59, 22 Ky. L. R. 572, 58 S. W. 478.)

Grade crossings. This statute (subsection 5) contemplates the crossing of a highway by the railroad track, at grade, and not an overhead crossing of great expense, but the legislation may by statute require or prohibit grade crossings. (Louisville & N. R. Co. v. Hopkins County, 153 Ky. 719, 156 S. W. 379.)

Limit of municipal authority—mandamus. The municipality has a voice in fixing the terms and conditions for the construction of a railroad within its limits, but the city may not arbitrarily refuse to agree upon any terms and conditions. Mandamus will lie to compel a city to exercise its discretion in good faith. (Louisville & N. R. Co. v. City of Covington, 81 Ky. 87, 203 S. W. 1060.).

Federal control—effect of as bearing upon litigation. (Louisville & N. R. Co. v. Steele, 180 Ky. 291.) Return of railroads to private ownership, effect of upon litigation. (U. S. Transportation Act of 1920 (Feb. 28, 1920) entitled "An act to provide for the termination of Federal control of railroads," etc.; U. S. Comp. Stat. Supp. Sec. 10,071cc.)

Condemnation of lands. Under subsection 4 of this section the right to condemn lands is not confined to the land absolutely required at the time of the taking, but extends to so much as the present plans and purposes of the railroad company show will be reasonably necessary. (Warden v. Madisonville H. & E. R. Co., 128 Ky. 563, 33 Ky. L. R. 38, 108 S. W. 880.)

Railroads generally. Railroad companies, as to their exact status, have been said to be in a class by themselves, being neither strictly private nor strictly public corporations. They are technically speaking private corporations as distinguished from municipal or other strictly public corporations, while on the other hand they are essentially different from strictly private corporations and owing to the character of their functions and powers with which they are invested and the duties which they owe to the public, they are usually termed *quasi-public corporations.* (33 Cyc. 38.)

Sec. 769. Construction of switches, tracks, and branches permitted—Purchase of stock in other companies. Any com-

pany may build such spurs, switches, tracks or branches as may be necessary to conduct its business or develop business along its line of road, and for that purpose shall have all the powers and be subject to the same restrictions and liabilities as are conferred upon it for the construction of its main line; and may purchase the property and franchises of any other railroad company, at public or private sale, not a competing line; and may sell its property and franchises to any other company not a competing or parallel line or otherwise prohibited by law to purchase, and may, unless prohibited by law, subscribe to the capital stock of any other railroad company organized under the law of this or any other State, with the assent of such company, and any company organized under the laws of this, or any other State, may, unless prohibited by law, subscribe to the capital stock of any company organized under this law, with the assent of such company, and may make any agreement or arrangement, not inconsistent with law, with any other railroad company. (*Ibid*, Sec. 188, as amended by Act of March 17, 1902.)

See Chapter on Anti-trust legislation in this state.

Taking of private property. This section does not authorize the taking of private property for private purposes without the consent of the owner under condemnation proceedings for the purpose of building spurs and branches. (Riley v. Louisville H. & St. L. R. Co., 142 Ky. 67, 133 S. W. 971.)

Municipalities. This section does not authorize the construction of a spur across a sidewalk without the consent of the city. (Louisville & N. R. Co. v. City of Covington, 158 Ky. 136, 164 S. W. 329.)

Construction. The words "competing *or* parallel" as used in this section do not mean "competing *and* parallel." A railroad may be a "competing" road by reason of connections with another line, although it does not own the connecting line. (Commonwealth v. Louisville & N. R. Co., et ano., 144 Ky. 324, 138 S. W. 291.)

Sec. 769a. Railroads permitted to operate ferries. That any railroad company operating a railroad in this State shall have the right, without securing the grant to it of any ferry franchise or privilege from the county court, to transport by boat,

or otherwise, or to employ other persons to transport for it, any passengers, baggage or freight carried, or to be carried, on the railroad operated by it, to and from the opposite sides of any stream, within the limits of, or bordering upon, this State. And any railroad company operating a ferry for the purposes mentioned in the preceding part of this section, is authorized to transport thereon any other persons or freight applying, or offered, for transportation, upon obtaining grant to it of a ferry franchise or privilege in the manner prescribed by law for the obtaining of such a franchise or privilege, but no railroad company, nor any employe, agent or trustee of any railroad company, shall be permitted to establish, operate or maintain a new ferry within one mile and a half in a straight line of any existing ferry heretofore established and now in operation. (Act of 1910, Sec. 86.)

See Ferries, (1 Carroll's Ed. Kentucky Statutes, Sec. 1800; Act of 1892, Ch. 42.)

Sec. 770. Merger of companies. Any two or more companies may, unless otherwise provided by law, consolidate into a single company in the manner provided by Sec. 556, Kentucky Statutes, as amended by this act. (Act of 1893, Ch. 171, Sec. 189; Act of 1902, Ch. 58; as amended by Act of 1916, Ch. 46.)

See K. S. 556, Corporations generally, *ante*. (Southern Pacific Co. v. Commonwealth, 164 Ky. 825, 176 S. W. 375; Louisville Gas & Electric Co. v. Bosworth, 169 Ky. 824 at 828, 185 S. W. 125.)

Sec. 771. Bonds may be issued and money borrowed to construct or operate road—Classification of preferred and common stock. Corporations organized under this law shall have power to borrow such sums of money as may be necessary for funding their floating debt or for completing, equipping or operating their road or any part thereof, or for paying any debts incurred for such purposes, and to issue and dispose of their bonds or obligations for any amount necessarily borrowed for such purpose, and to mortgage their

corporate property and franchises or any part thereof to secure the payment of any debt contracted or to defray any expenditures for the purposes aforesaid; and may in the manner provided in Article 1 of this Chapter increase or decrease its capital stock; and the increased stock may be common or preferred as shall be designated in the call for the meeting of the stockholders. If preferred stock be issued the company may guarantee to the holders thereof semi-annual or quarterly dividends, to an amount not exceeding six per cent per annum payable at its office or at such other places as the directors may designate. The stock may be sold at such time and place, either within or without the State, as may be deemed advisable, and the proceeds thereof applied for the purposes for which it was issued; the common stock of the company shall be entitled to dividends only out of the surplus of the profits after setting apart a sum sufficient to pay the dividends upon the preferred stock; and the company which issued such preferred stock shall reserve the privilege of redeeming and cancelling same at par at any time after three years from the date of its issue. (Act of 1893, Ch. 171, Sec. 190; Act of 1904, Ch. 105; as amended by Act of 1916, Ch. 46.)

Increase or decrease of capital stock. See Corporations generally, K. S. Sec. 553, *ante*.

Sec. 771a. Reorganization of insolvent railroad and bridge corporations under judgment of court. 1. Whenever any company owning or operating a railroad in Kentucky, or any company owning or operating a bridge over a navigable stream constituting a boundary of the State of Kentucky, shall be insolvent and shall come into the hands of any court under proceedings to enforce any mortgage or deed of trust, or for the payment of debts, it shall be lawful for the holders of a majority of any class of securities issued by such company, or any class of creditors of such company, to prepare and submit to such court a plan for the reorganization of the company. Such plan shall provide: First. For the payment

of all taxes and assessments due and owing by such company. Second. For the payment of all debts for labor and materials and supplies due by said company, and for which a lien shall exist on the property thereof under the law of the State of Kentucky. Third. For the payment of any debt due, or the assumption of any debt not due, and for which there shall exist a lien prior and superior to the claim of the class of creditors or security-holders proposing such plan. Fourth. For the issue of new classes of securities, which shall be for distribution among the creditors or the holders of the class of securities proposing such plan, and of subordinate and inferior securities or debts, and providing for such distribution. Such plan shall, as far as practicable, regard the relative rights and priorities of the different classes of creditors or security-holders.

2. When any such plan as above provided shall be filed with the court, it shall be the duty of the court to give such notice, by publication or otherwise, as it the [may] order, that a plan of reorganization has been filed in the cause, and that any holder or holders of any securities, or any creditor of such company, shall be entitled to file objections thereto, and shall be entitled to be heard in person or by attorney on the subject thereof; and if, upon the hearing thereof, and upon consideration of such plan, the court shall approve the same, or shall approve the same with such alterations and amendments as the court shall adopt, and such plan or scheme so approved shall receive the assent of the holders of three-fourths of the class of securities proposing the same, and a like proportion of all other classes of creditors subordinate thereto, and the court shall be of opinion that the said plan and scheme of reorganization is fair and equitable, and has made reasonable provision for the holders of all securities of said companies, the court shall adjudge and order that said plan or scheme of reorganization shall be adopted and carried out, and shall make proper provision for the execution thereof.

3. All creditors and persons holding securities of the said company, and not objecting to such plan of reorganization, shall be deemed to have assented thereto, and upon the entry of such order of approval the court may require from any creditor or person holding any of the securities of said company embraced by the said plan to surrender for discharge or cancellation such outstanding claims or securities, and receive in lieu or on account thereof the new securities provided in such plan. But where claims have arisen or securities have been issued prior to the passage of this act, and any holder of such claims or securities shall object to the plan of reorganization, there shall be inserted in such plan a provision for preserving and maintaining the right of such holder so as not to impair the obligation of his contract.

4. If no such plan be proposed or approved, the court may, within such time as the court may deem proper, order a sale of the property of any such company being so administered, after such notice as shall seem to the court sufficient. At any such sale, or at any sale which shall be hereafter made, of any railroad or bridge under any decree of sale, the purchaser or purchasers shall be required to pay the amount of the bid in cash: *Provided, however*, That if the property shall be purchased by or in behalf of holders of any class of securities issued by the said company, the purchaser or purchasers shall be required to pay in money or securities, immediately, such amount only as the court may deem sufficient to provide against a non-compliance with the bid; and the purchaser or purchasers shall thereafter be entitled, within such time as may be fixed by the court, to pay the amount of the bid by the payment of such money as may be necessary, and by the surrender of securities in proportion as such securities shall be entitled to receive the purchase money; and all holders of the same class of securities shall be entitled to have and enjoy equal rights in any such purchases with other holders of the same class. Such purchaser or purchasers under this latter provisions shall, before adopting any article

of incorporation, or transferring the property to any corporation formed for the purpose, present and file with the court, in which the decree of sale was entered, a plan of reorganization with substantially the provisions required in the preceding sections, and which shall likewise be subject to the approval of the court; and when the same shall have been so approved, and an order to that effect, and providing for the execution thereof, shall have been entered, the said purchaser or purchasers may adopt articles of incorporation under and in accordance with the laws of the State of Kentucky providing for the incorporation of such companies.

5. The word "securities" as used in this act shall embrace bonds, debentures, preferred and common stock, and other issues of obligations or certificates of substantially similar character, and the provisions hereof shall apply, as far as may be, to proceedings in relation to any separate division, or portion, or branch of any railroad on which are charged any separate issues of securities.

6. Where the property of any such company shall be partly without this State, the plan of reorganization may make provisions for including the property without the State, in such plan, in such manner, as may be consistent with the laws of the State where situated. (Act of 1896, Ch. 21.)

Secs. 772 to 834, inclusive, relate to operation of railroads and not to railroad corporations, and are therefore omitted.

Sec. 821. Railroad commission. There is established a department in the State government to be known as the Railroad Commission, which shall be composed of three Commissioners, one of whom shall act as chairman, and whose duty it shall be to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. Each of said Commissioners is authorized to administer oaths, and two of them shall constitute a quorum. (Duties as to extortion—dis-

crimination, Secs. 816, 820a. Assessment of railroads, Sec. 4096; Act of 1893, Ch. 171, Art. V. Subd. III, Sec. 228.)

Construction of this section.—(Louisville & N. R. Co. v. Garrett, 231 U. S. 298; see also, Ky. Const. sec. 209.)

Nature of state railroad commissions. Governmental control of railroads in many of the states is exercised through instrumentality of officers generally called railroad commissioners. These officers, of course, derive all their power from the statute which creates the commission, and a railroad commission is a tribunal possessing naked statutory powers. (In Kentucky however, the railroad commission is now established by virtue of Section 209, of the state constitution, *ante*, although not formerly. [See Louisville & Nashville R. Co. v. Greenbrier Dist. Co., 170 Ky. 785.] It is not a court, although it may exercise powers of a judicial nature. [See United States Supreme Court decision in Louisville & Nashville R. Co., case, *supra*]. The fact that powers in their nature judicial are exercised by an officer, a board of officers, or by a body of officers, does not make the officer a judge, nor does it constitute the body or board a court. The truth is that all officers who have discretionary duties to perform exercise *quasi judicial* power. . . . The functions and duties of railroad commissioners are administrative or ministerial, and neither legislative nor judicial. Their powers cannot be legislative, for legislative powers cannot be delegated, nor can their powers be judicial in the proper sense of the term, for the judicial power can only be exercised by courts and judges. (2 Elliott on Railroads, 2nd Ed. sec. 675; except words in parentheses.)

Governmental control of railroads. Railroads having been created mainly for the accomodation of the public are subject to legislative control within the limits of state and Federal constitutional restrictions. (Louisville & N. R. Co. v. Railroad Commission of Tennessee, 19 Fed. 679; Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567; Central Stockyards Co. v. Louisville & N. R. Co., 192 U. S. 568; reversing, 118 Fed. 113; Louisville & N. R. Co. v. Central Stock Yards Co., 212 U. S. 132; reversing, 133 Ky. 148, 97 S. W. 778; Michigan Central R. Co. v. Michigan Railroad Commission, 236 U. S. 633; Opportunity to test adequacy of rates fixed by state—penalties for exceeding, when constitutional. St. Louis, Iron Mt. & So. Ry. v. Williams, 251 U. S. 63; and other cases annotated under sections of the Kentucky Constitution in relation to railroads.

Federal railroad administration. Upheld under "war power," Northern Pac. Ry. Co. v. State of North Dakota, 250 U. S. 135; effect of, Louisville & N. R. Co. v. Steele, 180 Ky. 291, 202 S. W. 878; return of railroads to private owners, Transportation Act of 1920, Act of Congress, Feb. 28, 1920, U. S. Comp. Stat. Supp. Sec. 10,071.)

State regulation. A state railroad corporation cannot exempt itself from the control reserved to the state by its constitution. (Louisville

& N. R. Co. v. Kentucky, 183 U. S. 503; Louisville & N. R. Co. v. Kentucky, 161 U. S. 701.)

Powers of commission extended by statute (Act of 1916, Ch. 18) so as to give it jurisdiction over express companies, steamboats, water craft, telephone and telegraph companies.

Sec. 822. Railroad Commission—Office—Salaries and employes. The office of the Commission shall be at the seat of the government, and they shall be provided with suitable offices, furniture and stationery, by the State and may appoint a secretary and one stenographer at a salary of twelve hundred dollars per year to each, and one rate clerk at a salary of eighteen hundred dollars per year, which shall be paid by the State. Each Commissioner shall, before entering upon the duties of office, take an oath to discharge faithfully the duties of his office, and they shall receive an annual salary of three thousand dollars, except the chairman, who shall receive thirty-six hundred dollars per annum, and their actual necessary traveling expenses while engaged in the discharge of their duties, which, together with the salaries of the secretary, rate clerk and stenographer, shall be paid in the same manner as the salary of the Governor, except that before any expenses are paid, the chairman of the Commission shall file with the Auditor an itemized statement of said expenses, signed by him and approved by the Governor, which statement shall be filed before any warrant can be issued therefor, and except that each railroad corporation in the Commonwealth shall bear that portion of said traveling expenses incurred by said Commissioners for transportation over its lines, and shall either pay same to the Auditor, to be covered into the treasury, or, in lieu thereof, may issue to the Commonwealth, for use of said Commissioners, rate clerk and stenographer, written or printed authority entitling them to be transported over their respective lines when engaged in the discharge of their official duties, without charge or compensation. (Act of 1893, Ch. 171, Sec. 229, as amended by Act of 1906.)

Sec. 823. Election of commissioners. At the regular election in 1895, and every four years thereafter, there shall be elected one Commissioner from each of the districts hereafter designated, by the qualified voters thereof, who shall take his office on the fifth Tuesday next succeeding his election, and hold the same for four years, and until his successor is elected and qualified. (Act of 1893, Ch. 171, Sec. 230.)

Sec. 824. Districts. For the purpose of electing Commissioners the State is divided into three districts, the first composed of the counties of Meade, Hardin, Larue, Hart, Metcalfe, Barren, Monroe, Allen, Simpson, Warren, Edmonson, Grayson, Breckinridge, Hancock, Ohio, Butler, Logan, Todd, Muhlenberg, McLean, Daviess, Henderson, Webster, Hopkins, Christian, Trigg, Caldwell, Lyon, Crittenden, Union, Livingston, Marshall, Calloway, Graves, McCracken, Ballard, Hickman, Fulton, and Carlisle. The second composed of the counties of Gallatin, Owen, Scott, Fayette, Jessamine, Pulaski, Wayne, Clinton, Russell, Casey, Lincoln, Garrard, Boyle, Mercer, Anderson, Woodford, Franklin, Henry, Oldham, Carroll, Trimble, Jefferson, Shelby, Spencer, Bullitt, Nelson, Washington, Marion, Taylor, Green, Adair, and Cumberland. The third composed of the counties of Boone, Kenton, Grant, Harrison, Bourbon, Clark, Estill, Madison, Jackson, Laurel, Rockcastle, Whitley, Knox, Bell, Harlan, Leslie, Perry, Letcher, Floyd, Pike, Martin, Johnson, Breathitt, Clay, Owsley, Lee, Powell, Montgomery, Bath, Nicholas, Fleming, Robertson, Pendleton, Bracken, Campbell, Lewis, Mason, Greenup, Rowan, Carter, Elliott, Boyd, Lawrence, Morgan, Magoffin, Wolfe, Menefee, and Knott. (*Ibid*, Sec. 231.)

Sec. 825. Reports. Every railroad company shall, on or before the first day of September in each year, make and transmit to the Commission, at its office in Frankfort, under oath of the president or manager of the company, a full and true statement of the affairs of said company as the same existed on the first day of the preceding July, specifying:

1. The amount of capital stock paid up, and the names of the owners thereof, and amounts owned by each, and the residence of each stockholder as far as known.

2. The amount of its assets and liabilities.

3. The names and places of residence of its general officers.

4. The amount of cash paid to the company on account of the original capital stock.

5. The amount of the funded debt.

6. The amount of floating debt.

7. The estimated value of the road-bed, including iron and bridges.

8. The estimated value of rolling stock.

9. The estimated value of stations, buildings and fixtures.

10. The estimated value of other property.

11. The length of single main track.

12. The length of double main track.

13. The length of branches; stating length of single and of double track.

14. The aggregate length of siding and other tracks not above enumerated.

15. The number of miles run by passengers trains during the year preceding the making of the report.

16. The number of miles run by freight trains during the same period.

17. The number of tons of through freight carried, and the number of tons of local freight during the same period.

18. The monthly earnings for the transportation of passengers during the same time.

19. The monthly earnings for the transportation of freight during the same time.

20. The monthly earnings from all other sources respectively.

21. The amount of expenses incurred in running of passenger trains during the same time.

22. The expenses incurred in running of freight trains, and in running mixed trains during the same time.

23. All other expenses incurred in the management of the road, including the salaries of the officers, which shall be reported separately.

24. The amount expended for repairs of the road and maintenance of way, including repairs and renewals of bridges and renewals of iron.

25. The amount expended for improvements, and whether the same is estimated as a part of the expenses of operating or repairing the road; and if either, which?

26. The amount expended for motive power and cars.

27. The amount expended for station-houses, buildings and fixtures.

28. All other expenses for maintenance of way.

29. All other expenses for other purposes.

30. The number of tons of freight carried one mile.

31. The amount received per ton per mile.

32. The average distance each ton was hauled, and the average cost of hauling a ton of freight one mile.

33. What freight and transportation companies run on its road, and on what terms, and whether such transportation companies use the cars of the railroad company, or cars furnished by themselves.

34. Whether the freight or cars of such transportation companies are given any preference in speed or order of transportation; and, if so, in what particular?

35. The Commission may propound any additional interrogatories, which shall be answered by such company in the same manner as those specified in the foregoing section; and the Commission shall furnish to each company in proper time blanks upon which to answer the foregoing, and such other questions as may be propounded. (*Ibid*, Sec. 232.)

Taxation—foreign railroad companies—rolling stock subject to. (Baltimore & Ohio S. R. Co. v. Commonwealth, 177 Ky. 566, 198 S. W. 35.)

Sec. 826. Rate regulation. Said Commission shall examine all through freight rates from points out of this State to points into this State; and whenever they find that a through

rate charged into or out of this State is excessive or unreasonable, or discriminating in its nature, they shall call the attention of the railroad officials in this State to the fact, and to urge them of the propriety of changing such rates. And when such rates are not changed it shall be the duty of said Commission to present the facts to the Inter-State Commerce Commission and appeal to it for relief, and they shall receive upon application the services of the Attorney General of this State and (shall inquire) into the condition, management, and all other matters concerning the business of railroads in this State, so far as the same pertain to the relation of such railroads to the public, and whether such railroad corporations, their officers and employes, comply with the laws of the State; and whenever it shall come to their knowledge, or they shall have reason to believe, that the laws affecting railroad corporations in their business relations to the public have been violated, they shall prosecute, or cause to be prosecuted, the corporations or persons guilty of such violations. (*Ibid*, Sec. 233.)

NOTE: The words "shall inquire" are inserted by the author; the text of the act is probably erroneously printed.

Sec. 827. Power to examine railroad officials and agents. They shall have the power to examine, under oath, any person, or the directors, officers, agents and employes of any railroad corporation doing business in this State, concerning the management of its affairs, and to obtain information pursuant to this law; and shall have power to issue subpoenas for the attendance of witnesses, and to administer oaths; and any person who shall neglect or refuse to obey the process of subpoenas issued by said Commissioner, or who, being in attendance, shall refuse to testify, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment not less than ten nor more than fifty days, or both, in the discretion of the jury. (*Ibid*, Sec. 234.)

Sec. 828. Penalty for failure to file reports. Each officer, agent or employe failing or refusing to make, under oath, any report required by the Commission within the time required, or failing or refusing to answer fully, under oath, if required, any inquiry propounded by the Commission, or who shall, in any way, hinder or obstruct the Commission in the discharge of its duty, shall be guilty of a misdemeanor, and shall be fined for each offense not less than five hundred nor more than one thousand dollars; and it shall be the duty of the Commission to prosecute the person offending; and the Franklin circuit court, or the circuit court of any county through which the railroad runs, the officer, agent or employe of which has violated the provisions of this section, shall have jurisdiction of such prosecution; and it shall be the duty of the Commonwealth's attorney to prosecute all indictments, actions and proceedings under this law. (*Ibid*, Sec. 235.)

Sec. 829. Hearings for complaints against companies. The Commission shall hear and determine complaints under Secs. 816, 817 and 818. Such complaints shall be made in writing, and they shall give the company complained of not less than ten days' notice of the time and place of the hearing of the same. They shall hear and reduce to writing all the evidence adduced by the parties, and render such award as may be proper. If the award of the Commission be not satisfied within ten days after the same is rendered, the chairman shall file a copy of said award and the evidence heard, in the office of the clerk of the circuit court of the county, which, under the Code of Practice, would have jurisdiction of said controversy, and the clerk of said court shall enter the same on the docket for trial; and summons shall be issued, as in other cases, against the party against whom the award shall have been rendered, requiring said party to appear in the court, within the time allowed in ordinary cases, and show cause why said award shall not be satisfied. If such party fails to appear, judgment shall be rendered by default,

and the same proceedings had thereon as in other ordinary cases. If a trial is demanded the case shall be tried, in all respects, as other ordinary cases in which the same amount is involved, except that no evidence shall be introduced by either party except that heard by the Commission, except such as the court shall be satisfied, by sworn testimony, could not have been produced before the Commission by the exercise of reasonable diligence; the judgment and proceedings thereon shall be the same as in other ordinary cases. (*Ibid*, Sec. 236.)

Award of railroad commission—quashing summons. In a proceeding to recover judgment upon an award of the railroad commission, the summons will not be quashed because not issued upon petition because a petition is not required in such a proceeding. (Louisville & N. R. Co. v. Greenbrier Distillery Co., 170 Ky. 776, 187 S. W. 296.)

Section 829 not unconstitutional. This section does not violate Section 59 of the state constitution, since it is not a special or local act within the meaning of that clause of the constitution, but is a general law applicable to all proceedings of the kind. (L. & N. R. Co. v. Greenbrier Dist. Co., supra.) Nor is it in violation of sections 27, 28, 109, 135 in that it gives the railroad commission, judicial powers. (Ibid.; Louisville & N. R. Co. v. Garrett, et al., 231 U. S. 299; affg. 186 Fed. 176.) Likewise the provision which limits evidence to be heard in the circuit court does not deny the equal protection and due process of law, guaranteed by the 14th Amendment to the Federal constitution (Ibid); the Fourteenth Amendment does not control mere forms of procedure in state courts. (Illinois Central R. Co. v. Paducah Brewery Co., 157 Ky. 357, 163 S. W. 239.)

Constitutional law. The railroad commission had authority under the constitution of 1850 to make awards to be paid in money, and section 209 of the present constitution, authorizes it to exercise all the powers vested in it when the present constitution was adopted. (L. & N. R. Co. v. Greenbrier Dist. Co., supra.)

Legislative power—rates. The fixing of rates is a legislative power delegated to the commission by the legislature. (L. & N. R. Co., v. Greenbrier Dist. Co., supra.)

Regulation of rates—intrastate—limitation upon. The limitation upon legislative authority to regulate intrastate rates is that they must not be confiscatory. (L. & N. R. Co. v. Greenbrier Dist. Co., supra.)

Powers of commission. The railroad commissioners have power to enforce reasonable facilities and connections for passengers. (Commonwealth v. Louisville & N. R. Co., 120 Ky. 91, 85 S. W. 712.)

Sec. 830. Proceedings—Judgment of commission. Whenever, in the judgment of the Commission, after a personal examination of the same, it shall appear that repairs are necessary upon any railroad, or when, from complaint made or their own knowledge, they shall have reason to believe that the tracks, bridges, tunnels, or other structures of any company are in an unsafe or dangerous condition, or unfit for public travel, or that any additions to, improvements, or changes in the stations or terminal facilities are needed for the convenience and security of the public, they shall give notice in writing to the company owning or operating such road of the repairs, improvements or changes they deem proper and necessary, and shall afford such corporation an opportunity to be heard in reference thereto; and if the company shall neglect or refuse to make such repairs, improvements, or changes within a reasonable time after such hearing, if a hearing is requested by the company and the Commissioner shall believe that such improvements or changes are proper and necessary after a hearing, if one is had, they shall lay the facts before the Attorney General for his action and shall report the same fully to the next Legislature; no examination, request, advice, or report of the Commission shall, in any way, affect the duties or obligations of any company or relieve it from any liability. (*Ibid*, Sec. 237.)

Sec. 831. Information not to be made public. The Commission shall not be required to give publicity to any contracts, leases, or engagements obtained by them in the official capacity, if the interest of any company would thereby be injuriously affected, unless, in the judgment of the Commission, the public interest requires it. (*Ibid*, Sec. 238.)

Sec. 832. Influencing commission prohibited. The Commissioners, nor either of them, shall, directly or indirectly, solicit or request from, or recommend to, any railroad company, or any officer, attorney, agent, or employe thereof, the appointment of any person to any place or position, nor shall

any company offer to them, or either of them, any place or appointment for themselves or other persons, nor shall they, or either of them, directly or indirectly, request, accept or receive any present, gift or gratuity of any kind from any company. A violation of the provisions, or any of them, of this section, shall subject the person or corporation so violating to a fine of not less than one thousand nor more than five thousand dollars, to be recovered by indictment as other penalties for violation of law are. (*Ibid*, Sec. 239.)

Sec. 833. Copies of records. For a copy of any record on file in their office, they shall charge and receive the same fees that are charged by the Secretary of State for similar services, and shall cover into the State Treasury any amount so received. (*Ibid*, Sec. 240.)

Sec. 834. Annual report of commission. The Commission shall anually, on the first day of December, make a report to the Governor of all matters relating to their office for the preceding year, and such as will disclose the practical workings of the railroads in this State, and such other suggestions in relation thereto as they may deem necessary and proper, and shall have printed and lay before each Legislature, within the first ten days of its session, five hundred copies of their reports for the preceding two years. (*Ibid*, Sec. 241.)

CHARTER—FORMS FOR PURPOSE CLAUSE

Form 1.

(Louisville, Henderson & St. Louis Ry. Co.)

ARTICLE III. The corporation is formed for the purpose of acquiring by purchase all and singular the property of every character and description owned by the Louisville, St. Louis and Texas Railway Company sold under decree of the Circuit Court of the United States for the District of Kentucky and hereinafter more particularly described, or so much thereof as may be useful and desirable, and further constructing, operating and maintaining the same and to build extensions to or branches from said road and branches from said branches and is to have all the rights, privileges and franchises which by the law it is entitled to have for the purpose of carrying out the objects of its creation.

Form 2.

ARTICLE III. Said corporation is formed for the purpose of building, constructing, acquiring, by purchase, lease or otherwise, and owning, maintaining, and operating a railroad with rights of way, roadbed, tracks, side tracks, spurs, switches, stations, depots, terminals, way stations, freight houses, power houses, lines for transmission of electric power, telegraph and telephone lines, and all necessary, useful and convenient buildings and structures, having the city of ———, Kentucky, for one terminus, and the city of ———, Kentucky, for its other terminus, and passing through the following named counties in the state of Kentucky, to wit: ————————, and with branches from said main line to towns or places within the limits of said counties, or to connections with other railroads within the state of Kentucky, or to mines, clay banks, quarries, oil fields, manufacturing establishments, elevators, warehouses and navigable waters, within or bordering upon the state; said railroad to be operated by steam, electric or other motive power, and of building, constructing, manufacturing and acquiring, by purchase, lease or otherwise, the necessary engines, locomotives, motors, cars, coaches, rolling stock and equipment of all kinds, necessary, sufficient, and convenient for the proper and profitable operation of such road; of owning real estate in all the said counties, sufficient and proper for maintaining such stations, depots, terminal facilities, way stations, freight houses, power houses, and yards, necessary, sufficient and convenient for the proper and profitable operation of a complete railroad system; of owning real estate, with buildings, structures, machinery, tools and other appliances, sufficient for shops, repair shops, for the purpose of making, manufacturing, building and repairing engines, locomotives, motors, cars, coaches, and rolling stock and equipment of all kinds.

Form 3.

(Louisville & Interurban Railroad Co.)

ARTICLE III. The said corporation is formed for the purpose of constructing, acquiring, operating and maintaining a railroad or railroads in the City of Louisville and into and through the counties of Jefferson, Oldham, Shelby, Spencer, Nelson, and Bullitt, in the state of Kentucky.

It is proposed to construct a railroad from the terminus of the Bear grass Railway on the Taylorsville Turnpike to Jeffersontown, a distance of 7 miles; and thence to the City of Shelbyville in Shelby county, in said state, a distance of 17 miles; and also from a point beginning at or near the terminus of the Louisville Railway Company's tracks on Eighteenth Street, over, along and near the Eighteenth Street turnpike to Valley Station in the county of Jefferson in said state, a distance of 10 miles. And also from a point in the City of Louisville on the line of the tracks of the Louisville Railway Company situated on Story Ave., and thence through and along the streets of said city to Worthington, in the said county of Jefferson, state of Kentucky, a distance of 10 miles.

And in connection with such railroads the said corporation may construct, maintain and operate all necessary branches and switches, turnouts, trolley and feed wires, and such telegraph and telephone lines as may be expedient in the transaction of its business; and may receive, hold and purchase all necessary properties which may be required or be proper for the construction, operation, and maintenance of said railroads and may contract with any other railroad or street railway company in the City of Louisville for the operation of its cars over and along any of the tracks of such company in said city.

RULES OF PRACTICE BEFORE THE RAILROAD COMMISSION

1. Regular sessions of the Commission for hearing, considering and deciding contested cases, and any other matters properly before it, will be held at its office in Frankfort, Kentucky, on the first Wednesday in each month, and be continued from day to day when necessary. If the day so designated should at any time fall upon a legal holiday, then the session shall be held upon the day next following.

2. Special sessions of the Commission may be held at any time or place after due notice thereof to all interested parties, when, in the judgment of the chairman, or of the other two members, the public interests or the duties of the Commission require it.

3. Should a quorum of the Commission not be present on the day named for any regular or special session when there are on the docket contested cases or other matters ready for hearing or decision, then, in that event, the members present, if any, or the secretary, shall adjourn the same from day to day, making note thereof on the record until a quorum is present, when the business shall be proceeded with the same as if there had been a quorum present on the day named for that session. When it is known in advance to the secretary that there will not be a quorum present for any session, he shall, if practicable, so advise all interested parties, and also let them know what day a quorum may be expected to be present.

4. The Commission, when a quorum is present, will at any time or place take up, consider and dispose of any matters, other than contested cases, that may be brought before it or to its notice.

5. Any person, firm, association or corporation may complain to the Commission of any act done or omitted to be done by any person or corporation in violation of the laws creating and defining the powers and duties of the Commission; or if any acts or practices by any person or corporation in violation of the laws relating to all railroads which the Commission is charged to see "are faithfully executed." Complaints and applications for hearing or relief, while technical pleading will not be required, must be made in writing signed by the complainant or his attorney, and must give the name of the party complained of, and also a brief statement of the facts claimed to constitute a violation of the law, or to entitle the applicant to the relief asked for. The secretary will, upon request, advise any party as to the form of petition, application, answer or other paper necessary to be filed in any case, and furnish any information from the records of the Commission as will conduce to a full presentation and and a speedy disposal of the matters in controversy.

6. All complaints, applications for hearing, or information, and all other papers relating thereto, and all communications, telegrams and inquiries concerning matters before or to be brought before the Commission should be delivered or mailed to the "Secretary, Railroad Commission," Frankfort, Kentucky. However, complaints and communications delivered or addressed to any member of the Commission at the place of his residence will be given prompt attention.

7. Application for re-opening a case after it has been submitted, or for rehearing after it has been decided by the Commission, may be made within ten days thereafter by petition in writing duly verified, in which must be stated specifically the grounds upon which the application is based, and if for rehearing, the finding of fact and conclusions of

law claimed to be erroneous must also be specified. A copy of the petition must also be filed for the adverse party.

8. When such complaint or application shall be made, the secretary shall file the same by placing his file mark thereon, with the proper number, and enter the same on the docket.

9. Before causing notice to be issued to the carrier or other party complained of as provided by law, the Commission may notify the party against whom complaint is made of the nature of such complaint and the party making the same, in order that the cause of the complaint may be removed or remedied without incurring the expense of a formal trial or hearing before the Commission. When notice shall be issued to such party to appear before the Commission at the place and time named in the notice to answer such complaint, the party so notified shall file answer and at least one copy thereof with the secretary of the Commission, not later than five days before the time so fixed and the secretary shall at once forward said copy to complainant.

10. The secretary of the Commission will, when a complaint or complaints have been filed, make full copies of same for use of each member of the Commission and of the party complained of.

11. In entering the complaint upon the docket and in the answer thereto, the party making complaint shall be designated "plaintiff" and the party against whom complaint is made shall be designated "defendant." If the application be "*ex parte*," the case shall be so styled, with the name of the applicant.

12. The party or parties to any complaint or application and party complained of may appear before the Commission in person or by counsel.

13. Any member of the Commission will issue subpoenas for the attendance of witnesses whose testimony either party may desire at any investigation.

14. In all contested cases the plaintiff shall open and close, and the procedure before the Commission will be governed,

as far as applicable, by the practice in the Circuit Courts of Kentucky.

15. These Rules shall be printed and copies thereof furnished to all applicants.

CONDEMNATION PROCEEDINGS BY RAILROADS

Sec. 835. Appointment of Commissioners. When any company authorized to construct a railroad shall be unable to contract with the owner of any land or material necessary for its use for the purpose thereof, it shall file, in the office of the clerk of the county court, a particular description of the land and material sought to be condemned, and may apply to the county court to appoint Commissioners to assess the damages the owner or owners thereof may be entitled to receive, and thereupon the said court shall appoint three impartial housekeepers of the county who are owners of land, and who shall be sworn to faithfully and impartially discharge their duties under this law. (Act of 1893, Ch. 171, Art. V. Subd. IV., Sec. 242.)

Sec. 835a. Union stations—Tracks, platforms, etc. All corporations or companies organized under the laws of this or any other State for the purpose of constructing, maintaining or operating union railway stations, whether passenger or freight, are hereby vested with the right and power to acquire by condemnation such lands and material in this State as, in their discretion, may be reasonably necessary for the purpose of constructing, maintaining and operating such union railway stations and the usual or proper railway tracks, platforms, sheds, approaches and other appurtenances thereto. And when any such corporation or company shall be unable to contract or agree with the owner or owners of such land or material it may, in the mode prescribed by law for the condemnation of land and material by railroad companies, condemn and acquire the same, or so much thereof as, in

its discretion, may be necessary for the purposes aforesaid. (Act of 1906, Ch. 91.)

Right of way—easements. Rights of way for railroad purposes secured by condemnation are easements merely and except for the easement the title remains in the landowner. Secs. 835-840 inc., prescribe the means whereby this easement or right of way may be condemned over private property and put to public use in the shortest time possible, consistent with and saving the rights of the owners. (Dickerson v. Goocey, County Judge, 154 Ky. 685, 159 S. W. 539.)

County court. Jurisdiction is conferred upon the county court to condemn the right of way for public use and assess the damages the owner may be entitled to receive, but where the title to the land involved is in dispute the county court has no jurisdiction to try the question of title and at the instance of one of the claimants the cause should be transferred to the Circuit Court. (Dickerson v. Goocey, supra.)

Electric railways. Electric railways are within the purview of the railroad condemnation law. (Devon v. Cincinnati, C. & E. Ry. Co., 128 Ky. 768, 109 S. W. 361.)

Oil and gas companies. Oil and gas companies come within the purview of the railroad condemnation law. (Kentucky Stat. Sec. 3766a, post.)

Abandonment of lands condemned—effect of. A corporation may abandon the purpose of taking property which it has condemned for its use without incurring any liability to pay the damages awarded. The corporation has no interest in the property, and the owner is not divested of his title until there has been a payment on or tender of the damages assessed. The effect of the condemnation proceedings is simply to fix the price at which the corporation can take the property if it choses to do so. (Manion v. Louisville, St. Louis & Texas R. Co., 90 Ky. 491, 12 R. 445, 14 S. W. 532.)

Practice in instituting condemnation proceedings. It is not necessary for a corporation to file a petition in strict conformity with the Civil Code but the statement filed as the basis of the proceeding must contain not only a description of the land, but an averment that the land is necessary for its use, and that it has been unable to contract with the owner for it. These are jurisdictional facts, and if not pleaded in the petition, the proceeding should be dismissed. (Portland & Greenwood T. P. Co. v. Bobb, 88 Ky. 226, 10 R. 796, 10 S. W. 794.)

Practice on appeal to the circuit court. The confirmation of the commissioners' report is not the sole question to be tried on appeal to the circuit court but the assessment of damages may be tried de novo. (David v. Louisville & Interurban R. Co., 158 Ky. 721, 166 S. W. 230.)

Measure of damages. In estimating the value of the property condemned it is the market value of the property which is to be considered and evidence of sale prices of surrounding property is competent, but

such evidence is incompetent unless the witness can fix dates, costs and sale prices. (David v. Louisville & Interurban R. Co., supra.)

Measure of damages. In condemnation proceedings the owner of land is entitled to the value of the land taken, considering its relation to the remainder of the tract and also damages by reason of the depreciation in value of the residue of the land on account of the shape it is left in. (Louisville, St. Louis & Texas R. Co. v. Barrett, 91 Ky. 487, 13 R. 57, 16 S. W. 278.)

Appeal bonds. Appeal bonds must be executed according to the statute. (Kothhmier v. Louisville & Interurban R. Co., 28 Ky. L. R. 298, 89 S. W. 104.)

FORM FOR PETITION

———— COUNTY COURT

Central Railroad of Kentucky, Plaintiff, vs. John Doe and Richard Roe, Defendants.	PETITION FOR CONDEMNATION

The plaintiff, the Central Railroad of Kentucky states that it is a corporation organized and existing under and by virtue of the laws of the state of Kentucky, for the purpose of constructing a railroad and operating and maintaining the same through the counties of ———, in the state of Kentucky, and that by reason of its creation as such it is empowered to construct, operate and maintain a railroad, together with various branches and spurs in the county of ———, and it is necessary for it to construct and build a railroad line or track through the lands of John Doe and Richard Roe, the defendants herein, in the said county, and state of Kentucky; that in order to so construct the said railroad line or track in the said county it is necessary to use the lands of the defendants herein and to secure a right of way in and to said lands, the same being described as follows:

[*Description by metes and bounds.*]

That the plaintiff, is unable to contract with these defendants for the purchase of the property herein described for the following reasons:

[*Enumerate reasons why purchase is impossible.*]

WHEREFORE, plaintiff prays the court to appoint three commissioners to assess the damages John Doe and Richard Roe, the defendants, are entitled to receive from it by reason of the appropriation of the aforesaid tract, for the purposes and uses herein described, and for such further relief as to the court may seem just and proper.

NOTE: In the petition for condemnation if the railroad corporation is a foreign corporation, the petition must aver that it has also become organized as a corporation under and by virtue of the laws of the state of Kentucky, otherwise the proceeding should be dismissed, or an alle-

gation that it had complied with the requirements of Section 211 of the Constitution of Kentucky and Section 765 of the Kentucky Statutes, would probably be sufficient. (See constitution Sec. 211, and K. S. Sec. 765, ante, with annotations thereunder.)

Sec. 836. Assessment of damages—Report of commissioners. It shall be the duty of said Commissioners to view the land and material, and to award to the owner or owners the value of the land or material taken, which shall be stated separately; and they shall also award the damages, if any, resulting to the adjacent lands of the owner, considering the purposes for which it is taken; but shall deduct from such incidental damages the value, if any, of the advantages and benefits that will accrue to such adjacent lands from the construction and prudent operation of the railroad proposed to be constructed. They shall return a report in writing to the office of the clerk of said court, stating their award, and shall describe, in their report, the land and material condemned, give the names of the owners, and whether non-residents of the State, infants, of unsound mind, or married women. (Act of 1893, Ch. 171, Sec. 243.)

See Ky. Constitution, Secs. 13, 242, ante.

Instructions. In condemnation proceedings for a railroad right of way through the lands of another, instructions which told the jury that the defendants should be allowed as direct damages the fair market value of the land actually taken for the roadbed, the cost to them of the erection of gates and fences resulting therefrom, and such other damages as directly resulted to the remainder of the tract, if any, not exceeding the difference between the fair market value of the land immediately before and after the taking of the right of way, gave for the guidance of the jury all the law applicable to the issues of fact made in the case. (West Kentucky Coal Company v. Dyer, 161 Ky. 407, 170 S. W. 967.)

Evidence—admissibility—contiguous lands—market value. Evidence as to the market value of the lands contiguous to that of the defendants, or prices at which such contiguous lands sold, about the time of the condemnation proceedings, was admissible as bearing upon the market value of the defendants' lands. (West Kentucky Coal Company v. Dyer, supra.)

Instructions. Definition of words "market value." (Sandy Valley & Elkhorn Railway Company v. Bentley, 161 Ky. 555, 171 S. W. 178.)

Evidence of value on appeal. On appeal to the circuit court the evidence as to value of the property condemned should be confined to its

value at the time of trial. (Sandy Valley & Elkhorn Ry. Co. v. Bentley, supra.)

No obligation to take property after judgment. (Sandy Valley & Elkhorn Ry. Co. v. Bentley, supra.)

Instructions. The value of reasonable improvements may be allowed although made after the commencement of the condemnation proceeding. (Sandy Valley & Elkhorn Ry. Co. v. Bentley, supra.)

Evidence—opinion of witnesses as to value. It was not error to admit the opinions of witnesses as to the value of property condemned, where there had been no sales of similar property, sufficiently near in point of time and circumstances to afford a fair basis for measuring the market value of the property condemned. The determination of the qualifications of such witnesess is a matter for the discretion of the judge. (Sandy Valley, etc. v. Bentley, supra.)

Measure of damages. Condemnation of country club property by railroad. (Louisville & N. R. Co. v. White Villa Club, 155 Ky. 452, 159 S. W. 983.)

Instructions generally approved. (Louisville & N. R. Co. v. Hall, 143 Ky. 497, 136 S. W. 905; Shirley v. Southern Ry. Co., 28 Ky. L. R. 151, 89 S. W. 124; Chicago, St. Louis & New Orleans R. Co. v. Rottgering, 26 Ky. L. R. 1167, 83 S. W. 584; see also Hobson, Blain & Caldwell's "Instructions to Juries," p. 284.)

FORM FOR INSTRUCTIONS[1]

(a) You will find for the defendant such a sum as you may believe from the evidence is the fair and reasonable cash value of the strip of land taken, considering it in relation to the entire tract of which the said strip is a part, (b) and also such other direct damage, if any, as you may believe from the evidence will directly result to the reminder of the tract by reason of the situation in which it is placed by the taking of said strip, and any such additional fencing or other improvements, if any, as may be necessary to the reasonable enjoyment of the remaining tract, by reason of the taking of said strip; (c) but your finding under this instruction should not exceed in all, the amount which you may believe from the evidence is the difference between the market value of the entire tract of land immediately before, and the market value of the remainder immediately after, the taking of said strip, containing ——— acres, excluding from both estimates any enhancement of the value of the land by reason of the prudent building or operation of the proposed railroad.

(d) You will take into consideration all the advantages and disadvantages which you may believe from the evidence can be reasonably anticipated to result from the prudent construction and operation of the proposed railroad through and upon said land and if you believe from the evidence that such disadvantages will exceed such advantages, you

[1] Hobson, Blain & Caldwell's, "Instructions to Juries," Sec. 249.

may allow the defendant what you may believe from the evidence will remunerate him therefor, but if you believe from the evidence that such advantages equal or exceed such disadvantages, then you will find for the defendant only the direct damages, as set out and defined in the first instruction, and nothing under this instruction.

Instructions where infants have an interest in land condemned. **Approved instructions.** (Broadway Coal Mining Co. v. Smith, 136 Ky. 725, 125 S. W. 157, 26 L. R. A. (N.S.) 565; Big Sandy R. Co. v. Dils, 120 Ky. 563, 87 S. W. 310; see also Hobson, Blain & Caldwell's, "Instructions," p. 285.)

Adverse possession—when a bar to condemnation. Where, after fifteen years a railroad company seeks to recover an additional strip of land, which it claims was included by the judgment in the condemnation proceedings, but by mistake, omitted by the surveyor. Held, that the possesson of the owner of the servient estate was adverse, and that the company's right to recover was barred. (Louisville & N. R. Co. v. Quinn, 94 Ky. 310, 15 Ky. L. R. 734, 22 S. W. 221.)

Right of way in a public highway. Duty of railroad company to support and not to destroy the highway. (Louisville & N. R. Co. v. Whitley County Court, 95 Ky. 215, 15 Ky. L. R. 734, 24 S. W. 604; Lawrence County v. Chattaroi R. Co., 81 Ky. 225.)

Injuries to abutting property owners—measure of damages. (Henderson Belt R. Co. v. Dechamp, 95 Ky. 219; Fulton v. Short Route, 85 Ky. 640, 4 S. W. 332; Cornwall v. Louisville & N. R. Co., 87 Ky. 72; Elizabethtown, Lexington & Big Sandy R. Co., 73 Ky. [10 Bush] 382; Jeffersonville, Madison & Indianapolis R. Co. v. Esterle, 76 Ky. [12 Bush] 667.)

Charter rights—repeal of by statute. The right of eminent domain given a railroad company by its charter may be repealed by a general act applicable to all railroads. (Chattaroi R. Co. v. Kinner, 81 Ky. 221; Tracy v. Elizabethtown, Lexington & Big Sandy R. Co., 85 Ky. 270, 3 S. W. 168.)

Right to dismiss proceeding. Plea of former judgment setting out conditions of condemantion, election to take upon those conditions. (Cornwall v. Louisville & N. R. Co., 104 Ky. 29, 46 S. W. 685, and former case, 87 Ky. 72.)

Condition precedent. Necessity and a public use must exist as a condition precedent to condemnation of private property, but there is no presumption of necessity. (Tracy v. Elizabethtown, Lexington & Big Sandy R. Co., 80 Ky. 259, 3 Ky. L. R. 813; Houser v. Paducah & Illinois R. Co., 178 Ky. 458, 199 S. W. 3.)

Election to take lands. A railroad corporation may, after judgment, elect to take or not to take lands condemned and an absolute personal judgment for the amount of the damages awarded is not proper before the exercise of of this right of election. (Long Fork Ry. Co. v. Sizemore. 184 Ky. 54, 211 S. W. 193.)

Sec. 837. Confirmation of report of commissioners. Upon the application of said company, and upon filing such affidavits as may be necessary, the clerk of said court shall issue process against the owners to show cause why the said report should not be confirmed, and shall make such orders as to non-residents and persons under disability as are required by the Civil Code of Practice in actions against them in the circuit court. (*Ibid*, Sec. 244.)

Sec. 838. Confirmation of report in absence of exceptions. At the first regular term of the county court, after the owners shall have been summoned the length of time prescribed by the Civil Code of Practice before an answer is required, it shall be the duty of the court to examine said report, and if it shall appear to be in conformity to this law, and to the extent that no exceptions have been filed thereto by either party, it shall confirm said report as against the owners not excepting. (*Ibid*, Sec. 245.)

Forms of report, summons, affidavit and order. (See Caldwell's Ky. Form Book, Nos. 816, 818, 821, 822.)

The confirmation of the commissioners' report is not the sole question which may be reviewed on appeal to the circuit court. The case may be tried de novo, on appeal, as to value, etc., at the time of trial. (David v. Louisville & Interurban R. Co., 158 Ky. 721, 166 S. W. 230.)

Sec. 839. Exceptions, trial of and appeal to circuit court. When exceptions shall be filed by either party, the court shall forthwith cause a jury to be empaneled to try the issues of fact made by the exceptions, and each juror shall be allowed one dollar per day for his services, to be taxed as cost. In assessing the damages the jury shall be governed by the rule prescribed in Sec. 836 of this law, and, upon the request of either party, may be sent by the court, in charge of the sheriff, to view the land or material. If sufficient cause be not shown for setting aside the verdict, the court shall render judgment in conformity thereto, and shall make such orders as may be proper for the conveyance of the title upon the

payment of the damages assessed. Either party may appeal to the circuit court, by executing bond as required in other cases, within thirty days, and the appeal shall be tried *de novo*, upon the confirmation of the report of the Commissioners by the county court, or the assessment of damages by said court, as herein provided, and the payment to the owners of the amount due, as shown by the report of the Commissioners when confirmed, or as shown by the judgment of the county court when the damages are assessed by said court, and all cost adjudged to the owner, the railroad company shall be entitled to take possession of said land and material, and to use and control the same for the purpose for which it was condemned as fully as if the title had been conveyed to it. But when an appeal shall be taken from the judgment of the county court by the company, it shall not be entitled to take possession of the land or material condemned until it shall have paid into court the damages assessed and all costs. All money paid into court under the provisions of this law shall be received by the clerk of the court and held subject to the order of the court, for which he and his sureties on his official bond shall be responsible to the persons entitled thereto. (*Ibid*, Sec. 246. See Ky. Const., Sec. 242.)

Sec. 840. Proceedings on appeal. The appeal from the county court shall be taken by filing with the clerk of the court to which the appeal lies a statement of the parties to the appeal, and a transcript of the orders of the county court, and thereupon the said clerk shall certify to the clerk of the county court that said appeal has been filed, and the clerk of the county court shall immediately transfer the original papers to the clerk of the court to which the appeal is pending; and if the owner on his appeal shall fail in the circuit court to increase the amount of damages awarded in the county court, he shall pay all the costs of the appeal; if the damages are increased in the circuit court, the other party shall pay all the costs of the appeal. The same rule as to

payment of costs shall apply when the appeal is prosecuted by the party seeking to condemn land. (*Ibid*, Sec. 247.)

Proceedings and assessment of compensation. It is competent for the condemnor to show in evidence the fair market value of lands in the same community and the owner may offer evidence in rebuttal. (Music v. Big Sandy & Kentucky River R. Co., 163 Ky. 628, 174 S. W. 44.)

Costs upon condemnor. The costs of the county court in condemnation proceedings must be paid by the condemnor regardless of whether there is an appeal from the judgment of the ounty court and without reference to which party is successful in reducing or increasing the compensation. (Music v. Big Sandy & Ky. Riv. R. Co., supra; 1912 C. Am. & Eng. Ann. Cas. 533, 15 Cyc. 973.)

Public use—presumption of necessity. There is no presumption of necessity for a public use of certain lots from the fact that a railroad company has built its tracks thereon but such necessity must be proved before the rights of private ownership give way to public use. (Houser v. Paducah & Illinois R. Co., 178 Ky. 458, 199 S. W. 3.)

Appeal—review. The verdict of the jury will not be disturbed unless flagrantly against the weight of evidence. (Music v. Big Sandy & Kentucky River R. Co., supra.)

Appeals—necessity of giving bonds—time. In an appeal from a judgment of the county court under sections 839 and 840, the party taking the appeal must file appeal bond, statement of the parties, and transcript of the orders of the county court, within thirty days after judgment rendered. (Kotheimer v. Louisville & Interurban R. Co., 28 Ky. L. R. 298, 89 S. W. 104.)

Appeals. Tried de novo in the circuit court. (David v. Louisville & Interurban R. Co., 158 Ky. 721, 166 S. W. 230.)

Appeals—payment of costs into court, effect of. Such payment of costs and the amount of the award into court, does not waive the right to appeal from the circuit court to the court of appeals. (Madisonville, Hartford & E. R. Co. v. Ross, 126 Ky. 138, 103 S. W. 330.)

Appeals—increase of award by circuit court. The amount of award and costs increased by the circuit court on appeal from the judgment of the county court may be credited with the amount paid by plaintiff in satisfaction of the judgment rendered below. (Cincinnati Gas Transportation Co. v. Cartee, 149 Ky. 89, 147 S. W. 925.)

Appeals. On appeal, the award of arbiters agreed upon in lieu of a jury, will not be set aside, the record showing such agreement to have been made. (Hensley v. Wasiota & Black Mt. R. Co., 153 Ky. 17, 154 S. W. 385.)

Liability of landowner for costs on appeal in eminent domain proceedings. The Kentucky rule stated in Music v. Big Sandy & Ky. Riv. R. Co., 163 Ky. 628, 174 S. W. 44, seems to be that the county court costs

must be paid by the condemnor whether successful or unsuccessful, and whether the judgment of the county court is appealed from or not. The question is discussed generally in an elaborate note to the case of Peoria, Bloomington & Champaign Traction Co. v. Vance, et al.; reported in 1912 C. Am. & Eng. Ann. Cas. 532, 251 Ill. 263, 95 N. E. 1081. But a landowner should be charged with costs of an unsuccessful appeal from the circuit court. (Barrall v. Quick, 74 S. W. [Ky.] 214, 36 L. R. A. [N.S.] 624.)

Forms for exception, order and appeal under this section. (See Caldwell's Ky. Form Book, Nos. 819, 828, 837.)

Under K. S. Secs. 835-840, 966, and 1052, where a condemnation award is claimed by adverse claimants, each claiming to be the sole owner of the land, the county court has no jurisdiction to try the title, and should, on application of one of the claimants transfer the issue to the circuit court. (Dickerson v. Goosey, 154 Ky. 685, 159 S. W. 539.)

FOREIGN RAILWAY COMPANIES

Sec. 841. Foreign railroad company to become domestic corporation. No company, association or corporation created by, or organized under, the laws or authority of any State or country other than this State, shall possess, control, maintain, or operate any railway, or part thereof, in this State until, by incorporation under the laws of this State, the same shall have become a corporation, citizen and resident of this State. Any such company, association or corporation may, for the purpose of possessing, controlling, maintaining or operating a railway or part thereof in this State, become a corporation, citizen and resident of this State by being incorporated in the manner following, namely: By filing in the office of the Secretary of State, and in the office of the Railroad Commission, a copy of the charter or articles of incorporation of such company, association or corporation, authenticated by its seal and by the attestation of its president and secretary, and thereupon, and by virtue thereof, such company, association or corporation shall at once become and be a corporation, citizen and resident of this State. The Secretary of State shall issue to such corporation a certificate

of such incorporation. (Act of 1893, Ch. 261, Sec. 1, and not a part of the general corporation law enacted in 1893.)

See Constitution, sec. 211, ante. with annotations.

Filing articles, effect of. A compliance with this section by filing foreign articles of incorporation in the office of the Secretary of State will permit a foreign corporation to maintain and operate its lines within the state but it does not give it the right to eminent domain. (Evansville & Henderson Traction Co. v. Henderson Bridge Co., 141 Fed. 51, affrmed 134 Fed. 973.)

Leases of established lines. This section permits foreign railways to lease established lines in this state. (Plummer v. C. & O. Ry. Co., 143 Ky. 102, 136 S. W. 162.)

Taxation. Compliance with this section does not subject a foreign corporation to the provisions of section 4225 of the Kentucky statutes, providing for organization tax. (C., N. O. & T. P. Ry. Co. v. Commonwealth, 119 Ky. 196, 83 S. W. 562; Vaughan v. Nashville, C. & St. L. Ry., 192 Ky. 137, 232 S. W. 411.)

Sec. 842. Penalty for violation of Sec. 841. Any company, association or corporation that, after the first day of August, one thousand eight hundred and ninety-three, possesses, controls, maintains, or operates any railway, or part thereof, in this State, without becoming incorporated as a corporation, citizen and resident of this State, as permitted by Sec. 841, shall be guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars for each day or part thereof, that any railway, or part thereof, in this State, is possessed, controlled, maintained or operated by it; any person that in anywise aids or assists either as officer, agent, servant or employe in possessing, controlling, maintaining or operating any railway or part thereof, in this State, shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars for each day or part thereof that he so assists or aids. (*Ibid*, Sec. 2.)

INTERURBAN ELECTRIC RAILROADS

Sec. 842a. 1. Interurban electric railroads—powers of, etc. All interurban electric railroad companies authorized to construct a railroad ten or more miles in length, heretofore or

hereafter incorporated under the general railroad laws of this Commonwealth, shall be under the same duties and responsibilities, so far as practicable, and shall have the same rights, powers and privileges as is now granted to or conferred upon railroad corporations existing, operated or incorporated under existing laws of this Commonwealth, or under laws that may hereafter be enacted. (Act of 1902, Ch. 13.)

Condemnation of land. An electric railway is empowered to condemn lands for its right of way and this is so even though ten miles of track have not been completed. (Devon v. Cincinnati, C. & E. Ry. Co., 128 Ky. 768, 109 S. W. 361; see Railroad Condemnation Law.)

Safety requirements. The requirements of the law in relating to gongs and signals along the right of way of steam railroads apply to electric railroads. (Commonwealth v. Louisville & Interurban R. Co., 141 Ky. 583, 133 S. W. 230.)

Bundle racks. Interurban railways are required to be equipped with bundle racks in the cars. (Act of 1918, ch. 101.)

2. **Passengers in city limits.** Interurban electric railroads shall not, unless by special contract with electric street railway companies, receive, transport and deliver passengers between points within the limits of cities or municipalities, which are contiguous or adjacent, and into and through which such electric street railways are being operated, while using the tracks of such electric street railway therein. (*Ibid.*)

3. **Assessment of property.** All property of interurban electric railroads, both tangible and intangible, shall be valued and assessed for taxation in the same manner provided by law for the valuation and assessment of other railroad property in this Commonwealth. (Ibid.)

4. **Water supply, contracts as to.** Any interurban electric railroad company now incorporated, or that may hereafter be incorporated as prescribed in Sec. 1 of this act is hereby authorized and empowered to contract with the owner of any land, material or water right, necessary for the construction and equipping and maintaining a reservoir

within five miles of the line or railroad, or a line of railroad proposed to be constructed or for a supply of water from a lake or river for the use and purpose of providing and maintaining a sufficient supply of water for its power house or powerhouses, and conveying, by a pipe line, the water thereto. When any company authorized to construct interurban electric railroads shall be unable to contract with the owner of any land or material or water rights, necessary for the purpose of constructing, equipping, and maintaining a reservoir to provide a sufficient supply of water, and pipe the same to its power house or powerhouses, it shall have the right to condemn the same, in the same manner in which railroad companies condemn land for rights-of-way. (*Ibid.*)

Condemnation proceedings apply to electric railroads. (Devon v. Cincinnati, C. & E. Ry. Co., 128 Ky. 768, 109 S. W. 361; see Railroad Condemnation Law.)

5. **Act not to affect other railroads.** Nothing in this act shall be construed as depriving companies heretofore organized and which may hereafter be organized and incorporated under the general railroad laws of this Commonwealth, governing such companies, and which companies use, or intend to use, electricity or other motive power, of the right of condemnation or other rights and privileges which they obtain or may obtain by reason of their incorporating under the general railroad laws of this Commonwealth. (*Ibid.*)

6. **Penalty for damaging property.** Any person who shall wilfully and maliciously tear up, break or displace any rail or other fixture attached to the track or switch or break any bridge or viaduct, or distrub trolly wires or their supports or poles and guy-poles and guy-wires or feed or supply wires, power house or machinery therein, car barns or cars therein, owned and used by any interurban electric railroad company, or do any act whereby the motor or cars might be upset, arrested or thrown from the track of any such road, or of any switch or any branch or turnout, or who shall wilfully and maliciously destroy, or injure any

dam, reservoir, or bank thereof, or shall destroy, injure or obstruct any pipe, watermain or course connected with such reservoir, shall be confined in the penitentiary not less than two or nor more than ten years. (*Ibid.*)

JURISDICTION OF COMMISSION EXTENDED

The jurisdiction of the Railroad Commission has been recently extended by an Act of 1916, Chapter 18, as amended by Act of 1920, Chapter 61, so as to give it regulatory power over "express companies, telephone companies, telegraph companies, natural gas companies and natural gas transportation companies, steamboats and steamboat companies, and all boats and other water craft propelled by the use of oil, gasoline, or other means, whether incorporated or unincorporated," and the regulation of rates, toll charges, etc., except where the same are under municipal jurisdiction.

ASSESSMENT OF RAILROADS

(See Corporation Tax Law.)

CHAPTER VI

PROVISIONS OF THE KENTUCKY STATUTES RELATIVE TO MISCELLANEOUS CORPORATIONS

Including the following corporations not specifically provided for by the general corporation law

1. Bridge companies.
2. Building and loan associations.
3. Religious, charitable and educational corporations.
4. Foreign news corporations.
5. Co-operative corporations (see also Bingham Act).
6. Investment companies (1920 Blue Sky Law).
7. Oil and gas companies.
8. Telegraph and telephone companies.
9. Co-operative marketing associations (Bingham Act).

BRIDGE COMPANIES

Sec. 843. Merger. When a corporation heretofore or hereafter organized under general incorporation laws of this Commonwealth for the purposes of constructing, maintaining and operating a bridge across a river forming boundary line of this Commonwealth has, with the consent of its stockholders, heretofore consolidated, or may hereafter consolidate, with a corporation organized for the same purposes under the laws of any State other than Kentucky, then such consolidated corporation, upon the filing of a verified copy of the agreement of consolidation with the Secretary of State of this Commonwealth, shall have the rights, powers, privileges and immunities of a body-politic and corporate under the laws of this State, and shall become and be a corporation resident and citizen of this State, with power to construct, maintain and operate such bridge; and it shall be vested with the right of perpetual succession, and with the right and

power to condemn land in this Commonwealth necessary for the constructing, maintaining and operating such bridge, its avenues, approaches and necessary appurtenances; said condemnation proceedings to be conducted in the manner prescribed by law for the condemnation of lands for railroad and turnpike road purposes. No bridge constructed under this act, nor any main or principal approach thereof, shall cross any railway at grade thereof. (See Sec. 771a as to reorganization of insolvent companies. Act of 1893, Ch. 145.)

Bridges—interstate—regulation of toll on. A bridge for foot passengers across the Ohio river, between Kentucky and Ohio, is an interstate bridge and congress may regulate rates of toll thereon; but in the absence of congressional legislation on the subject, the two states may by identical and reciprocal legislation fix the rates of toll thereon. (Broadway & Newport Bridge Co. v. Commonwealth, 173 Ky. 165, 190 S. W. 715.)

Police power. The rate legislation must be joint and reciprocal, and therefore, one state can not fix toll rates alone, under the police power. (Broadway & Newport Bridge Co. v. Commonwealth, supra.)

Negligence. Duty of bridge company maintaining a grade crossing. (Louisville Bridge Co. v. Iring, 180 Ky. 729, 203 S. W. 531.)

Kentucky-Indiana boundary. The territorial limits of Kentucky extend across the Ohio river to low-water mark on the Indiana side. (Nicoulin v. O'Brien, 248 U. S. 113, affg. 172 Ky. 473, 189 S. W. 724.)

Sec. 844. Capital stock, increase of. Such consolidated corporation shall have the right to increase its capital stock from time to time to an amount sufficient for the construction of such bridge, but not to exceed the amount of the capital stock authorized in the articles of incorporation of its Kentucky constituent corporation, and shall have the right and power to create an indebtedness not exceeding in amount its capital stock, and to secure the same by a mortgage upon its property, rights and franchises. (*Ibid.*)

Sec. 845. Schedule of toll rates. Such corporation may take reasonable tolls for crossing such bridge, but it shall be unlawful to demand, charge, exact or receive for passage over such bridge any toll, fare, compensation, reward or thing of value whatever greater than or in excess of the

following rates, to-wit: For persons passing over such bridge on foot, two cents for a single crossing, twenty-five crossings for twenty-five cents; ten crossings for ten cents; five crossings for five cents; for vehicles drawn by one horse, ten cents for a single crossing, or eleven crossings for one dollar; for vehicles drawn by two horses, fifteen cents for a single crossing, or seven crossings for one dollar; for vehicles drawn by three horses, twenty cents for a single crossing or five crossings for one dollar; for vehicles drawn by more than three horses, five cents for every horse more than three; for horse with rider, five cents; for timber wheels drawn by two horses, thirty cents; for timber wheels drawn by three or four horses, fifty cents; for timber wheels drawn by five or six horses, seventy-five cents; for cattle, horses or mules, per head, five cents; for hogs, per head, three cents; for sheep, per head, two cents; for vehicles in tow the same toll charged for vehicles drawn by one horse; for each automobile having seats for less than six passengers, five cents for a single crossing; for each automobile having seats for more than five passengers, ten cents for a single crossing; for each motor-driven vehicle or truck the carrying capacity of which is not more than two tons, ten cents for a single crossing; for each motor-driven vehicle or truck the carrying capacity of which is more than two tons and not more than four tons, twenty cents for a single crossing; for each motor-driven vehicle or truck, the carrying capacity of which is more than four tons and less than six tons, twenty-five cents for a single crossing; for each motor-driven vehicle or truck the carrying capacity of which is six tons and over, twenty-five cents for a single crossing. (Act of 1893, Ch. 145, as amended by Act of March 1916, Ch. 108.)

See Broadway and Newport Bridge Co. v. Commonwealth, supra.

Sec. 846. Tickets and coupons based on toll rates. The corporation or person owning, possessing, controlling or operating any such bridge shall sell to all applicants there-

for tickets or coupons for passage over such bridge, according to the divisions and classifications, and at not greater rates than the maximum rates fixed in Sec. 845; and such tickets or coupons shall entitle the holder to passage either way over such bridge. (Act of 1893, Ch. 145, Sec. 4.)

Sec. 847. Maintenance of offices for sale of tickets. The corporation or person owning, possessing, controlling or operating any such bridge shall have and keep at either end of such bridge an office, and there have continuously on sale, at all hours of the day and night, the tickets or coupons provided for in Sec. 846, and shall at such offices keep conspicuously posted a schedule of the tolls that may be fixed in pursuance of the provisions of this act. (*Ibid*, Sec. 5.)

Sec. 848. Use of bridges for railroad purposes—Rates of toll. Such bridge shall be open to use for the passage of all street railway cars or other cars propelled or drawn by any other than steam power upon the condition hereinafter set out; and no discrimination shall be made in the tolls charged for such passage. But no person or corporation shall use, or be permitted to use, any such bridge for the pasage of street railway cars or other cars, except upon the condition that such person or corporation carries passengers from any city or town in this State to which he or it may run or operate any street railway cars or other cars to all points in any other State to which he or it may run or operate any street railway cars or other cars, for a single cash fare or toll of not more than five cents for each passenger carried; and from all points in any other State to which he or it may run or operate any street railway cars or other cars to any city or town in this State to which he or it may run or operate any street railway cars or other cars for a single cash fare or toll of not more than five cents for each passenger carried. Violations of the condition aforesaid shall be a misdemeanor upon the part of the person or corporation who owns, runs

or operates such street railway cars or other cars, and also upon the part of the person or corporation that owns, possesses, controls or operates such bridge; and as to each day that such violation occurs or continues the same shall be a separate offense. (Act of 1893, Ch. 145, Sec. 6.)

A bridge company is not itself a common carrier. (Covington & Cincinnati Bridge Co. v. So. Covington & Cincinnati Ry. Co., 93 Ky. 136, 14 Ky. L. R. 52, 19 S. W. 403.)

Sec. 849. Combination of companies owning parallel bridges prohibited. No corporation such as is described in the title of this act shall ever own, possess, lease, control or operate more than one bridge spanning any river forming a boundary line of this Commonwealth. No bridge constructed by any corporation such as is described in the title of this act shall ever be owned, possesed, leased or controlled by any person or corporation owning, possessing or controlling any other bridge spanning a river forming a boundary line of this Commonwealth, nor by any agent or agents, officer or officers, stockholder or stockholders, of such latter corporation. No corporation such as is described in the title of this act, nor any stockholder, officer or agent thereof, shall ever make or be a party to any contract, agreement, combination or arrangement whatever relating to tolls or fare on any bridge spanning a river forming a boundary line of this Commonwealth with any person or corporation owning, possessing, controlling or operating any other such bridge, nor with any stockholder, officer or agent of such latter corporation. No stock in any corporation such as is described in the title of this act shall be subscribed for by, transferred to, held, possessed, or owned by any holder, possesor or owner of stock in, nor by any officer or agent of any other corporation owning, possessing, controlling or operating any other bridge spanning a river forming a boundary line of this Commonwealth, from any point within the same county of this Commonwealth, nor by any such other corporation. Each corporation such as is described in the title of this act, and holders or owners of

stock therein, and all agents or officers of such corporation, are hereby made incapable of and prohibited from holding, possessing, or owning stock in any other corporation that may own, possess, control or operate any other bridge spanning a river forming a boundary line of this Commonwealth, from any point within the same county of this Commonwealth. (Act of 1893, Ch. 145, Sec. 7.)[1]

This section is not retroactive and does not apply to bridges built before the enactment of this section. (Commonwealth v. L. & N. R. R. Co., 148 Ky. 94, 146 S. W. 767.)

Insolvent bridge companies may be reorganized under K. S. Sec. 771a. (See Railroad Law, p. 219.)

Sec. 850. Penalty for violation of this statute. Every violation of or failure to comply with any provision or requirement of this article, shall subject the corporation or person so offending to a fine of not less than five hundred dollars nor more than five thousand dollars, recoverable by indictment in this Commonwealth in any court of competent jurisdiction. (*Ibid*, Sec. 8.)

(See Commonwealth v. L. & N. R. R. Co., supra.)

Sec. 851. Contracts in violation of act, prohibited. Every contract, agreement, combination or arrangement made, and every act done in violation of anything contained in this act, shall be void. (*Ibid*, Sec. 9.)

Sec. 852. Forfeiture of charter. In addition to the penalties fixed in the preceding sections of this act, any violation of, or failure to comply with, any provision or requirement of this act by any corporation, such as is described in the title[1] of this act, shall be cause for forfeiture of all rights, powers, privileges, immunities and franchises of such corporation; and in case there be any such failure to comply

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[1] Title of this Act—"An act relating to consolidated corporations organized under general laws, for the purpose of constructing, maintaining and operating bridges across rivers forming boundary lines of this Commonwealth * * *."

with, or violation of any provision or requirement of, this act, by any such corporation, then the Governor or Attorney-General of this Commonwealth may institute and prosecute, or cause to be instituted and prosecuted, the proper judicial proceedings for a forfeiture of the rights, powers, privileges, immunities and franchises of such corporation. (*Ibid*, Sec. 10. See chapter on Quo Warranto proceedings, p. 418.)

Sec. 853. Consolidation held to be acceptance of constitution. The filing with the Secretary of State by any corporation, such as described in the title of this act, of a copy of said agreement of consolidation, shall be held to be, and be an acceptance by such corporation of the provisions of the constitution of this Commonwealth promulgated on the twenty-eighth day of September, one thousand eight hundred and ninety-one, and of all the provisions and requirements of this act. (*Ibid*, Sec. 11.)

Sec. 853a. Construction of bridges. That it shall be lawful to construct bridges over any navigable river or other navigable water, the navigable portions of which lie wholly within the limits of the State of Kentucky, provided the location and plans thereof have been approved by the chief of engineers, and by the secretary of war, before construction has commenced. (Act of 1900, Ch. 63.)

BUILDING AND LOAN ASSOCIATIONS

(Act of 1893, ch. 171, sec. 248, etc., as repealed by the new law, Act of 1918, ch. 144.)

Sec. 854. Definition. A building and loan association to be entitled to the benefits of this act, and to be known and designated as such, shall receive payments from members only and make loans to members only on the plan herein set forth. Such associations organized under the laws of this State shall be known as "domestic" associations, and those organized under the laws of any other State or territory shall be known as "foreign" associations.

Sec. 854a. How incorporated. Any number of persons, not less than nine, who are residents of this State may associate themselves together for the purpose of organizing a mutual building and loan association and for that purpose they shall make, sign and acknowledge before some person authorized by the laws of this State to take acknowledgments of deeds articles of association in writing which shall state:

1. The name adopted by said association which shall not be the same as, nor similar to the name of any other association incorporated in this State and the words "Building Association" shall form a part of the name.

2. The purposes for which the association is formed.

3. The name of the city or town and county in which its principal office or place of business is to be located.

4. The amount of its authorized capital stock; the number of shares into which it is divided the par value of each share and the number of shares subscribed for, which shall not be less than two hundred in cities, towns or villages of fewer than five thousand inhabitants and five hundred shares or more in cities, towns or villages of five thousand inhabitants or more.

5. The names and places of residence of each of its incorporators and the number of shares subscribed by each.

6. The time when it is to commence business and the period it is to continue.

7. By what officers or persons the affairs of the corporation are to be conducted and the time and place at which they are to be elected.

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

Sec. 854b. Filing articles—power and duty of Banking Commissioner. Before filing the articles of incorporation of any proposed association in the office of the county clerk in

the county in which the association is to do business, and with the Secretary of State, as is required by law, the incorporators shall present a copy of said articles of incorporation, together with the proposed by-laws, of the association to the Banking Commissioner for his approval, and when same are approved in writing by the said Commissioner, the incorporators may proceed to the filing of said articles of incorporation and recording of same. Upon presentation of said articles of incorporation and *by*-laws to the Banking Commissioner for approval, he shall carefully examine same and shall make such inquiry and investigation as to the financial standing and moral character of the incorporators as he may deem necessary. He shall inform himself that the incorporators are seeking to establish a bona fide building and loan association, and are acting in good faith and upon his conclusions, he shall approve or refuse to approve said articles of incorporation. If such articles be approved, then the county clerk and the Secretary of State, respectively, may receive said articles for filing and recording. Upon the filing and recording of said articles and doing all other things required by the laws of the State, the said building and loan association shall be deemed organized for the purpose named in its articles of incorporation, but no corporation seeking to do a building and loan business, shall actually transact any business, until it receives from the Banking Commissioner a certificate, in which it shall be set out that said corporation has fully complied with all the provisions of this act and other pertinent laws.

Sec. 854c. Building and loan associations to report to. From and after the enactment of this law, all reports now required to be made by building and loan associations to the Secretary of State shall be made to the Banking Commissioner, and the powers and duties now imposed by law upon the Secretary of State with reference to all building and loan associations shall terminate and said duties are hereby im-

posed upon the Banking Commissioner and his department as provided under this act.

Sec. 854d. Corporate rights. Corporations formed under this act shall be bodies, corporate and politic for the period for which they are organized; may sue and be sued; may have a common seal, which they may alter or renew at pleasure.

Sec. 855. Unlawful to operate except under this act. It shall be unlawful for any building and loan association, recognized under the provisions of this act to transact its business in other manner than as is herein provided or to engage in any other business and any violation of the provisions of this section shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars. Each day shall be deemed a separate offense:

Provided however, That corporations, associations or organizations organized under the laws of this State, or any other State and now engaged in the building and loan business in this State, may within sixty days after this act becomes a law, file with the Banking Commissioner a copy of a resolution duly adopted by its board of directors and certify by its secretary accepting the provisions of this act and electing to operate thereunder and immediately the said association, corporation or organization shall be considered a building and loan association duly organized, created and existing under this act and subject to all provisons thereof. Such resolution or a certified copy thereof shall be evidence for and against such corporation.

Sec. 856. Capital stock—how divided. The capital stock to be accumulated shall be divided into shares of the ultimate value fixed by the articles of incorporation;

Provided, however, That associations now organized under the laws of this State or any other State and now engaged in the building and loan business, in this State and the ulti-

mate value of whose shares have been fixed by the by-laws, shall file with the Banking Commissioner copy of by-laws duly attested by its secretary, and upon the filing of such copy of its by-laws, it shall be deemed to have complied with this section.

The shares may be issued at the time or times and in the class or classes as the by-laws shall designate, or they may be issued upon the continuing or permanent plan, if so provided in the by-laws.

Sec. 856a. Kinds of stock—method of transfer. An association may issue stock upon which payments shall be made at stated periods until the share reaches the ultimate value fixed by the articles of incorporation or by-laws or is withdrawn, cancelled or forfeited. Payments on such shares shall commence from date of issuance and if in a series shall commence from its issue, but all shares shall share equally in the profits.

The association may convert stock or partly matured (in even shares) into fully paid-up stock and restrict the same to a less rate of profit by stating upon the face of the certificate of stock this restricted rate of profit and the association may also issue paid-up stock upon which all payments may be made in full at time of issuance and may restrict this stock to a less rate of profit by stating upon the face of certificate of stock this restricted rate.

Every share shall be subject to a lien for payment of unpaid installments and such other charges as may be lawfully incurred thereon under the provisions of this act, and the by-laws may prescribe the manner of enforcing the lien.

All shares which have matured or which shall have been cancelled, withdrawn or retired may be re-issued as of subsequent date or series. All shares heretofore issued by any association upon which installments have been paid in advance together with the interest allowed or paid thereon, are hereby legalized and validated. The by-laws shall provide the method of transfer of shares of stock.

Sec. 857. Limit of shares to one person. No person shall hold in any association having an authorized stock of one hundred thousand ($100,000.00) dollars or less, exceeding an amount equal to two and one-half (2½) per cent. of the whole number of shares; in those having an authorized capital exceeding one hundred thousand ($100,000.00) dollars and not exceeding five hundred thousand ($500,000.00) dollars, two (2) per cent.; those having an authorized capital of five hundred thousand ($500,000.00) dollars and not exceeding one million ($1,000,000.00) dollars, one and one-half (1½) per cent., and those having an authorized capital of one million ($1,000,000.00) dollars, or in excess thereof one (1) per cent. of whole number of shares therein.

Provided, however, That an association may restrict the number of shares to which any person may be entitled to hold in his own name to any number less than that permitted by this section.

Sec. 858. Management and elections. The business of the association shall be managed by a board of directors of not less than nine (9) in number, all of whom shall be bona fide shareholders in such association owning not less than five (5) shares each and residents of the State of Kentucky. The directors may, by the by-laws, be divided into one, two or three classes, the term of office of those of first class to expire at the annual election next ensuing; of the second class, one year thereafter; of the third class, two years thereafter and at each annual election held after such classification, directors shall be chosen for two or three years, as the case may be, to succeed those whose terms expire. The officers shall consist of president, vice-president, secretary and treasurer and such other officers as the association may by its by-laws determine necessary to the management of its business.

The duties and qualifications of the officers and directors, their terms of office, the time and manner of their election,

the manner of filling vacancies, the time of holding periodical meetings of the officers and shareholders, the manner of calling all special meetings and manner of voting when not provided for in this act shall be determined by the by-laws;

When not provided in this act and unless the compensation of the secretary and employes of the association shall be provided for in the by-laws, the directors shall fix and determine the same. No compensation shall be paid to president, vice-president, treasurer, or to any director unless authorized by the by-laws.

Sec. 858a. Officers' bonds. Every person appointed or elected to any position requiring the receipt, payment, management or use of money belonging to such association, shall within thirty (30) days after such appointment or election, become bonded in some good and responsible fidelity insurance company in such amounts as the directors shall require and approve, the premiums upon all such bonds and renewals thereof to be paid by the association. No officer or employe who is required to give bond shall be qualified to enter upon the discharge of his duties until his bond has been approved by the majority of directors. All bonds shall be in the custody of the officer provided for in the by-laws.

Sec. 859. Liability of directors and officers. Any officer, director, trustee, attorney, agent or servant of any association heretofore or hereafter to be incorporated who shall use or dispose of the moneys, property, assets or funds of such association or assign, transfer, cancel, deliver up or acknowledge satisfaction of any bond, mortgage or other written statement belonging to such association, unless duly authorized or otherwise than in the regular and legal business of the corporation, or who shall be guilty of any fraud in the performance of his duties shall be liable civilly to the corporation and also to any other party injured to the extent of the damage thereby caused and shall also be deemed guilty of a

misdemeanor or felony, and upon conviction be punished in the manner prescribed by law for stealing property of the value of the money, property, assets or funds so used or disposed of, or stealing property of the value of any bond, mortgage or other written instrument so assigned, transferred, cancelled and delivered up.

Sec. 860. Failure to perform duties. Any officer, director, trustee, attorney, agent or servant of any association heretofore or hereafter to be incorporated, who shall fail to perform any duty or service imposed upon him by the association, shall, unless he has been excused from the performance of such duty or service by the board of directors, be responsible and liable personally for any loss that may result by reason of such failure or neglect to perform his duty.

Sec. 861. Power to borrow money. The directors shall have power to borrow money for such temporary uses and purposes of the association as the exigencies of the business may demand and as are not inconsistent with the objects of the association. To secure such loans, the directors may cause the obligation or obligations of the association to be issued therefor, bearing interest at not to exceed the then legal rate. No such loan or loans shall have a longer duration than one year, nor shall the aggregate amount of such outstanding indebtedness at any time exceed fifteen (15) per centum of the first three hundred thousand ($300,000.00) dollars of assets composed of dues paid in and five (5) per cent. of the assets, composed of dues paid in, in excess of three hundred thousand ($300,000.00) dollars. Before any money shall be borrowed, the board of directors shall first, by a majority vote of all members, pass and record a resolution to that effect.

Sec. 862. Infants as stockholders. Infants over fourteen years of age may become members in any association the same as adults and the infant members shall be subject to the same

duties and liabilities as respects their stock, as adult members. Any receipt, releases, acquittance or discharge given to the association by an infant shall be binding upon the infant to the same extent as if he were of full age, but no infant shall be eligible to hold any office in any association.

Sec. 862a. Membership—Fees. A membership fee and a tranfer fee, neither of which shall exceed the amount per share set forth in the by-laws may be charged and all fees shall be accounted for as a part of the receipts of the association.

Sec. 863. Deceased members. Upon the death of a shareholder his legal representative shall be entitled to receive the voluntary withdrawal from the unpledged shares of the deceased. No fine shall be charged or profits credited to any deceased member's shares from and after his decease, unless his legal representative assume the future payment of such shares;

Provided, however, that any administrator, executor or other fiduciary, may sell, transfer and assign, any shares which have not matured without application to any court as provided in Sec. 4707, Kentucky Statutes, Carroll's Edition, and,

Provided, further, when shares are issued in the names of husband and wife and to the survivor of them, upon the death of either of such joint owners the association shall be liable only to the survivor.

Sec. 864. Withdrawal of shares. A member may withdraw his unpledged shares at any time by giving thirty (30) days' notice of his desire to do so in a book provided by the association for that purpose and payments shall be made in the order in which applications are received. The member shall be entitled to receive the full amount of dues paid in on shares so sought to be withdrawn and such interest thereon as is fixed in the by-laws together with such proportion of the

profits as the by-laws may determine, less all fines, expenses and proportionate part of any unadjusted loss.

Provided, however, That at no time shall more than one-half of the funds in the treasury of the association be applicable to the demand of withdrawing members or payment of matured shares, without the consent of the board of directors;

Provided, further, that any member having pledged his shares as security for an advance, without other security, may withdraw the same and receive the evidence of indebtedness given for such advance and the balance, if any, in cash which may be to the credit of his shares, but such withdrawal shall be subject to same regulations in all other respects as in case of shares not pledged.

Provided, further, subject to approval of board of directors any borrowing member may withdraw from his dues, not in excess of twenty-five (25) per cent of dues paid in to be applied to payment in full of taxes, which have been delinquent or unpaid for at least one year and to payment in full of assessments for municipal improvements which have been a lien for at least one year, and,

Provided, further, That the dues so withdrawn be applied under the supervision of the association to payment of such taxes and assessment only and that the receipts evidencing such payments shall be filed in the office of the association with the note and mortgage of the member, and,

Provided, further, That this privilege shall not be exercised by any member within five years of the date of mortgage nor shall it be exercised by any member more than once and not then unless he shall fully satisfy the directors of his inability to pay. Nothing herein contained shall be construed as preventing the directors from permitting withdrawal of dues to pay fire and tornado insurance premiums.

Sec. 864a. Withdrawal—Involuntary. The directors may, in their discretion, under the rules made by them in con-

formity with by-laws, retire the unpledged shares, in the order of the issue of such shares, by enforcing withdrawals of the same and the owners shall be paid the full value of their shares together with six per cent. interest thereon from date of last preceding distribution of profits, less any unpaid fines, provided, that all fully paid, prepaid or matured shares that may be outstanding, shall first be retired.

Sec. 864b. Shares that have reached maturity. When any unpledged shares reaches the value fixed by the articles of incorporation or by-laws, all payments of dues thereon shall cease and if the member so desires, he shall be entitled to receive the value fixed by the articles of incorporation or by-laws with interest at the rate of six per cent. per annum from the date of maturity to the time of payment, but at no time shall more than one-half of the funds of the association be applicable to the payment of matured shares without the consent of the directors and when any share either pledged or unpledged reaches maturity between the dates of adjustment of profits or whenever shares are retired between these dates, the holders of such shares, shall, in addition to value thereof, be entitled to interest at rate of six per cent. per annum from date of last distribution of profits to date of maturity.

Sec. 865. Money accumulated to be loaned to members—Surplus—How invested. The moneys accumulated after due allowance made for necessary and proper expenses and for withdrawal of shares, shall at each monthly or weekly meeting, be offered to members according to their priority or right to a loan as fixed by the by-laws. Each member whose application for a loan has been approved shall be entitled upon giving proper security and complying with the by-laws, to receive a loan equal to the par value of each share held by him or such fractional part as the by-laws allow. If a balance of money remains after the monthly loans the direc-

tors may invest the same in good and safe bonds, or in such other securities in which banks are now permitted to invest.

Sec. 865a. Loans—How secured—Penalties and failure to offer good security. For every loan made and not secured by first mortgage on real estate shall be given, accompanied by a transfer and pledge of shares of the borrower. The shares so pledged shall be held by the corporation as collateral security for the performance of the conditions of said note and mortgage. The note and mortgage shall provide the number of shares pledged and the amount of money advanced thereon and shall be conditioned for the payment, as provided in the by-laws, of the monthly or weekly dues on said shares and the interest and premiums, if any, upon the loan together with all fines, upon payments in arrears until said shares shall reach the value fixed by articles of incorporation or the by-laws or said loan is otherwise cancelled and discharged.

The shares without other security may, at the discretion of the directors, be pledged as security for loans to an amount not exceeding 80 per cent. of their value, as determined at the time of application for said loan;

Provided, no loans shall be made upon paid-up, fully paid-up or matured stock.

If the borrower neglects to offer security satisfactory to the directors within the time prescribed by the by-laws, his right to the loan shall be forfeited and he may, in the discretion of the board of directors, be charged with one month's interest at the rate for which said money is loaned together with all expenses, if any, incurred and the money appropriated for the loan be reloaned at the next or any subsequent meeting.

Sec. 866. Repayment of loans. The borrower may repay a loan at any time upon application to the association in the manner provided in the by-laws, and upon settlement of his account he shall be charged with the full amount of the

original loan, together with all installments of interest, dues, premiums and fines in arrears and other charges and shall be given credit for the withdrawing value of his shares pledged and transferred as security and the balance shall be received by the association, in full satisfaction of said loan.

The borrower desiring to retain his shares and membership, may, at his option, repay his loan without claiming credit for said shares, whereupon said shares shall be free from any claim by reason of said cancelled loan, but in the event the association distributes its profits to non-borrowers in cash, the borrower shall be required to withdraw any profits which have been credited upon his loan.

Provided, however, any borrowing member may elect to have applied as a credit upon his loan, or advance the withdrawal value of his pledged shares when such value is equal to one full share or any multiple thereof and upon giving notice as required by Sec. 864 hereof the member may withdraw the amount equal to one or more full shares shall still be held as pledged, and the note evidencing the loan and the mortgage given to secure the same, shall in no manner be prejudiced by such withdrawal and cancellation whether provided for in the mortgage and note, or notes, and after the application of every such credit the amount of such loan or advance shall forthwith be and become reduced in accordance with the amount so applied as a credit and such member shall not thereafter be held liable for any greater amount than shall be remaining due after the application of such credits except for averages and penalties occasioned by the member's own default. Notice of the borrowing member's right to apply withdrawal values of shares upon loan or advance shall be given by printed or written notices posted in not less than three conspicuous places in the office of the association.

Sec. 867. Default in payment of dues—Penalty—Forfeited share account. Members who make default in payment of their monthly or weekly dues, interest, fines and other charges,

may be charged a fine not exceeding ten cents per share a month on each share in arrears and in the event the member is a borrower, not exceeding an additional ten cents per one hundred ($100.00) dollars or part thereof on account of failure to pay interest. No fine shall be charged after the expiration of six months from the first lapse in any such payment, nor upon fines in arrears. The shares of a member who continues in arrears more than six weeks shall, at the option of the directors, if the member fail to pay the arrears within thirty (30) days after notice, be declared forfeited and the withdrawing value of the shares at the time of the first default shall be ascertained and after deducting all fines and other legal charges the balance remaining shall be placed to an account to be designated as the "Forfeited Share Account" to the credit of the defaulting member; said member if not a borrower, shall be entitled upon thirty (30) days' notice to receive the balance so transferred without interest, in his order or turn out of the funds appropriated to the payment of withdrawals. All shares so forfeited or transferred shall cease to participate in any profits of the corporation accruing after the last adjustment and distribution of profits before said default.

Sec. 867a. Default in payment of dues and interest by borrower—Effect of. In case any borrower shall fail or neglect to pay dues on stock, interest, other charges or fines as provided by the by-laws or terms of his note, mortgage or other evidence of indebtedness for period of six weeks, or shall be in default in the performance of any of the obligations imposed upon him thereby, and such default shall continue for thirty (30) days after notice thereof, then the whole of said indebtedness shall become due and payable at the option of the directors and payment thereof may be enforced by proceedings according to law.

Sec. 868. Profits and losses—Distribution of—How computed. Dividends shall be declared, credited or paid on stock

in proportion to the amount paid in on such stock, quarterly, semi-annually or annually as the by-laws may provide, but no dividends shall be declared, credited or paid by any association except out of net profits collected after deducting from the earnings all expenses of operation and losses sustained.

Sec. 868a. Contingent or reserve fund. Every association shall set aside from the gross profits at least one (1) per cent. thereof each year as a sinking fund to provide against contingent losses until the total amount of the fund so set aside shall equal five (5) per cent. of the assets of such association, but this sinking fund shall in no case exceed ten (10) per centum of the assets of the association;

Provided, however, That no association shall be required to reduce its dividend below five (5) per cent. for that purpose.

Sec. 868b. Real estate may be purchased by association. Any association may purchase at any sale, public or private, any real estate upon which it may hold any mortgages, lien or other incumbrance or in which it has an interest and may dispose of same at pleasure, but within five years after it has acquired title thereto; it may also acquire and own real estate for the purpose of occupying the same as its own business building from portions of which, not required for its own use, a revenue may be derived and the real estate so held may be sold, conveyed or exchanged.

Sec. 869. Non-election of directors. No building and loan association shall cease or expire from neglect on the part of the association to elect directors or officers at the time mentioned in by-laws, and all directors and officers elected by any association shall continue in office until their successors are duly elected and qualified.

Sec. 869a. Examination of books by public accountant. Any association may allow reasonable compensation to public

accountants or expert book-keepers appointed by the board of directors to make examination of the affairs of the association.

Sec. 869b. False rumors about solvency of building and loan association—Penalty for circulating. That any person who shall wilfully and maliciously make, circulate or transmit to another or to others any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to financial condition or affects the solvency of any building and loan association doing business in this State, or who shall counsel, aid, procure, or induce another to start, transmit or circulate any such statement or rumor shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred ($200.00) dollars nor more than one thousand ($1,000.00) dollars, or confined in the county jail not less than twenty (20) nor more than one hundred (100) days or both so fined and imprisoned in the discretion of the court.

Sec. 870. Annual reports. Every domestic building and loan association shall, in the month of January of each year, file in the office of the Banking Commissioner a statement of its condition at the close of business on the 31st day of December preceding. The statement shall be signed and sworn to by the president or manager or secretary and attested by at least two directors, showing the amount of paid-up capital, the amount of all cash receipts and disbursements and such other facts as the Banking Commissioner may require and every corporation, officer, agent or manager failing or refusing to make said report and to furnish any information called for by Banking Commissioner under oath and at attestation of its officers, as required, shall be severally guilty of a misdemeanor and fined not less than $100.00.

Sec. 871. Amendment of articles of incorporation. Any association by the consent in writing of the members owning

at least two-thirds of its capital stock, may, at any time, change or amend any of the articles of its corporation or association by presenting to the Banking Commissioner for his approval such alteration or amendment signed and acknowledged by its directors or a majority of them. Upon approval of such amendment in writing by the Banking Commissioner, the amended articles of incorporation may be recorded in the office of the county clerk, in the county wherein the place of business of said association is located and in the office of Secretary of State and when so recorded the articles of incorporation shall be amended to the extent indicated, provided the association has complied with all provisions of this act and other pertinent laws.

Sec. 872. Failure to report. The president and secretary of any such association failing to make and file the reports required by this act within thirty (30) days after the same are due, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding $100.00, upon failure to file such report it shall be the duty of the Banking Commissioner to notify the president and secretary of such failure, and if the report is not filed within thirty (30) days from the date of notice, then it shall be the duty of the said Banking Commissioner to immediately examine the association as provided of Sec. 874 of this act.

Sec. 873. Consolidation of association. Any two or more associations of this State may consolidate into a single corporation by a majority vote of all the members of each of the different associations at a special meeting of each association called for that purpose, of which at least thirty days' notice shall have been given to each member, the consolidation to be upon such terms as shall be mutually agreed upon by the directors of such associations and the terms shall be plainly set forth to each member in the notice of the special meetings. Any member not consenting to the consolidation shall be entitled to receive the withdrawal value of his stock

in settlement or to have the value thereof applied in part settlement of his loan, if he be a borrower.

Sec. 874. Department created—Building and loan clerk—Examiners—Salary—Expense. There is hereby established in the office of the Banking Commissioner a building and loan association department under the control and direction of the Banking Commissioner, who shall be ex-officio building and loan association inspector and shall be charged with all laws of this State relative to building and loan associations.

The Banking Commissioner shall appoint a clerk to be known in his office as building and loan clerk. The term of office of building and loan clerk shall begin on the first day of July, 1918, and he shall hold office and until a successor is appointed and qualified; he shall receive an annual salary of twenty-four hundred ($2,400) dollars, payable monthly out of the State Treasury.

The Banking Commissioner shall also appoint not exceeding two building and loan examiners, the term of office of one of whom shall be for two years from July 1, 1918, and for the other, if appointed four years from July 1, 1918. Thereafter the Banking Commissioner shall biennially during the month of June appoint one building and loan examiner. Each building and loan examiner shall receive an annual salary of two thousand ($2,000) dollars, payable monthly out of the State Treasury, and shall be paid his necessary traveling expenses monthly on properly itemized and verified accounts rendered to the Banking Commissioner and approved by him and by the Auditor of the State of Kentucky.

The said salaries and expenses shall be paid out of the fees received by the Banking Commissioner and State Treasurer under the provisions of this act; Provided, however, that the Banking Commissioner may appoint a building and loan clerk, and not exceeding two building and loan examiners, as soon as this act becomes a law to serve until July 1, 1918, and until the appointment and qualification of their succes-

sors at same rate of salary per month and expenses as above set forth.

Sec. 874a. Officers—Qualifications of—Bonds. No Banking Commissioner, building and loan clerk or examiner shall be a director, officer or employee in any building and loan association under his supervision or subject to his examination. If any officer becomes so interested in any such association, his office shall immediately become vacant.

Every building and loan clerk and building and loan examiner shall be a resident and citizen of the Commonwealth of Kentucky, shall be a practical book-keeper and accountant and shall have had not less than four years' experience in a building and loan association, bank or trust company, but no building and loan association examiner shall be appointed to examine the affairs of any association in any county in which he holds stock in any building association, bank or trust company, and shall take the oath of office required of officers by the constitution and laws of this Commonwealth for the faithful performance of duties.

They shall severally execute bond with good surety to be approved by the Auditor for the faithful performance of their duties. The bond of the building and loan clerk shall be in the penal sum of $20,000.00 and the bond of each building and loan examiner in the penal sum of $10,000.00. All bonds so required to be executed shall be filed as part of the public records in the office of Secretary of State. The cost of all contingency and all bonds required to be given under this section shall be borne and paid by the State in the same manner as other expenses of the department.

Sec. 874b. Examination of associations. The affairs of every domestic building and loan association not in liquidation shall be examined by the Banking Commissioner or by the building and loan clerk or one of the examiners provided in Sec. 874 of this act as often as shall be deemed necessary, but at least once in every year and without any notice to

such association, its officers or agents, and such examiner shall have the power and shall make a thorough examination into the condition, workings and affairs generally of such association and he shall have the power to examine any officer, agent or employee of such association or any other person under oath touching the affairs thereof and for that purpose shall have the power to administer oath. All books, papers and records and assets of such association shall be subject to his inspection. Said examiner shall make report of his findings and file the same in the office of the Banking Commissioner and the said Banking Commissioner shall furnish a copy of such report to the association examined. Said examiner shall report any violation of law or any unauthorized or unfit practices or any failure to keep and have correct accounts of business of such association and if he finds that any director was wilfully neglected to attend meetings regularly, he shall recommend the discharge of such director.

Sec. 874c. Charge for reports and examinations—Money paid into state treasury. Every building and loan association shall have each report made to the Commissioner and for the filing thereof, without recording, pay to the Commissioner a fee of one dollar and for each examination herein provided for, shall pay to the Commissioner immediately upon completion of the examination the following fees: For the examination of any association having assets of $20,000.00 or less, the sum of twenty ($20.00) dollars; those having assets of over $20,000.00, but less than $50,000.00, the sum of twenty-five ($25.00) dollars; those having assets of $50,000.00 and up to and including $100,000.00, thirty-five ($35.00) dollars, and for those having assets in excess of $100,000.00, the sum of five ($5.00) dollars for each additional one hundred thousand ($100,000.00) dollars, or fraction thereof, but no association shall be required to pay for more than one examination each year, unless such examination shall be necessary by failure of association to file reports required by this act.

Sec. 874d. Publication of reports. The Banking Commissioner shall compile the reports of all such associations required to be filed in his office and shall publish the same in his annual report to the Governor together with a report of the operation of building and loan departments and receipts and expenses of the department and such additional information respecting building and loan associations doing business in the State of Kentucky, as may be of general interest.

Sec. 874e. Disclosures of examiners—Penalty. It shall be unlawful for any inspector or examiner appointed or acting under the provisions of this act to disclose to any person, other than officially to the Banking Commissioner of the State, in the report made to him, or in compliance with the order and precept of some court, the names of stockholders or members in any such association, or any information respecting their private accounts.

Every inspector or examiner who violates the foregoing provision shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of not less than $100.00 nor more than $500.00.

Sec. 874f. Banking commissioner's duties when assets are impaired. Whenever it shall appear to the Banking Commissioner that the assets of any association doing business in the State are impaired to the extent that such assets do not exceed the dues paid in on shares, or that it is conducting its business in a fraudulent, illegal or unsafe manner, he may at once in either case, take charge of and assume control of such association.

Sec. 874g. Banking commissioner—Special meeting of stockholders—Reports. The Banking Commissioner at the time of taking charge of any association as herein provided, shall, within ten days thereafter, convene a special meeting of the members for the purpose of considering and acting upon all matters as at such special meeting shall seem best. Notice

of the special meeting shall be given in the manner and form provided in Sec. 874m of this act for the calling of special meetings of the members. At the meeting the Banking Commissioner shall present a report of the affairs and condition of the association as found by him from his examination thereof.

Sec. 874h. Report—Duties of banking commissioner. The Banking Commissioner shall take possession of the books, records and assets of every description of the association and pending the proceedings provided in this act, shall prepare or have prepared a full and true exhibit of the affairs, property and condition of such association, including an itemized statement of all its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it. He shall also receive and receipt for all payments becoming due after the time of taking charge of such association and shall keep the same separate and apart from the other moneys and effects of such association.

Sec. 874i. Meetings of members—Re-organization. If, at the special meeting of the members to be called, as herein provided, the members of the association shall vote to re-organize said association, then upon the consummation of re-organization thereof and when the Banking Commissioner shall be satisfied that the interests of the members will be fully protected, all the books, papers and effects of every description belonging to the association shall be turned over to the new management.

Sec. 874j. Voluntary liquidation. If, at the special meeting of the members to be called and held as herein provided, the members shall vote to go into voluntary liquidation or to otherwise close up and discontinue the business of the association, the said Banking Commissioner shall return to the members all payments received and receipted for by him and which became due and payable after the time of his assump-

tion of control and all books, papers and effects of every description in his hands belonging to the association not so returnable may, when he shall deem it advisable, be turned over and delivered to the person or persons entitled thereto.

Sec. 874k. If the banking commissioner finds that an association cannot be re-organized—Report to attorney general—Duties of attorney general—Proceedings. If the Banking Commissioner, after calling meeting of the members as in this act provided, shall find that the association cannot be re-organized or that voluntary liquidation by the members cannot be had or consummated, he shall report the same to the Attorney General whose duty it shall then become to at once, apply to the Circuit Court of the county in which the principal office of such association may be located, or to any of the judges of said court in vacation in the name of the Commonwealth of Kentucky on the relation of Banking Commissioner for an injunction restraining the association from doing further business and for the appointment of a receiver of the association and for the dissolution of said association, which application may be made and granted in the manner now provided for the obtaining of an injunction and said cause shall thereupon proceed as other causes in equity.

Sec. 874l. When associations may re-organize or go into voluntary liquidation. Any association may re-organize or go into voluntary liquidation by the votes of its members owning at least 2-3 of the shares in force at the time the vote is taken. Whenever the members shall desire to re-organize or go into voluntary liquidation, it shall be the duty of the board of directors of the association or the committee of members appointed for that purpose, to submit the question of re-organization or voluntary liquidation to a vote of the members at a special meeting of the members to be called and held as herein provided, but no association shall re-organize or go into voluntary liquidation without the approval of the Banking Commissioner.

Sec. 874m. Meeting of the members can be called—Notice to be given. Whenever a meeting of the members is to be called for the purpose aforesaid, it shall be the duty of the board of directors or of said committee to convene a special meeting of the members at the principal office of the association at such time as such directors or committee shall fix and determine.

Notice of meeting shall be given to every member of the association by depositing at the post office at least ten days before the time fixed for the meeting, a notice properly addressed to every member at his last recorded address. The directors or committee shall also cause a notice of the meeting to be certified to the Banking Commission at the time notice is given to the members.

Sec. 874n. Exhibit of affairs to be printed. Such directors or committee shall prepare or have prepared a full and true exhibit of the affairs, property and condition of the association, including an itemized statement of its assets and liabilities, which exhibits shall be sworn to by a majority of said directors or of said committee before some officer authorized to take acknowledgements of deeds in this State, said report to be printed and a copy thereof mailed along with the notice convening such special meeting. The original exhibit sworn to as herein provided, shall be filed with the Banking Commissioner of this State, together with notice of the meeting at the time they are mailed to the members.

Sec. 874o. Voting—Adoption of resolution to re-organize or liquidate. At the special meeting all votes taken shall be by ballot and votes by the members owning at least 2-3 of its shares in force at the time the vote is taken shall be necessary to carry any resolution for the re-organization or liquidation of the association; and if, at the meeting said members shall, in the manner herein provided, pass a resolution for the re-organization or liquidation, a copy of the resolution duly certified by the presiding officer and secretary of the

meeting shall be given to and contain full instructions and define the authority and compensation of the party or parties to be named therein to answer and discharge the duties intrusted to them by such resolution and a like duly certified copy of the resolution, instructions and authority shall immediately be filed with the Banking Commissioner by the party or parties named in any resolution before they shall enter upon the discharge of their trusts. Before the party or parties named in any resolution shall assume the duties of his trust, they shall become bound with two or more sufficient sureties or in some good and responsible fidelity insurance company in such sum as the Banking Commissioner of this State shall require and approve.

Sec. 874p. Whenever it becomes necessary under any of the provisions of this act for Banking Commissioner to take charge of any association, he shall have power to employ counsel and procure such expert assistants and advice as may be necessary in the liquidation and distribution of its assets, or in its re-organization. Whenever, under the provisions of this act, the Banking Commissioner in person or building and loan clerk or examiner shall take charge of any building and loan association, or the court shall appoint a receiver, such person shall be allowed for his services not exceeding $2.00 per hour for not exceeding eight hours per day, for time actually engaged by him in labor in the liquidation or re-organization, but all fees shall be subject to review by the court.

Sec. 784q. Penalties for violations of act by department of associations—How collected—When commissioner may take charge of association. If the building and loan clerk, or any building and loan examiner, shall have knowledge of the insolvency or unsafe condition of any association subject to examination under this act, or that it is unsafe, or that it is inexpedient to permit such association to continue business, and shall neglect to forthwith report such fact in writing

over his signature to the Banking Commissioner, or shall disclose contrary to the provisions of this act any information obtained by him by virtue of his office, or shall violate any of the provisions of this act, or fail to perform any duty herein imposed upon him, he shall forfeit his office and shall be fined for each offense not less than one hundred ($100.00) dollars nor more than two thousand ($2,000.00) dollars.

If the Banking Commissioner shall have knowledge of the insolvency or unsafe condition of any association subject to examination or that it is unsafe or that it is inexpedient to permit such association to continue business and shall wilfully fail to take action as provided in this act, or shall disclose contrary to the provisions of this act any information obtained by him by virtue of his office, or shall violate any of the provisions of this act, or shall fail to perform any of the duties hereby imposed upon him, he shall forfeit his office, and shall be fined for each offense not less than five hundred ($500.00) dollars nor more than five thousand ($5,000.00) dollars.

If any association shall knowingly fail to make a report required by law or by the Banking Commissioner within the time designated for the making thereof, or to include therein any matter required by law or by the Banking Commissioner, or to pay when due the fees for filing reports, or for an examination of the association, it shall be subject to a penalty of twenty-five ($25.00) dollars for each day which it shall be delinquent for the periods respectively mentioned, the aggregate penalty, however, for such offense not to exceed two hundred and fifty ($250.00) dollars.

Every person who, or association which wilfully makes or transmits a false report or refuses to submit its books, papers and assets for examination, or any officer of such association who refuses to be examined under oath touching the concerns of such association, severally shall be fined not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars.

Whenever any such officer, person or association becomes liable to any penalty imposed by this act and refuses to pay it, or the Banking Commissioner, building and loan clerk or any building and loan examiner becomes liable to any penalty imposed by this act, the Attorney General shall institute a penal action against such delinquent person, association or officer, in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or in the circuit court of the county in which such offense is committed, for the recovery of such penalty, and all sums collected in such actions shall be paid into the State Treasury.

If any association or its officers wilfully refuse after demand by the Banking Commissioner to comply with any of the provisions of this act, the Banking Commissioner shall have power to take charge of its property and assets as provided in Sec. 874f hereof.

FOREIGN ASSOCIATIONS

Sec. 875. Statement. It shall be unlawful for any corporation, association, or society organized under the laws of any State or territory (other than the State of Kentucky) or of any government foreign to the government of the United States, to conduct or engage in the business of the building loan fund, savings or investment association and of issuing stocks or bonds to members, payable in weekly, monthly or yearly installments or assessments, agreeing to pay thereon dividends or profits, or interest, or to pay off bonds by number consecutively or otherwise, without first having filed in the office of the Banking Commissioner a statement, under the oath of the president, secretary and at least three of the directors showing the name and location of such corporations, association or society, date of incorporation, the name of its officers, the amount of its capital stock, the amount of its capital stock paid in, the amount of the assets of said corporation, association or society, the character of such assets and the fair cash value thereof, together with the fair cash

value of all of the securities held by such corporation, association or society; the liabilities of such corporation, association or society, and the character of such liabilities; the par value and the amount of dues or assessments chargeable on each share of stock issued by such corporation, association or society; the proportion of such dues or assessments credited to the loan fund, expense fund, or other fund; when such assessments or dues are payable; the amount of premium and interest charged on loans made by such corporation, association or society; the amount of interest paid on paid-up or other stock issued by said corporation, association or society; and such other information concerning the business of said corporation, association or society as may from time to time be required by said Banking Commissioner.

Sec. 875a. Copy of act of corporation. In addition to the statement required by Sec. 875 of this act, said foreign corporation, association or society shall file with the Banking Commissioner a copy of its act of incorporation, properly authenticated by the officer of the State in which said foreign corporation, association or society is incorporated, a copy of the by-laws and rules governing it, and of each of the several kinds of the certificates issued to its shareholders or stockholders.

Sec. 875b. Deposit of cash or bonds. Every such foreign corporation, association or society doing business in this State shall conduct the same in accordance with the laws [of the] State governing domestic associations. It shall also deposit with the Banking Commissioner one hundred thousand dollars, either in cash or bonds of the United States, or any county or municipal corporation in the State of Kentucky, satisfactory to the Banking Commissioner, or in lieu of any such deposit any such foreign corporation, association or society shall file with the Banking Commissioner a written contract or bond executed by a responsible surety or guaranty corporation or company, to be approved by the Banking Commissioner, by

which contract or bond said surety or guaranty corporation or company shall agree that upon notice by mail from the Banking Commissioner that any such foreign corporation, association or society is indebted to any citizen of the State of Kentucky in any sum or sums, which indebtedness it refuses to promptly pay, that it will at once pay such sum or sums to the Banking Commissioner and continue so to do from time to time until such payments shall equal one hundred thousand dollars, and upon failure to make such payment or payments, then such Banking Commissioner shall at once revoke the license of any such foreign corporation, association or society, under Sec. 876 of this act, and suit against such surety and guaranty corporation or company shall be brought by the State of Kentucky on relation of the Attorney General of said State, and any judgment recovered against any such surety and guaranty corporation or company shall include one hundred dollars damages and costs of suit exclusive of such sum or sums of indebtedness in favor of such citizen or citizens, which damages shall be the compensation of such Attorney General for recovering such judgment. Such surety and guaranty corporation or company shall agree in writing, filed with the Banking Commissioner before acceptance by the Banking Commissioner of its contract or bond, to accept service of process of court by service thereof on the Banking Commissioner, who shall mail a copy thereof to the office of such corporation or company. And such Banking Commissioner may, whenever in his judgment he thinks any such contract or bond so filed in his office to be insufficient, request any such foreign corporation, association or society to file a new bond satisfactory to such Banking Commissioner and upon failure to comply with such requirement, said Banking Commissioner shall revoke the license of said foreign corporation, association or society, as provided in said Sec. 876, to do business in this State, and such foreign corporation, association or society shall not be entitled to enforce by legal proceedings any evidence of indebtedness against any citizen

or citizens in this State, or any mortgage against any property in this State until such requirement has been complied with. Any such foreign corporation or society shall also file with the Banking Commissioner a written instrument, properly executed, agreeing that a summons may be issued against it from any county in the State, and when served upon the Banking Commissioner shall be service upon such foreign corporation, association or society. The Banking Commissioner shall, however, mail a copy of the papers served upon him, postage prepaid, to the home office of such foreign corporation, association or society.

Sec. 876. License by banking commissioner. Upon compliance with the preceding sections of this act by any such foreign corporation, association or society, and the Banking Commissioner is satisfied that it is doing a lawful and safe business, he may issue to said foreign corporation, association or society a license authorizing it to conduct its business in this State and to solicit subscriptions from the residents of this State to its capital stock. The Banking Commissioner shall have the power at any time, to revoke said license when said foreign corporation, association or society fails or refuses to comply with any of the provisions of this act, or when any such foreign corporation, association or society shall refuse to permit to be made an examination of the affairs of such foreign corporations, association or society, hereinafter provided for, or, when, upon examination, the Banking Commissioner shall find that such foreign corporation, association or society is not conducting its business in accordance with the law, or that the affairs of such foreign corporation, association or society are in an unsound condition. Provided, that upon the revocation of said license, said Banking Commissioner shall cause a notice thereof to be mailed to the home office of such foreign corporation, association or society, and to be published in at least one newspaper in the city of Frankfort; and provided further, that after the publication

of such notice it shall be unlawful for any agent of such foreign corporation, association or society to receive further stock deposits from members residing in this State, except payments on stock on which a loan has been made.

Sec. 876a. Deposits—How held. The deposit made with the Banking Commissioner shall be held as security for all claims of residents of this State against said foreign corporation, association or society and shall be liable for all judgments or decrees thereon. Such foreign corporation, association or society may collect and use the interest on any security so deposited, as required by Sec. 875b of this act, so long as it fulfills its obligations and complies with the provisions of this act. It may also exchange them for other securities of equal value and satisfactory to the Banking Commissioner. All securities or cash deposited with the Banking Commissioner shall be immediately deposited by him with the Treasurer of the State, who, with his sureties, shall be responsible for the safe-keeping thereof. The treasurer shall deliver such securities only upon written order of the Banking Commissioner.

Sec. 876b. Agents to procure certificates. Every agent or person engaged, directly or indirectly, in soliciting subscriptions to the capital stock of any such foreign corporation, association or society shall first procure from the Banking Commissioner a certificate showing the appointment of such person as such agent of said foreign corporation, association or society, to which certificate the Banking Commissioner shall attach a certified copy of the statement of the condition of such foreign corporation, association or society. It shall be unlawful for such Banking Commissioner to issue such certificate except upon the filing in his office of a written appointment under the hand of the president and secretary of such foreign corporation, association or society, attested by its corporate seal. Such certificate shall be renewed annually in the month of January of each year.

Sec. 876c. Examination by banking commissioner. The Banking Commissioner of the State shall examine, or cause to be examined under the provisions of this act, whenever in his judgment it may be necessary for the interest of the shareholders or stockholders of said foreign corporation, association or society residing in this State, every detail of the business of any of said foreign corporation, association or society transacting business in this State. Said examination shall be made at the expense of the foreign corporation, association or society examined, and consent to make such examination shall be filed before any certificate authorizing such foreign corporation, association or society shall be granted, and the provisions of this act relative to domestic building and loan associations shall be applicable to such examinations.

Sec. 876d. Reports by association. Every such foreign corporation, association or society, authorized to transact business in this State shall on the first day of January in each year file a report under the oath of its president or secretary, and which shall be certified to by at least three directors, showing the gross amount of assessments, dues, fines, membership fees and all money collected by said foreign corporation, association or society from shareholders or stockholders residing in this State during the previous year. Such statement shall also show the amount of money loaned by said foreign corporation, association or society to any of its shareholders or stockholders residing in the State during the previous year. Any such foreign corporation, association or society shall pay to the Banking Commissioner, to be by him paid into the Treasury of the State, the sum of three ($3.00) dollars on every one hundred ($100.00) dollars received by such foreign corporation, association or society from the shareholders or stockholders residing in the State, less the amount actually loaned to the shareholders or stockholders of such foreign corporation, association or society residing in this State.

Sec. 877. Statement—Filing of. Every such foreign corporation, association or society shall, in addition to the report required by Sec. 876 of this act, on the first of January of each year file with the Banking Commissioner a detailed statement, showing separately the amount of membership fees, dues, interest, premium, fines, forfeitures, assessments, expense fund receipts and all other moneys received by it together with a full showing of amounts paid on loans, withdrawals, losses, salaries and all other expenses, dividends, interest or other expenditures; and it shall further show the amount of the assets of said foreign corporation, association or society, the character of cash assets, the fair cash value thereof together with the nature and fair cash value of all securities of such foreign corporation, association or society, and the character of such liabilities; the par value and the amount of dues or assessment chargeable on each share of stock issued by such foreign corporation, association or society, the proportion of such dues or assessments credited to the loan fund, expense fund or other fund, when such assessments or dues are payable; the amount of premium and interest charged on loans made by such foreign corporation, association or society, the rate and amount of interest paid on paid-up or other stock issued by such foreign corporation, association or society, and such other information concerning the business of such foreign corporation, association or society as may from time to time be required by the Banking Commissioner.

Sec. 877a. Fees collected by banking commissioner. The Banking Commissioner shall charge and collect from such foreign corporation, association or society for filing the statement and other papers and issuing the certificates required to be filed and issued by this act the same fees as are charged and collected from insurance companies doing business in this State which are chartered and incorporated under the laws of the State in which such foreign corporation, association or society is incorporated.

Sec. 877b. Penalty for unlawful business. Any person or persons who, either directly or indirectly shall solicit subscriptions to the capital stock of any such foreign corporation, association or society or act as agent for any such foreign corporation, association or society without first procuring the certificate required in Sec. 876b of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred ($500.00) dollars to which may be added imprisonment in the county jail not exceeding thirty (30) days.

Sec. 877c. Receiver. That where a foreign building and loan association doing business within this State has become insolvent and its affairs are being wound up by a receiver, the failure of such association to have complied with the laws of the State respecting its admission to do business therein, shall not affect the right of such receiver to bring any suit to wind up the affairs of such associations.

Sec. 878. Emergency clause. Whereas no provision now exists for examination of building and loan associations and the present laws governing such associations are vague and indefinite, therefore an emergency is declared to exist and this act shall take effect from and after its passage.

Sec. 878a. Repeal. All laws and parts of laws in conflict with this act are hereby repealed.

Cases construing the old law. Globe Co.'s Assignee v. Wood, 100 Ky. 4, building and loan association permitted to make assignment for the benefit of creditors. Home Savings Fund Co. v. Driver, 129 Ky. 754, what are "necessary expenses" within the meaning of the old section 863. Simpson v. Building and Loan Association, 101 Ky. 496, old section 864 unconstitutional. German Insurance Co. v. Commonwealth, 141 Ky. 606, what real estate may be held by association.

Building and loan associations—legislative regulation of. Building and loan associations so widely differ from other corporations in their purpose and nature that they are generally recognized as a proper subject of independent legislation. (4 Ruling Case Law 344.)

Building and loan associations generally. (4 Ruling Case Law, pp. 341-392 inc.)

RELIGIOUS, CHARITABLE AND EDUCATIONAL CORPORATIONS[1]

Sec. 879. Organization. Any number of persons may associate to form a corporation, society association, having no capital stock, for religious, charitable, educational, or any other lawful purpose, from which no private pecuniary profit is to be derived. Such persons shall sign articles of incorporation, and the same shall be filed in the office of the Secretary of State, and recorded in the county clerk's office of the county where the principal place of business of the corporation is located. The articles shall set forth the name of the proposed corporation, society or association, which shall not be the name of any existing corporation, and the object for which it is formed, and such other facts as the signers of the articles deem proper to mention. (Act of 1892, Ch. 14; see Sec. 4756.)

Sec. 880. Corporate powers. When the articles are filed and recorded as provided, and a certificate of that fact is issued by the Secretary of State, the signers of the articles, their associates and successors, shall be a body-coporate and politic, and by the name selected shall have the right to sue and be sued, contract and be contracted with, have and use a common seal, and alter the same at pleasure; and to receive and hold such property, real and personal, whether obtained by purchase, gift or devise, as may be necessary to carry on or promote the objects of the corporation, society, or association, and may sell or dispose of such property at pleasure, unless the property has been received as a gift or devise for some special purpose, and if so received, it shall be used and applied only for such purpose. (Act of 1892, Ch. 14.)

Sec. 881. Management—Limitations. Corporations, associations or societies organized under this act may adopt such rules for their government and operation, not inconsistent with law, as the directors, trustees or managers deem proper,

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1 Tax Exemptions, see page 23.

but shall not be operated, managed or used for private gain, or engage in any plan or scheme of banking or insurance. (Ibid.)

Rules and by-laws. Under this section a rule forbidding students entering public eating places was within the power of the authorities of a college to enact. (Gott v. Berea College, 156 Ky. 376, 161 S. W. 204.)

Sec. 882. Amendment of articles of incorporation. Existing corporations, associations or societies heretofore incorporated or chartered, and not operated, managed or used for private profit, and such as may become organized under this act, may, by the consent of two-thirds of the directors, managers or trustees amend any of the charters or articles of incorporation by filing and recording the amendment in the manner herein provided for filing and recording original articles; and,

"Whereas, There are now in existence in this Commonwealth numerous corporations, associations or societies heretofore created for the cultivation and diffusion of knowledge by maintaining free reference libraries, circulating libraries, or popular lectures, or by collecting materials for the illustration of the various branches of useful knowledge, or by other means; and,

"Whereas, It may become desirable for the cities or towns in which such corporations are located, to establish and maintain similar institutions for the free use and benefit of all the residents thereof; and,

"Whereas, In the charters of said corporations, associations or societies it is provided that, in case said charter or corporation shall lapse from non-user or other cause, any property that may be owned by the corporation shall escheat to the Commonwealth of Kentucky and pass under the supervision of the State Librarian, and doubt may arise whether such corporation has power or authority to transfer its property to any such city or town, therefore, any corporation, association or society, heretofore created for the circulation and diffusion of knowledge by maintaining free reference libraries, circulating libraries, or popular lectures, or by col-

lecting materials for the illustration of the various branches of useful knowledge, is hereby authorized and empowered, upon the vote of a majority of its members present and voting, at a regular meeting, or at a meeting called for the purpose of considering the subject, to transfer or convey to the city or town in which the same is located to be used by said city or town for library or educational purposes for the benefit of all the people of said city or town, with such additional conditions as may be agreed upon by such corporation, association or society, and it shall be lawful to incorporate in such agreement conditions securing the right to nominate or appoint on the Board of Trustees a given number of the directors or trustees in the corporation with which such agreement may be made, and such city or town, all or any part of the property, real, personal and mixed, owned or held by said corporation, association or society, and title thereto may be vested in said city or town or in any corporate department or branch thereof; but nothing herein contained shall be construed so as that a transfer of its property, as hereinabove provided, shall operate as a dissolution of any such corporation, association or society, or to terminate its existence but the same may continue its corporate existence for any of the purposes within the purview of its charter or articles of incorporation. (Act of 1892, Ch. 14; as amended, beginning with paragraph 2, by Act of 1904, Ch. 86.)

Sec. 883. General law not to apply to. Corporations, associations or societies organized under this act shall not be subject to any of the laws relating to corporations having a capital stock, or organized for pecuniary profit, except that requiring an agent on whom process may be executed, but shall at all times be subject to visitation by the legislature. (Act of 1892, Ch. 14, Sec. 5.)

Exemptions from general law-service of process. This section which excepts corporations organized for charitable purposes from the provisions of the general corporation law [ante], is not limited to corporations organized under this act, but is applicable to all corporations of such

character whether organized previous to the passage of this act or subsequent thereto, but charitable corporations are *not* exempt from the requirements of K. S. section 571, requiring the designation of agents upon whom process may be served. (Johnson v. Mason Lodge, 106 Ky. 838, 21 Ky. L. R. 493, 51 S. W. 620; American Patriots v. Kincaid, 144 Ky. 662, 139 S. W. 834.)

Fraternal benefit society is a benevolent or charitable association within the exemption statutes. (Caldwell's Jud. Dict., Vol. I, p. 495, citing note to Royal Highlanders v. Nebraska, in 7 L. R. A. [N.S.] 480.)

Charitable corporations—legislative power over. The legislature has not an unrestrained power of legislation over charters granted for educational purposes. Such power does not exist unless a corporation be a public one, invested with political power. Where the charter provides for educational or eleemosynary purposes it is none the less a private corporation. (City of Louisville v. Pres., etc., of the University of Louisville, 54 Ky. [15 B. M.] 642; Kentucky University v. White, 10 Ky. Op. 89.)

Ecclesiastical corporations sole. Such corporations were common in England where the archbishops, bishops, deans, archdeacons and priests were frequently incorporated in their official person, as distinguished from the vast majority of religious corporations in this country which are corporations aggregate. (14 C. J. 72.) However, while text writers and courts in this country are most persistent in denying the existence of ecclesiastical corporations sole, it is one of the peculiarities of Kentucky jurisprudence, that there still exists in this state at least one such corporation. The Roman Catholic Bishop of Louisville is a corporation sole. (Act of 1908, ch. 1123 amending the charter as to the name; also see Rt. Rev. George McCloskey, Roman Catholic Bishop of Louisville v. Doherty, 97 Ky. 300, 30 S. W. 649). The Episcopal Bishop of Kentucky was formerly a corporation sole, until the charter was amended, so as to create a corporation aggregate, at the instance of the present bishop, the Rt. Rev. Charles E. Woodcock. For all practical purposes it may be stated that under the present constitution of Kentucky (section 59, subd. 17), the legislature is powerless to create a new corporation sole, being prohibited by the limitation placed upon special legislation, unless by general act.

Sec. 4756. Universities—Adjunct schools—Subscriptions for. That any incorporated college or university located in this Commonwealth shall have power to establish adjunct schools and colleges in any part of the Commonwealth, to be operated in connection with and under the auspices of the college or university by which they shall be established; and for the purpose of establishing, operating and controlling said adjunct

schools and colleges, the institution establishing them shall have power to solicit and receive subscriptions and donations of money and other property. (Act of 1893, Ch. 240.)

Sec. 4757. Management of adjunct schools by university. All money and property subscribed, donated, or otherwise procured, for the benefit of any adjunct school or college, shall be held and applied by the board of trustees or curators of the institution establishing them for the purpose of establishing, maintaining and controlling said adjunct school or college; and said board of managers shall have power to procure grounds and erect buildings thereon for their use and occupation; to appoint and remove teachers for the same; to prescribe a course of study for the students thereof, and confer degrees of graduation therefrom, and to exercise the same general supervision and control over them that are empowered by their several charters to exercise over the affairs of their respective institutions. (Ibid.)

Charitable institutions—for the blind and the insane. (K. S. sections 217-311 inc.)

Charitable uses and religious societies—grants to charitable and religious institutions, churches, etc. (K. S. sections 317-324 inc.)

FOREIGN NEWS CORPORATION

Sec. 883-a. 1. Distribution of news without discrimination. That all foreign corporations formed for the purpose or engaged in the business of buying, gathering or accumulating information or news, of vending, supplying, distributing or publishing the same, shall, as a condition of carrying on any part of said business in this State, at all times, vend, supply, distribute and publish the news and information, bought, gathered or accumulated by it to any and all persons, firms and corporations organized under the laws of this State, or carrying on in this State the business of conducting or publishing a newspaper, when such person, firm or corporation desires to buy or be supplied with such news and information so bought,

gathered or accumulated by such foreign corporation, and in vending, supplying, distributing and publishing the news and information so bought, gathered or accumulated by such foreign corporation, no discrimination in charges or prices shall be made by such foreign corporation between any of the persons, firms or corporations doing business in this State and desiring to purchase or be supplied with such information and news. (Act of 1898, Ch. 68.)

2. **Forfeiture of charter.** It shall not be lawful for any foreign corporation, or any agent or employe of such corporation, formed for the purpose or engaged in the business of buying, gathering, or accumulating information or news, or vending, supplying, distributing, or publishing the same, to transact any of the business of such corporation[1] shall have refused to vend, supply, distribute, or publish the information or news bought, gathered, or accumulated by it to any person, firm, or corporation engaged in this State and carrying on the business of conducting or publishing a newspaper, when such person, firm, or corporation has notified such foreign corporation, or any agent upon whom process can be served under the laws of this State, of his, their, or its desire to purchase or be supplied with said news or information so bought, gathered, or accumulated by such foreign corporation, and upon his, their, or its offer to pay the same charges or prices therefor which are exacted by said foreign corporation against other persons, firms, or corporations engaged in this State in the business of conducting or publishing a newspaper, and any such foreign corporation, and any agent or employe of such foreign corporation, or any other person who shall carry on, transact, or cause to be conducted any business in this State for such foreign corporation after it shall have failed or refused to comply with any of the requirements of this act, shall be severally guilty of a misdemeanor, and, upon conviction, fined not less than one hundred nor more than one thousand dollars for such offense, and each day's continuance of any part of the business of such foreign corpora-

[1] So in original act.

tion in this State, after it shall have failed to comply with any of the provisions of this act, shall constitute a separate offense. (Ibid.)

3. **Penalty for violation of this act.** A violation of the provisions of this act shall, upon conviction, operate to forfeit the charter of the corporation, or proceedings may be instituted by the attorney for the Commonwealth in any district within the State to forfeit the charter of any corporation violating the provisions of this act, and to subject the party charged, if found guilty, to the penalty imposed in Sec. 2 of this act. (Ibid.)

4. **Transmission by telegraph and telephone companies.** Every telegraph company, every telephone company, or every association or company engaged in buying, gathering, or transmitting of dispatches shall afford the same and equal facilities to all publishers of newspapers and furnish to all parties collected by them for publication, in any county or locality, to all newspapers there published, on the same conditions as to terms, payment and delivery, and, for a violation of any of the provisions of this section, shall, for such violation, be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars, and, if a corporation or association, shall upon conviction, forfeit its charter. (Ibid.)

FORMS FOR PURPOSE CLAUSES

(News corporation)

ARTICLE III. Said corporation is formed for the purpose of printing and publishing newspapers, magazines, news bulletins, periodicals; and of collecting and buying and vending information or news. To distribute its publications and conduct a general advertising and printing business and to do all things necessary and incident thereto.

(Co-operative corporation)

ARTICLE III. Said corporation is formed for the purpose of conducting and maintaining a general store, buying, selling and generally dealing in groceries, provisions, drygoods, clothing, newspapers, magazines, farm implements, boots and shoes, grain, feed, tobacco, and general merchandise; distributing its merchandise to its stockholders at prices not greater than the cost thereof, with expense of distribution, and the doing of all things necessary and incident thereto.

CO-OPERATIVE CORPORATIONS

Sec. 883d. 1. **Co-operative corporations defined.** Any person or persons not less than three, who are residents of the State of Kentucky, may associate themselves together as a co-operative corporation for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business on the co-operative plan. For the purpose of this act the "co-operative plan" shall be construed to mean a business concern that distributes the net profit of its business by: First, the payment of a fixed dividend upon its stock; second, the remainder of its profits are pro rated to its several stockholders or customers, or both, as provided by by-laws, upon their purchases from or sales to said concern, or both such purchases and sales. (Act of 1918, Ch. 159.)

2. **Execution of articles of incorporation.** They shall sign and acknowledge articles of incorporation, which shall specify those things required by Sec. 539 of the Kentucky Statutes. (Act of 1918, Ch. 159.)

See annotations under K. S. Sec. 539, ante.

3. **Articles of incorporation, filing and amendment of.** Said articles shall be filed as now required by law for other private corporations, and for filing same and amendments thereto under this act the same fees shall be paid to the Secretary of State as now required under the general corporation law. (Ibid.)

See K. S. Sec. 540, ante.

4. **Fifty per cent of capital stock to be paid in.** Corporations organized under the provisions of this act shall conform to the requirements of Sec. 543 of the Kentucky Statutes. (Ibid.)

See annotations under K. S. Sec. 543, ante.

5. **Directors—Power of stockholders.** Every such association shall be managed by a board of not less than three directors. The directors shall be elected by and

from the stockholders of the association at such times and for such term of office as the by-laws may prescribe, and shall hold office for the time for which elected and until their successors are elected, and shall enter upon the discharge of their duties, but a majority of the stockholders shall have power at any regular or special stockholders' meeting, legally called, to remove any director or official for cause, and fill the vacancy, and thereupon the directors so removed shall cease to be directors of said association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer (one may be both secretary and treasurer), who shall be elected annually by the directors, and each of said officers must be a director of the association. (Ibid.)

6. **Vote of stockholders.** No stockholder, regardless of the number of shares he may own, shall be entitled to more than one vote upon any proposition. (Ibid.)

7. **Reserve fund.** Out of the net profits of its business, after payment of a fixed dividend upon its stock, and before the profits are pro rated as set out and provided for in Sec. 883d-1 hereof, by vote of at least two-thirds of the stockholders of such corporation, a reserve fund may be created by setting aside not less than ten nor more than twenty-five per cent. of the remainder annually of said net profits. (Ibid.)

8. **Co-operative corporations formerly organized.** All co-operative corporations, companies or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all the provisions of this act, and be bound thereby on paying the fees provided for in this act and filing with the Secretary of State a written declaration signed and sworn to by the president and secretary to the effect that said co-operative company or association has by a majority

vote of its stockholders decided to accept the benefits of and be bound by the provisions of this act. (Ibid.)

9. **Exclusive use of the word "co-operative."** No corporation, association or company now or hereafter organized or doing business for profit in this State shall be entitled to use the title "co-operative" as part of its corporate or other business name or title unless it has complied with the provisions of this act, and any corporation, association or company violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder. Any corporation, association or company not entitled to use the title "co-operative" as part of its corporate or other business name or title as herein provided, if it does so use the title "co-operative" shall be subject to a fine of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1000.00.) (Ibid.)

See Bingham Co-operative Marketing Act, p. 367.

INVESTMENT COMPANIES

Sec. 2223a. 1. **Reserve and redemption fund.** Every corporation of the character generally known as investment companies, organized, or which may be hereafter organized under the laws of Kentucky, for the purpose of conducting the business of placing or selling certificates, bonds, debentures, certificates of interest, or other investment securities of any kind, on the partial payment installment or any other plan of payment, and providing for the redemption and retirement of same, or any part thereof, and every company, partnership, or association conducting such business in this State shall provide a reserve and redemption fund of not less than seventy-five per cent. of amount collected in premiums, for the benefit and protection of its investors, and so much of said fund as shall not be immediately distributed to investors shall be invested as hereinafter provided, and every such company, corporation, partnership, association or individual now doing such business

in this State within ninety days after the passage of this act shall deposit with the State Treasurer the total amount of its paid-up capital stock, and if said paid-up capital stock shall not amount to fifteen thousand dollars, shall deposit in addition thereto enough of the reserve fund to make fifteen thousand dollars in cash, or in bonds or mortgages, lien notes, or deeds of trust, or unincumbered real estate within the State of Kentucky, worth fifty per centum more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policy transferred to said corporation, partnership, company, or association, and continued in force so long as the loan continues; and in bonds of this State, or any other State of the United States, or in bonds of the United States or in bonds of any county or incorporated city or town of this State, authorized to be issued by the Legislature, and also stock of any incorporated bank or trust company of this State and of the national banks of this State or of adjacent States, and in the first mortgage bonds of railroads of this and other States, stocks or bonds of any bridge, water, street railway, gas, or electric light corporation of this State, which have for two years previous to the time of making the investment paid interest or dividends of not less than four per centum per annum; and none of the foregoing securities shall have a market value of less than eighty per cent. of the par value. Said fund so deposited, shall be for the protection of investors in such certificates, debentures, and other investment securities, wherever residing. Said company, corporation, partnership, or association shall within ninety days after the passage of this act, also file with the treasurer of the Commonwealth a statement verified by its president and secretary, showing its assets and liabilities as fixed herein, its income for the preceding twelve months, the total amount passed to its reserve fund now on hand, the number of certificates or parts of certificates redeemed or paid, and the amount of money used therefor. And at the same time, such corporation, company, partnership, or associa-

tion shall deposit with the treasurer in cash, or in bonds or such other securities as hereinbefore provided for, the amount passed to the reserve fund, as shown by said statement, which deposit shall be made each year until the total amount of the deposit with the treasurer shall be of the actual value of one hundred thousand dollars ($100,000.00.) (Act of 1902, Ch. 82.)

2. **License.** Whenever such corporation, company, partnership or association shall have deposited the amount above mentioned and filed the verified statement as required by the provisions of this act, the treasurer of this Commonwealth shall issue to said corporation, company, partnership or association a license to do business in this State, which license shall expire on the fifteenth day of the succeeding January, and whenever any such company, corporation, partnership or individual shall make the deposit and file the verified annual statement required herein, the treasurer of the Commonwealth shall issue to such corporation, company, partnership, or association a renewal of its license until the fifteenth day of the succeeding January. (Ibid.)

3. **Annual statement.** Every such corporation, company, partnership or association shall anually, on or before the fifteenth day of January each year, file with the treasurer of the Commonwealth of Kentucky a statement of its business for the twelve months next preceding the first day of said year, which statement shall be verified by the affidavit of its president or secretary and treasurer, and shall show the assets and liabilities, as fixed herein, of the corporation, company, partnership or association making the statement, and the amount of its premium receipts during the preceding year, and the amount passed to the reserve fund during the preceding year; and the amount distributed to investors, which statement shall be published in some newspaper of general circulation in the county in which the principal office or place of business may be located. (Ibid.)

4. **Interest on securities.** Every such corporation, company, partnership or association may collect and use the interest on any securities deposited as herein required, and also exchange such securities for other of equal value and of the kind authorized by this act. (Ibid.)

5. **Security for loans.** No company, corporation, partnership or association as above defined shall hereafter lend to holders of its bonds, certificates, debentures, or other investment securities out of its reserve fund on such bonds, certificates or debentures, or other investment securities in force an amount greater than the proportionate share of such bonds, debentures, certificates, or other investment securities in said reserve fund, but when any such loan is made, it shall be evidenced by the note of the borrower, secured by a deposit of the bonds, debentures, certificates or other investment securities on which the same is made, as collateral security, which said note and collateral may be deposited with the treasurer as a part of the deposit hereinbefore required, and shall be computed as making up so much of said required deposit as the proportionate share of such bonds, debentures or certificates so deposited in the entire reserve fund amounts to, not exceeding, however, the amount loaned. (Ibid.)

6. **Act not retroactive.** No company, corporation, partnership or association shall be required to change investments hereinbefore made legally and in good faith in the course of business, and the securities representing such investments shall be accepted by the treasurer of this State as part of the deposit required by this act to be made for the security of investors. (Ibid.)

7. **Fee to treasurer.** For every license issued by the treasurer under this act and every renewal of same, the company, corporation, partnership or association receiving same shall pay to the treasurer a fee of one hundred dollars ($100.) (Ibid.)

8. **Investment of reserve funds.** The reserve fund, capital stock and any increase thereof, of each and every such cor-

poration, company, partnership or association, doing business in this Commonwealth, shall be invested in such real estate as may be necessary for the proper conduct of business; in bonds or mortgages, lien notes, or deeds of trust on unincumbered real estate, worth fifty per centum more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policy transferred to said corporation, partnership, company or association, and continued in force so long as the loan continues; and in bonds of this State or any other State of the United States, or in bonds of the United States, or in bonds of any county or incorporated city or town of this State or any other State of the United States, authorized to be issued by law, and also stock of any incorporated bank or trust company of this State and of the national banks of this State or of any other State in the United States, and in the first mortgage bonds of railroads of this or any other States, stocks or bonds of any bridge, water, street railway, gas or electric light corporation or company, have, for two years previous to the time of making the investment paid interest or dividends of not less than four per centum per annum; or in like securities in any other nation or country, providing always, that any of the aforementioned securities shall have a market value of not less than eighty per centum of their par value. **(Ibid.)**

9. Expert accountants to examine affairs. The Governor of the Commonwealth of Kentucky shall have the power, at any time that he may deem proper, to appoint expert accountants at the expense of any company, corporation, partnership or association operating under provisions of this act, to make an examination of its affairs, and if it shall be ascertained by said expert accountants that any company, corporation, partnership or association operating under the provisions of this act shall not have assets sufficient to equal in value the reserve fund contributed by every contract in force, plus the interest at three and one-half per cent. per annum, compounded

annually, said company shall be declared insolvent and its license revoked. (Ibid.)

10. **Corporations—Requirements.** Every such corporation, company, partnership or association organized under the laws of any other State, which shall have made deposit with the proper authority of such State, or of any other State of the United States, either in cash or in acceptable securities, for the benefit and protection of all its investors, wherever residing, or which shall comply with the laws of this State upon the following conditions to wit: It shall file with the Secretary of State of this Commonwealth a certified copy of its charter or articles of incorporation and a statement giving the location of its office or offices in this State and the name or names of its agents upon whom process can be served; and shall file with the treasurer a certificate from the proper authorities of the State in which it may have been organized, or had made such deposit, showing that the deposit aforesaid has been made; such corporation shall also on or before the fifteenth day of January in each year, make an annual statement as required by this act, which shall be published as aforesaid; and shall furnish to the treasurer a certificate from the proper officer of the State where it shall have been organized or have made such deposit, showing that the deposit herein required of companies organized under the laws of this State for the preceding year has been made with the authorities of such State for the protection of its investors; and upon so doing it shall be entitled to a renewal of its license for one year from the expiration of that already held by it: Provided, When, by the laws of any other State, any taxes, fines, penalties, or deposits of money, or of securities, or other obligations, or prohibitions, or requirements are imposed upon investment companies organized under the laws of said State, and transacting business in such other State or upon the agents of such investment companies greater than those imposed upon similar companies, by the law of this State, or when such laws of other States shall require investment com-

panies to deposit money or security for the protection of certificate holders of such other State, or shall prohibit companies of this State from transacting business in said State without a special examination of said companies or a computation of their liabilities by the officers of said State, the same taxes, fines, penalties, deposits, and all other requirements shall be imposed upon all investment companies organized in such other State and doing business in this State as are imposed upon such company or corporation by the laws of the State in which said company may be incorporated: And provided further, That where any such corporation, company, partnership or association organized in any other State shall have made a deposit in any other State of the United States for the protection of holders of its certificates, bonds, debentures, certificates of interest or other investment securities, wherever residing, less in amount than that required by the laws of this State, it shall, before doing business in this State, file a certificate of such deposit as herein required, and shall deposit an amount with the treasurer of this State which, together with the amount so deposited in such other State, shall make up the total amount required by this act to be deposited by said companies in this State; And provided, That when, by the laws of any other State, any such company shall have been required to make, and shall have made, a deposit in such State for the security of holders of its certificates, bonds, debentures, certificates of interest, or other investment securities in such State alone, said company shall not be required to make a deposit in this State of its reserved fund accruing from its certificates, bonds, debentures, certificates of interest, or other investment securities which, under the laws of such other States, are secured by special deposit in such State, and the holders of said bonds shall not be entitled to the benefit of the securities deposited with the treasurer of this State under this act. (Ibid.)

11. **Penalty.** Any corporation, company, partnership or association, or any officer or agent of the same, who shall

attempt to place, or transact business as herein defined, when the corporation, company, partnership or association has not license to do so, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars ($500), nor more than one thousand dollars ($1,000), for such offense. (Ibid.)

NOTE—The above sections constitute an Act of 1902, ch. 82, not originally a part of the general corporation law. The following sections constitute subdivision II of the investment companies law, being added by Act of 1918, ch. 28. To this act is further added an Act of 1920, ch. 125. known as the "Blue Sky Law."

These three acts, however, are separate and distinct laws. The loan and investment company act (1918) specifically provides that the provisions of the Act of 1902 shall not apply to corporations organized thereunder.

Investment companies. Fraudulent declaration of dividends, penalty for. (Taylor v. Commonwealth, 25 Ky. L. R. 374, 75 S. W. 244.)

Statutes—construction. Section 2223b (changed to 2223a) relating to investment companies is construed so as to require such companies authorized after the passage of the act, as a condition precedent to beginning business, to deposit with the state treasurer the total amount of its paid up capital stock, provided it be equal to $15,000, and if not equal to that sum to supply the deficiency either in cash or in other securities enumerated in the statute. Construction of the 1902 act generally. (Goodpaster, Treasurer v. United States Mortgage Bond Company, 174 Ky. 284, 192 S. W. 35.)

Sec. 2223b-1. Definition of "loan and investment company." The term "loan and investment company" as used in this act, means any corporation formed under the provisions of this act. (Act of 1918, Ch. 28.)

2. **Corporator's number—Amount of capital required—name.** Any number of persons not less than five may associate to establish a loan and investment company in cities of the first and second class upon the terms and conditions and subject to the liabilities prescribed in this act. The name of any corporation formed under this act may contain the words "industrial bank," but said name shall not be that of any other existing corporation in this State, and it shall not be

necessary for any corporation organized under the provisions of this act to use the word "incorporated" in addition to its corporate name, either in its place of business or on any printed or advertising matter. The capital stock of any such loan and investment company shall not be less than $25,000, fifty per cent. of which shall be paid in cash before any such corporation shall be authorized to transact any business other than such as relates to its formation and organization, and the remainder of the capital stock shall be paid in in money within one year after the loan and investment company is authorized to commence business at such times and in such amounts as the directors may require. (Ibid.)

3. **Articles of incorporation.** Such persons shall execute articles of incorporation which shall specify:

(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.

(2) The name of the city or town and county in which its principal office or place of business is to be located.

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

(4) The amount of its capital stock and the number of shares into which the same shall be divided.

(5) The names and places of residence of the incorporators and the number of shares of stock subscribed by each.

(6) The time when it is to commence and the period it is to continue.

(7) By what officers or persons the affairs of the corporation are to be conducted and the time and place at which they are to be elected.

(8) The highest amount of indebtedness or liability which the corporation may at any time incur.

(9) Whether the private property of the stockholders, not subject by the provisions of the law under which it is organ-

ized, shall be subject to the payment of corporate debts, and if so, to what extent. (Ibid.)

NOTE—The above section is the same as section 539, ante, p. ———, of the general corporation law. See also annotations under that section and form for general incorporation.

Subsec. 4. Articles of incorporation—How executed and recorded—Previous approval by banking commissioner. The articles of incorporation shall be signed and acknowledged by the parties thereto before any officer authorized to take acknowledgment to deeds, and recorded in the county clerk's office of the county in which the loan and investment company is to be located, and a certified copy thereof shall be filed in the office of the Secretary of State; and said articles, or a certified copy thereof, may be used as evidence in any action for or against such loan and investment company; provided, however, that before filing the articles of incorporation of any proposed loan and investment company in the office of the county clerk in the county in which the loan and investment company is to do business, and with the Secretary of State, as herein provided, the incorporators shall present a copy of said articles of incorporation to the Banking Commissioner for his approval, and when same are approved in writing by said commissioner, the incorporators may proceed to the filing and recording of same. Upon presentation of said articles of incorporation to the Banking Commissioner for approval, said commissioner shall carefully examine same, and shall make such inquiry and investigation as to the financial standing and moral character of each of the incorporators as he may deem necessary. He shall inform himself that the incorporators are seeking to establish a bone fide loan and investment business and are acting in good faith, and upon his conclusions he shall approve or refuse to approve said articles of incorporation. If such articles be approved then the county court clerk and the Secretary of State, respectively, may receive said articles for filing and recording. Upon the filing and recording of said articles and doing all other things

required by the laws of the State, the said bank or trust company shall be deemed organized for the purposes named in its articles of incorporation, but no corporation seeking to do a loan and investment business shall actually transact any such business until it receives from the Banking Commissioner a certificate in which it shall set out that said corporation has fully complied with all the provisions of this act, and that the requisite capital has been in good faith subscribed and paid in cash. (Ibid.)

5. **Business—When may begin—Powers of corporation.** When the articles are filed and recorded, and the certificate received from the Banking Commissioner, as herein provided, it may commence business and be known by and carry on its business in its corporate name, and as such shall have power to adopt and use a corporate seal; to make contracts; sue and be sued; to appoint, remove and elect officers, define their duties and require from any of them a bond for the faithful discharge of their duties; to prescribe by its board of directors, by-laws for the government of the loan and investment company not inconsistent with law; to exercise subject to law all such powers as may be necessary:

(a) To lend money and to deduct interest therefor in advance at the rate of six per centum per annum, and in addition to require and to receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower, simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments.

(b) To sell or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at any time, either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments.

(c) To charge for a loan made pursuant to this section one dollar for each fifty dollars or fraction thereof loaned for

expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or surety and the drawing and taking acknowledgment of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made as a result of such examination or investigation. (Ibid.)

6. **Limitations on powers of corporation.** No corporation organized under the provisions of this act shall:

(a) Hold at any one time the obligation or obligations of any person, firm or corporation for more than two thousand dollars.

(b) Make any loan under the provisions of this act for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any bank or trust company unless such bank or trust company has been designated as such depository by vote of the majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated. (Ibid.)

7. **Reports to banking commissioner.** Every corporation incorporated under the provisions of this act shall report to and be subject to examination, supervision and control of the Banking Commissioner as now provided or may hereafter be provided by law. (Ibid.)

8. The provisions of Chapter 82 of the Sessions Acts of 1902 entitled "An act to regulate investment companies" (Secs. 223a-1 to 2223a-11; ante) shall not apply to corporations incorporated under the provisions of this act. (Ibid.)

FORM FOR PURPOSE CLAUSE IN ARTICLES OF INCORPORATION

No. 1.

ARTICLE III. To acquire, own, sell, and dispose of, and deal in stocks, bonds, mortgages, securities, notes and commercial paper of corporations, either domestic or foreign, and of individuals.

No. 2.

ARTICLE III. To buy, sell, exchange, pledge and generally deal in and with government, municipal and industrial bonds and other securities and in and with the stock, debentures, trust receipts and other securities

of corporations both domestic and foreign and generally to carry on the business of stock and bond investment companies, but nothing herein shall be construed as an attempt to secure powers not properly obtainable by corporations organized under the laws of the state of Kentucky relating to investment companies and brokerage companies

SALES OF STOCKS, BONDS, ETC.

An act to prevent fraud in the sale and disposition of contracts, stocks, bonds, or other securities sold or offered for sale within the Commonwealth of Kentucky by any person, dealer, firm, company, association or corporation, foreign or domestic, by requiring an inspection of such contracts, stocks, bonds, or other securities, and an inspection of the business of such persons, firms, companies, associations or corporations, including dealers and agents, and such regulation and supervision of the business of said persons, firms, companies, associations or corporations, including dealers and agents as may be necessary to prevent fraud in the sale within this State of any contracts, stocks, bonds, or other securities, and to provide a penalty for the violation thereof, and placing the supervision and enforcement of the law in the hands of the Banking Commissioner. This act is commonly known as a "Blue Sky Law." (Act of 1920, Ch. 125.)

The Blue Sky Law is now compiled in the 1922 edition of the Kentucky Statutes (Carroll) as Sec. 883e-1.

Sec. 1. Banking commissioner to be executive officer. The State Banking Commissioner shall be and he is hereby constituted and delegated with full power and authority to supervise and enforce the provisions of this act, and he shall appoint an assistant at a salary not exceeding twenty-four hundred dollars per annum for the purpose of this act, to be paid in the same manner as the salary of the Banking Commissioner, and such Banking Commissioner shall make such rules and regulations as may be necessary to carry out the provisions herein and shall prepare all necessary blanks, records and stationery, and shall pay all other expenses lawfully incurred

hereunder in the same manner as expenses of his office are now paid.

Sec. 2. Investment company, meaning of. Every person, corporation, co-partnership, company or association (except those whose securities are exempt under the provisions of this act), organized or which shall hereafter be organized in this Commonwealth, whether incorporated or unincorporated, which shall either himself, themselves or itself, or by or through others, sell or negotiate for the sale of any contract, stock, bonds or other securities issued by him, them, or it, within the Commonwealth of Kentucky shall be known for the purposes of this act as a domestic investment company.

Every such person, corporation, co-partnership, or association, a resident of or organized in any other State, territory, or government, shall be known for the purposes of this act as a foreign investment company.

Sec. 3. Securities exempted from operation of act. The provisions of this act shall not apply to, (a) securities of the United States; or any foreign government; or any State or territory thereof, or of any county, city, township, district, or other public taxing sub-division of any State or territory of the United States, or any foreign government; (b) unsecured commercial paper; (c) securities of public or quasi-public corporations, the issue of which securities is regulated by any public service commission or board of equal authority of any State or territory of the United States or securities senior thereto; (d) securities of State or National banks or trust companies and building and loan associations; (e) securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes; (f) mortgages upon real or personal property situated in this State where the entire mortgage is sold and transferred with the note or notes secured by such mortgage; (g) increase of stock sold and issued to stockholders, also stock dividends;

(h) securities of corporations, which corporations are listed in any standard manual of information ;provided, however, that said Banking Commissioner shall have power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities, and also suspend, either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if, in the opinion of said Banking Commissioner the sale of such securities would work a fraud upon the purchaser thereof; (i) securities (other than those exempted in paragraphs a, b, c, d, e, f, g and h), sold or offered for sale by or through a licensed dealer who is a member of a regularly organized and recognized stock exchange who has an established and lawfully conducted place of business in this State, regularly open for public patronage as such; provided, however, that said Banking Commissioner shall have power to suspend temporarily or permanently the sale of such securities by any person, firm or corporation when, in the opinion of the Banking Commissioner the sale of such security or securities would work a fraud upon the purchaser thereof; (j) securities listed on any stock exchange recognized by the Banking Commissioner or securities senior thereto; provided, however, that the Banking Commissioner shall have power to suspend temporarily or permanently the sale of such securities by any firm, person, or corporation when in the opinion of the Banking Commissioner the sale of such security or securities would work a fraud upon the purchasers thereof; (k) securities sold or offered for sale to a licensee under this act.

Sec. 4. Method of application and fees fixed. Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatsoever in this Commonwealth any contracts, stocks, bonds, or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the Banking Commissioner a statement showing in full detail the plan upon which it proposes to

transact business, a copy of all contracts, stocks, bonds, or other instruments which it proposes to make with or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds, or other securities, which statement shall also show the name and location and main office of the investment company; the names and addresses of its officers, and an itemized account of its financial condition and of its assets and liabilities, and such other information touching its condition and affairs as the Banking Commissioner may require.

If such investment company shall be a co-partnership or an unincorporated association, it shall also file with the Banking Commissioner a copy of its articles of incorporation or co-partnership, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other State, territory or government, incorporated or unincorporated, it shall also file with the Banking Commissioner a copy of the laws of the State, or territory, or government, under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such State showing that it is authorized to transact business there; and also copies of its constitution and by-laws and of all amendments of any of the above mentioned instruments which have been made, and of all other papers pertaining to its organization. It shall also pay a filing fee of one-tenth of one per cent. upon the face value of the securities for the sale of which application is made; provided, however, such filing fee shall not be more than one hundred dollars, nor less than ten dollars.

Sec. 5. Applications to be verified. All the above described papers shall be verified by the oath of a member of the co-partnership or company, if it be a co-partnership or company, and by the oath of a duly authorized officer, if it be a corporation or an unincorporated association.

All such papers, however, as are recorded or are on file in any public office shall be further certified by the officer of

whose records they form a part, as being correct copies of such records.

Sec. 6. Consent for service of process. Every foreign investment company before offering for sale any of its stocks, bonds, or other securities in this Commonwealth shall file its irrevocable written consent that suits and actions may be commenced against it in the proper courts of any county in this Commonwealth in which a cause of action may arise, or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth, on the Banking Commissioner, said consent stipulating and agreeing that such service of such process or pleading on such Commissioner shall be taken and held in all courts to be as valid and binding as if due service had been made on the company itself, and said instrument containing such consent shall be authenticated by the seal of said foreign investment company, and shall in such case be accompanied by a duly certified copy of the resolution of the Board of Directors, authorizing the president and secretary to execute the same. In any case any process or pleading mentioned in this act are served upon the Banking Commissioner, it shall be by duplicate copies, one of which shall be filed in the office of the Banking Commissioner, and another immediately forwarded by registered mail to the head office of the investment company against which said process or pleadings are directed.

Sec. 7. Examination and additional information. The said Banking Commissioner shall have power to demand from any investment company seeking to come under the provisions of this act any further information other than that which such investment company is required to furnish under the provisions of this act which shall be necessary to properly qualify him to pass upon all questions that may come before him. He may make or have made under his direction a detailed examination of such investment company's property, business and affairs, which examination shall be at the expense of the applicant. He may cause an appraisal to be made at the

expense of the investment company, of the property of the said investment company, including the value of patents, good will, promotion and intangible assets, and he may fix the amount of stocks, bonds, or other securities that may be issued by any corporation, foreign or domestic, in payment for property, patents, good-will, promotion and intangible assets at the value he shall find same to be worth, and may require that such stocks, bonds, or other securities so issued for such property, patents, good-will, promotion, and intangible assets shall be deposited in escrow under such terms as said Banking Commissioner may prescribe. And said Banking Commissioner may withhold his certificate of authority to sell such stocks, bonds, or other securities if such corporation has issued stocks, bonds, or other securities in payment for property, patents, good-will, promotion or intangible assets in excess of their value as found by said Banking Commissioner, or if said stocks, bonds or other securities are not deposited in escrow according to the terms fixed by the Banking Commissioner until such stocks, bonds, or other securities issued in payment for property, patents, good-will, promotion or intangible assets in excess of the value so found by said Banking Commissioner has been surrendered to such corporation and cancelled by it, and until the said stock has been deposited in escrow under the terms prescribed by said Banking Commissioner.

Sec. 8. To issue permit, if free from fraud. It shall be the duty of said Banking Commissioner to examine the statements and documents filed in his office by any investment company and the reports of any investigation conducted under the direction of said Banking Commissioner and to hear such applicant and he shall have power to examine under oath any person interested or connected with such investment company, and if said Banking Commissioner finds that the proposed contracts, stocks, bonds, or other securities are fraudulent or of such nature that the sale thereof, would, in the opinion of the said Banking Commissioner, work a fraud upon the purchaser, then the said Banking Commissioner shall disapprove the

sale of such proposed contracts, stocks, bonds, or other securities and shall notify such investment company, by registered mail, of his findings and disapproval, and it shall be unlawful for such company to do any further business in the way of selling offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever of any such contracts, stocks, bonds, or other securities in this Commonwealth; and said contracts, stocks, bonds, or other securities shall not be sold in this State; provided, however, that such investment company may have the right to appeal to the circuit court of Franklin county within forty days after such disapproval and shall be entitled to an immediate trial therein. Each party may appeal from the decision of the Franklin circuit court to the Court of Appeals.

If, however, such Banking Commissioner shall not find that the proposed plan of business of said investment company or that its proposed contracts, stocks, bonds, or other securities are fraudulent or are of such nature that the sale thereof would, in the opinion of said Banking Commissioner, work a fraud upon the purchaser thereof, then he shall approve the sale of same in the Commonwealth of Kentucky, and issue his certificate in substantially the following language:

This is to certify that the ———— *has this day been given permission to sell* $———— *of its* ———— *within the*

[*Stocks, bonds, or other securities.*]

Commonwealth of Kentucky,
Franklin County.

THE BANKING COMMISSIONER DOES NOT RECOMMEND THE PURCHASE OF THIS SECURITY.

This ———— *day of* ————, *A. D.*, 19—.

In witness whereof, I have hereunto affixed the seal of the banking department.

Done at Frankfort, Kentucky, this ———— *day of* ————, *A. D.*, 19—

————

(SEAL) *Banking Commissioner.*

The words "the Banking Commissioner does not recommend the purchase of this security," shall be printed in type two sizes larger than any other part of said certificate, and in case said certificate or the fact that said Banking Commissioner has approved said securities is printed or published in any circular, pamphlet or newspaper, the words "the Banking Commissioner does not recommend the purchase of this security" shall be printed in type two sizes larger than the balance of said certificate, or statement or such facts that such securities have been approved by said Banking Commissioner appears.

Sec. 9. Dealer defined—Regulations prescribed. Any person, firm, co-partnership, corporation or association, not the issuer, who shall in this Commonwealth sell or offer for sale any contracts, stocks, bonds or other securities exempted or non-exempted, or who shall, by advertisement or otherwise, profess to, or engage in the business of selling or offering for sale any such securities or any securities whatever, shall be deemed to be a "dealer" within the meaning of this Act, and no dealer within the meaning of this Act shall sell or offer for sale any securities or profess the business of selling or offering for sale any securities unless and until he shall have obtained a license as provided in this Act. The term "dealer" shall not include an owner, not the issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who, in a trust capacity created by law, lawfully sells any securities embraced within such trust.

Sec. 10. How dealer licensed. Any dealer desiring to sell or offer for sale within this Commonwealth any contracts, stocks, bonds or other securities shall first register with the Banking Commissioner and shall furnish said Banking Commissioner upon oath in such form as the Banking Commissioner shall prescribe the following information, to-wit: The dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places

Sec. 11. Dealers license, when revoked. Said Banking Commissioner may at any time revoke any such license, or refuse to renew the same, upon ascertaining that the licensee:

(a) Is of bad business repute;

(b) Has violated any provision of this act; or

(c) Has engaged, or is about to engage, under favor of such license, in illegitimate business or in fraudulent transactions.

No dealer whose license has been revoked shall be relicensed within six months from the date of such revocation.

The Banking Commissioner shall at once lay before the prosecuting attorney, of the proper county, any evidence which shall come to his knowledge of criminality under this Act.

Sec. 12. Notice of revocation. At least five days before revoking or refusing to grant or renew a license, the Banking Commissioner shall send by registered mail to the licensee or applicant, at the address named in the application written notice of his intention so to do, specifying therein the reason for such revocation or refusal.

Sec. 13. Petition for reversal of Commissioner's ruling. Anyone whose license shall be refused or revoked, or to whom a renewal license may be denied, may file, within thirty days thereafter, in the Franklin Circuit Court, a petition against the Banking Commissioner officially, as defendant, alleging therein, in brief detail, the plaintiff's qualifications to be licensed and praying for a reversal of the official action complained of. Upon service of summons upon said defendant, returnable within three days from its date, but otherwise made as in civil actions, he shall, within one week from such return day, file an answer, in which he shall allege by way of defense the grounds previously assigned in his notice to such applicant or licensee, and such other grounds as shall in the meantime, accrue or be discovered. All allegations of the answer shall be deemed to stand denied without further pleading and, upon application of either party, the case shall

where the business is to be conducted within this Commonwealth, and where the business in this Commonwealth is not to be conducted by the dealer in person, then the names and addresses of all persons in charge thereof. Said dealer at the time of such registration shall pay to the Banking Commissioner a license fee of fifty dollars and shall furnish said Banking Commissioner with such other information in addition to that above specified as said Banking Commissioner shall deem necessary in order to thoroughly acquaint himself with the character of the business of such dealer. All authorized agents of any dealer shall be registered with the Banking Commissioner and the name of any agent shall be stricken from the register by the Banking Commissioner upon the written request of the dealer and additional agents may be registered by the Banking Commissioner upon like request of the dealer accompanied with the fee therefor; provided, that no agent shall act as such until his name and address shall be registered with the Banking Commissioner.

If the dealer be a foreign person, co-partnership, association or corporation, it shall at the time of registry with the Banking Commissioner file with the Commissioner a written duly authenticated appointment of the Banking Commissioner of this Commonwealth as its agent in Kentucky upon whom process or pleadings may be served for and on behalf of the dealer for the purposes mentioned in Section 6 of this Act, and such appointment shall be irrevocable.

Upon compliance by such dealer with the provisions of this Act, the said Banking Commissioner shall issue to him a certificate of authority under the seal of said commission, which said certificates shall be valid for one year from the date thereof, unless sooner revoked by said Banking Commissioner as provided for in this Act; provided, that in the event such certificate of authority be not revoked before the expiration of one year from the date thereof, same may be renewed by the said Banking Commissioner upon receipt of an inspection fee of twenty-five dollars.

be advanced and heard without delay. Merely technical irregularities in the procedure of such Banking Commissioner shall be disregarded and the burden shall rest upon the plaintiff to disprove the grounds assigned and specified in the official action complained of. Upon the decision of the case by the Franklin Circuit Court, either party shall have the right to appeal to the Court of Appeals, and, upon motion of either party, said case shall be advanced by the Court of Appeals and decided as speedily as possible. A judgment sustaining the refusal of the Banking Commissioner to grant or renew a license shall not bar, after thirty days, a new application by plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent such Banking Commissioner from thereafter revoking such license for any proper cause which may thereafter accrue or be discovered.

Sec. 14. Agents, fees for. In addition to the filing, inspection and examination fees herein provided for to be paid by investment companies and dealers, there shall be charged and collected by the Banking Commissioner a fee of three dollars for the registration and authorization of each agent of any such dealer or investment company, which shall be valid until March 1 following, unless sooner revoked by the Commissioner for cause appearing sufficient, and all the fees and charges collected by the Banking Commissioner shall be turned into the Commonwealth treasury and are hereby reappropriated to the Banking Commissioner toward paying the expenses of enforcing this Act.

Sec. 14a. Foreign dealers, when exempt. The provisions of Sections 10, 11, 12, 13 and 14 shall not apply to foreign dealers offering securities in this Commonwealth solely to dealers duly registered and licensed under the provisions of this Act.

Sec. 15. Accounts and examinations; fees for. The general accounts of every investment company, domestic or foreign, shall be kept in a businesslike and intelligent manner and in

sufficient detail that said Banking Commissioner can ascertain at any time its financial condition, and the books and accounts shall at all times during business hours, except on Sundays and legal holidays, be open to stockholders and investors in said company and to said Banking Commissioner, and all such investment companies shall be subject to examination by said Banking Commissioner, or duly authorized examiner at any time said Banking Commissioner shall deem it advisable and in the same manner as is now provided for the examination of State banks, and such investment companies shall pay a fee for each examination not to exceed ten dollars per day or fraction thereof that any examiner is absent from the Capitol building for the purpose of making such examination, and in addition thereto shall pay the actual hotel and traveling expenses of such authorized examiner from Frankfort and return. And the failure or refusal of any investment company to pay such fees upon demand of such Banking Commissioner or duly authorized examiner, while making such examination, shall work a forfeiture of the right of such investment company to sell or offer for sale any of its contracts, stocks, bonds, or other securities in this State. In case a preliminary examination of any investment company by said Banking Commissioner for the purpose of the ascertainment by said Banking Commissioner as to whether said company shall be permitted to come under the provisions of this Act, the fee for such examination shall be the same as in this section provided, and in case it shall appear to the Banking Commissioner from the examination of such investment company, after said investment company has been authorized to sell or offer for sale its contracts, stocks, bonds, or other securities that the further sale of said contracts, stocks, bonds, or other securities would work a fraud upon the purchaser, then the said Banking Commissioner may make an order revoking the license of such investment company to sell its contracts, stocks, bonds or other securities upon notice duly given and a hearing duly had, and may, pending such hearing, suspend the right

of such investment company to sell its contracts, stocks, bonds or other securities.

Sec. 16. Unlawful to do business until law complied with. It shall be unlawful for any investment company or dealer or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner in this Commonwealth, any contracts, stocks, bonds, or other securities (except as expressly exempted herein), unless and until said Banking Commissioner has approved thereof and issued his certificate in accordance with the provisions of this Act, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statement and papers required to be filed by virtue of the provisions of this Act or the rules of the Banking Commissioner. It shall be unlawful for any investment company, or dealer, or its or his agents, to issue, circulate or deliver any advertisement, pamphlet, prospectus or other document in regard to its stocks, bonds or other securities (except as specifically exempted herein) in the Commonwealth of Kentucky differing in any way from the copy filed with the said Banking Commissioner as provided in this Act. It shall be unlawful for any publication in the Commonwealth of Kentucky to advertise the sale of any stocks, bonds or other securities which have not been approved by said Banking Commissioner or which are not exempt under the provisions of this Act.

Sec. 17. Dealer not to act until laws complied with. No dealer within the meaning of this Act shall sell or offer for sale within this Commonwealth any of the contracts, stocks, bonds or other securities of any investment company (except as expressly exempted herein), unless such investment company shall have fully complied with all the provisions of this Act, nor until said dealer shall have registered with the Banking Commissioner under the terms of this Act; provided, however, that should any dealer desire to sell or offer for

sale within this Commonwealth the contracts, stocks, bonds or other securities of any investment company, which has not itself complied with the provisions of this Act, said dealer shall make application to the said Banking Commissioner for license as hereinbefore provided for applications by investment companies and shall pay the same fee required to be paid by said investment company.

Sec. 18. Information subject to public inspection. All information obtained by the Banking Commissioner relating thereto shall be open to examination by the public, and it shall be the duty of the Banking Commissioner to preserve such information, and so classify and arrange it as to facilitate examination and inspection thereof. The Banking Commissioner shall, from time to time, issue in pamphlet form, or by newspaper advertisements, or otherwise, any and all information regarding any and all contracts, stocks, bonds or other securities sold or offered for sale within this State which he deems would be of public interest or advantage.

Sec. 19. Act not to repeal or cancel banking laws. Nothing in this Act shall be construed to repeal or modify any laws giving the State Bank Department of this Commonwealth control over State banks, and the business of banking in this Commonwealth, nor shall any part of this Act be construed to repeal or modify laws giving the Insurance Commissioner of this Commonwealth control of and supervision over the business of insurance in this Commonwealth and those engaged therein.

Sec. 20. Penalty for false oath. Any person who shall knowingly or wilfully subscribe to or make or cause to be made any false statement or false entry in any book of any investment company or who shall exhibit any false paper with the intention or for the purpose of deceiving any person authorized to examine into the affairs of said investment company, or shall make or publish any false statement of the financial

condition of said or any investment company or false statement relating to the contracts, stocks, bonds or other securities by it issued and offered for sale, shall be deemed guilty of false swearing, and shall be punished as provided by law for such offense.

Sec. 21. Copies may be furnished receipts appropriated. The Banking Commissioner shall provide for the furnishing to those who may apply therefor any information regarding any investment company or its affairs, which is on file in its office, said Banking Commissioner to charge therefor approximately the cost of preparing such information, and fifty cents for each certificate of authentication. All fees collected under the provision of this Act shall be paid into the State treasury on the first day of each and every calendar month, and a complete record of all fees received shall be kept in the office of the Banking Commissioner, and all said fees so turned into the State treasury are hereby appropriated to the Banking Commissioner for the purpose of paying salaries and expenses necessary for carrying this Act into effect.

Sec. 22. Annual report. Every investment company, corporation or association, domestic or foreign, shall, within ninety days after the close of its fiscal year, file each and every year a detailed statement in such form and containing such information as the Banking Commissioner may prescribe and require, showing its condition at the close of such fiscal year, and shall, at the same time, pay a filing fee therefor of two dollars and fifty cents; provided, that such Banking Commissioner may call for any other or additional reports of any kind at any time, and such other or additional reports shall be filed with the Banking Commissioner not more than twenty days after the call therefor, and for which report a like fee as above provided shall be paid.

Sec. 22a. Maximum commission allowed. It shall be illegal for any person, firm, corporation or association to pay or agree

to pay, in consideration for the sale of any of the securities included in this Act, in property of any character, a commission or fee greater than twenty per cent.

Sec. 23. Penalties. Any person or persons who shall violate any of the provisions of this Act shall, except as otherwise specifically provided, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or may be imprisoned in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court or jury trying the case.

Sec. 24. No trick, device, subterfuge or pretense shall be allowed to evade the operation or defeat the purpose of this law.

Sec. 25. Constitutionality confined to each section. Should the courts of this Commonwealth or of the United States declare any section, provision or part of this Act unconstitutional or unauthorized, or in conflict with any other section or provision of this Act, then such declaration shall affect only the section, provision or part so declared to be unconstitutional or unauthorized, or if in conflict only such provisions or parts as are so held, and such holding shall not affect any other section or part of this Act.

Sec. 26. All laws and parts of laws in conflict herewith are hereby repealed, and this Act shall be in force from and after its passage.

OIL AND GAS COMPANIES

Sec. 3766b. Condemnation proceedings. All corporations or companies organized for the purpose of constructing, maintaining or operating oil or gas well or wells or pipe line or lines for conveying, transporting or delivering oil or gas, or both oil and gas, are hereby vested with the right and power to condemn lands and material in this Commonwealth or the

use and occupation of so much thereof as may be necessary for constructing, maintaining and operating such pipe line, or lines, and all necessary machinery, pumping stations, appliances and fixtures, including tanks, telephone and telegraph lines, for use in connection therewith, together with rights of ingress and egress to examine, alter, repair, maintain and operate or remove such pipe line or lines, all such being hereby declared to be a public use; and when any such corporation or company desires to construct oil or gas pipe line or lines, or both, for the purpose of conducting, transporting or delivering oil or gas, or both, over the lands of others, shall be unable to contract or agree with the owner or owners of land or material necessary for its use for said purposes, it may, in the mode prescribed for the condemnation of land for railroads, condemn the use of so much of said land as may be necessary for the purpose of constructing, maintaining and operating such pipe line or lines, and all necessary machinery, pumping stations, appliances and fixtures, including necessary tanks, telephone and telegraph lines, and including rights of ingress and egress to examine, alter, repair, maintain and operate or remove the same. (Condemnation of land for railroads, Sec. 835; Acts of 1900, Ch. 17.)

Eminent domain—highways—rights of fee owners—gas mains. The laying of gas mains in a country highway, in which the fee was in the abutting owners, by a private corporation, engaged in selling its natural and manufactured gas to the public, which it desired to conduct through such mains from its wells and plant to a city, constituted an additional servitude, to which the highway could not be subjected by the mere consent of the fiscal court of the county, without the consent of such fee owners. There is a distinction between the use of a rural highway for gas mains, and the use of a city street for necessary lighting purposes. (Paine's Guardian v. Calor Oil & Gas Co., 133 Ky. 614, 11 L. R. A. [N.S.] 727, 134 Am. St. 475, 103 S. W. 309.)

Constitutionality of statute—upheld. This section, giving to owners of gas wells the right of eminent domain for the purpose of piping their products to market is constitutional. (Calor Oil & Gas Co. v. Franzell, 128 Ky. 745, 109 S. W. 328.) Proceedings to assess damages under power of eminent domain. (Calor Oil & Gas Co. v. Franzell, supra.) Condemnation for pipe line. (Calor Oil & Gas Co. v. Franzell, 122 S. W. 188, Kentucky Heating Co. v. Calor Oil & Gas Co., 146 Ky. 414, 142 S. W. 728.)

Damages—evidence. In proceedings under this section to condemn a gas pipe line right of way, exclusion of evidence tending to show the availability of land for such purpose was not erroneous as violating the Fourteenth Amendment of the Federal Constitution. (Calor Oil & Gas Co. v. Withers, Admr., 141 Ky. 489, 133 S. W. 210.)

Oil Leases—when unenforceable by corporation. A corporation which has failed to comply with the requirements of section 571, by designating an agent upon whom process may be served, cannot lawfully do business in this State nor maintain an injunction suit to prevent interference with a lease. (See K. S. 571, under title "Civil Code Practice," ante; Hayes v. West Virginia Oil, Gas & By-Products Company, 183 Ky. 622, 210 S. W. 174.)

Leases, forfeiture of—for failure to develop. (Monarch Oil, Gas & Coal Co. v. Richardson, 124 Ky. 602, 30 Ky. L. R. 824, 99 S. W. 668.)

PETROLEUM, NATURAL GAS AND SALT WATER

Sec. 3910. Natural gas wells to be closed up. That from and after the passage of this Act, any person or corporation, and each and every of them, in possession, whether as owner, lessee, agent or manager, of any well in which petroleum, natural gas or salt water has been found, shall, unless said product is sooner utilized, within a reasonable time, not, however, exceeding three months from the completion of said well, in order to prevent said product wasting by escape, shut in and confine the same in said well until such time as it shall be utilized: Provided, however, That this section shall not apply to gas escaping from any well while it is being operated as an oil well, or while it is used for fresh or mineral water. (Act of May 14, 1892.)

Sec. 3911. How to be closed up. That whenever any well shall have been put down for the purpose of drilling or exploring for oil, gas or salt water, upon abandoning or ceasing to operate the same, the person or corporation in possession as aforesaid shall, for the purpose of excluding all fresh water from the gas-bearing rock, and before drawing the casing, fill up the well with sand or rock sediment to a depth of at least twenty feet above the rock which holds the oil, gas or salt water, and drive a round, seasoned wooden plug, at least

three feet in length, equal in diameter to the diameter of the well below the casing, to a point at least five feet below the bottom of the casing; and immediately after drawing the casing, shall drive a round, seasoned wooden plug, at a point just below where the lower end of the casing rests, which plug shall be at least three feet in length, tapering in form, and of the same diameter, at the distance of eighteen inches from the smaller end, as the diameter of the hole below the point at which it is to be driven. After the plug has been properly driven, there shall be filled on top of the same sand or rock sediment to the depth of at least five feet. (Ibid.)

Sec. 3912. Penalties. Any person or corporation who shall violate any of the provisions of Secs. 3910 or 3911, shall be liable to a penalty of one hundred dollars for each and every violation thereof, and to the further penalty of one hundred dollars for each thirty days during which said violation shall continue; and all such penalties shall be recovered, with cost of suit, in a civil action or actions, in the name of the State, for the use of the county in which the well shall be located. (See Salt and Saltpetre Works, Sec. 4359. Ibid.)

Sec. 3913. Others beside owners may close up wells. Whenever any person or corporation in possession of any well in which oil, gas or salt water has been found, shall fail to comply with the provisions of Sec. 3910, any person or corporation lawfully in possession of lands situate adjacent to or in the neighborhood of said well, may enter upon the lands upon which said well is situated, and take possession of said well from which oil, gas or salt water is allowed to escape or waste in violation of said Sec. 3910, and tube and pack said well, and shut in said oil, gas or salt water, and may maintain a civil action in any court of this State against the owner, lessee, agent or manager of said well, and each and every one of them, jointly and severally, to recover the cost

thereof. This shall be in addition to the penalties provided by Sec. 3912. (Ibid.)

Prevention of waste—construction—legislative control. The Kentucky Statutes, Secs. 3910, 3914, provide (1) for the confinement of gas in wells until utilization (2) for the plugging of abandoned wells (3) that landowners adjacent to wells, the owners of which fail to comply with Sec. 1, may enter on their lands and plug the wells (4) that the owners of land adjacent to abandoned wells may enter and plug them (5) declare an emergency on account of the number of abandoned wells; held, that since Secs. 2 and 5 provide expressly and sufficiently for abandoned wells, and Secs. 1 and 4 are not so limited, those latter sections provide for wells not abandoned, although the emergency was declared to exist only as to the abandoned wells. These sections were enacted for the prevention of waste of gas, and enjoining the plugging of wells not in use, and were within the legislative power to enact, as a protection of the natural resources of the State, and the rights of the public, to which the rights of the individual owners are subject. (Commonwealth v. Trent, 117 Ky. 34, 25 Ky. L. R. 1180, 77 S. W. 390.)

Sec. 3914. Recovery of cost by others not owners—Civil action. Whenever any person or corporation shall abandon any well, and shall fail to comply with Sec. 3911, any person or corporation, lawfully in possession of lands adjacent to or in the neighborhood of said well may enter upon the land upon which said well is situated, and take possession of said well, and plug the same in the manner provided by Sec. 3911, and may maintain a civil action in any court of this State against the owner or person abandoning said well, and every one of them, jointly and severally, to recover the cost thereof. This shall be in addition to the penalties provided by Sec. 3912: Provided, this section shall not apply to persons owning the lands, on which said well or wells are situated and drilled by other parties; and in case the person or corporation drilling said well or wells is insolvent, then, in that event, any person or corporation in possession of the lands adjacent to or in the neighborhood of said well or wells, may enter upon the land upon which said well or wells are situated, and take possession of said well or wells, and plug the same in the manner provided for in Sec. 3911, at their own expense. (Ibid.)

Sec. 3914a. Plugging of wells previous to abandonment. It shall be unlawful for any person or persons, corporations or companies to abandon any oil or gas wells, either dry or producing, in this Commonwealth, or to remove casings therefrom, whether same be either oil or gas, either producing or dry, or for any cause abandon said well or wells without first plugging same in a secure manner by placing a plug of pine, poplar, or some other material which will prevent said well from becoming flooded, said plug to be placed above the oil producing sand or sands, and filled in above for the distance of seven feet with sediment or clay and placing upon same another plug of similar material as that of the first and also placing about ten feet below the said casing another plug of like material as above referred to, seven feet of sediment or clay, and then another plug, all plugs to be securely driven in so that no water can pass the same, before the casing is removed.

Any person or persons, corporations or companies refusing or failing to comply with the foregoing provisions as provided for in Sec. 1 herein, shall, on conviction, be fined in any sum not less than one hundred dollars, or not more than one thousand dollars, in the discretion of the jury. All acts or parts of acts in conflict herewith are hereby repealed. (Act of 1906, Ch. 47.)

Licenses and taxes on oil and gas companies. See Chapter on Corporation Tax Law, post, p. 390.

Incorporation of oil and gas companies. Oil and gas companies are incorporated under the general corporation law, like any other corporation in this State, not otherwise specifically provided for.

PURPOSE CLAUSES IN ARTICLES OF INCORPORATION

FORM 1

ARTICLE III. The nature of the business proposed to be transacted, promoted and carried on by this corporation shall be as follows:—To purchase, lease, or otherwise acquire lands, mineral and oil rights and privileges in the State of ———. Also to purchase, lease or otherwise acquire in the State of ——— and other parts of the world, lands containing or believed to contain, petroleum or other oil spring deposits. Also to

store and transport oil, gas, brine, and other mineral solutions, and to make reasonable charges therefor. To buy, sell, and furnish oil and gas for lighting, heating and other purposes. To lay down, construct, maintain, and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses, and such machinery, apparatus and devices as may be necessary to operate such pipes and pipe lines between various points. Also wherever permitted by law, to have right and power to enter upon ——— rights of way, easements, properties, and lands of all persons and corporations, and to have the right to lay its pipe and pipe lines across and under any public road, railroad, right of way, street, canal, or stream, subject to law. To lay its pipe and pipe lines across and under any street or alley or other thoroughfare in any incorporated city, village or town, with the consent, and subject to the ordinances. and directions, of the authorities of such cities, villages or towns. Also to carry on the business of producing, refining, selling, and storing petroleum products, vegetable and mineral oils and solutions.

FORM 2

ARTICLE III. The nature of the business proposed to be transacted, promoted and carried on by this corporation, shall be as follows:—To drill for and accumulate petroleum or other oil spring deposits and mineral solutions including natural gas, and to buy and sell the said oil and gas rights, privileges and leases, and oil and gas, and the products thereof; to lease oil and gas territory; to refine, manufacture, and deal in oil; to deal in lands containing or believed to contain oil and gas and to do all things necessary and incident thereto.

FORM 3

ARTICLE III. The nature of the business proposed to be transacted, carried on and promoted by this corporation, shall be as follows:—To lease, acquire, hold, operate and dispose of petroleum oil and natural gas properties; to drill for petroleum oil, natural gas; to produce, accumulate, and dispose of the same, and the products thereof; to manufacture, distill, refine, and otherwise convert such oil and gas and the products thereof, and market and dispose of the same, and to do all things necessary or incident thereto.

FORM 4

Standard Oil Company (of Kentucky)

The general nature of the business proposed to be transacted is the manufacturing, refining, buying and selling of petroleum and all its products and naval stores.

FORM 5

Pipe Line Company

ARTICLE III. Said corporation is formed for the purpose of transporting oils and other fluids through tubing and pipes and for handling

and storing the same in tanks or otherwise, and for exercising all of the powers which may be exercised by such corporations under the laws of the State of Kentucky.

Sec. 1. Oil and gas companies—Common carriers. Every company or corporation receiving, transporting or delivering a supply of oil or natural gas for public consumption is hereby declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipe line operated by any such company is declared to be a public use. (Acts of 1920, Ch. 131.)

This act is now compiled in Carroll's Edition of the Kentucky Statutes as Sec. 3766b-1b.

Sec. 2. Duties of oil and gas companies. It shall be the duty of each and every company engaged in the receipt, transportation or delivery of oil or natural gas for public consumption at all reasonable times to receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all gas that may be held and stored or ready for delivery, provided, however, that said main or tributary line has the means or capacity to so receive, transport or deliver such oil or gas as is offered. (Ibid.)

Sec. 3. In the event that any main line or tributary thereto, or both, is operating and transporting to such capacity as that it is impossible or impracticable to receive or transport all offered oil or gas, where connections exist, then it shall be the duty of the operating company to receive and transport offered oil or gas in equal proportions, using the daily productive quantity of each producing person or company so offering gas as the basis of proportion. (Ibid.)

Sec. 4. Penalty for violation of act. Any wilful refusal or failure to receive, transport and deliver oil or gas in the manner set out above shall be deemed a misdemeanor, and upon conviction the company so failing or refusing shall be fined not less than one hundred nor more than five hundred

dollars, and each day's wilful failure or refusal shall be deemed to be a separate offense, and in addition said failing or refusing company shall be liable in damages to the injured party. (Ibid.)[1]

This act is now compiled in Carroll's Edition of the Kentucky Statutes as Sec. 3766b-1a.

Sec. 1. Pipe lines exempt from liability except when enjoined. That all persons, firms, corporations, and associations engaged in the business of transporting crude petroleum or gas by pipe line, as a common carrier, may accept for transportation such oil or gas as is offered to it for that purpose from the party or parties in possession and shall redeliver the same upon the order of the consignor, unless prevented by an order of some court of competent jurisdiction, and such delivery shall be made without liability on the part of such carrier to the true owner out of possession except from the time such order of court is served upon it, in the same manner that summons is now required to be in civil actions. (Acts of 1920, Ch. 24.)

CONSTRUCTION OF OIL LEASES

Sec. 1. Whenever, in any lease of lands for oil and gas purposes, it is provided in substance that actual drilling or development may be postponed by the payment or tender of rentals on or before the date fixed in said lease for such payment or tender, if the lessee or assignee of said lease shall fail to pay or tender said rents on or before the date stipulated in the lease, or contract to pay, then said lease or contract shall be void, unless the lessor, thereafter, and before executing a new lease or contract, shall accept said rentals. (Act of 1920, Ch. 24.)

This act is now compiled in Carroll's Edition of the Kentucky Statutes as Sec. 3766b-1c.

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1 See further Chapter 18 of the Acts of 1916, as amended by Act of 1920, Chapter 61, extending the jurisdiction of the Railroad Commission to natural gas companies and natural gas transportation companies.

Sec. 2. That all valid, existing or future contracts and leases for oil and gas rights upon and under the lands of this Commonwealth, wherein by their terms a rental clause is provided in the event of failure to drill for oil or gas within a given period, are hereby validated and declared to be, and shall be, construed by the courts of this Commonwealth enforceable and binding contracts according to the terms thereof between the parties so long as the rentals therein provided shall be paid or tendered at and as provided by their terms during the period of said lease and contract. (Ibid.)

Sec. 3. That the drilling of one non-productive well shall be sufficient consideration for the discharge of rentals for holders of said contract and lease for a period of twelve months after its completion, and at the expiration of which time another well shall be commenced or rentals renewed as per said lease or contract, and if lessor fails to commence a well or renew payments of rentals said lease shall automatically expire and become null and void. (Ibid.)

Sec. 4. That in the event of oil or gas being discovered in paying quantities on an adjoining leasehold and the products therefrom being taken out of the ground and marketed and said well is within two hundred feet of another lessor's property line, then within three months after written notice has been given lessee to the effect that such oil or gas has commenced to be transported off and marketed from the said adjoining premises the lessee or lessees of the land lying within two hundred feet of the said wells shall begin to drill an offset well to each of such wells so located, provided said offset wells to be drilled are not less than five hundred feet of each other, and upon his failure to so commence said offset well and complete same with diligence the said contract and lease shall automatically expire and become null and void. Provided this shall not apply to leases that are being operated, or on which wells are being drilled. (Ibid.)

Sec. 5. All acts and parts of acts in conflict with this act are hereby repealed.

Oil leases—eviction—accounting for oil. Where the lessor leased premises for mining operations for oil, in which lease the lessee agreed to pay the lessor one eighth of the gross amount of the oil produced, and the lessee was evicted to the extent of a one seventh interest by the owner of the paramount title, and was compelled to account to the owner for one seventh of the amount of the oil produced. Held, that in a suit against the lessor on his implied warranty under the lease, plaintiff was entitled to recover the net value of the one seventh of the oil adjudged to be paid to the evictor, not to exceed the value of one eighth of the gross amount of oil produced and agreed to be paid to the lessor. (New Domain Oil & Gas Co. v. McKinney, 188 Ky. 184, 221 S. W. 425.)

Oil leases—forfeiture. An oil lease providing that the lessee shall drill a well on the leased premises within a year or thereafter pay a small sum annually as rental which should be accepted in performance of the lessee's contract under the lease until a well was drilled, could not be forfeited by the lessor on account of the failure of the lessee to drill a well within a year or thereafter when the lessor was accepting the rentals, in satisfaction of the contract and demanded that the well should be drilled. Provisions of the lease quoted and construed. (Plumber v. Southern Oil Co., 185 Ky. 243, 214 S. W. 896.)

Contract for lease. Where the vendor alone signs a contract for the lease of land if otherwise sufficient, it will be enforceable against either party. (Duff v. Duff, 187 Ky. 237.)

Oil lease—forfeiture. Since the chief purpose of the lessor in oil and gas leases is to obtain and market as much of the oil and gas as possible, he may decline to accept the stipulated rentals for an extension of the right to commence operations, and demand of the lessee the performance of the contract by commencing operations which if not done within a reasonable time thereafter, a forfeiture and cancellation of the lease may be had by the lessor. (Ocala Oil Co. v. Hughes, 187 Ky. 487 219 S. W. 799.)

Oil lease—default in payment. An oil lease may be forfeited by default in payments but the lessee may assume that the lessor is satisfied to receive the rents instead of development where the rent has been paid to and accepted unconditionally by an oil lessor. (Denniston v. Kenova Oil Co., 187 Ky. 831, 220 S. W. 1087.)

Coal and mineral rights—deed construed. (Scott v. Laws, 185 Ky. 440, 215 S. W. 81; Tichenor v. McHenry Coal Co., 185 Ky. 727. 215 S. W. 799.)

Royalties as between life tenant and remainderman. (Caudil v. Wagoner, 184 Ky. 381, 212 S. W. 422.)

Royalties as between joint owners. (Miller v. Powers, 164 Ky. 417, 212 S. W. 453.)

Partition by joint owners of mineral lands. (Kentucky Fluorspar Co. v. Pierce's Exrs., 184 Ky. 573, 213 S. W. 542.)

Taxation. Discrimination between non-resident and resident owners not permitted. The legislature has no power to subject to taxation the property of non-residents of this State if like property owned by residents of the State is exempt from taxation. (Raydure v. Board of Supervisors, 183 Ky. 84, 209 S. W. 19.)

Although assessable property of a particular description may not be mentioned in the tax schedule, it is subject to assessment and taxation under K. S. Sec. 4020 (see Corporation Tax Law), and the item in the schedule providing for the assessment of the value of "property not mentioned in the schedule." (Ibid.)

Taxation of oil leases. Oil leases giving the lessee the exclusive privilege for a specified time of exploring for and producing oil on the leased premises are property that may be assessed for taxation. (Ibid.)

If they have a cash value they are subject to assessment although there may be producing wells on the territory covered by the leases on which a production tax on the oil produced is paid by the owner of the lease. The legislature may fix a production tax on the value of oil produced but it must not be an unreasonable or arbitrary tax. The act providing for an oil production tax is a license tax on the business of producing oil and is authorized by section 181 of the constitution, and this may be imposed in addition to the ad valorem tax imposed by virtue of section 171 of the constitution but a license tax may be regulated on an ad valorem basis on the volume of business done, or it may be a fixed sum for carrying on the business. (Ibid; see also Acts of 1918, Ch. 122.)

Corporations—representation of agents—scope of authority—estoppel. It was not within the apparent scope of the authority of the vice-president and general manager of a corporation, owning a lease of coal mining property, who had authority to sell the lease only for cash and who went as the representative of a third party, who had sold the property covered by the lease, for the purpose of delivering the deed and collecting the purchase price consisting of cash notes and stock, to represent to the intending purchasers that the title to the property covered by the lease was perfect, and thereby estop the lessee corporation from asserting its claims under the lease. (Empire Coal Mining Co. v. Empire Coal Co., 183 Ky. 700, 210 S. W. 474.)

Capital stock-oil leases. Where an oil company organized under the laws of this State, issued its capital stock in payment for oil leases of a much less market value than the face value of the stock so issued, the corporation, or upon its failure a bona fide stockholder therein, may institute and maintain in the corporate name and for its use and benefit, an action in equity for the cancellation of all stock issued by the company in excess of the reasonable market value of the leases given in pay-

ment for the stock. (Taylor v. Citizens Oil Co., 182 Ky. 350, 206 S. W. 644.)

Oil lease—quieting title. The owner of an oil and gas lease is entitled to have his title to the oil and gas quieted as against the owner and the subsequent lessee with notice, and to have them enjoined from interferring with his right to enter the land and remove the oil. (Warren Oil & Gas Co. v. Gilliam, 182 Ky. 807, 207 S. W. 698.)

Oil lease—foreign corporation when barred from suit upon lease. A foreign corporation failing to comply with K. S. Sec. 571, requiring the filing of a statement with the Secretary of State, giving the name of an agent upon whom process may be served, cannot maintain an action to recover on its contracts made in this State. (Warren Oil & Gas Co. v. Gardner, 184 Ky. 415, 212 S. W. 456.)

Construction of oil and mineral leases generally. Drainage of oil from leased premises (Hughes v. Busseyville Oil & Gas Co., 180 Ky. 545, 203 S. W. 515). Minerals as real property and as chattels (Kennedy v. Hicks 180 Ky. 562, 203 S. W. 318). Infants, judicial sale of mineral lands for (Webb v. Webb's Guardian, 178 Ky. 158, 198 S. W. 736), Abandonment by lessee, when presumed, cancellation (Densmoor v. Combs, 177 Ky. 740, 198 S. W. 58). Unavoidable casualty, effect on royalties (Bennett v. Howard, 175 Ky. 797, 195 S. W. 117). Judicial sale of mineral rights (Lowther v. Kaufman, 174 Ky. 383, 192 S. W. 1). Operation of mine by life tenant, dower (Daniels v. Charles, 172 Ky. 238, 189 S. W. 192).

Lease when unilateral. An executory contract whereby a landowner leased the oil, gas and mineral privileges of his land for a one-eighth royalty, but which did not require the lessee to develop the oil, gas and mineral privileges within any specific time, will not be specifically enforced, because it is unilateral and lacks mutuality of obligation. (Soaper v. King, 167 Ky. 121, 180 S. W. 46.)

Statute of frauds. An oil and gas lease giving the lessee the right to explore land and remove oil and gas therefrom is a conveyance of an interest in lands and is required by the statute of frauds to be in writing. (Beckett Iseman Oil Co. v. Backer, 165 Ky. 518, 178 S. W. 1084.)

Gas leases. (Armitage v. Mt. Sterling, etc., Co., 25 Ky. L. R. 2262, 80 S. W. 177; Berry v. Frisbie, 120 Ky. 337, 86 S. W. 558; Rowland v. Cox, 28 Ky. L. R. 307, 89 S. W. 215; Bay State Petroleum Co. v. Penn. Lubricating Co., 121 Ky. 637, 87 S. W. 1102.)

FORM FOR LEASE

In consideration of the sum of ——— dollars, the receipt of which is hereby acknowledged, etc., the first parties hereby grant unto ———, the second party, its successors or assigns, all the oil and gas in and under the following described land, together with the right of ingress and egress at all times for the purpose of drilling and operating for oil and gas, and to conduct all operations and lay all pipe necessary for the production and transportation of oil or gas taken from said premises

reserving, however, to the first parties the equal one-eighth part of all oil produced and saved from said premises; to be delivered in the pipe line to the credit of the first parties free of charge; said land being all that certain tract of land situate in the ——— of ———, county of ———, and state of ———, bounded and described as follows, to-wit:

On the north by lands of ———; on the east by lands of ———; on the south by lands of ———; on the west by lands of ———; containing ——— acres, more or less.

To have and to hold the same, unto the second party, ———, its successors or assigns, for ——— years, from the date hereof, and as long thereafter as oil or gas is produced from said premises.

It is agreed that if gas is found in paying quantities, the consideration in full to the parties of the first part for gas shall be ——— dollars per annum for each well which shall produce gas, to be paid quarterly (in advance) when utilized off the property.

If gas is found in paying quantities to the lessee, the lessor ——— may have gas free of cost by laying the necessary line and making connections at ——— cost, at such point as may be designated by the lessee for ———, in the mansion house on said premises to be used with economical appliances, subject to the approval of the lessee. Said gas to be used at lessor's own risk from any cause, and further the lessee not to be in any way liable for insufficient supply of gas caused by the use of pumping stations, breakage of lines, or other causes, but nothing herein shall prevent the lessee from abandoning any well or interfere with the right to withdraw and remove the casing, tubing, and other property from any well or wells at any time within ——— months after the term of the lease.

No well shall be drilled nearer to the house or barn on said premises than ——— feet therefrom.

Until this lease shall have been surrendered as hereinafter provided or a producing well shall have been completed on said premises, the said party of the second part shall pay to the said parties of the first part an annual rental of ———, payable in advance, equal quarterly ——— installments, said payments to be made by mailing a check for the amount, payable to the order of ———, in an envelope addressed to ———, on or before the ——— day of ———, which said payments shall be in full of any and all rentals, royalties or consideration; but in the event of a well being completed on said premises, then the above payments shall be succeeded by the rental or royalty on such well or wells.

It is agreed, That the second party is to have the privilege of using sufficient gas, oil or water from the streams thereon to run all necessary machinery on this farm, and at any time to remove all machinery and fixtures placed on said premises; and, further upon the payment of ——— dollars, at any time, by the party of the second part ———, successors or assigns, shall have the right to surrender this lease for cancellation, and that thereupon any and all liability on the part of the said lessee, for or on account thereof, shall cease and determine, and this

lease become absolutely null and void. Said second part— shall pay all damages ——— may create to growing crops or fences.

_____

_____

_____

It is understood between the parties to this agreement, that all conditions between the parties hereto shall extend to their successors or assigns.

In witness whereof, the parties hereto have hereunto set their hands and seals, this ——— day of ———, A. D. 19—.

Sealed and delivered in the presence of ———.

_____ (Seal)
_____ (Seal)
_____ (Seal)
_____ (Seal)
_____ (Seal)

_____
_____

STATE OF KENTUCKY, }
COUNTY OF ———. } ss.

I, ———, a ——— of said county, do certify that ——— and ———, his wife, whose name ——— signed to the writing within, bearing date, the ——— day of ———, 19—, ha— this day acknowledged the same before me in my said county.

Given under my hand this ——— day of ———, 19—.

_____ (Seal)

_____.

TELEGRAPH AND TELEPHONE COMPANIES

Sec. 4679c. 1. Right of condemnation. That a telegraph company chartered or incorporated by the laws of this or any other State, shall upon making just compensation, as hereafter provided, have the right to construct, maintain and operate telegraph lines through any public lands of this State, and on, across and along all highways, and turnpikes, and across and under any navigable waters (and on, along and upon the right-of-way and structures of any railroad in this State).[1] Provided, that the posts, arms, insulators, and other fixtures of such telegraph lines be erected and maintained in the usual manner of constructing, operating and maintaining telegraph lines on or along and upon the right-of-way of

1 The act of 1898, above quoted, stands repealed insofar as that act relates to the right of a telegraph company to condemn railroad property in this state. (Act of 1916, ch. 15.)

railroads, and on, across and along the highways, and across and under navigable waters, and in such manner as not to interfere with the ordinary use or the ordinary travel and traffic on such highways, railroads or waters, or that of any other telegraph line already constructed on the right-of-way of any railroad. (Act of 1898, Ch. 49.)

2. **Rights-of-way subject to contract.** That whenever any telegraph company desires to construct, operate and maintain its lines, on, along or upon the right-of-way and structure of any railroad, or upon and along the roadways of any incorporated turnpike, it may through an authorized agent agree and contract with such railroad and turnpike companies for such right. (Ibid.)

Sec. 840a. Wire companies prohibited from condemning railroad property without consent. That no part of the right-of-way of any railroad company, or any interest or easement therein, shall be taken by any condemnation proceedings, or without the consent of such railroad company, for the use or occupancy of any part of such right-of-way on, over and along such right-of-way longitudinally, by any telegraph, telephone, electric light, power, or other wire company, with its poles, cables, wires, conduits, or other fixtures; provided, that nothing in this section shall be construed as preventing any such wire company from obtaining the right to cross the right-of-way of a railroad company, under existing laws in such manner as not to interfere with the ordinary use or ordinary travel and traffic of such railroad company's railroad. (Act of 1916, Ch. 15.)

This act and the act of 1898 above quoted, has been the subject of considerable litigation between the Louisville and Nashville Railroad Company and the Western Union Telegraph Company. It is now definitely settled by the United States Supreme Court that the act of 1916, ch. 15, repeals the act of 1898, ch. 49, insofar as that act relates to the right of a telegraph company to condemn railroad property in this state. The court held that this latter act, "takes away the power to condemn the right of way of a railroad company by telegraph companies" and that "the state has a right to say upon what property or to what extent the

right of eminent domain, shall be exercised." (Western Union Telegraph Co. v. Louisville & N. R. Co., 42 Sup. Ct. Rep. 258, 66 L. ed. 300, Op. per McKenna, J.; see also 201 Fed. 946, 207 Fed. 1, 249 Fed. 385, 268 Fed. 4, 13.)

Sec. 4679c-3. Condemnation proceedings. That in case any telegraph company having the rights and privileges herein granted is unable to agree with such railroad or turnpike company for the exercise of such rights and privileges, such telegraph company may file its petition, sworn to by its agent, in the office of the clerk of the county court of any county in which any portion of such railroad or turnpike is situated or may run, and one proceeding shall be sufficient to condemn the right-of-way herein provided for of any railroad or turnpike in this State. Said petition shall designate the railroad or turnpike as the case may be, and the particular use, right, easement or privilege sought to be condemned, and shall state the name of the petitioner, where incorporated, how, and in what manner, and with what kind of material it proposes to construct its telegraph line, and that it has complied with the constitution of this Commonwealth in regard to such corporations seeking to exercise right of eminent domain. An application in writing by an authorized agent of such telegraph company, delivered to the president or any general officer of any railroad or turnpike company, proposing to agree with such company upon the compensation to be paid and offering therefor a sum certain for such rights and privileges, not accepted in ten days thereafter, in writing by such president, general officer, or some one else duly authorized, may be treated as a failure to agree with such railroad or turnpike company. (Act of 1898, Ch. 49.)

See Constitution, sections 3, 195, 242, ante.
See acts of 1916, ch. 15 (K. S. Sec. 840a), ch. 18.

Condemnation of land. Prior to the act of 1898, ch. 49, there was no provision of law authorizing the condemnation of land for telegraph lines. Sec. 835 of the Kentucky statutes authorizing condemnation of lands for railroad purposes did not authorize condemnation by telegraph companies. (Postal Tel. Cable Co. v. Mobile & Ohio R. R. Co., 21 Ky. L. R. 1188, 54 S. W. 727.)

Telephone companies—condemnation by. Telephone companies are public utilities corporations subject to control of the legislature (K. Const. Sec. 199) and have authority to condemn land for the construction of their lines (K. S. Sec. 4679d). (Carrollton Telephone Exchange Co. v. Spicer, 177 Ky. 345, 197 S. W. 827.)

Telephone companies—mandamus—construction—franchises. It is well settled that mandamus will not lie except to compel the performance of a plain legal duty and not to compel the sale of a franchise by a city. There is nothing in sections 163 or 164 of the state constitution, which makes it the duty of a municipality to sell a franchise. They merely prescribe the conditions upon which a franchise must be obtained and fix the steps which shall be taken in case the council of a city determines to grant a franchise. (Bastin Telephone Co. v. Davidson, 176 Ky. 23, 195 S. W. 148.)

State and federal jurisdiction—police power. It is not every state law which may incidentally affect interstate commerce that necessarily constitutes a regulation of commerce within the meaning of the federal constitution. Legislation which is a mere aid to interstate commerce may be enacted by the state under its police power. (Western Union Telegraph Co. v. Lee, 174 Ky. 211, 192 S. W. 70.)

Condemnation proceedings by telegraph company—validity of statute authorizing. Section 4679a of the Kentucky statutes (now repealed in part by K. S. Sec. 840a), authorizing telegraph companies to condemn right of way for their lines along and upon the right of way of any railroad is not in violation of section 248 of the state constitution in that it provides for a jury of twelve men in the county court to fix the amount of compensation. (Louisville & Nashville R. Co. v. Western Union Tel. Co., 207 Fed. 1; affirmed, 250 U. S. 363; Louisville & Nashville R. Co. v. Lang, County Judge, 160 Ky. 702, 170 S. W. 2.)

Form of judgment in proceedings. The form of judgment given in subsection 3 of the act of 1898, ch. 49, is to be read in connection with subsection 3 of the act, and the act means that the court must determine what is appropriated. (Louisville & N. R. Co. v. Lang, supra.)

Subsection 8 unconstitutional. Subsection 8 is unconstitutional and void, although its invalidity does not affect the validity of the whole act. (Louisville & N. R. Co. v. Lang, supra.)

NOTE—Section 8 is omitted from the text below.

Measure of damages. In an action to condemn right of way by a telephone company, the defendant may recover the actual cash value of the land taken and such damages as will accrue to the remainder of his land by reason of the taking of the strip and the construction of the telephone poles and lines as set out in the petition. (Postal Telegraph Cable Co. v. Patton, 153 Ky. 187, 154 S. W. 1073.)

Use of highways. A telephone company may, upon making just compensation therefor, obtain the use of public highways, but it must first obtain the consent of the fiscal court of the county by the purchase from

it of a franchise for that purpose, under section 164 of the constitution. (Christian-Todd Tel. Co. v. Commonwealth, 156 Ky. 557, 161 S. W. 534.)

Jurisdiction to permit use of highways. The county court has no jurisdiction to grant a permit but application must be made to the fiscal court. (Bevis v. Vanceburg Tel. Co., 121 Ky. 177, 28 Ky. L. R. 142, 89 S. W. 126; Jackson-Hazard Tel. Co. v. Holliday's Admr., 143 Ky. 149, 136 S. W. 135.)

Right of way to turnpike company—telephone line—compensation—additional servitude. Where the right of way has been granted by a land owner for the building of a turnpike thereon, an agreement by the turnpike company to allow telephone poles and wires to be erected thereon, being for a public purpose, does not constitute an additional servitude on the land, for which the original owner can maintain an injunction or recover compensation from the telephone company. (Cumberland Tel. Co. v. Avritt, 120 Ky. 35, 27 Ky. L. R. 394, 85 S. W. 204.)

Federal operation of telegraph and telephone lines. Effect of on litigation against a telegraph company. (Mitchell v. Cumberland Telephone & Telegraph Co., 188 Ky. 263, 221 S. W. 547.)

5. **Evidence of damages—Deduction.** That the court shall admit any relevant testimony either party may offer to prove the cash market value of the land that will be taken and occupied by the petitioner, and all actual damages that will accrue to the defendant in the diminution of the value of the remainder of its right-of-way for railroad or turnpike purposes, as the case may be, by reason of the construction of the telegraph line upon such right-of-way in the manner set out in the petition, and in considering incidental damages to the defendant, they may take into consideration any advantages that may accrue to the defendant as shown by the proof, by reason of the construction of such telegraph line.

6. **Form of verdict.** The jury shall not be required to go upon or view such right-of-way, and shall return their verdict on the form following: "We, the jury, assess the damages and just compensation to be paid ——— by the ——— to be dollars ———;" and the form of the verdict may be given the jury by the court.

7. **Form of judgment.** That upon the return of the verdict the court shall enter up a judgment as follows: "In this case,

the claim of the ——— Telegraph Company, to have condemned for its use the right to construct, operate and maintain the line of telegraph upon the right-of-way of the defendant in this State, in the manner set out in its petition, was submitted to a jury composed of (here insert the names), on the ——— day of ——— A. D., ———, and said jury returned a verdict fixing said defendant's due compensation and damages at dollars ———, and the verdict was received and entered. Now upon payment of said award either to the defendant or to the clerk of this court, and all costs in this behalf expended, said ——— Telegraph Company may enter upon said land and appropriate so much thereof as may be necessary, as prayed for in its petition."

8. **Appeal.** This section is omitted as unconstitutional. (Louisville & N. R. Co. v. Lang, supra.)

9. **Notice of condemnation award to mortgagee.** That no notice of the condemnation proceedings herein provided for, shall be given to any mortgagee of the defendant, but in the event there be any mortgage recorded in the county where such proceedings are had, upon the property condemned, then the damages and compensation awarded by the jury shall be paid to the clerk of said court, whose duty it shall be forthwith to mail written notice of such proceedings, and of said award to the mortgagee or trustee named in said mortgage, who may contest with the said defendant for the same, if he sees fit so to do.

10. **Tender of condemnation award.** That if any telegraph company has heretofore constructed its line of telegraph upon the right-of-way of any railroad or turnpike company in this State, such railroad or turnpike company shall petition the county court of any county through which said line is constructed, to have its damages and compensation assessed against such telegraph company, and like proceedings shall be had as if instituted by such telegraph company as herein provided for, and the payment by such telegraph company of the award that may be made in such case, shall entitle such

telegraph company to maintain and operate its telegraph line as if it had been constructed by virtue of this act, and in such proceedings the telegraph company shall pay the cost of such suit, unless it shall, before such suit be instituted, offer to pay such railroad or turnpike company a sum more than the award of the jury, and, if the award of the jury be less than the sum offered by such telegraph company for such right or privilege, then the cost of said proceedings shall be adjudged against such railroad or turnpike company, as the case may be, and the failure to institute such proceedings by such railroad or turnpike company within ninety days after this act shall take effect, be a waiver of its right to recover damages in any amount or in any proceedings against such telegraph company for the use and occupation of so much of its right as is used by said telegraph company.

4. **Condemnation proceedings in county court.** That such petition, as hereinbefore provided for, may be filed at any time, and the proceedings thereunder had shall be *in rem* against such railroad and structures and turnpike roadway, and, upon the filing of such petition, the clerk of said county court shall issue a summons, which shall be executed by the sheriff, upon any agent of such railroad or turnpike company in said county notifying such railroad or turnpike company of such proceedings and to appear to the next term of the said county court to be held in and for said county, and make any lawful defense thereto if it sees proper so to do. This summons must be served upon such agent at least ten days before the terms of court to which it is returnable, and such clerk shall also issue a writ of *fieri facias*, commanding the sheriff to summon and have on the first day of said court to which said cause is returnable, a special venire of eighteen good and lawful men, citizens, and qualified jurors of said county to serve as jurors in said cause. To which jurors either party may have as many challenges, and for the same causes, as in the trial of other civil causes in the circuit courts of this Commonwealth, and from said special venire

and talesman, if necessary, a jury of twelve shall be impaneled, who shall be sworn by the clerk or judge of said court, as follows: "I do solemnly swear that as a member of this jury, I will a true verdict render in this cause, assessing for the defendant, the actual cash value of so much of its land as may be shown by the proof will be actually taken and occupied by the petitioner, and such other incidental damages, if any, as shown by the proof will accrue to the remainder of the right-of-way for the purpose for which it is held by the defendant, by reason of the construction of petitioner's telegraph line in the manner set out in the petition so help me God." (Act of 1898, Ch. 49.)

Proof. The evidence should be confined to the questions indicated in the statute. (Postal Telegraph Cable Co. v. Patton, 153 Ky. 187, 154 S. W. 1073.)

Repeal of act as to railroad property. (See acts of 1916, ch. 15, K. S. Sec. 840a; Western Union Telegraph Company v. Louisville & N. R. Co., 42 U. S. Sup. Ct. Rep. 258, 66 L. ed. 300.)

TELEPHONE COMPANIES

Sec. 4679d. 1. **Right to construct and maintain lines.** That any telephone company chartered and incorporated under the laws of this or any other State, partnership or individual, shall, upon making just compensation as hereafter provided, have the right to construct, maintain and operate telephone lines through any public lands of this State and on and across and along all public roads and turnpikes, and across and under any navigable waters and on and across the land of any person: Provided, That fixtures of said company shall not interfere with the travel on and along said roads, nor obstruct the navigation of said waters.

2. If such telephone company, partnership or individual, cannot obtain the right-of-way by contract, companies, partnerships or individuals may proceed to institute condemnation proceedings to obtain the desired right-of-way, which proceedings shall be substantially the same as is provided in Chapter 125a (Sec. 4679a, Kentucky Statutes), in respect to

proceedings to acquire the right-of-way for telegraph companies.

3. The provisions of this act shall not apply to any incorporated town or city.

See K. S. 840, supra. In re condemnation of railroad property by wire companies.

Sec. 4679e-1. Merger of parallel lines forbidden. No telephone company shall consolidate its capital stock, franchise or property or pool its earnings, in whole or in part, with any other telephone company owning a parallel or competing line or structure [*or acquire by purchase, or lease or otherwise, any parallel or competing line or structure, or operate the same*]; and no telephone companies doing an exchange business in the same municipality shall consolidate [*or purchase, lease or operate*] each others' plants or lines under authority of this act until the proper municipal authorities have, after such investigation as they deem necessary, determined that no substantial public benefits result from the separate existence of such companies and that the actual competitive conditions do not exist and have signified such determination in a resolution consenting to such consolidation (lease, sale or operating) arrangement. (Act of 1912, Ch. 99, as amended Act of 1918, Ch. 68.)

See sections 199 to 201, inc., Kentucky constitution and annotations thereunder, ante.

The first clause of this section is taken from Sec. 201 of the Kentucky Constitution. The amendment of this section of the Constitution, adopted in 1917, is now made a part of Sec. 4679e-3 of the Kentucky statutes. (See page 40.)

Sec. 4679e-2. Merger of companies in same communities—Railroad commission. No telephone company doing a toll line business shall consolidate under authority of this act with any other company doing a like business whose lines serve the same communities or localities, or purchase, lease or operate

the plants or lines of such other company until the Railroad Commission, after such investigation as it deems necessary, shall determine that no substantial public benefits result from the separate existence of such companies and that actual competitive conditions do not exist and has signified such determination in a resolution consenting to such consolidation, lease, sale or operating arrangement.

(a) Whenever the joint application of any two or more such telephone companies requesting such determination and granting of such consent, is filed with the Railroad Commission, the said Commission is empowered and required to make such investigation, hold such hearings, examine such witnesses and require the production of such books, papers and records as it shall deem pertinent to the determination of the application, and shall take such action with respect thereto as the facts in the judgment of the Commission shall warrant, and may grant or withhold such consent.

(b) In the event that any Commission shall be created with general jurisdiction over telephone companies, then the duties and powers herein vested in the Railroad Commission, shall thereupon become vested exclusively in such other Commission, and all matters arising under this act at the time under consideration by the Railroad Commission shall be turned over to such other commission, together with all documents, records and other data pertaining thereto. (Ibid.)

Sec. 4679e-3. Consent of city and railroad commission. That telephone companies may acquire by purchase or lease or otherwise, and operate parallel or competing exchanges, lines and structures, and the property of other telephone companies, if the Railroad Commission or such other State Commission as may have jurisdiction over such matters shall first consent thereto, and if, further, each municipality wherein such property or any part thereof is located shall also first consent thereto as to the property within its limits, but under any such acquisition and operation toll line connections

with the property so acquired shall be continued and maintained under an agreement between the purchasing company and the toll line companies then furnishing such service, and in the event they are unable to agree as to the terms of such an agreement the Railroad Commission, or such other State Commission as may have jurisdiction over such matters shall fix the terms of such agreement. This act is not intended to deprive any governmental agency of any power now invested in it by law to regulate and supervise such companies and their exchange lines, rates and tolls. (Ibid.)

This entire section except the last sentence is taken from the amendment of Sec. 201 of the Kentucky Constitution (see page 40), adopted in 1917.

Sec. 4679e-4. Jurisdiction of railroad commission. The Railroad Commission shall have jurisdiction of the matters set out in Sec. 4679e-3 of this act and shall keep a record of its acts in relation thereto to be entered in the minutes of said Commission. (Ibid.)

Sec. 4679f. 1. Reception and transmission of messages. Telephone companies operating exchanges in different towns and cities shall receive and transmit each other's messages without unreasonable delay or discrimination, and the telephone exchange receiving any message from the exchange in which said message originated shall, in the event the destination of said message be to an exchange or point beyond the lines of the exchange first receiving it as above stated, then said exchange first receiving said message and the exchanges connected therewith through which said message should be routed, shall switch said message through their respective exchanges by causing, without unreasonable delay or discrimination, and with the same promptness with which messages originating and ending on their own lines are handled, the talking circuit to be connected up over the toll line leading through or from said receiving exchange through other connecting exchanges to the point of destination. In order to give effect to Sec.

199 of the constitution it is hereby intended to compel the connecting up and usage of toll wires through the various intervening exchanges between the exchange in which the messages originate and the point of destination, so that the party requesting said service shall be able to hold a conversation over the telephone circuit with the party called for at the point of destination. (Act of 1912, Ch. 143.)

2. **Connection of lines for reception and transmission of messages.** Whenever any individuals, associations, or corporations owning or operating such telephone exchanges or lines desire to connect their exchanges or lines with the exchanges or lines of other individuals, associations and corporations and the latter shall refuse to permit this to be done, upon reasonable terms, rates and conditions, then the individuals, associations and corporations so desiring to connect their exchanges and lines shall file a written statement of such desire with the Railroad Commission, setting out the reason why such connection is desired and the point or points at which such connection or connections should be made, and giving the name and address of the owner or chief officer of the company or companies operating the lines and exchanges so desired to be connected with, residing in this State; and it shall thereupon be the duty of the secretary of said Commission to cause to be served a copy of such writing upon the individuals, associations or corporations owning or operating said lines or exchanges by mailing a copy thereof to said owner or chief officer residing in this State, and to fix a date, not earlier than ten days from the date of mailing such notice, for the hearing of said application and upon the day so fixed for said hearing the said individuals, associations or corporations may respond in writing to said application and either side may introduce such testimony as it desires and be heard by attorneys. After said hearing is completed the Commission shall enter its finding in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if it directs such connection to be made it shall indicate the point or

points where it is to be so made and the number of wires to be connected, and the terms, conditions and rates of toll to be charged, and the division of said toll charged between the respective parties handling toll messages over the lines, and the cost of making such connection shall be borne equally by the parties.

If said company shall refuse to make such connection for a period of thirty days after said finding, it shall be subject to a fine of not less than one thousand dollars nor more than five thousand dollars, to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the person or corporation requesting said connection resides or has its chief office in this State, and the company so desiring to connect its lines and exchanges with the lines and exchanges of the company so refusing shall be authorized and permitted to connect the same and shall recover one-half the cost of making such connection or connections from the company so refusing; and if said delinquent company shall refuse to receive and transmit the toll message so offered to it by the company connecting with its lines or exchanges, or shall refuse to deliver messages from its own lines or exchanges to the lines or exchanges of the company so connecting with it, it shall be fined the sum of one hundred dollars for each day it so refuses, to be recovered by indictment in the courts above named; and if it shall continue so to refuse for a period of six months it shall forfeit its right to do business in this State, and any and all officers, agents and employes who shall do or attempt to do any business in this State for it after the expiration of said period of six months shall be fined in the sum of fifty dollars for each day they do so or attempt to do any of such business for it. (Ibid.)

3. **Contempt proceedings for refusal to connect lines.** If, upon the demand of any person or corporation operating a telephone exchange or toll line, the other persons or corporations upon whom the demand is made for physical connection

and interchange of messages refuse to permit said connection or refuse to grant said privilege upon reasonable terms, conditions and toll rates, then the person or corporation demanding said physical connection and interchange of messages can compel same upon reasonable terms by suit in equity filed in the Franklin Circuit Court or in the Circuit Court of the county in which the party making the demand resides or has its chief office in Kentucky, and the court shall, by mandatory injunction, compel said physical connection of the wires and interchange of messages with the exchange or toll line wires demanded, and enforce the same by contempt proceedings and in the manner other mandatory injunctions are enforced in this Commonwealth; and the remedy by mandatory injunction, provided in this section, may be invoked by the person or company demanding said connection in lieu of the remedy provided in Sec. 2 above. (Ibid.)

4. **Penalties.** Any company doing anything in this Act prohibited, or failing to do anything required by this Act, for which no other penalty is herein provided, shall be fined the sum of five hundred dollars for each offense, and each day it does a prohibited act or fails to do anything required by this Act shall be a separate offense. (Ibid.)

5. **Repealing clause.** All acts or part of acts in conflict with the provisions of this Act are hereby repealed. (Act of 1912, Ch. 143.)

FORM FOR PURPOSE CLAUSE

ARTICLE III. To acquire, manufacture, buy, sell and generally deal in telegraph and telephone instruments, machines, and apparatus; to construct, erect, build, operate and maintain telegraph and telephone stations for the transmission and reception of messages by electricity, wire or wireless instruments; to receive and transmit messages by signal or other devices and contrivances, from, upon and by wire or wireless instruments and any and all similar, kindred, and like instruments and devices; to transmit and receive messages for hire over, upon and by wire and wireless systems, of telegraphing and telephoning by any and all systems and devices for transmitting and receiving messages. To buy, build and cause to be built, operate and maintain, stations for the transmission and reception of telegraph and telephone messages by means of wire or wireless systems; to carry on the business of transmitting and receiving

messages from such stations. To acquire and hold lands, property and buildings necessary or useful in the conduct of the business of telegraph and telephone companies under wire and wireless systems, and in connection therewith to manufacture and construct machinery, instruments, apparatus, wires and any other materials and article used with or pertaining to telegraph and telephone lines.

Jurisdiction of railroad commission. The Railroad Commission, has, by act of 1916, ch. 18, as amended by act of 1920, ch. 61, and act of 1918, ch. 68, been given the jurisdiction to regulate rates and toll charges by telegraph and telephone companies, where not already under the regulation of municipal authorities.

BINGHAM CO-OPERATTIVE MARKETING ACT[1]

(Acts of 1922, Ch. 1.)

Sec. 1. Declaration of policy. In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation; and to eliminate speculation and waste; and to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of agricultural products, this act is passed.

Sec. 2. Definitions. As used in this act. (a) The term "agricultural products" shall include, horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any farm products. (b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock. (c) The term "association" means any corporation organized under this act; and (d) The term "person" shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder shall be deemed "non-profit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers. (e) For the purposes of brevity and convenience this act may be indexed, referred to and cited as "The Bingham Co-operative Marketing Act."

Sec. 3. Who may organize. Twenty (20) or more persons, a majority of whom are residents of this State, engaged in

1 This Act, at this writing, has not been compiled in the official Kentucky Statutes.

the production of agricultural products, may form a non-profit, co-operative association, with or without capital stock, under the provisions of this act.

Sec. 4. Purposes. An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein.

Sec. 5. Preliminary investigation. (Omitted.)

This section provides that technical information on co-operative marketing may be obtained from the Dean of the College of Agriculture, University of Kentucky, at Lexington.

Sec. 6. Powers. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural products produced or delivered to it by its members, or the manufacturing or marketing of the by-products thereof; or any activity in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association, however, shall handle the agricultural products of any non-member except for storage.

(b) To borrow money without limitation as to amount of corporate indebtedness or liability; and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above-mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in; and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto.

(g) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

Sec. 7. Members. (a) Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members, or issue common stock to, persons only engaged in the production of agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or part of the crop raised on the leased premises.

(b) If a member of a non-stock association be other than a natural person, such member may be represented by any individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

Sec. 8. Articles of incorporation. Each association formed under this act must prepare and file articles of incorporation setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must be not less than five (5) and may be any number in excess thereof; the term of office of such directors, and the names and addresses of those who are to serve as incorporating directors for the first term, or until election and qualification of their successors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision or paragraph of the articles of incorporation shall not be altered, amended or repealed except by the written consent or vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof.

The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted, and the number of shares of stock to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances, and shall be filed in accordance with the provisions of the general corporation law of this State (see K. S. Sec. 540), and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this State and other places, as prima facie evidence of the facts contained therein and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the dean of the College of Agriculture of the University of Kentucky.

Sec. 9. Amendments to articles of incorporation. The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation law of this State. (See K. S. Sec. 540.)

Sec. 10. By-laws. Each association incorporated under this act must, within thirty (30) days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association, under its by-laws, may provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting its meetings.

(b) The number of stockholders or members constituting a quorum.

(c) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effects of such votes.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensation, and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.

(f) Penalties for violations of the by-laws.

(g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.

(h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holder of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; and the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or with-

drawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

Sec. 11. General and special meetings—How called. In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten per cent. of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

Sec. 12. Directors—Election. The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary election shall be held

in each district to elect directors apportioned to such districts, and that the result of all such primary elections may be ratified at the next regular meeting of the association or may be considered final as to the association. The by-laws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

The by-laws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

Sec. 13. Election of officers. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may

combine the two latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank or any depository, and as such, shall not be considered as an officer, but as a function, of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as and where authorized by the board of directors.

Sec. 14. Stock — Membership certificate — When issued — Voting—Liability—Limitations on transfer and ownership. When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote.

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of a co-operative association shall own more than one-twentieth (1/20) of the common stock of the association; and an association, in its by-laws, may limit the amount of the common stock which one member may own to any amount less than one-twentieth (1/20) of the common stock.

No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him.

Any association organized with stock under this act may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on

such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products handled by the association; and such restrictions must be printed upon every certificate of stock subject thereto.

The association may, at any time, as specified in the by-laws, except when the debts of the association exceed fifty (50) per cent. of the assets thereof, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors, and pay for it in cash within one (1) year thereafter.

Sec. 15. Removal of officer or director. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by five per cent. of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought, shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent. of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority

of the members of that district, the director in question shall be removed from office.

Sec. 16. Referendum. Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose.

Sec. 17. Marketing contract. The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery; or at any other specified time if expressly and definitely agreed in the said contract. The contract may provide that the association may sell or re-sell the products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight (8) per cent. per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight (8) per cent. per annum upon common stock.

Sec. 18. Remedies for breach of contract. (a) The by-laws of the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees,

in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(b) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(c) In any action upon such marketing agreements, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for non-delivery or breach shall lie and be enforceable against such landowner, landlord or lessor.

Sec. 19. Purchasing business of other associations, persons, firms or corporations—Payment—Stock issued. Whenever an association, organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest

purchased shall be equivalent to payment in cash for the shares of stock issued.

Sec. 20. Annual reports. Each association formed under this act shall prepare and make out an annual report on forms to be furnished by the dean of the College of Agriculture of the University of Kentucky, containing the name of the association; its principal place of business; and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operations; the amount of its indebtedness or liabilities, and its balance sheets.

Sec. 21. Conflicting laws not to apply. Any provisions of law which are in conflict with this act shall not be construed as applying to the associations herein provided for.

Any exemptions under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer, shall apply similarly and completely to such products delivered by its farmer members, in the possession or under the control of the association.

Sec. 22. Limitation of the use of term "co-operative." No person, firm, corporation or association, hereafter organized or doing business in this State, shall be entitled to use the word "co-operative" as part of its corporate or other business name or title for producers' co-operative marketing activities, unless it has complied with the provisions of this act.

Any person, firm, corporation or association now organized and existing, or doing a producers' co-operative marketing business in this State and embodying the word "co-operative" as part of its corporate or other business name or title, and which is not organized in compliance with the provisions of this act, must, within six months from the date at which this

act goes into effect, eliminate the word "co-operative" from its said corporate or other business name or title.

Sec. 23. Interest in other corporations or associations. An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

Sec. 24. Contracts and agreements with other associations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other State, for the co-operative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means and agencies for carrying on and conducting their respective businesses.

Sec. 25. Associations heretofore organized may adopt the provisions of this act. Any corporation or association, organized under previously existing statutes, may, by a majority vote of its stockholders or members, be brought under the provisions of this act by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of the stockholders or members, decided to accept the benefits and be bound by the provisions of this act and has authorized all changes accordingly. Articles of incorporation shall be filed as required in Sec. 8, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

Where any association may be incorporated under this act, all contracts heretofore made by or on behalf of same by the promoters thereof in anticipation of such association becoming incorporated under the laws of this State, whether such contracts be made by or in the name of some corporation organized elsewhere and when same would have been valid if entered into subsequent to the passage of this act, are hereby validated as if made after the passage of this act.

Sec. 26. Misdemeanor to induce breach of marketing contract of co-operative association—Spreading false reports about the finances or management thereof. Any person or persons or any corporation whose officers or employes knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred ($100) dollars and not more than one thousand ($1,000) dollars for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred ($500) dollars for each such offense.

Sec. 27. Warehousemen liable for damages for encouraging or permitting delivery of products in violation of marketing agreements. Any person, firm or corporation conducting a warehouse within the State of Kentucky who solicits or persuades or permits any member of any association organized hereunder to breach his marketing contract with the association by accepting or receiving such member's products for sale or for auction or for display for sale, contrary to the terms of any marketing agreement of which said person or any member of the said firm or any active officer or manager of the said corporation has knowledge or notice, shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred ($500) dollars for each such offense; and such association shall be entitled to an injunction against such warehouseman to prevent further breaches and a multiplicity of actions thereon. In addition, said warehouseman shall pay to the association a reasonable attorney's fee and all costs involved in any such litigation or proceedings at law.

This section is enacted in order to prevent a recurrence or outbreak of violence and to give marketing associations an adequate remedy in the courts against those who encourage violations of co-operative contracts.

Sec. 28. Associations are not in restraint of trade. Any association organized hereunder shall be deemed not to be a conspiracy nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of this State; and the marketing contracts and agreements between the association and its members and any agreements authorized in this act shall be considered not to be illegal nor in restraint of trade nor contrary to the provisions of any statute enacted against pooling or combinations.

Sec. 29. Constitutionality. If any section of this act shall be declared unconstitutional for any reason, the remainder of this act shall not be affected thereby.

Sec. 30. Application of general corporation laws. The provisions of the general corporation laws of this State and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act.

Sec. 31. Taxation. The shares of corporations organized under this act shall be taxable as against the owner thereof of the period of assessment of other personal property for taxation in this State.

Such shares will represent in the aggregate all the property held or owned by such corporation, and when taxed as against the individual owner, all of the property in the name of said association will thereby be taxed.

Under existing law, crops grown in the year of assessment are exempt from tax whilst owned by the producer. So much of the value of each share of said stock as may represent the owner's proportion of crops grown by him and delivered to the association as herein provided, shall be exempt from taxation, inasmuch as it is the same thing exempted now by the constitution and laws of this State to such grower.

Sec. 32. Filing fees. For filing Articles of Incorporation, an association organized hereunder shall pay Ten (10) Dollars; and for filing an amendment to the articles, Two and 50/100 ($2.50) Dollars.

Foreign corporations doing co-operative marketing business under substantially the same restrictions and limitations established by the Bingham Act, but incorporated under the laws of another state, may use the word "co-operative" as part of its corporate or business name, and such corporations are declared not to be a conspiracy nor an illegal monopoly. (Acts of 1922, ch. 109.)

Anti-monopoly statutes. By act of 1922, ch. 71, the anti-trust or monopoly statutes in the state of Kentucky are expressly repealed in their entirety.

CHAPTER VII

PROVISIONS OF THE KENTUCKY STATUTES RELATIVE TO CORPORATION TAX LAW

1. Constitutional provisions (sections referred to—for text see Provisions of Constitution relative to Corporations, p. 23).
2. Summary of taxes by Secretary of State.
3. Annual taxes—how divided.
4. Property subject—tangible and intangible—franchises.
5. Assessment of certain corporations.
6. Special tax provisions (statutes referred to).
7. License tax on corporations.
8. Oil production tax.

Constitutional provisions. See Kentucky Constitution provisions relative to corporations.

Sec. 170. Exemption from municipal taxation for manufacturing corporations, authorized.

Sec. 171a. Classification of property for taxation.

Sec. 174. Corporate property to be taxed like individuals.

Sec. 181. Legislature to confer power upon municipalities to levy taxes. License fees and other taxes.

Sec. 181a. Taxation by cities and towns in lieu of an ad valorem tax. Exception in cities of the first class (Louisville).

Sec. 182. Railroads, assessment of.

SUMMARY OF TAXES BY SECRETARY OF STATE

Organization tax $1.00 per $1,000.00 of capital.

License (on certain corporations) $0.50 on the $1,000.00 each year.

Franchise (on certain corporations) fixed by the tax commissioner each year.

Property tax for State purposes, $0.40 on the $100.00 each year. (See statutes.)

Articles must be signed and acknowledged by at least three of the incorporators, filed and recorded in the clerk's office of the county in which its principal place of business is located, a certified copy filed and recorded in the office of the Secretary of State. Said certified copy should be accompanied by the organization tax, which is one-tenth of one per cent of capital stock (see Sec. 4225), and also the amount of recording fee, which is twenty-five cents for each one hundred words, and one dollar for filing statement of process agent, and unless the amount of organization tax, together with recording and certificate fee, accompanies the articles they will be held until proper amount is received.

Organization tax is due upon the organization of a corporation and must be paid to the Treasurer or sent with the articles for delivery to him before a charter will be issued by this department authorizing the corporation to commence business, and is also due upon any subsequent increase of capital stock to the extent of the increase.

Sec. 4019. Annual taxes—Classification of. An annual tax of forty (40) cents upon each one hundred dollars ($100.00) of value of all property directed to be assessed for taxation, as herein provided, shall be paid by the owner, person or corporation assessed. Of the aggregate amount of tax realized by all assessments under this forty (40) cent rate, fifteen cents shall be for the use of the ordinary expenses of the government, eighteen cents for the support of the common schools, one cent for use of the sinking fund, one and three-quarters cents for the support and erection of buildings for the University of Kentucky at Lexington, five-eighths of one cent for the support and erection of buildings of the Eastern State Normal School, located at Richmond, five-eighths of one cent for the support and erection of buildings for the Western State Normal School, located at Bowling Green, and three

cents for the State road fund, and the Auditor of Public Accounts will make distribution of said tax in accordance with the said apportionment at the end of each month. The tax herein provided for the University of Kentucky is in lieu of the tax provided by an act entitled: "An act for the benefit of the Agricultural and Mechanical College," approved April 29, 1880, and the annual appropriation now made for the University of Kentucky under the provisions of Sec. 4535b, Kentucky Statutes, edition 1915; the annual appropriation now made for the University of Kentucky under the provisions of Subsec. 4 of Sec. 4636b, Kentucky Statutes, edition 1915; the annual appropriation now made for the University of Kentucky by the act which became a law March 26, 1904, Acts 1904, Chapter 120; the annual appropriation now made for the University of Kentucky under the provisions of Subsec. 5 of Sec. 4636c, Kentucky Statutes, edition 1915. The tax herein provided for the two normal schools shall be in lieu of the appropriations made for the support of said schools in Subsecs. 29, 35 and 36 of Sec. 4535a and in Sec. 4535b of the Kentucky Statutes, edition 1915. The tax herein provided for the University of Kentucky and the normal schools shall be paid monthly, when and as collected, to the treasurers of these institutions in the amount set forth in this section, and shall be used by the University of Kentucky and the normal schools for their maintenance and support and when sufficient sums shall have accumulated in the treasuries thereof, it may be used for the erection of buildings and the purchase of land and equipment. The tax herein provided for the State road fund shall be in lieu of the tax provided by an act entitled: "An act to create and establish a system of public State roads and to provide for the construction and maintenance thereof." (Chapter 4, Acts 1918.)

Sec. 4020. Property classified. All real and personal estate within this State, and all personal estate of persons residing in this State, and of all corporations organized under the

laws of this State, whether the same be in or out of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises as herein provided, shall be subject to taxation unless the same be exempt from taxation by the constitution, and shall be assessed at its fair cash value, estimated at the price it would bring at a voluntary sale: Provided, however, That tangible personal property located and having a taxable situs without the State, of persons residing in this State, and of all corporations organized under the laws of this State, shall not be subject to taxation; and, Provided, further, That the situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having the custody or possession of same: Provided, further, That nothing herein contained shall in any way affect the liability for franchise taxes now payable by corporations organized under the laws of this State.

Property taxable under this section. (Raydure v. Board of Supervisors, 183 Ky. 84, 209 S. W. 19.)

Sec. 4077. Assessment of public utilities. Every railway company or corporation and guaranty or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are

hereby constituted a board of valuation and assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in Sec. 1 (4095) of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the board of valuation and assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney General, when requested by the board of valuation and assessment, to attend said board at its meetings and advise with same in its proceedings.

Transfer and hacking companies not liable for franchise tax. (Commonwealth v. Louisville Transfer Co., 181 Ky. 305, 204 S. W. 92.)

Foreign corporations engaged in interstate commerce—when liable for franchise tax. (Bosworth v. Evansville & Bowling Green Packet Co., 178 Ky. 716, 199 S. W. 1059.)

Franchise tax defined. The franchise tax mentioned in K. S. Sec. 4077 is a tax on the intangible property of a corporation, estimated by ascertaining the value of the capital stock and then deducting therefrom the value of the tangible property, the remainder being the amount subject to franchise tax. The state has the same right to subject this intangible property to the same tax as other like property. (Baltimore & Ohio Southwestern R. Co. v. Commonwealth, 177 Ky. 566, 198 S. W. 35; Commonwealth v. Walsh's Trustee, 133 Ky. 103, 117 S. W. 398; Commonwealth v. Chesapeake & Ohio Ry. Co., 170 Ky. 489, 186 S. W. 164.)

Board of valuation and assessment. Assessment by and also assessment by city auditor in certain cases. (Kentucky Heating Co. v. City of Louisville, 174 Ky. 152, 192 S. W. 4; Louisville & N. R. Co. v. Greene, 244 U. S. 522.) Powers now vested in State Tax Commission, K. S. Sec. 4114i-16.

Penalty for violation by corporation or its officers for refusing to make report required by sec. 4078, prescribed by this section. (United Fuel Gas Co. v. Commonwealth, 171 Ky. 526, 188 S. W. 660.)

Construction of term "franchise." The term "franchise" as used in this section, imposing a franchise tax on corporations engaged in freight traffic, etc., is not the right to do the thing but the doing of it in fact. Held, that it was no defense to a corporation's liability for such tax that its engaging in such a business was ultra vires. (James v. Kentucky Refining Co., 132 Ky. 353, 113 S. W. 468.)

Construction of sections. When an assessment is made of the franchise of a corporation under K. S. Secs. 4077-4080, it necessarily embraces all of the intangible property of the corporation; the word "franchise" in these sections not being used in its strict technical sense. (Com. v. C. & O. Ry. Co., 91 S. W. 672, 28 Ky. L. R. 1110.)

The word "franchise" as used in K. S. Sec. 4077 was not used in its technical sense. (Adams Express Co. v. Kentucky, 166 U. S. 180; Greene v. Louisville & Interurban R. Co., 244 U. S. 511.)

Foreign corporations—when not taxable. A foreign corporation, organized merely to hold stock of another corporation, so long as it never acquired any property or engaged in any business was not taxable; its right to be a corporation being of no taxable value. (Commonwealth v. Ledman, 127 Ky. 603, 106 S. W. 247, 32 Ky. L. R. 452; Com. v. Lee Line Co., 159 Ky. 476, 167 S. W. 409).

Jurisdiction of court to assess—necessary evidence to be presented. (Com. v. United States Express Co., 149 Ky. 755, 149 S. W. 1037.)

Franchise tax defined. A franchise tax is not a license tax or occupation tax, but an "ad valorem or property tax." (City of Newport v. South Covington & Cincinnati Street Ry. Co., 156 Ky. 403, 161 S. W. 222.)

Classification of corporations. The corporations enumerated in this section are known by the classification of "franchise corporations." (Com. v. Fidelity Trust Co., 147 Ky. 177, 143 S. W. 1037.)

Definition of tax. Under this section and section 174 of the constitution, a tax on the franchise of a gas corporation is a property tax on the intangible property and not a privilege tax under K. S. Sec. 4082. (Com. v. Louisville Gas Co., 135 Ky. 324, 122 S. W. 164.)

Domicile of corporation. For fiscal purposes the domicile of a domestic corporation is the place designated in its charter or articles of incorporation; its intangible property is assessable there only. (City of Covington v. Standard Oil Co., 137 Ky. 837, 127 S. W. 480; Inter-Southern Life Ins. Co. v. Milliken, 155 Ky. 529, 159 S. W. 1141.)

Right of city to recover tax when corporation property is omitted from the assessment. (City of Covington v. Cincinnati, etc., R. Co., 144 Ky. 646, 139 S. W. 854.)

Stockholder's liability for tax. A stockholder in a foreign corporation need not list or pay taxes upon stock if the corporation has paid all taxes due by it and assessable against it on its property located in Kentucky. (Commonwealth v. Fidelity Trust Co., supra.)

Power of state board of valuation and assessment does not extend to conferring power of a corporation to do business. (Cumberland Tel., etc., Co. v. City of Calhoun, 151 Ky. 241, 151 S. W. 659.)

Right to tax bridge company after its sale to railroad company denied. (Louisville & N. R. Co. v. City of Henderson, 154 Ky. 575, 157 S. W. 1105.)

Taxation of consolidating corporations. (See K. S. Sec. 556; Southern Pacific Co. v. Commonwealth, 164 Ky. 825, 176 S. W. 375.)

Intangible property—assessment. Secs. 4077-4091 inc., are intended to provide a method for ascertaining value and assessment of intangible property of corporations, exercising any special or exclusive privileges or franchise in Kentucky, not allowed by law to natural persons, whether the corporation be foreign or domestic; and all corporations exercising such a privilege are amenable to provisions of the statutes whether the privilege is exercised in its own name or in the name of a holding corporation which it adopts. (Com. v. Southern Ry. Co., 193 Ky. 474, 237 S. W. 11.)

"Doing business" defined, and authorities cited with approval. (Com. v. Southern Ry. Co., supra.)

Valuation—ferry franchise. In computing capitalized valuation of a ferry franchise, it was proper in determining operating expenses to be deducted from earning capacity, to include the salary of the owner. (Com. v. Kottmyer, 183 Ky. 163, 208 S. W. 823.)

Franchise taxes, powers of state board of valuation and assessment— definitions of "capital stock," "tangible and intangible," "property," etc. (Paducah Street Ry. Co. v. McCracken Co., 105 Ky. 472, 49 S. W. 178; Henderson Bridge Co. v. Commonwealth, 99 Ky. 623, 31 S. W. 486; Louisville & Jeffersonville Ferry Co. v. Commonwealth, 108 Ky. 717, 57 S. W. 624; Louisville Tank Line Co. v. Commonwealth, 123 Ky. 81, 93 S. W. 635; Hager v. American Surety Co., 121 Ky. 791, 90 S. W. 550; Cumberland Tel., etc., Co. v. Hopkins, 121 Ky. 850, 90 S. W. 594; Com. v. C. & O. Ry. Co., 120 Ky. 678, 87 S. W. 1077; Jefferson County v. State Board, 117 Ky. 531, 78 S. W. 443; Owensboro Waterworks v. City of Owensboro, 24 Ky. L. R. 2530, 74 S. W. 685.)

Sec. 4078. Report to auditor—Value of franchise—How estimated. In order to determine the value of the franchises mentioned in the next preceding section,[1] shall, annually, between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.: The name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock sold at a bona fide sale within twelve months next before the thirtieth day of June of the year in which the

1 Such corporations (words not in original act).

statement is required to be made; the amount of surplus funds and undivided profits and the value of all other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the thirtieth day of June of the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, assessed, or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the Auditor may require. (Sec. 4078, Ky. Stat. As to time in which report shall be made, see Sec. 4079 herein.)

Acts of 1917, ch. 11.

Reports under this section required to be made by a corporation annually, between June 30th and October 1st and a verified statement of its affairs, to the auditor, are mandatory requirements (N. C. & St. L. Ry. Co. v. Com., 160 Ky. 50, 169 S. W. 511.)

In a proceeding to assess as omitted certain property of a railroad company it must appear in the petition that the report required by this section was not made or if made, that it did not include the property sought to be assessed. (Com. v. Louisville & N. R. Co., 149 Ky. 829, 150 S. W. 37.)

Where a corporation filed a report, it must be assessed as of that year and it can not be assessed under an amendment to the law dated two years after. (James v. American Surety Co., 133 Ky. 313, 117 S. W. 411.)

Itemized expense statement. A corporation making report to the auditor of public accounts for franchise tax purposes should itemize expenses; the term "other expenses" being too general and indefinite. (Chesapeake & Ohio Ry. Co. v. Com., 190 Ky. 552, 228 S. W. 15.)

Sec. 4078a. Time for filing annual reports. That the annual report or statement of every railway company or railway corporation, telephone, telegraph, express company or other public utility company now required under the provisions of the Kentucky Statutes to be made and delivered to the Auditor of Public Accounts, Tax Commission or Railroad Commission, between the 30th day of June and the 1st day of October, hereafter shall be made and delivered by every such company or corporation to the Auditor of Public Accounts, the Tax

Commission and the Railroad Commission between the 31st day of December and the 31st day of March following, and the information therein furnished as called for by the statutory provisions aforesaid shall cover the period of twelve months ending the 31st day of December, instead of the 30th day of June, as heretofore required, provided, however, the aforesaid State departments are hereby authorized and directed to change the date of the aforesaid reports to conform to any change in date established by Federal regulations. (Sec. 1, Chapter 128, Acts 1918.)

Sec. 4079. Assessment of franchise—How estimated. Where the line or lines of any such corporation, company or association extend beyond the limits of the State or county, the statement shall, in addition to the other facts hereinbefore required, show the length of entire lines operated, owned, leased or controlled in this State, and in each county, incorporated city, town or taxing district, and the entire line operated, controlled, leased or owned elsewhere. If the corporation, company or association be organized under the laws of any other State or government or organized and incorporated in this State, but operating and conducting its business in other states as well as in this State, the statement shall show the following facts in addition to the facts hereinbefore required: The gross and net income or earnings received in this State and out of this State, on business done in this State, and the entire gross receipts of the corporation, company or association in this State and elsewhere during the twelve months next before the thirtieth day of June of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered corretly, or will not afford any valuable information in determining the value of the franchise to be taxed, the said board may excuse the officer from answering such questions: Provided, that said board from said statement, and from such other evidence as it may have, if such corporation, company or association be organized under the

laws of this State, shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

The Board of Valuation should consider every element of property including the franchise and earning capacity, but is not governed by the value of the company's shares. (Commonwealth v. Ledman, 127 Ky. 603, 106 S. W. 247; see also Anderson v. Commonwealth, 142 Ky. 663, 134 S. W. 477; Commonwealth v. Louisville & N. R. Co., 149 Ky. 829, 150 S. W. 37; Louisville & N. R. Co., v. Bosworth, 209 Fed. 381; Bosworth v. Kentucky Highlands R. Co., 183 Ky. 749, 210 S. W. 671.)

Sec. 4080. Assessment of foreign corporations. If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the board shall fix the capital stock in this State by capitalizing the net income derived in this State, or it shall fix the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere, the proportion which the gross receipts of this State, within twelve months next before the thirtieth day of June of the year in which the assessments were made, bears to the entire gross receipts of the company, the same proportion of the value of the entire capital stock or the capitalizing of the net earnings in this State, less the assessed value of the tangible property assessed, or liable to assessment in this State, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in this State. (Act of 1906, Ch. 22, p. 129.)

The intention of the legislature was to require the board to consider both the item of gross earnings and the item of net income. The word "or" in the amended act should read "and." When thus read, the act is constitutional and there is no delegation of the taxing power. (James v. United States Fidelity & Guaranty Co., 133 Ky. 299, 117 S. W. 406.)

Sec. 4081. Carriers engaged in interstate commerce—Franchises. If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in this State, bears to the total length of the lines owned, leased or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located. (Acts of 1906, Ch. 22.)

A refrigerator car company which manufactures cars in this state and leases them to a packing house in another state comes within the purview of this section. (Morrell Refrigerator Car Co. v. Commonwealth, 128 Ky. 447, 108 S. W. 926.)

This section simply provides that the total length of the lines in and out of the state shall be considered. It does not furnish an absolute criterion. (Southern Pacific Co. v. Commonwealth, 134 Ky. 410, 120 S. W. 309.)

Procedure under this section. (Louisville & N. R. Co. v. Bosworth, 209 Fed. 380.)

Act of 1906, Ch. 22, p. 130 held not unconstitutional. (Commonwealth v. Southern Pacific Co., 150 Ky. 97, 140 S. W. 1105.)

Sec. 4083. Auditor—Duty of. It shall be the duty of the Auditor, immediately after fixing such values by said board, to notify the corporation of the fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation, and may introduce evidence, and the chairman of the board is hereby authorized to summon and swear witnesses and, after hearing such evidence, the board may change the valuation as it may deem proper, and the action of the board shall be final. (Acts of 1902, Ch. 22.)

Notice under this section held insufficient. (Louisville & N. R. Co. v. Bosworth, 209 Fed. 380; cited Green v. Louisville & I. R. Co., 244 U. S. 503.)

Under sections 4077 and 4083, a railway company claiming that its franchise tax in a city is too high, need not apply in thirty days to the State Board for correction, for before the valuation is final it has no means of knowing what the assessment would be. (City of Newport v. S. C. & C. St. Ry. Co., 156 Ky. 403, 161 S. W. 222.)

Sec. 4084. Certificate of auditor to county clerk. The Auditor shall, at the expiration of thirty days after the final determination of such values, certify to the county clerk of the counties, when any portion of the corporate franchise of any such corporation, company or association shall be liable to local taxation as herein provided, the amount thereof liable for county, city, town or district tax, and such certificate shall be, by each county clerk filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection, and all county, city, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of such tax is given by the officer whose duty it is to collect the same.

Sec. 4085. Assessment of property to be same as natural person, exception. The property of all corporations, except where differently provided by law, shall be assessed in the name of the corporation in the same manner as that of a natural person, except that, when legally called on, the chief officer shall report under oath a full statement of the property of such corporation for taxation, and, for a failure, shall be subject to the penalties provided by law for a similar failure by a natural person in listing his own property. (Act of 1906, Ch. 22, p. 88; as amended by Act of 1917, Ch. 11, Sec. 2.)

Liability of stockholders. Ewald's Exr. v. City of Louisville, 192 Ky. 279, 232 S. W. 389.

Sec. 4086. Payment to state treasurer. All corporations and other persons who are required to make reports to the Auditor of Public Accounts shall pay all taxes due the State from them into the treasury at the same time, and shall be liable for and pay the same rate of interest and penalties as defaulting individuals, except where otherwise specially provided.

Sec. 4087. Penalties. Any corporation, or officer thereof, wilfully failing or refusing to make reports as required by this chapter, shall be deemed guilty of a misdemeanor, and for each offense shall be fined one thousand dollars, and fifty dollars for each day the same is not made after October the first of each year. (Crim. Code, Sec. 11; Civ. Code, Sec. 63.)

See also, Danville Light, Power and Traction Company v. Commonwealth, 191 Ky. 270, 230 S. W. 38.)

Sec. 4088. Payment at source—Stockholder's exempt. The individual stockholders of a corporation, at least one-fourth of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation so long as the corporation pays taxes on all its property in Kentucky (including the corporate franchise when the franchise is required to be assessed), provided the shareholder furnishes satisfactory proof to the taxing authorities that at least one-fourth of the

total property of such corporation is taxed in Kentucky. (Sec. 3, Chapter 11, Acts 1917.)

Sec. 4089. Receivers, duty of. Should any corporation required to make the report as hereinbefore provided be in the hands of, or under the control of, a receiver or other person, it shall be the duty of such receiver or other person to make the return and valuation as hereinbefore required. (Acts of 1906, Ch. 22.)

Sec. 4090. Arbitrary valuation in the absence of report. Should any corporation fail to make the reports as required herein on or before the first day of October of each year, the said board shall proceed to ascertain the facts and values as required by this article, in such manner and by such means as it deems proper, at the cost of the company failing to make the report, and shall fix the value of the corporate franchise liable for taxation as aforesaid and the corporation shall be taxed accordingly. (Act of 1906, Ch. 22.)

Sec. 4091. Taxes—Time of payment—Notice to corporation. All the State taxes assessed against any corporation, company or association, under this article, shall be due and payable thirty days after notice of the same has been given said corporation, company or association by the Auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given to the officer whose duty it is to collect the same; and every such corporation, company or association failing to pay its taxes, after receiving thirty days notice, shall be deemed delinquent, and a penalty of ten per cent on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent per annum. Any such corporation, company or association failing to pay its taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor and, on conviction, shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indict-

ment or civil action, of which the Franklin Circuit Court shall have jurisdiction. It shall be the duty of the county clerk to furnish to the Auditor of Public Accounts, on blanks provided by the Auditor, a statement of the assessed value of the tangible property of all corporations paying a franchise or other tax under this act. (Act of 1906, Ch. 22, p. 133.)

The Auditor's agent cannot bring suit to recover the penalty provided in this section until there has been a conviction. (Louisville Water Co. v. Commonwealth, 132 Ky. 311, 116 S. W. 711; Henderson Bridge Co. v. Commonwealth, 120 Ky. 690, 87 S. W. 1088; Louisville & N. R. Co. v. Commonwealth, 29 Ky. L. R. 666, 90 S. W. 655; Bank of Kentucky v. Commonwealth, 32 Ky. L. R. 1087, 107 S. W. 812.)

SPECIAL TAX PROVISIONS

Secs. 4019a1. to 4. State tax on bank deposits. (Act of 1917, Ch. 4, Sec. 1; repealing Secs. 4092a, 4092c.)[1]

Secs. 4090a6. to 8. State tax on building and loan associations. (Act of 1917, Ch. 14; repealing Secs. 4093, 4094.)

Secs. 4096 to 4104. Assessment of railroads. (Act of 1906, Ch. 22.)

Assessment of warehouse companies. (Act of 1920, Ch. 58.)

Annual ad valorem tax on certain unmanufactured agricultural products. (Act of 1920, Ch. 65.)

Sec.4189a. License tax on corporations. All corporations having capital stock divided into shares, organized by or under the laws of this or any other State or government, owning property or doing business in this State, except foreign insurance companies, whether fire, life, accident, casualty or indemnity, foreign and domestic building and loan associations, banks and trust companies, and all corporations which, under existing laws, are liable to pay a franchise or license tax, shall pay to this State, to be credited to the sinking fund, an annual license tax based upon its authorized capital stock, as hereinafter provided. (Act of 1917, Ch. 7.)

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1 State tax of 10 cents on each $100 on deposit annually as of July 1st. Banks are permitted to pay the tax and charge same to account of depositor.

Sec. 4189b. Classification. For convenience in classification, corporations are divided into two classes, domestic and foreign. A domestic corporation is one incorporated by and under the laws of this State; every other corporation is a foreign corporation. (Ibid.)

Sec. 4189c. Amount of tax. Domestic and foreign corporations shall pay an annual license tax of fifty cents on each one thousand dollars of that part of their authorized capital stock represented by property owned and business transacted in this State, which shall be ascertained by finding the proportion that the property owned and business transacted in this State bears to the aggregate amount of property owned and business transacted in and out of this State.

Provided, that such corporation may pay at said rate upon their entire authorized capital stock; and in that event they shall not be required to report as in paragraph (c) of Subsec. 4 hereof. And their failure so to report shall be deemed conclusive evidence that such corporation elects to pay upon its entire authorized capital stock, and it shall be its duty so to do, and the duty of the Board of Valuation and Assessment so to fix its license tax. (Ibid.)

Sec. 4189d. Reports to commission—What shall show—Assessment by board of valuation. In order to ascertain the amount of taxes due and payable under the next preceding section, by such corporations now owning property or transacting business in this State, it shall be the duty of every such corporation to file with the tax commission on or before the first day of February, 1918, and on or before the same day annually thereafter, a written report, verified by the affidavit of the president or secretary of such corporation, showing:

(a) The name of such corporation, the name of the State or government under the laws of which it is incorporated, the date of incorporation, the place of its principal office in and out of the Commonwealth, the name and post office address of its president and secretary, the name and post office address

of its authorized agent or attorney upon whom process may be executed, as provided by law, and the name and address of its officer or agent in charge of its business in this State.

(b) The total amount of its authorized capital stock.

(c) The value and location of the property owned and used by the company in Kentucky and the value of the property owned and used by the company in each State or foreign country outside of Kentucky, the aggregate amount of business transacted by said company during the preceding year ending the 31st day of December, and the proportion of such business transacted in this State and in each other State or foreign country, and such other facts bearing on proper taxation as the Tax Commission may require.

It shall be the duty of the Tax Commission acting as a board of valuation and assessment, from such reports and from such additional information as it may require, to ascertain and fix that part of the authorized capital stock of such corporations upon which the license tax shall be based, as herein provided, and to fix the license tax of such corporations at the rate hereinbefore prescribed. The board may in any case require such additional information as it may deem necessary to enable it to perform its duties herein; and it shall be its duty to notify every such corporation of the amount so assessed. The notice may be given as provided in Subsec. 5 hereof, and it shall be the duty of the corporation to pay the amount of such tax to the Auditor of Public Accounts not later than thirty (30) days thereafter or not later than thirty (30) days after final action by the board, should it grant a rehearing, which the board may grant upon application therefor, filed within thirty (30) days after the date of such notice. Upon final action by the board it shall certify to the Auditor of Public Accounts the amount of such tax due from each and every such corporation. (Ibid.)

Sec. 4189e. Secretary of state to report to tax commission name and address of corporation. It shall be the duty of the

Secretary of State to certify to the tax commission the names and addresses of all corporations coming within the purview of this article, and also the names of their designated agent upon whom process may be executed, that now or that may hereafter appear upon the records of his office.

From such certification and from the records of its own office, it shall be the duty of the tax commission to notify such corporations required to report under this section and to furnish a blank upon which to make the report, not later than December fifteenth in each year. Proof that such notice and blank have been deposited in the United States mail duly stamped and addressed to the person last designated as the person upon whom process may be served, shall in all cases be deemed conclusive evidence that such notice to report had been given to such corporation. (Ibid.)

Sec. 4189f. Domestic corporations exempt year of organization. Domestic corporations hereafter incorporated shall not be required to pay the annual license tax in this section provided for the year in which they may be organized. (Ibid.)

Sec. 4189g. Reports, when to be made. Domestic corporations and foreign corporations owning property or transacting business in this State, shall make such report to the tax commission in the manner provided in this section, on or before February first succeeding their incorporation or succeeding their becoming the owner of property, or transacting business in this State; and shall make such report on or before said date annually thereafter. And, except as provided in Subsec. 6, such corporations shall pay the annual license tax at the rate in the proportion provided in Subsec. 3; and in all respects be subject to all the provisions and penalties in this section contained and prescribed. (Ibid.)

Sec. 4189h. Penalty for false statements. Any person who shall falsely make an affidavit herein required shall be guilty of false swearing, and, upon conviction therefor, shall suffer

the pains and penalties in such cases made and provided. Any corporation which wilfully violates the provisions of this section or any of such provisions, or wilfully fails or neglects to perform any duty herein imposed upon it, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined any sum not less than fifty dollars nor more than one thousand dollars for each offense; the same to be recovered by penal action or by indictment in the circuit court of Franklin county; and every such judgment of conviction for failure to report or for failure to pay the annual license tax required, shall also provide that the right to be a corporation in this State shall be suspended until the fine and costs and all taxes and penalties due the State shall be paid or replevied, or the judgment superseded. Every corporation failing to pay its taxes as provided in this section within the time herein prescribed shall be deemed a delinquent, and a penalty of ten per centum on the amount of such tax shall attach, and thereafter such tax shall bear interest at the rate of ten per centum per annum, the same to be collected in the same manner and by the same process as the tax is collected. (Ibid.)

Sec. 4189i. Minimum fee. No corporation required to pay an annual license tax under this section shall pay a less sum therefor than ten dollars. (Ibid.)

Sec. 4189j. Secs. 4189a to 4192, inclusive, Kentucky Statutes, Carroll's 1915 edition, are hereby repealed. All other laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict. (Act of 1917, Ch. 7.)

Sec. 1. Oil production tax.[1] Every person, firm, corporation or association producing crude petroleum oil in this State, shall, in lieu of all other taxes on the wells producing said crude petroleum, annually pay a tax equal to one per centum of the market value of all crude petroleum so produced, and such tax shall be for State purposes, and, in addition, any county in the State may impose a like tax for road purposes,

[1] This Act is now compiled in Carroll's 1922 Ed. Kentucky Statutes, as Sec. 4223c.

county purposes or school purposes not to exceed one-half of one per centum of the market value of all crude petroleum produced in such county, and the fiscal court of any county may levy said tax for county purposes and shall determine what fund or funds shall receive the taxes when collected, and, when crude petroleum is produced in any separate taxing district in a county, the fiscal court shall equitably distribute such taxes between the county and such taxing district. (Act of 1918, Ch. 122, and Act of 1917, Ch. 9.)

Sec. 2. Any county imposing the tax provided in Sec. 1 hereof shall immediately, after the levy of such tax, give notice thereof to each transporter of crude petroleum registered in said county, and the transporter of said crude petroleum shall, from and after the first day of the month immediately following such notice, proceed as hereinafter provided, to collect such county tax, and shall pay the same to the sheriff of such county, in the manner and at the time payment of such taxes shall be required to be made to the State Tax Commissioner. Each county imposing such tax shall also, upon the fixing of the levy, certify the same to the State Tax Commission, which shall make the assessment for such county tax, in the same manner and at the same value as provided for the State tax, which shall be certified to such county for collection. (Ibid.)

Sec. 3. The tax hereby provided for shall be imposed and attach when the crude petroleum is first transported from the tanks or other receptacles located at the place of production. (Ibid.)

Sec. 4. Every person, firm, corporation or association required to report under Sec. 5 of this act, shall register as a transporter of crude petroleum in the clerk's office in each county of this State, in which such business is carried on by such transporter of crude petroleum, in a book which the State Tax Commission shall provide therefor, showing the name, residence and place of business of such transporter of

crude petroleum, and it shall be the duty of the County Clerk of each county to immediately certify to the State Tax Commission a copy of each registration as made.

Sec. 5. Every person, firm, corporation or association engaged in the transportation of crude petroleum in the State from the tanks or other receptacles located at the place of production in the State, shall, for the purposes of this act, be considered a transporter of crude petroleum, and every such transporter of crude petroleum shall make a monthly, verified report to the State Tax Commission, on or before the 20th day of the month succeeding the month in which the crude petroleum is so received for transportation, showing the quantity of each kind or quality of all crude petroleum so received from each county in the State and the market value of such crude petroleum on the first business day after the tenth day of the month in which such report is made, and such report shall show any sales of such crude petroleum so received, in which event it shall show the quantity of crude petroleum in each sale, the date of each sale, and the market price of such crude petroleum on each date of sale for such preceding month, and said report shall be made upon blanks furnished and prescribed by the State Tax Commission.

Sec. 6. The State Tax Commission shall, upon receiving the reports provided for in Sec. 5 hereof, upon such reports and such other reports and information as it may secure, assess the value of all grades or kinds of crude petroleum so reported for each month, and, on or before the last day of the month in which such reports are required to be made, notify each transporter of crude petroleum so reporting of such assessment, and certify such assessment to the county clerk of each county which has reported the levy of the county tax provided for in Sec. 2, for record, and such county clerk shall immediately deliver a copy thereof to the sheriff of such county for the collection of such county tax. The transporter so notified of the assessment shall have until the twentieth day

of the month following such notice, in which to be heard by the State Tax Commission on any objection to such assessment, and the assessment shall become final on such twentieth day of the month and the tax be due and payable on that day. The State Tax Commission shall make the assessment of the value of the crude petroleum so reported by each transporter of crude petroleum as follows:

Where the report shows no sale of crude petroleum during the month covered by such report, then the market value of crude petroleum on the first business day after the tenth day of the month in which the report is made shall be fixed as the assessed value of all crude petroleum covered by such report.

But where the report shows sales of crude petroleum during the month covered by such report, if it shows that all crude petroleum so reported has been sold, then the market price of such crude petroleum on each day of such sale or sales shall be the assessed value of all crude petroleum sold on such date of sale and the total amount of the tax to be reported as the assessment on such report shall be the total of the assessment or assessments made on such sale or sales; but if such report shows that any part of the crude petroleum so reported remains unsold, then as to such portion remaining unsold the market price of the crude petroleum on the first business day after said tenth day of the month following the month covered by such report, shall be fixed as the assessed value of such portion of the crude petroleum unsold, and the total amount of the tax to be reported as the assessment on such report shall be the total of the assessments made on such sold and unsold crude petroleum.

The State Tax Commission in making its assessments shall take into consideration transportation charges. (Ibid.)

Sec. 7. Every person, firm, corporation or association required to make report as provided in Sec. 5 hereof, shall be responsible and liable for the taxes as herein set forth on all crude petroleum so received by it, and shall collect from the producer in either money or crude petroleum the taxes

imposed under the provisions of this act; but, if collection is in crude petroleum, such transporter is authorized and empowered to sell the same, and pay said taxes by check or cash to the State Tax Commission or sheriff, as provided in this act. (Ibid.)

Sec. 8. The State Tax Commission may require reports on blanks prepared by it from all producers and transporters of crude petroleum, in addition to the reports above provided for, as it may deem necessary, from time to time. (Ibid.)

Sec. 9. Any person, firm, corporation or association, required to make reports or collect and pay the taxes hereunder, failing to pay such taxes, penalty or interest, after becoming delinquent; or failing to make any report, required by this act, for thirty days after the date upon which the same is required by this act to be made; or failing for thirty days after engaging in the transportation of crude petroleum, as set out herein, to register as required hereby, shall be deemed guilty of a misdemeanor, and on conviction shall be fined fifty dollars ($50) for each day of such failure, to be recovered by indictment or civil action, and a false report shall be deemed as a failure to report under this act. (Ibid.)

Sec. 10. All acts and parts of acts in conflict herewith are hereby repealed. (Ibid.)

CHAPTER VIII.

PROVISIONS OF THE CIVIL CODE OF PRACTICE AND CERTAIN RELATED STATUTES AFFECTING PRIVATE CORPORATIONS

1. Agent upon whom process may be served. (Ky. Const., Sec. 194; K. S. Sec. 571.)
2. Process against foreign corporations. (K. S. Sec. 631.)
3. Service upon corporations, how obtained. (Code Sec. 51.)
4. Rules of construction of the Code. (Code Sec. 732.)
5. Warning orders against corporations. (Code Sec. 57.)
6. Attachments. (Code Sec. 71.)
7. Venue, local actions, banks and insurance companies. (Code Sec. 71.)
8. Corporations generally, local actions. (Code Sec. 72.)
9. Carriers, local actions. (Code Sec. 73.)
10. Verification of pleadings of corporations. (Code Sec. 117.)
11. Bond for costs. (Code Sec. 616.)
12. Motions. (Code Sec. 628.)
13. Proceedings, quo warranto. (Code Secs. 480, 483; K. S. Sec. 569.)

CIVIL CODE OF PRACTICE

Provisions thereof in relation to corporations, together with Sec. 194 of the Kentucky Constitution, and Kentucky Statutes, Secs. 571 and 631.

Sec. 194, Ky. Const. Designation of agent upon whom process may be executed in this State. All corporations formed under the laws of this State, or carrying on business in this State, shall, at all times, have one or more known places of business in this State, and an authorized agent or agents there, upon whom process may be executed, and the General Assembly shall enact laws to carry into effect the provisions of this section. (See Sec. 571, Ky. Stat.)

Sec. 571 of the Kentucky Statutes was enacted pursuant to this section of the constitution. (Oliver Co. v. Louisville Realty Co., 156 Ky. 628 at 639, 651, 161 S. W. 570.)

This section applies alike to all corporations whether charitable or otherwise. (Johnson v. Mason Lodge, 106 Ky. 839, 21 Ky. L. R. 493, 51 S. W. 620. Note briefs of counsel.)

Sec. 571, Ky. Statutes. All corporations except foreign insurance companies formed under the laws of this or any other State, and carrying on any business in this State, shall at all times have one or more known places of business in this State, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this State, until it shall have filed in the office of the Secretary of State a statement, signed by its president or secretary, giving the location of its office or offices in this State, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the Secretary of State a statement of such change; and the former agent shall remain agent for the purpose of service until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employe of such corporation, who shall transact, carry on or conduct any business in this State, for it, shall be severally guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense. (Statement to be recorded, Sec. 877.)

The leading case construing this statute is the case of Oliver Co. v. Louisville Realty Co. (156 Ky. 639, 161 S. W. 570), the syllabus of which is in part as follows:

Foreign corporations can not enforce contracts without complying with the registration laws of the state—section 571 of statutes. A foreign corporation cannot enforce the collection of the amount due on a contract entered into in the execution of its business in this state if it has not complied with section 571 of the Kentucky Statutes providing that all corporations must have a known place of business in this state and an authorized agent thereat upon whom process may be served.

Foreign corporations—unlawful to do business in state without complying with section 571 of the statutes—effect on contracts. The statute

does not expressly declare that contracts made before complying with it shall be void or not enforceable, but the fact that the statute imposes a penalty for engaging in business in violation of it has the same effect the invalidity of contracts made without observing its conditions.
and accomplishes the same end as if the statute had expressly declared

Foreign corporations—party contracting with not estopped to set up as defense failure of corporation to comply with section 571. A person who makes an otherwise valid contract with a foreign corporation that has not complied with the provisions of section 571, will not be estopped to rely on this defense if sued by the corporation. The effect of allowing the plea of estoppel would be to defeat one of the chief purposes of the statute, as there are few cases in which business transactions are not directly conducted between the corporation and the persons affected by the contract.

Statutes—purpose of section 571 of the Kentucky statutes. This section was intended as a police regulation for the protection of the people of the state who have a right to know whether the party they are dealing with is an individual or a corporation.

Statutes—sections 566 and 571—construction and effect of. Section 566 relates to defects in the organization of a corporation and a person dealing with a corporation will not be permitted to raise the question that it was not legally organized; while section 571 relates exclusively to the matter of a corporation doing business in this state without having an agent and a place of business in the state, and was enacted pursuant to section 194 of the Constitution. Overruling Johnson v. Mason Lodge, supra.)

Insurance policies. The rule in the Oliver case does not apply as against policy holders in insurance companies. (American National Ins. Co. v. Brown, 179 Ky. 717, 201 S. W. 326.)

Foreign insurance companies are excluded from the operation of this section, because they come within the provisions of K. S. Sec. 631. (Barnes v. Union Central Life Ins. Co., 168 Ky. 257, 182 S. W. 169.)

Banks, loans to. Loans to foreign banks are valid although the foreign bank has not complied with this section. (Citizen's Trust Co. v. Hays, 167 Ky. 561, 180 S. W. 811.)

Banks. National banks do not come within the purview of this section. (First National Bank of Owensboro v. Commonwealth, 17 Ky. L. R. 1167, 33 S. W. 1105.)

Joint stock associations and other unincorporated companies do not come within the purview of this section. (Commonwealth v. Adams Express Company, 123 Ky. 720, 97 S. W. 386.)

Contracts. To give the non-observance of section 571 the consequential effects of denying a corporation the right of remedy on contract in the courts of this state, as is adjudged in the Oliver case, applies only to *unexecuted* contracts and is non-effectual in a case where the contract has been executed. (Citizens Trust Co. v. Hays, supra.)

Foreign corporations failing to comply with this section can not sue to recover upon a contract made in this state . (Warren Oil & Gas Co. v. Gardner, 184 Ky. 411 at 415, 212 S. W. 456; Bondurant v. Dahnke Co., 175 Ky. 774, 195 S. W. 139; Fruin-Colnon Constructing Co. v. Chatterson, 146 Ky. 504, 143 S. W. 6.)

Oil leases. A corporation which has failed to comply with the requirements of this section, cannot lawfully do business in this state and cannot maintain a suit for the protection of a business which is being conducted contrary to law and it cannot make its acts, before complying with the statute, valid, by a subsequent compliance with the law. Rights under a lease held unenforcible. (Hayes v. West Virginia Oil, Gas & By-Products Co., 183 Ky. 622, 210 S. W. 174; Warren Oil & Gas Co. v. Gardner, 184 Ky. 411, 212 S. W. 456.)

Process. This section was not intended to substitute an agent for the officers of the corporation, designated by the code (section 51) upon whom process may be served, but to provide an additional person upon whom process may be served. (Kentucky Bonding Co. v. Commonwealth, 178 Ky. 609, 199 S. W. 807.)

Original filing of the names of two agents, held sufficient, although subsequently the corporation failed to file the name of a new agent appointed after the death of one of its former agents. (House v. Bank of Lewisport, 178 Ky. 281, 198 S. W. 760.)

Jurisdiction and venue. The venue of penal actions under this section is the county where the business of the corporation was carried on, and jurisdiction is in the circuit courts. (House v. Bank of Lewisport, supra; Commonwealth v. Grand Central Building & Loan Ass'n., 97 Ky 325, 30 S. W. 626.)

Negotiable instruments. Failure of the payee, a corporation, to comply with this section does not constitute a defense to an action upon a note, by the holder in due course. (First Nat. Bank of Central City v. Utterback, 177 Ky. 77, 197 S. W. 534; citing McMann v. Walker, 73 Pac. [Colo] 1055; National Bank of Commerce v. Pick, 99 N. W. [N. D.] 63.)

Interstate commerce. A corporation can not be compelled to comply with this section (K. S. 571) where it is engaged in a transaction which is exclusively in interstate commerce. (Larkin Co. v. Commonwealth, 172 Ky. 107, 189 S. W. 3; Louisville Trust Co. v. Bayer Blower Co., 166 Ky. 745, 179 S. W. 1034; Commonwealth v. Eclipse Hay Press Co., 31 Ky. L. R. 824, 104 S. W. 224; Reichert v. Ellis Ferry Co., 184 Ky. 150, 211 S. W. 403.)

Interstate commerce. A foreign corporation whose only business in this state is to send salesmen here is engaged in interstate commerce and does not come within the purview of this section. (Commonwealth v. Hogan, 25 Ky. L. R. 41, 74 S. W. 737; see also Three States Buggy and Implement Co. v. Commonwealth, 32 Ky. L. R. 385, 105 S. W. 971.)

Interstate and intrastate commerce. Power and limitations of state regulation. Foreign croporations, power to exclude and regulate, their

subjection to general corporation laws of the State. Equal protection of the laws. Due process of law. These topics are ajudicated by the Supreme Court of Kansas in the leading case of State, ex rel., Coleman, Atty-Gen., v. Western Union Tel. Co., 90 Pac. 299.

Contracts. A contract of sale is non-enforceable by a foreign corporation which does not comply with section 571. (United Iron Works Co. v. Watterson Hotel Company, 182 Ky 113, 206 S. W. 166.)

Statutes. Kentucky Statutes, Sec. 3720d, and Sec. 571, distinguished. (Town of Russell v. Whitt, 161 Ky. 187 at 196, 170 S. W. 609.)

Mortgage debt. The taking of a mortgage to secure a debt owing from a resident of this state to a foreign corporation, is not carrying on business within the meaning of sec. 571. (Ichenhauser v. Landrum's Assignee, 153 Ky. 317, 155 S. W. 738.)

Instructions to juries. To the effect that if the jury believe that the statement required to be filed, by sec. 571, was mailed to the Secretary of State in time to have reached him in the due course of mail, before the corporation began to do business, and that the envelope was not returned, they should find for the defendant (in a penal action), held error. (Commonwealth v. O'Bryan, Utley & Co., 153 Ky. 407, 155 S. W. 1122; Associated Press v. Commonwealth, 22 Ky. L. R. 1229, 60 S. W. 295.)

Proof of filing. It is necessary to prove by evidence that the statement required by sec. 571, was actually delivered to the Secretary of State's office, or that it is actually on file therein. (Coleman v. Freeman, 160 Ky. 57, 169 S. W. 523.) The burden is on the defendant corporation to show that it has filed the requisite statement. (Commonwealth v. Read Phosphate Co., 113 Ky. 32, 67 S. W. 45.)

Charitable corporations come within the provisions of this section. (Johnson v. Mason Lodge, 106 Ky. 839, 21 Ky. L. R. 493, 51 S. W. 620; American Patriots v. Kincaid, 144 Ky. 662, 139 S. W. 834.)

Residence of agent. Agent required by this section must be present, either at the principal place of business, or in the county, at all reasonable times, but not necessarily all the time. (Puducah Cooperage Co. v. Commonwealth, 122 Ky. 755, 93 S. W. 12.)

Statutes. This section does not conflict with Code Sec. 51, but provides, in addition to the officers of the corporation, an agent upon whom process may be served. (Paducah Cooperage Co. v. Commonwealth, supra; Pennebaker v. Bell City Mfg. Co., 130 Ky. 593, 113 S. W. 829.)

Jurisdiction of the courts is not affected by failure to file the required statement in the Secretary of State's office. (Pennebaker v. Bell City Mfg. Co., supra.)

Pleading. Demurrer to indictment for failure to keep on file in the office of the Secretary of State, the required statement sustained; the gravamen of this offense is the carrying on of business in this state, by a corporation, without filing the statement prescribed by section 571, and not its failure to keep such statement filed, that being the duty of the Secretary of State. (Commonwealth v. Benton Hotel Co., 145 Ky. 76, 140 S. W. 38.)

Pleading. Indictment should designate the offense by a brief general description in the language of the statute where, as in this case, there is no generally known name for the offense. (Knoxville Nursery Co. v. Commonwealth, 108 Ky. 6, 55 S. W. 691.)

Constitutional law. It may be stated, as a general proposition that a state has power entirely to exclude from its limits a foreign corporation, so it has the power of prescribing the terms upon which alone it may be permitted to do business within its limits. Citing, Home Ins. Co. v. Davis, 29 Mich. 238; Farmers' Ins. Co. v. Harrah, 47 Ind. 236; Attorney-General v. Bay State Mining Co., 99 Mass. 148, 96 Am. Dec. 717; State v. Lathrop, 10 La. Ann. 398; W. U. T. Co. v. Mayer, 28 Ohio St. 521; Re Comstock, 3 Saywer [U. S.] 218; Semple v. Bank of British Columbia, 5 Sawyer 88; Paul v. Virginia, 8 Wall. 168, 181; Lafayette Ins. Co. v. French, 18 How. 404; Ducat v. Chicago, 10 Wall. 410.) A foreign corporation may be required by the legislature of a state within which it seeks to do business to appoint a resident agent, upon whom all process may be served in suits against such corporations . . . in default of which it will not be permitted to do business within the state, and any contracts which it assumes to make within the state will be voidable, at least in the absence of circumstances of estoppel. (6 Thompson on Corporations, sections 7887, 7888; see also Commonwealth v. Read Phosphate Co., 113 Ky. 32, 67 S. W. 45.)

Process—service upon agent of corporation. The service of a summons on an authorized agent has the same legal effect as if the service had been made on the president or chief officer, and failure of the agent to notify the corporation does not entitle it to a new trial on the ground of accident, surprise, casualty or misfortune. (Iroquois Life Ins. Co. v. Thomas, 185 Ky. 710, 215 S. W. 818.)

Process—summons—sufficiency of return—judgment by default. In an action against a private corporation, a summons executed on F. described as having charge of the works of the corporation in the county where it was executed, will not authorize a judgment by default. The return may be amended however, before motion to quash, or after suit is brought to set aside judgment obtained on defective summons.

The safe practice in suits against corporations where a chief officer cannot certainly be found in the county where the action is pending is to have the process served on the authorized service agent provided for in the statute. (Morris v. Cumberland Producing & Refining Co., 187 Ky. 15, 218 S. W. 302.)

Investment companies—service upon. Service upon investment companies, foreign brokerage houses or dealers, etc., may be had upon the Banking Commissioner in accordance with sections 6 and 10 of the "Blue Sky Law." (Act of 1920, Ch. 125.)

Failure to file statement—effect upon contracts. The failure of a non-resident corporation does not render the contract void but only voidable at the option of the other party thereto, who may enforce it. (Yewell v. Board of Drainage Com'rs, 187 Ky. 434, 219 S. W. 1049.)

Statute not applicable to suits on executed contracts. Where a foreign corporation without filing the required statement purchased standing timber in this state and paid therefor, the contract was executed so as to pass title, and hence non-compliance with the statute did not affect its right to sue one to whom the seller resold the timber. (E. C. Artman Lumber Co. v. Bogard, 191 Ky. 392, 230 S. W. 953.)

Single transactions. This section applies to a single transaction as well as several. (E. C. Artman Lumber Co. v. Bogard, supra.)

Criminal proceedings. In a prosecution of an agent for embezzlement, the defendant is estopped to deny the authority of his corporate principal to transact mercantile business in this state, because of failure to comply with K. S. Sec. 571. (Sebree v. Commonwealth, 190 Ky. 164, 227 S. W. 152.)

Stock subscription not "doing business." The prohibition contained in this section against conducting business before filing the required statement does not invalidate a stock subscription contract, made before such filing, since "business" refers to business for which the corporation was organized. (Hauger v. International Trading Co., 184 Ky. 794, 214 S. W. 438.)

Foreign corporations—when not "doing business" within the meaning of this section. A corporation which had in another state merely been assigned and transferred an oil lease did not do business in this state, and it was unnecessary for it to file a statement with the Secretary of State, under K. S. Sec. 571, unless it took some affirmative steps toward enforcing the lease, and it was immaterial, in an action by the vendee of the lease for the purpose of removing a cloud upon the title, that such statement had not been filed, because non-compliance with the statute renders the transaction voidable and not void. (Great Western Petroleum Corporation v. Samson, 192 Ky. 814, 234 S. W. 727.)

Foreign holding corporation, when not "doing business." Mere ownership of stock in a domestic corporation by another (foreign) corporation, though it be the entire stock, is not sufficient of itself to render the corporation identical or to constitute "doing business" by the holding corporation within the State wherein the corporation whose stock is held is organized. (Com. v. Southern Ry. Co., 193 Ky. 474, 237 S. W. 11.)

Form of statement filed by foreign corporation. The following form of statement filed by a foreign corporation with the Secretary of State was approved by the Court of Appeals in the case of Great Western Petroleum Corporation v. Samson, supra, as substantially complying with the statute:

> Sir: Notice is hereby given that the place of business for the Great Western Petroleum Corporation, a corporation of the State of Delaware, in Kentucky, is Glasgow, and that J. P. Lewis of Frankfort, Kentucky, is our agent thereat, upon whom process may be served in any suit that may be brought against our company within the State of Kentucky.
>
> Done at Chicago, this 27th day of July, 1917.

See form as prepared by the Secretary of State, page 402.

Interstate and intrastate commerce. A corporation of one state may go into another for all legitimate purposes of interstate commerce, without the leave or license of the latter state, and any statute of such state obstructing or laying a burden upon the exercise of such privilege is void under the commerce clause of the Federal constitution. The purchase of wheat in Kentucky to be delivered on board cars at a point in Kentucky was interstate commerce, where the buyer in continuance of its earlier practice was purchasing the grain for shipment to its mill in Tennessee, and hence K. S. Sec. 571, prescribing the conditions on which foreign corporations may do business in Kentucky was invalid as to such transaction. The Court of Appeals of Kentucky held that the transaction was one which was entirely consummated in this state, and that therefore it was an intra-state transaction and that the contract could not be enforced because the Tennessee corporation, the plaintff below, had not filed the statement required by this section of the Kentucky statutes. But the Court of Appeals in applying the statute to this transaction entirely overlooked the intention of the plaintiff to ship the goods purchased to its mill in Tennessee. and its past practice. (DahnkeWalker Milling Co. v. Bondurant, 42 U. S. Sup. Ct. R. 106, reversing 185 Ky. 386, 215 S. W. 76; first appeal of case, 175 Ky. 774, 195 S. W. 139; see also International Harvester Co. v. Com., 147 Ky. 655, 145 S. W. 393, affd. 244 U. S. 579; see also dissenting op., per Brandeis, J., 42 U. S. Sup. Ct. R. 109.)

STATEMENT AS TO AGENT UNDER SECTION 571

Statement of ———— Company, Inc.

Louisville, Ky., ————, 19—

To the Secretary of State, Frankfort, Ky.

Sir:—Notice is hereby given pursuant to section 571 of the Kentucky Statutes, that the principal place of business in the State of Kentucky, is in the City of Louisville, and that Mr. ————, of ————, Ky., is its agent thereat, upon whom process may be served in any suit or other legal proceeding brought against said company within the State of Kentucky.

[SEAL]

————, President.

————, Secretary.

ANOTHER FORM

(Prescribed by the Secretary of State)

STATEMENT OF CORPORATION

(To be filed in the office of the Secretary of State before doing business in this State.)

To the Secretary of State, Frankfort, Ky.

Sir:—Notice is hereby given that the place of business for the ——— (name of corporation), a corporation of the State of ———, in Kentucky,

is (are) ———, and that ———, of ———, Ky., is (are) our agent—thereat, upon whom process may be served in any suit that may be brought against our company within the State of Kentucky.

Done at ———, this ——— day of ———, 19—.

———, President

———, Secretary

This statement may be signed by president or secretary.
Fill in and return to Secretary of State with $1.00 recording fee.

Sec. 631. Foreign corporation—Removal of causes to federal court, prohibited. Before authority is granted to any foreign insurance company to do business in this State, it must file with the Commissioner a resolution adopted by its board of directors, consenting that service of process upon any agent of such company in this State, or upon the Commissioner of Insurance of this State, in any action brought or pending in this State, shall be a valid service upon said company; and if process is served upon the Commissioner it shall be his duty to at once send it by mail, addressed to the company at its principal office [and if any company shall, without the consent of the other party to any suit or proceeding brought by or against it in any court of this State, remove said suit or proceeding to any federal court, or shall institute any suit or proceeding against any citizen of this State in any federal court, it shall be the duty of the Commissioner to forthwith revoke all authority to such company and its agents to do business in this State, and to publish such revocation in some newspaper of general circulation published in the State].

NOTE: Words in brackets are unconstitutional. See also Kentucky Statutes, Sec. 572, forbidding removal of causes to Federal court.

Insurance—foreign insurance company—action against on contract made in another state—venue of—how determined. In an action brought in the Franklin circuit court of this state by a non-resident beneficiary against a foreign insurance company doing business in this state, upon a contract made in another state, as by section 631, Kentucky Statutes, a foreign insurance company is required to file with the Insurance Commissioner of this state a "resolution adopted by its board of directors, consenting that service of process upon any agent of such company in this state or upon the Commissioner of Insurance of this state, in any action brought or pending in this state shall be a valid service upon said company," and

compliance by a defendant foreign insurance company with this requirement of the statute is a condition precedent to its right to do business in this state, its admission, when sued, that it has no principal office or place of business in this state, that the transaction out of which the action arose did not take place with its agent in any county of the state, but was made in another state, together with the service of summons upon the Insurance Commissioner of this state, gave the Franklin circuit court jurisdiction of the action and parties. In such a state of case the action is not localized by section 71, Civil Code, but is governed by the provisions of section 78, Civil Code, applicable to transitory actions. (Barnes v. Union Central Life Insurance Co., 168 Ky. 253, 182 S. W. 169; followed in South v. Continental Casualty Co., 170 Ky. 250.)

Process in an action brought in this state against a foreign insurance company, may be served upon any agent of such company in this state or upon the Commissioner of Insurance of this state. The meaning of this section is not that the process must not be served on the agent if there be one in this state, and that it cannot be served upon the Insurance Commissioner if the company has an agent in this state, but that service may be had upon either at the election of the plaintiff. (Mutual Benefit Life Insurance Co. v. First National Bank, 160 Ky. 538 at 534; 169 S. W. 1028.)

Service upon the Insurance Commissioner is not good unless copy of the summons is at once mailed to the home office of the company by the Commissioner. Failure to bring notice to the company will entitle it to a new trial. (Chicago Life Ins. Co. v. Robertson, 147 Ky. 61, 143 S. W. 740.)

Service upon Insurance Commissioner gives jurisdiction to the State Courts. (Home Benefit Society of New York v. Muehl, 22 Ky. L. R. 61, 59 S. W. 520; Aetna Ins. Co. v. Commonwealth, 106 Ky. 864, 51 S. W. 624.

Withdrawal of an insurance company from the State does not divest the Courts of jurisdiction since it must be presumed that the company's consent to service on the Insurance Commissioner continues so long as necessary to satisfy the policies issued by it. (Germania Insurance Co. v. Ashby, 23 Ky. L. R. 1564, 65 S. W. 611.)

Constitutionality. That part of section 631 enclosed in brackets (supra) is undoubtedly unconstitutional and void. In the case of Prewitt, Comm'r, v. Security Mutual Life Ins. Co., 26 Ky. L. R. 1239, 83 S. W. 611, the Kentucky Court of Appeals held that this section is not in conflict with the Federal Constitution or the laws of the United States, but in the cases of Commonwealth v. East Tennessee Coal Co. (97 Ky. 238) and Commonwealth v. Jellico Coal Co. (Ibid 246), both reported in 30th Southwestern Reporter, the Court of Appeals has held that Kentucky Statutes, sec. 572, which prohibits foreign corporations from removing to, or instituting in the Federal Courts, without the consent of the adverse party, under penalty of forfeiture and fine, is unconstitutional and

void, being in conflict with the Federal Constitution and the laws of the United States.

If section 572 is unconstitutional, so the latter clause of section 631, must also be unconstitutional upon the same grounds, the latter being practically similar to the provisions of sec. 572, except that the only penalty is forfeiture of the state charter. Certainly the later cases reported in 97th Kentucky, if not overruling the Prewitt case, are in accordance with the general weight of authority upon this point.

It is not within the rightful power of the states, by their statute law, to restrict, enlarge, limit, or qualify the jurisdiction of the Federal courts as defined by the constitution and prescribed by the acts of Congress. Any right of action of a civil nature, created by a statute of a state, and cognizable at law or in equity, may be enforced in the Federal courts by appropriate action, provided the necessary conditions as to the amount in controversy and the diverse ciitzenship of the parties are met. A state may prescribe exclusive jurisdiction to certain courts in certain classes of actions but such limitations cannot be made to apply to the Federal courts, and the right of removal of causes to the Federal courts cannot be abridged by state statutes. (Citing Hyde v. Stone, 20 How. 170; Lincoln County v. Luning, 133 U. S. 529; Smith v. McGroarty, 136 U. S. 237; Bigelow v. Nickerson, 70 Fed. 113; Elliott v. Schuler, 50 Fed. 454; Semmes v. Whitney, 50 Fed. 666; Davenport v. Moore, 74 Fed. 945; Oliver v. Omaha, 3 Dill. 368; Babcock v. Weston, 1 Gall. 168; American Finance Co. v. Bostwick, 151 Mass. 19, 23 N. E. 656; see also Terral v. Burke Construction Co., 66 L. ed. Sup. Ct. Rep. 223, 42 U. S. Sup. Ct. Rep. 188, 157 U. S. —.)

A state statute which requires that every foreign corporation, or all foreign corporations of certain classes, shall as a condition of obtaining a permit for the transaction of business within that state, stipulate in advance that they will not remove into the Federal Courts, suits brought against them in the courts of the state by citizens of the state, and which they would otherwise, by the laws of the United States, have the right to remove, is unconstitutional and void, because it obstructs the right of removal granted by the acts of Congress and makes the right to a permit dependent upon the surrender by a foreign corporation of a privilege secured to it by the Constitution and laws of the United States. Black's, Dillion on Removal of Causes, secs. 17, 18.

In support of the foregoing paragraph the following authorities are cited in the text: Barron v. Burnside, 121 U. S. 186; Home Ins. Co. v. Morse, 20 Wall. 445; Southern Pacific Co. v. Denton, 146 U. S. 202; Northwestern Mutual Life Ins. Co. v. Elliott, 5 Fed. 225; Orange Nat. Bank v. Traver, 7 Fed. 146; Chicago, Milwaukee & St. Paul R. Co. v. Becker, 32 Fed. 849; Metropolitan Life Ins. Co. v. Harper, 3 Hughes 260; Commonwealth v. East Tennessee Coal Co., 97 Ky. 238, 30 S. W. 608; Railway Passenger Assurance Co. v. Pierce, 27 Ohio St., 155 and others. See also Orient Ins. Co. v. Daggs, 172 U. S. 557; Judicial Code (U. S.), sec. 28; U. S. Compiled Stat., sec. 1010, removal of causes to district courts.

Sec. 51. Service of summons upon corporations. (3) In an action against a private corporation the summons may be served, in any county, upon the defendant's chief officer, or agent, who may be found in this State; or it may be served in the county wherein the action is brought, upon the defendant's chief officer or agent who may be found therein [or if the defendant operate a railroad, it may be served upon the defendant's passenger or freight agent stationed at or nearest to the county seat of the county in which the action is brought].

Words in brackets added by act of 1893, ch. 161, p. 588. Service on insurance companies, see K. S. sec. 631 with annotations, supra. Service on agent of corporation, K. S. Sec. 571, ante.

(4) In every action against a common carrier, the summons may be served. in any county, upon the defendant's chief officer or agent; or it may be served, in the county wherein the action is brought, upon the defendant's chief officer or agent who resides therein; or, if the defendant operate a railroad, it may be served upon defendant's passenger or freight agent stationed at or nearest to the county seat of the county in which the action is brought. (As amended by Act of 1893, Ch. 237, p. 1207.)

(5) Where the defendant corporation is the owner or the lessee of a railway in this State, or the builder or constructor of a railway in this State, and can not be served with summons under existing laws, then the person or corporation controlling or operating the railway so owned or built or constructed shall be treated as the representative of the defendant, and service of summons upon such of the officers or agents of the persons or corporation operating or controlling the railway as would be required if such controller or operator were the party sued, shall be a sufficient service of summons upon the defendant to the action, but such service must be twenty days before the commencement of the term, and the facts authorizing the same must be made to appear by the return of the officer or the affidavit of some person other

than the plaintiff in the action, and the appearance of the defendant to move for the quashal of the service of the summons shall operate as an appearance for all the purposes of the action, and the same shall stand for trial at the succeeding term of the court in case the motion to quash shall prevail. (Act of 1890, Ch. 141, p. 135.)

Manner and sufficiency of service of process upon domestic and foreign corporations generally. (Alderson on Judicial Writs and Process, secs. 105-108, inc.)

Pleading corporate existence and character—must be averred in petition. The courts will not take judicial notice of corporate existence.

Verification of pleadings. (Civil Code, sec. 117-3; 1 Edelen's Pl. & Prac., p. 302.)

Process must be served upon an agent sustaining such a relation to it that notice to the agent might well be deemed notice to the principal, without violation of the principles of natural justice. A single transaction of bringing a buyer and seller together does not constitute an agency for the purposes of service of process. (Good Roads Machinery Co. v. Commonwealth, 146 Ky. 690, 143 S. W. 18, citing 19 Cyc. 1328; St. Clair v. Cox, 106 U. S. 350; see also International Harvester Co. v. Commonwealth, 147 Ky. 655, 145 S. W. 393, affd. 244 U. S. 579.)

"Chief officer" of a private corporation is defined by secs. 732-33 of the Civil Code, post. (First National Bank v. Sanders Bros., 162 Ky. 374, 172 S. W. 689.)

Summons. Where the summons was not issued against the corporation, but against its vice-president and general manager, designating him as "general manager" the service did not have the legal effect of bringing the corporation before the court and judgment rendered was therefore void. (Kentucky Bonding Co. v. Commonwealth, 178 Ky. 605, 199 S. W. 807; contra, Lancashire Ins. Co. v. Utterback, 17 Ky. L. R. 702.)

Section 51-4 construed in connection with sec. 73 Civil Code. (Southern Ry. Co. v. Avey, 173 Ky. 598 at 603, 191 S. W. 460.)

Foreign insurance company. Section 51-4 construed in connection with sec. 631 Kentucky Statutes ,and Civil Code, secs. 71 and 78. (Barnes v. Union Central Life Ins. Co., annotated, 168 Ky. 253, 182 S. W. 169.)

Local ticket agent of railroad—service upon. (C. & O. R. Co. v. Cowherd,, 96 Ky. 113, 27 S W. 990.)

Subsidiary corporations. Where a Tennessee corporation and a Kentucky corporation were merely subsidiary companies of a New York corporation, service upon one subsidiary corporation was held sufficient to give jurisdiction over the other subsidiary company. (Postal Tel. & Cable Co. v. Thornton, 153 Ky. 176, 154 S. W. 1100.)

Process upon foreign corporation and non-resident natural person distinguished. A state has no power to provide that non-resident individuals, in suits growing out of their business transacted within the state through a local agent, shall be bound by process served upon him after the agency is at an end. The power to make such provision as against foreign corporations springs from the power to exclude such corporations from local business, whence by fiction, the continued agency to receive service is attributed to the corporation's implied consent, but there can be no room for implied consent in the case of a non-resident natural person. (Op., per Mr. Justice Holmes, in Flexner v. Farson et al., partners, 248 U. S. 289.)

Non-resident corporation—service of summons on. Sub-section 6 of section 51 of the Civil Code applies to non-resident corporations engaged in business in this state.

The words "corporation" and "association" are synonymous within the meaning of the code relating to service of process.

Agent in charge of the business of a non-resident corporation in this state is a proper party to serve with process even though he may not reside here, within the meaning of code sec. 51-6.

Agency. The question of a person's agency for a non-resident corporation for the service of summons is not to be controlled by the extent of the agent's authority, but by the extent and scope of the business done, and the agent's connection therewith.

An agent of a non-resident vendor in a single transaction can be served with process only for the purposes of litigation involving that particular transaction, but a general agent in charge becomes a manager within the meaning of this section.

Interstate commerce and criminal law, conflict between. (International Harvester Co. v. Commonwealth, 147 Ky. 655, 145 S. W. 393, affd. 244 U. S. 579.)

Under this section, the summons, if executed in the county where the action is brought, must be executed on the chief officer of the corporation in that county, and if executed out of the county must be executed on the chief officer in the state. (Morris v. Cumberland Producing & Refining Co., 187 Ky. 15, 218 S. W. 302.)

FORM FOR RETURN ON SUMMONS

Executed on the ——— day of ———, 19—, upon ——— (name of corporation), by personally delivering a copy of the within summons to ——— (name of officer), its president (or vice-president, secretary, librarian, easier, treasurer, clerk, or managing agent, as the case may be), he being the chief officer of said corporation found in this county at this time.

———————, Sheriff,

By ———————, Deputy Sheriff.

Sec. 732. Construction of code provisions. (5) The word "person" includes a corporation.

(21) The words "other country," "foreign corporation" and words of like import, refer to any part of the world out of this State.

(32) The words "residence," "reside," mean, with reference to a corporation, its chief office or place of business.

(33) The chief officer or agent of a corporation which has any of the officers or agents herein mentioned is: First, its president; second, its vice-president; third, its secretary or librarian; fourth, its cashier or treasurer; fifth, its clerk; sixth, its managing agent.

Chief officer. See Louisville & Nashville R. Co. v. Colman, 7 Ky. L. R. 229; Adams Express Co. v. Crenshaw, 78 Ky. 136.

Whether a person is the chief officer or agent of a corporation within the meaning of this section is dependent upon the character of the duties performed by him. (Cumberland v. Lewis, 32 Ky. L. R. 1300, 108 S. W. 347; see also International Harvester Co. v. Com., supra.)

Chief officer. If there be more than one chief officer in the county in which the action is brought, the summons must be executed to the highest chief officer named in this section (subsection 33), and if executed out of the county it must be executed on the highest chief officer in the state. (Morris v. Cumberland Producing, etc., Co., 187 Ky. 15, 218 S. W. 302.)

General counsel may be deemed to be managing agent or chief officer for purposes of service of process where the corporation has no one of several other officers in the state. (Newport News & M. V. Co. v. McDonald, 109 Ky. 408, 59 S. W. 332.)

Return on summons, when defective. A return showing service on a corporation by showing delivery to "Baker, its agent," is not a good service within the meaning of sec. 732-33 of the code. (Studebaker Corporation v. Miller, 169 Ky. 90, 183 S. W. 256.)

Jurisdiction. The court can obtain jurisdiction of a corporation only by service of process upon some one of the officers mentioned in subsection 33 of this section of the code, and the return must at least show that the copy was delivered to a person who holds one of those offices named therein. (Youngstown Bridge Co., v. White, 105 Ky. 273, 49 S. W. 36.)

Sales agency is not an agent for purposes of service of process within the meaning of the statute providing for service of process upon a foreign corporation. (Barnes v. Maxwell Motor Sales Corporation, 172 Ky. 410, 189 S. W. 444.)

NOTE: This rule can not be generally construed to include all sales agents as for instance those having general charge of the business of a foreign corporation in this state. See Harvester Case, 147 Ky. 655, 145 S. W. 393, supra.

Sec. 57. Constructive service by warning order. If the defendant be a corporation having no agent in this State, known to the plaintiff, upon whom a summons can be lawfully served * * * the clerk shall, subject to the provisions of Sec. 58, make upon the petition an order warning the defendant to defend the action on the first day of the next term of the court, which does not commence within sixty days after the making of the order.

Edelen's Pl. & Prac. p. 123.

Courts having continuous session—K. S. sec. 1000. Sixty days must be allowed for appearance of defendant in courts having continuous session, viz: Jefferson Circuit (Louisville), Fayette Circuit (Lexington), Campbell Circuit (Newport), Kenton Circuit (Covington.)

Judgment in personam cannot be rendered against a defendant upon constructive service, and one who has not entered his appearance, having been thus summoned. (First National Bank v. Sanders Bros., 162 Ky. 374, 172 S. W. 689.)

Judgment in rem cannot be rendered against a defendant constructively summoned *except* in favor of a plaintiff who has acquired a lien by attachment or otherwise, against the property of the non-resident, and then the judgment can only be to subject the property to the payment of debt, to the extent of the proceeds of such property. (Ibid.)

Affidavit for warning order must be made out by the chief officer in the county, in actions by corporations, unless such chief officer be absent therefrom, in which case it may be made by the attorney or agent, whose affidavit must show that the chief officer is absent from the county. (Ibid.) See form of affidavit, post, also Code of Civ. Prac., sec. 58.

Warning orders generally. (Baker v. Baker, Eccles & Co., 162 Ky. 683.)

Process—knowledge of existence of corporate agent. Although this section permits a corporation to be proceeded against by warning order or constructive service, where there is no agent in the state, known to the plaintiff, it is the plaintiff's duty to inquire of the secretary of state whether or not the name of a designated agent for the corporation, has been filed in his office, pursuant to section 571, K. S., and ignorance of this can not be made the basis of an affidavit for a warning order. (Commonwealth Land & Lumber Co. v. Smith, 162 Ky. 140, 172 S. W. 88.)

Venue. An action upon constructive service must be brought in the county where the defendant has property inasmuch as no judgment in personam can be rendered. (Campbell v. Males Co., 152 Ky. 802.)

Absence of agent. A corporation can not be proceeded against by warning order unless it has no agent in the state known to the plaintiff. (Nashville, C. & St. L. Ry. Co. v. Carrico, 14 Ky. L. R. 431.)

Attorney, appointment of. A warning order is defective unless counsel is named therein to defend the non-resident defendant and it must be signed by the clerk of the court. (Jones v. Griffin, 25 Ky. L. R. 117, 74 S. W. 713.)

The code provisions relative to constructive service must be strictly complied with. (Warrick v. McCormick, 150 Ky. 800, 150 S. W. 1027.)

FORM OF AFFIDAVIT FOR WARNING ORDER

(Against a Corporation)

———— Circuit Court

John Doe, Plaintiff,
v.
Richard Roe & Co., Inc., Defendants. } Warning Order Affidavit.

STATE OF KENTUCKY,
COUNTY OF ———. } ss.

The plaintiff, John Doe, being duly sworn deposes and says that the defendant is a corporation having no agent in this state known to the plaintiff, upon whom a summons can be lawfully served, that its chief officer (or agent upon whom process can be served) resides at ——— st., in the city of ———, state of ——— (or that its chief officer resides in the state of ———, and that the post office nearest to the place where he resides is ———, state of ———; or that the plaintiff does not know in what state or country the defendant maintains its chief place of business or where its chief officer resides).

Sworn to before me this ——— day of ———, 19—.

————, Notary public ——— Co., Kentucky.

My commission expires ———.

FORM OF WARNING ORDER

———— Circuit Court

John Doe, Plaintiff,
v.
Richard Roe & Co., Inc., Defendants. } Warning Order.

The defendant, Richard Roe & Company, is warned to appear in this court within thirty days from date, and answer the petition of John Doe, plaintiff herein, and ———, Esq., a regularly practicing attorney of this court is appointed to correspond with said Richard Roe & Co., and accepts said appointment.

This ——— day of ———, 19—. ————,
Clerk, ——— Circuit Court.

Sec. 194. Attachment. The plaintiff may, at or after the commencement of an action, have an attachment against the property of the defendant . . . as a security for the satisfaction of such judgment as may be recovered. (1) In an action for the recovery of money against a defendant who is a foreign corporation . . . (8) But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the State, for any claim other than a debt or demand arising upon a contract, express or implied, or a judgment or award.

Under this section an attachment may issue against a foreign corporation for any cause that would authorize an attachment against a resident defendant, and also on the sole ground that it is a foreign corporation, if the action be founded upon a contract, judgment or award. (Bates Machine Co. v. Norton Iron Works, 113 Ky. 372, 68 S. W. 423.)

Stock of foreign corporation not subject to attachment. In an attachment suit brought in a court in this state, the court has no jurisdiction to subject to the plaintiff's claim stock held by the defendant in a foreign corporation doing business in this state through local agents. (New Jersey Sheep & Wool Co. v. Trader's Deposit Bank, 104 Ky. 90, 46 S. W. 513; see briefs of counsel for additional citations.)

Code provisions relative to attachment do not apply to foreign corporations given special rights by act of the legislature, before the adoption of the constitution of 1891 prohibiting such special legislation. (Martin, et al. v. Mobile & Ohio R. Co., 70 Ky. 116.)

Sec. 71. Venue—Of actions—Banks. Excepting the actions mentioned in Secs. 62 to 66, both inclusive, and in Secs. 70 and 75, an action against an incorporated bank or insurance company may be brought in the county in which its principal office or place of business is situated; or, if it arise out of a transaction with an agent of such corporation, it may be brought in the county in which such transaction took place. (Compare Sec. 127, Code of 1851; Sec. 101, Code of 1854.)

Venue. An action against an insurance company may be brought in any county where there is an agency, if it arises out of a transaction with such agency. (Howard v. Kentucky Mutual Life Ins. Co., 52 Ky. [13 B. M.] 282) and also in the county where its office and principal place of business is situated. (Employers' Indemnity Co. of Phila. v. Duncan, 159 Ky. 460, 167 S. W. 414.)

Foreign and domestic corporations come within the purview of this section. (Employers' Indemnity Co. of Phila. v. Duncan, supra; Mutual Fire Ins. Co. v. Hammond, 106 Ky. 386, 50 S. W. 545.)

When action is transitory. A suit by a non-resident beneficiary against a foreign insurance company doing business in this state, is not localized by this section but is governed by section 78 of the code relating to transitory actions, and process may be served upon the insurance commissioner at Frankfort. (Barnes v. Union Central Life Ins. Co., 168 Ky. 253, 182 S. W. 169.)

Judicial notice of place of business will not be taken by the courts. (Baker v. Louisville & Nashville R. Co., 67 Ky. [4 Bush] 619.)

National banks come within the jurisdiction of state courts the same as state banks for the purpose of actions involving usury. (U. S. Rev. Stat., section 5198, National Bank Act, as amended by act of July 12, 1882, sec. 4; National Bank v. Johnson, 91 Ky. 781, 15 S. W. 134; Henderson National Bank v. Alves, 91 Ky. 142, 15 S. W. 132; Edelen's Pl. & Prac., p. 147.)

Sec. 72. Corporations generally—Actions against. Excepting the actions mentioned in Secs. 62 to 66, both inclusive, and in Secs. 68, 70, 71, 73, 75 and 77, an action against a corporation which has an office or place of business in this State, or a chief officer or agent residing in this State, must be brought in the county in which such office or place of business is situated, or in which such officer or agent resides; or if it be upon a contract, in the above-named county, or in the county in which the contract is made or to be performed; or if it be for a tort, in the first-named county, or the county in which the tort is committed. (Secs. 101, 103, Code of 1854.)

Venue. An action upon contract against a corporation may be brought in the county where the contract is made or to be performed, and the summons may be sent to the home county. (Swann-Day Lumber Co. v. Cornett, 161 Ky. 98, 170 S. W. 516; Southern Coal & Coke Co. v. Bowling Green Coal Co., 161 Ky. 477, 170 S. W. 1185; Owensboro Shovel & Tool Co. v. Moore, 154 Ky. 431, 157 S. W. 1121; Nolin Milling Co. v. White Grocery Co., 168 Ky. 418.)

Common carriers come within the purview of section 73, and this section does not apply to such corporations. (Gainesboro Tel. Co. v. Buckner, 160 Ky. 607, 169 S. W. 1000.)

Venue. Tort action against a corporation may be brought in the county in which the chief office or place of business is located or else in the county in which the tort is committed. (Peaslee-Gaulbert Co. v. McMath's Admr., 148 Ky. 265, 146 S. W. 770.)

Action for injury to real property may be brought in the county where the land is situated, but jurisdiction may be waived by failure to object in time. (Gillen v. Illinois Central R. Co., 137 Ky. 375, 125 S. W. 1047.)

Quasi-corporations, such as counties or other political subdivisions of the state, and unincorporated boards do not come within this section. (King v. Kentucky Board of Pharmacy, 157 Ky. 53, 162 S. W. 651; Board of Church Extension v. Taylor County, 152 Ky. 518, 153 S. W. 747.)

Construction. The words "to be performed" do not mean that an action may be brought in any county in which the contract may or might be performed. The contract must designate some one county as the place of performance in order to give a right of action in the county where the contract is to be performed, within the meaning of this section. (Job Iron & Steel Co. v. Clark, 150 Ky. 246, 150 S. W. 367.)

Contract, usurious. Action upon a usurious contract should be brought in the county where it was executed. (Louisville Savings, Loan & Building Assn. v. Harbeson, 21 Ky. L. R. 278, 51 S. W. 787; also cases reported in 21 Ky. L. R. at 1140, 1344.)

Application of secs. 71, 72, 73 and 75. (Employers' Indemnity Co. v. Duncan, 159 Ky. 460, 167 S. W. 414.)

Foreign corporations. Venue of action against is regulated by this section. (German Ins. Co. v. Ford, 7 Ky. L. R. 380; Pennebaker Bros. v. Bell City Mfg. Co., 130 Ky. 502, 113 S. W. 829; Edelen's Pl. & Prac., p. 149.)

Joint stock companies doing business as corporations may be sued as such. (Adams Exp. Co. v. Schofield, 111 Ky. 832, 64 S. W. 903; Edelen's Pl. & Prac., p. 150.)

Receiver, appointment of, for corporation. (Emmons v. Lexington & Carter Co. Mining Co., 112 Ky. 91, 65 S. W. 593; Edelen's Pl. & Prac., p. 150.)

Action for personal injury by an employee against a railroad company is properly brought in the county where the injury occurred and through which the railroad passes. (Illinois Central R. Co. v. Gheen, 112 Ky. 695, 66 S. W. 639; cited Edelen's Prac. 150.)

Brokerage contract. (Currie Fertilizer Co. v. Krish, 24 Ky. L. R. 2471, 74 S. W. 268.)

Dummy corporations. (Chesapeake Stone Co. v. Holbrook, 168 Ky. 128, 181 S. W. 954.)

Sec. 73. Common carriers—Actions against—Venue—Local action. Excepting the actions mentioned in Sec. 75, an action against a common carrier, whether a corporation or not, upon a contract to carry property, must be brought in the county in which the defendant, or either of several defendants, resides; or in which the contract is made; or in which the carrier agrees to deliver the property. An action against such car-

rier for an injury to a passenger, or to other person or his property, must be brought in the county in which the defendant, or either of several defendants, resides; or in which the plaintiff or his property is injured; or in which he resides if he resides in a county into which the carrier passes. (Sec. 102, Code of 1854.)

Construction. The words "residence" or "reside" with reference to a corporation, refer to its chief office or place of business. (Eichhorn v. Louisville & N. R. R. Co., 112 Ky. 338, 65 S. W. 797.)

Death—action for causing death. Venue of suit by personal representative is laid in the county where such representative resides if the railroad or carrier passes through that county. Illinois Central R. Co. v. Stith's Admr., 27 Ky. L. R. 596; second appeal of case, 30 Ky. L. R. 331, 99 S. W. 303, 1 L. R. A. [N.S.] 1014.)

Death—ibid—contra. Venue is laid in the county in which the deceased resided at the time of his death and not that in which the personal representative resides. (Illinois Central R. Co. v. Willis' Admr., 29 Ky. L. R. 1187, 97 S. W. 21.)

Death—ibid. In an action for causing death of plaintiff's intestate, the plaintiff or personal representative, may at his option, sue either in the county where the injury occurred, or in any county where the defendant's chief agent can be served. (87 Ky. 651, 9 S. W. 832.)

Death—ibid. Action may be brought in the county of decedent's death and where the personal representative qualified. (Louisville & N. R. Co. v. Cooley's Admr., 20 Ky. L. R. 1372, 49 S. W. 339.)

See further, Louisville & N. R. Co. v. Hoskins, 32 Ky. L. R. 1264; Allen v. C., N. O. & T. P. R. Co., 143 Ky. 724.)

Personal injury—venue. (1) County where defendant resided, (2) county in which plaintiff was injured, (3) county of plaintiff's residence, if he resides in a county through which the carrier passes, (4) county of residence of the president of the road, (5) county of the vice-president's residence. (Harper v. Newport & M. V. Co., 90 Ky. 359; C. & O. Ry. Co. v. Cowherd, 16 Ky. L. R. 373; Louisville & N. R. Co. v. Mitchell, 162 Ky. 253, 172 S. W. 527.)

Telegraph and telephone companies are carriers within the meaning of this section. (Gainesboro Tel. Co. v. Buckner, 160 Ky. 604, 169 S. W. 1000.)

Jurisdiction, when waived. (Louisville & N. R. Co. v. Grimes, 150 Ky. 219, 150 S. W. 346.) When venue is in dispute it is a question for the jury. (Ibid.)

Contract of shipment. Action upon must be brought in the county where the contract was made. (Louisville & Nash. R. Co. v. Mazzone, 9 Ky. L. R. 151, cited Edelen's Pl. & Prac., p. 152.)

Sec. 117. Verification of pleadings by corporations. Pleadings, the verification of which is required by this code, must be certified as follows: (2) That of a . . . private corporation, must be verified by its chief officer or agent, upon whom a summons in the action is lawfully served, or might be lawfully served if it were a defendant; or if it have no such officer or agent residing in the county in which the action is brought, or is pending it may be verified by its attorney.

Verification of pleadings generally. (Edelen's Pl. & Prac., p. 302.)

Kentucky law to govern. Affidavits or pleadings made in another state must be verified as required by the laws of Kentucky, if to be used in this state. (Crane & Breed Mfg. Co. v. Stagg's Admr., 135 Ky. 428, 122 S. W. 225.)

Verification, failure of, is waived unless objection be taken before trial. (Myers v. Douglass, 99 Ky. 267, 35 S. W. 917.)

Attorney—verification by. When a pleading is verified by counsel, affiant must state in his affidavit the reason why it is verified by him, i. e., that the chief officer or agent is absent from the county. (Dengler v. Krell-French Piano Co., 119 S. W. 757.)

Manner of verification. An affidavit that the allegations of the pleading are true; that the statements made in the pleading are true upon affiant's information and belief, are true; that the statements in the pleading are true to affiant's own knowledge except those which he believes to be true upon the information of others, or upon information and belief; or that the statements are true to the best of affiant's knowledge and belief, are all forms of expression which may be used in an affidavit of verification. The belief by affiant that the statements or allegations are true is all that is required by law in Kentucky and no strict compliance with any set form is necessary in this state.

FORM FOR VERIFICATION BY OFFICER

STATE OF KENTUCKY, }
COUNTY OF ———. } ss.

A. B., states that he is the ——— (officer) of the plaintiff, ———, a corporation, and that the statements contained in the foregoing (name of pleading) are true to the best of his knowledge and belief (or of his own knowledge, are true.)

———.

Sworn to before me this ——— day of ———, 19—.

———, Notary public, ——— Co.

My commission expires ———.

FORM FOR VERIFICATION BY ATTORNEY

STATE OF KENTUCKY, }
COUNTY OF ———. } ss.

C. D., states that he is the attorney (or agent) for the plaintiff herein, and that the statements contained in the foregoing (name of pleading), are true, and that the reason why this pleading is verified by plaintiff's attorney (or agent) is that plaintiff's chief officer is absent from the county.

———.

Sworn to before me this ——— day of ———, 19—.

———, Notary public, ——— Co.

My commission expires ———.

Sec. 616. Corporations to give bond for costs—Banks excepted. A plaintiff who is a non-resident of this State, or a corporation other than a bank created by the laws of this State, before commencing an action, shall file in the clerk's office a bond of a sufficient surety, to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts.

NOTE—A new bond must be executed on appeal. This section exempts banks expressly. Quasi-corporations do not come within the purview of this section.

FORM OF BOND FOR COSTS

No. ——— ——— Circuit Court.

COMMONWEALTH OF KENTUCKY, ——— COUNTY

A. B. & Co., Inc., Plaintiff, }
v. } Bond for costs.
John Doe, Defendant. }

We undertake that the plaintiff ——— shall pay to the defendant ———, or to the officers of this court, all costs that may accrue in this action, either in this court or in any other court to which this action may be carried.

Witness our hands this ——— day of ———, 19—.

———.

Attest: ———.

———, Clerk.

By ———, Deputy Clerk.

STATE OF KENTUCKY, }
COUNTY OF ———. } ss.

——— states that he is a resident of this state, residing in ——— county, ——— street, in the city of ———; that he is worth $——— beyond the amount of his debts, and has property within this state subject to execution, the value of which is $———.

———.

Sworn to before me this ——— day of ———, 19—.

———, Deputy Clerk.

For ———, Clerk.

FORM OF MOTION FOR BOND FOR COSTS

——— Circuit Court

[*Style of case*]

Comes the defendant and moves the court for a rule herein against the plaintiff ———, to show cause, if any it has or can, why its petition herein should not be dismissed for failure to execute or file herein a bond for costs, as required by law.

———, Attorney for defendant.

NOTE—The word "incorporated" or "inc." should appear in the caption. The court will not take judicial notice of the fact that plaintiff is a corporation unless so designated in the pleading or in the caption. Affidavit in support of the above motion need not be filed if it appears from the record, as it must, that plaintiff is a corporation.

See Edelen's Pl. & Prac., II, 1183.

Sec. 628. Service of notice upon corporation. A notice to a corporation may be served on its chief officer or agent, or on its attorney.

PROCEEDINGS QUO WARRANTO

Provisions of the Civil Code of Practice and the Kentucky Statutes in relation to the forfeiture of corporate charters.

Code, Sec. 480. Forfeiture of charters. In lieu of the writs of scire facias and quo warranto, or of an information in the nature of a quo warranto, ordinary actions may be brought to vacate or repeal charters, and to prevent the usurpation of an office or franchise. (See Sec. 529, Code of 1854.)

Common law—attorney general. An information would lie at common law to prevent the usurpation of a private franchise. The right of the

attorney general to institute proceedings quo warranto is given by the code, independent of any other legislative enactment. (Commonwealth v. Lexington & Harrodsburg Turnpike Co., 6 B. Mon. 397; Commonwealth v. City of Frankfort, 76 Ky. [13 Bush] 186; Chambers v. Baptist Educational Society, 1 B. Mon. 215.)

Construction. Formerly, a writ of *quo warranto*, which was necessarily in the name of the Commonwealth, only questioned the incumbent's right and was not a remedy for establishing the right of another (3 J. J. M. 406; 13 B. Mon. 518), and it seems clear that such is the law now as to the effect of an action by the Commonwealth. (Bullitt's Code, 1902 ed., p. 355.)

Code, Sec. 481. Ibid. The action to repeal or vacate a charter shall be brought in the name of the Commonwealth, and be brought and prosecuted by the Attorney-General, or under his sanction and direction by an attorney for the Commonwealth. (See Sec. 530, Code of 1854; K. S. Sec. 569, post.)

Private citizen not to bring action. A private citizen can not maintain an action to vacate a corporate charter. Such an action can only be brought by the Commonwealth, by the attorney-general or some other attorney, proceeding with his consent and sanction, in the name of the Commonwealth. (Russell v. Cumberland & Ohio R. Co., 8 Ky. Op. 344; Kirch v. City of Louisville, 125 Ky. 398, 101 S. W. 373.)

Code, Sec. 482. Ibid. Actions to repeal or vacate the charters of municipal corporations, banks, railroad, turnpike road and internal improvements companies, shall only be instituted by order of the legislature, unless otherwise expressly provided. (See Sec. 531, Code of 1854.)

Incorporated banks. Duty of secretary of state to bring proceedings to forfeit charter, when. (K. S. Sec. 598, Incorporated Banks, ante.)

Code, Sec. 483. Usurpation of office or franchise. If a person usurp an office or franchise, the person entitled thereto, or the Commonwealth, may prevent the usurpation by an ordinary action. (See Code of 1854, Sec. 532.)

Construction. This section is limited in its application to the usurpation of a public office. It has no application to the office of director in a private corporation. (Gilchrist v. Collopy, 26 Ky. L. R. 1003; usurpation of corporate offices generally, 1915A, Am. & Eng. Ann. Cas. 1145.)

K. S., Sec. 569. Forfeiture of charter. Whenever any corporation [has failed, or shall fail, to conform or comply with any requirement or provision of its charter under which it does business] [1] in this State, or shall be guilty of an abuse or misuse of its corporate powers, privileges or franchises, or shall become detrimental to the interest and welfare of the Commonwealth or its citizens, it shall be the duty of the Attorney-General of the State to institute such proceedings as may be proper and necessary to have forfeited and revoked [the charters],[1] powers, franchises and privileges of such corporation. (Act of 1893, Ch. 171.)

Construction. Since the statute does not define what violations of charter duties or abuses shall afford causes for forfeiture, it should be liberally construed and applied. (Commonwealth v. Newport L. & A. Turnpike Co., 97 S. W. [Ky.] 375.)

Political contributions—by corporations—penalty is forfeiture of charter. (See K. S. Sec. 1574a.)

Nature of quo warranto proceedings. Writs "*quo warranto*" were formerly criminal proceedings, at least in form, instituted by the sovereign, as one of the prerogatives of the crown. Such writs were directed against any person who claimed any office, franchise, or liberty of the crown, and commanded him to show by what authority, "*quo warranto*," he exercised the franchise. It was originally a state writ, issuing in chancery, and returnable by the sheriff or his deputy. As early as A. D. 1198, a writ was heard before Lord Chief Justice Tindal, in the case of Darley v. The Queen, 12 Cl. & Fin. 520, where a priest of the Church of England, was required to show "*quo warranto*" he held possession of a church.

Although formerly a criminal or quasi-criminal proceeding, a *quo warranto* proceeding is now considered by American courts to be a civil proceeding, brought by the Commonwealth on the relation of interested private citizens. It is the appropriate remedy against a corporation for abuse of power, misuse of privilege, or non-feasance or mal-feasance, but the remedy can not be invoked to redress private wrongs, but only where the wrong has been against the public.

A corporate franchise being a property right, privilege or immunity, not inherent, but granted by the state, it therefore follows that the sovereign power which granted it has power and jurisdiction to inquire into its use or non-user, and if the corporation be found to have been guilty, either of a misuse or non-user of the same, the state may enforce a forfeiture. The courts, however, are reluctant to declare charters or franchises vacated, and ordinarily only the continued and flagrant abuse

[1] Words in brackets not original text of act.

of corporate power will be sufficient to warrant a forfeiture of the charter. Where there are adequate remedies at law or adequate criminal penalties for the punishment of specific offenses a court of equity will not entertain a proceeding *quo warranto*, except of course in cases where the statute specifically prescribes forfeiture as a penalty for violation of law.

A substantial performance of the conditions in its charter or articles of incorporation is all that is required of a corporation. *Ultra vires* acts, do not *per se*, constitute the basis of a *quo warranto* proceeding, but such acts in excess of corporate powers may be so continuous, flagrant and notorious as to amount to an abuse of the franchise, and therefore *quo warranto* proceedings would lie as against the corporation in such a case. The usurpation of a corporate franchise may exist where a *de facto* corporation which assumes to act in a corporate capacity when, through some defect in its organization, it can not legally exercise the power which it assumes. (22 Ruling Case Law 654; 1 High on Extraordinary Legal Remedies, ch. LX, p. 513; 2 Spelling on Injunctions and Other Extraordinary Remedies, ch. LX, p. 1551; Clark on Corp. 235.)

Quo warranto proceedings against foreign corporations. *Quo warranto* is a proper remedy, unless excluded by statute, to try the right of a foreign corporation to carry on business in the state, and to oust it if it is without right. (Clark on Corp. 624.)

Burden of proof. *Quo warranto*, being at common law a high prerogative writ, its issuance on behalf of the sovereign was deemed to cast on the respondent the burden of establishing in himself the right or franchise, concerning which, it was the purpose of the writ to inquire. In a majority of jurisdictions the rule still obtains, that in a *quo warranto* proceeding, or an action in the nature thereof, the burden of proof is on the respondent, and this is so in Kentucky, except that where the proceeding is, in reality, merely a contested claim to public office, the relator, who claims the office must bear the burden of establishing his right to that which he claims title. (State, ex rel., Dawson v. City of Harper, 94 Kan. 478, 146 Pac. 1169, 1917B, Am. & Eng. Ann. Cas. 464; with note citing Tillman v. Otter, 93 Ky. 600, 20 S. W. 1036, 29 L. R. A. 110; Stack v. Commonwealth, 118 Ky. 481, 81 S. W. 917.)

Right to jury trial. (State, ex. inf., Brown v. Sengstacken, 61 Ore. 455, 122 Pac. 292, 1914B, Am. & Eng. Ann. Cas. 230, with elaborate note discussing the question.)

See further K. S. Secs. 1574a and 1987 under corporations generally.

Forfeiture of charters. The failure of a company incorporated by special legislative act to exercise its franchise, accept by resolution the provisions of the present Constitution, file with the Secretary of State the name of the agent upon whom process could be served, or otherwise comply with K. S. Secs. 569, 571, 573, did not *ipso facto* forfeit its charter or render it incompetent to bring suit for trespass to its lands, although these facts subjected the corporation to fine and forfeiture. (Reichert v. Ellis Ferry Co., 184 Ky. 150, 211 S. W. 403.)

CHAPTER IX.

MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

1. Kentucky anti-trust legislation.
2. Common law.
3. History of legislation and decisions.

Out of all the chaos and confusion which the legislature and courts of Kentucky have thrown about the so-called anti-trust legislation in this State, the Court of Appeals has finally, after reversing and re-reversing itself, determined that the law against trusts, pools and combinations in restraint of trade, consists of the common law doctrine upon that subject, the act of 1890 (K. S., Secs. 3915 to 3921, inclusive) and one dormant section of the State Constitution (Ky. Const., Sec. 198; see Gay v. Brent, 166 Ky. 833, 149 S. W. 915, 41 L. R. A. (N.S.) 1034). Subsequent to this decision the legislature enacted in 1916 a new anti-trust law, supplementing but not repealing the act of 1890. (Acts of 1916, Ch. 17, p. 74; known as K. S., Secs. 3921a-1 to 3921a-21, inclusive.) The act of 1906 and the amendatory acts of 1908-10 have been held unconstitutional by the United States Supreme Court (International Harvester Co. v. Kentucky, 234 U. S. 216; Collins v. Kentucky, Ibid 634) and also by the Kentucky Court of Appeals (Gay v. Brent, supra).

I. COMMON LAW

The use of the word "trust" in connection with monopolies and contracts in restraint of trade is an erroneous nomenclature of comparatively recent origin, although now generally adopted by our American courts and legislatures. The word "trust" has been adopted since the rise of great corporate

combinations in our modern commercial and business life, but is unknown to the common law. Under the early common law all contracts in restraint of trade were adjudged void "as against the benefit of the Commonwealth," the first important reported case being that of Colgate v. Bachelor (1 Croke Rep. 872), decided in the reign of Henry V (1602). A century later this doctrine was modified in the celebrated case of Mitchell v. Reynolds (1 P. Williams 181; 1 Smith's Lead. Cases 705), where it was held that a contract in general restraint of trade was void, but when limited to a particular place and based upon an adequate consideration, such a contract was not unlawful. This rule was followed in Gunmakers v. Fell (Willes R. 384), decided in 1742, and in Bozon v. Farlow (1 Meriv. 459), decided in 1816. The law was again modified by the case of Whittaker v. Howe (3 Beaver 383), wherein an attorney and solicitor agreed for a valuable consideration, not to practice law in Great Britain for a period of twenty years. The limitation as to time and place was held not unreasonable restraint and therefore the agreement was valid.

The common law doctrine as denounced and modified by the foregoing cases and in many other later decisions, is summed up by Mr. Justice Story as follows: "An agreement in general or total restraint of trade although it be founded on a legal and valuable consideration. The same rule has been uniformly adhered to even to the present day, and agreement therefore not to carry on a certain business anywhere is invalid, whether it be by parol or specialty, or whether it be for a limited or for an unlimited time." (Citing among other cases Homer v. Ashford, 3 Bing. 323; Pierce v. Fuller, 8 Mass. 223; Nobles v. Bates, 7 Cow. [N. Y.] 307; Alger v. Thacher, 19 Pick. [Mass.] 51.) "But an agreement in partial restraint of trade, restricting it within certain reasonable limits or times, or confining it to particular persons, would if founded upon a good and valuable consideration, be valid. Such an agreement not only does not

obstruct trade, but it is oftentimes requisite and necessary, as well for the advantage of the public as of the individual." (Story on Contracts, Sec. 550; Wright v. Ryder, 36 Cal. 342.) The presumption, at common law, is against all contracts in restraint of trade. Contracts which go to the total restraint of trade, as that a man will not carry on business anywhere in the State, are void upon whatever consideration they may be made. (Chappel v. Rockaway, 21 Wend. [N. Y.] 157.) By the common law contracts treated as being in restraint of trade are limited to contracts having for their purpose the purchase of some trade or business, as a part of which the seller agreed not to engage in the trade or business he had disposed of. But in dealing with conditions brought about by modern business methods, it has been found necessary as a matter of public policy to extend the common law doctrine prohibiting contracts in restraint of trade to cases involving more than the mere purchasing or selling of a trade or business, so as to vest in the courts the power to prevent combinations, pooling agreements and so-called trusts, which have for their purpose the creation of monopoly, the control of prices and the suppression of competition. (6 R. C. L. 191.) In Kentucky the common law doctrine is denounced as follows by Benton, C. J., in the Clark Circuit Court, and affirmed and quoted with approval by the Court of Appeals in Gay v. Brent (supra): "The Kentucky Statutes against pools, trusts and conspiracies do not apply to contracts in restraint of trade. Contracts in restraint of trade are controlled by the common law, and when they are unreasonable, they are declared to be void. A contract entered into between those who have theretofore engaged in competition with reference to any particular product or commodity, which suppresses competition and controls the market with reference to that product or commodity, is an unreasonable restraint of trade; and this suppression is not required to be total in order to bring it within the condemnation of the law. When the enforcement of an executory contract would be a step in the

perfection of a scheme to restrain trade in a product or commodity the law will not aid the perfection of such a scheme by enforcing such an executory contract."

II. HISTORY OF LEGISLATION

Having determined in brief, what is the common law, we may now trace the history of anti-trust statutes in this State and the vicissitudes through which the legislature and courts of Kentucky have gone in an effort to establish the constitutionality of legislation upon this subject.

The first statute was enacted in 1890, which in substance provided that it should be unlawful for any corporation, partnership association, or person, to promote or become in any way interested in any pool, trust, combine, agreement or confederation with any other corporation, partnership association or person, for the purpose of regulating, controlling or fixing the price of any merchandise, manufactured article or property. It further provides that all contracts in violation thereof shall be void, and for penalities and forfeitures. The constitutionality of this act, standing alone, has never been questioned judicially, and as we shall observe, it was only after the Court of Appeals read into it the language of subsequent statutes that it was declared void by the Supreme Court of the United States.

In 1891 the new constitution, by Sec. 198, directed the legislature "to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value." In the case of Commonwealth v. Grinstead (108 Ky. 59), the question arose as to whether or not this constitutional provision repealed the act of 1890, and the court held, in sustaining the indictment in the case, that that act was unaffected by Sec. 198 of the constitution of 1891, which ruling was prudently followed in Commonwealth v. Bavarian Brewing Co. (112 Ky. 925).

So far there was no difficulty, but in 1906 the legislature enacted a statute, at the behest of Kentucky tobacco growers, providing in substance that it should be lawful for any number of persons to combine the crops of wheat, tobacco and other farm products, raised by them, for the purpose of obtaining a higher price than they could get by selling them separately. (Acts of 1906, Ch. 117.) The subsequent acts of 1908 and 1910 were merely supplementary to this act, reinforcing it by the addition of penalties and the right of injunction to farmers. In 1909 the question of the sufficiency of an indictment against the International Harvester Company, under the original act of 1890, was presented to the Court of Appeals. (Commonwealth v. International Harvester Co., 131 Ky. 551.) Defendant's contention therein was that "What is sauce for the goose is sauce for the gander." If the act of 1906 permitted farmers to do as legal, acts which were charged in the indictment against defendant company, as illegal, then the act of 1890 was contrary to the Fourteenth Amendment to the Federal Constitution in that it denied equal protection of the law to all persons. In avoiding the dangers of Scylla the Court of Appeals incurred the perils of Charybdis, by holding that the act of 1906 should be read together with the original act of 1890 so as to avoid the constitutional objection that these acts applied to farmers and not to all persons. The court then reversed its decision in Commonwealth v. Grinstead (supra), and also read into the statute law Sec. 198 of the constitution of 1891 and held that all these provisions were to be taken together so as to make any combination for the purpose of controlling prices lawful, unless for the purpose of fixing a price that was greater or less than the real value of the article. (Commonwealth v. International Harvester Co., 131 Ky. 551.) This rule was followed in the following Harvester Company cases: 144 Ky. 403, 147 Ky. 564, 147 Ky. 795, 149 Ky. 41. In the case of Collins v. Commonwealth (141 Ky. 564), the court upheld the validity of the act of 1908 in conformity with its ruling in 131 Ky.

The Harvester Company cases in 147 and 148 Kentucky Reports, and the Collins case (supra), were appealed to the Supreme Court of the United States and the Court of Appeals was reversed in all three cases on the ground that the anti-trust laws of Kentucky, as construed by our Court of Appeals (i. e., reading all statutes together with Sec. 198 of the State Constitution), violate the Fourteenth Amendment of the Constitution of the United States, in that they do not prescribe any standard of conduct whereby it is possible to determine with reasonable certainty when the price of an article has been enhanced above or depreciated below its real value (International Harvester Co. v. Kentucky, 234 U. S. 216), and that as penal statutes they violate "the fundamental principles of justice embodied in the due process of law" clause of the Fourteenth Amendment of the Federal Constitution. (Collins v. Kentucky, 234 U. S. 635.)

The unconstitutionality of these acts was based upon the erroneous construction given them by the Court of Appeals in 131 Kentucky. It then became the task of that court to untangle the Gordian knot without destroying the whole fabric of Kentucky's anti-trust law. This it seemed to have accomplished successfully in the case of Gay v. Brent (supra), with the following results: (1) The act of 1890 is not, standing alone, in conflict with either the State or Federal Constitutions, and remains unaffected by any of the subsequent acts mentioned above. (Commonwealth v. Grinstead, supra.) (2) The State constitutional provision (Sec. 198) is merely directory and not self-executing, and, therefore, standing apart, is valid and does not conflict with the Federal Constitution. Just why the court should hold so tenaciously to this provision, when it is practically impossible for the legislature to carry it into effect is not made clear. Unless the legislature can furnish a standard of real values, no act prohibiting the enhancing or depreciating of articles above or below their real value, is valid, according to the Supreme Court. This, it is manifest, the legislature can not do, and therefore Sec. 198

of the constitution must remain dormant and of no effect. (3) The acts of 1906, 1908 and 1910 are unconstitutional and void for uncertainty, and also violate both the State and Federal Constitution. (4) Commonwealth v. International Harvester Co. (131 Ky. 551), is overruled.

"Thus putting out of the way these acts and the decisions of this court holding that these acts and the act of 1890 and Sec. 198 of the constitution should be read together as one harmonious whole, we are now back to the safe place from which we ventured in 1906, and again stand on solid constitutional ground." (Op. per Carroll, J., in Gay v. Brent, supra.) Subsequently the Court of Appeals has held that a petition alleging an unlawful combination to control the price of property, stated a good cause of action. (Commonwealth v. American Tobacco Co., 167 Ky. 157; Commonwealth v. International Harvester Co., 167 Ky. 318, both being reported also in 180 Southwestern Reporter.)

In 1916 the legislature passed an additional statute which, while duplicating a considerable part of the act of 1890, did not repeal the original statute. That it did not is apparent from Sec. 17 of that act (Acts of 1916, Ch. 17, as amended by Act of 1920, Ch. 50), which vested in circuit courts jurisdiction of violations "declared illegal by this act or any other law in this State relative to the pools, trusts, conspiracies and unlawful combinations * * *." The one distinguishing feature of the 1916-18 statutes is that by Sec. 7 its enforcement was left to the Attorney-General of the State, this being analogous to proceedings by the Attorney-General to forfeit corporate charters.

Once more however the agricultural interests of the State have sought to combine or pool their products on a co-operative plan, as authorized by the legislature under the Bingham Co-operative Marketing Act. (Acts of 1922, Ch. 1.) To facilitate such a combination the legislature, mindful of the difficulties which arose in 1906 by reason of legislation in the interests of the tobacco growers of the State, has declared that

the anti-monopoly laws of this State are in a state of "utter confusion and uncertainty," and therefore expressly repealed all of the anti-monopoly statutes of Kentucky, to-wit, the acts of 1890, 1916, 1918. (See Acts of 1922, Ch. 71.) So that today there are no statutory provisions against pools and monopolies in Kentucky, but it seems that the common law upon this subject is still in force. (Scobee v. Brent, 185 Ky. 735.) The rule in Kentucky as to what constitutes a conspiracy in restraint of trade is clearly stated in the recent case of Commonwealth v. Hatfield Coal Company (193 Ky. 229, 235 S. W. 722), where the court said, in an opinion by Settle, J.:

"Obviously, the issuing of circulars by a corporation, company or individual for advertising a commercial business, whether by giving the prices at which it sells its or his products or otherwise advancing its or his trade, is everywhere recognized as both necessary and legitimate; and the fact that other dealers in like commodities change their prices to conform to those stated in the circulars will not of itself justify an inference that the circulars were issued in restraint of trade, or in furtherance of a conspiracy or combination between the sender, and others influenced by them, to fix or control the price of the commodity advertised. It can not be said that the mere sending out of such circulars to other dealers or customers is an unlawful act. To make it so, therefore, it must be shown that it was done with a previous understanding between the sender and those receiving the circulars that the latter would be controlled by the prices therein stated and change their own prices to conform to same. Proof to this effect, and to the further effect that the changes in prices made by appellee's circulars were not justified by changes in market conditions, seems to be lacking in this case and, however salutary the object of the statute[1] under which appellee was indicted, or great the necessity of preventing illegal profiteering by its enforcement, one indicted

[1] The indictment in this case was found under K. S. Sec. 3915, now repealed.

thereunder should not be punished for its violation in the absence of such evidence as would conduce to prove beyond a reasonable doubt his guilt. This may, of course, be done by circumstantial evidence and without formal proof of a conspiracy by agreement; but the circumstances relied on to establish the conspiracy or unlawful agreement must be of such character as that the facts must be consistent with the hypothesis of guilt and, beyond a reasonable doubt, exclude every other hypothesis but that of guilt." (Citing Wharton on Ev. 876; Underhill on Crim. Ev. 6; Burrill on Circumstantial Ev. 737; Spouse v. Com., 132 Ky. 269, 116 S. W. 344, 16 C. J., p. 650; Rucker v. Com., 171 Ky. 276, 188 S. W. 367.)

NOTES—See State of Missouri v. International Harvester Co., 234 U. S. 199, and 5 Fletcher Cyc. Corpns., p. 5437, Sec. 3388, where state statutes against pools and monopolies and the attacks made upon such statutes on constitutional grounds are elaborately discussed.

2 Eddy on Combinations 729 etc.

Address of Charles G. Middleton, Esq., 1915 Ky. State Bar Assn.

APPENDIX A

FEDERAL STAMP TAX ON BONDS AND STOCK

(United States Internal Revenue Act of 1921)

Title XI—Schedule A

1. **Bonds of indebtedness.** On all bonds, debentures or certificates of indebtedness issued by any person, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each $100 of face value or fraction thereof, five cents: Provided, That every renewal of the foregoing shall be taxed as a new issue: Provided further, That when a bond conditioned for the repayment of money is given in a penal sum greater than the debt secured, the tax shall be based on the amount secured.

2. **Capital stock, issued.** On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, of of interest in property or accumulations, by any corporation, on each $100 of face value or fraction thereof, five cents: Provided, That where a certificate is issued without face value, the tax shall be five cents per share, unless the actual value is in excess of $100 per share, in which case the tax shall be five cents on each $100 of value or fraction thereof, or unless the actual value is less than $100 per share, in which case the tax shall be one cent on each $20 of actual value, or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

3. **Capital stock, sales or tranfers.** On all sales, or agreements to sell, or memoranda of sales or deliveries of, or

transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale; whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, two cents, and where such shares are without par or face value, the tax shall be two cents on the transfer or sale or agreement to sell on each share: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased the same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the corporation the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such

person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both.

APPENDIX B

FEDERAL STAMP TAX ON PROXIES AND POWERS OF ATTORNEY

(United States Internal Revenue Act of 1921)

Title XI—Schedule A

10. **Proxies.** Proxy for voting at any election for officers, or meeting for the transaction of business, of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, ten cents.

11. **Powers of attorney.** Power of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, twenty-five cents. * * *

Power to transfer stock. A power of attorney authorizing the vendee of certain corporate stock, in which the grantor sells and assigns his stock to the vendee, to make a transfer upon the books of the company is not taxable. Also a formal power of attorney printed on the back of a certificate of stock or bond, to transfer the same, is not taxable. (Reg. 55 Rev., Art. 144; Reg. 55 Rev., Art. 139; Treasury Decision 2085; T. D. 2134.)

Powers of attorney to officers and others. Where the board of directors of a corporation grants a power of attorney to an officer to do some act in his official capacity for or in behalf of the corporation, such power of attorney is not taxable, but where a person other than an officer is thus granted a power of attorney such power is taxable. (Reg. 55 Rev., Art. 131; Reg. 55 Rev., Art. 132.)

Powers of attorney to agents. Powers of attorney to agents upon whom process may be served against foreign corporations are taxable. (Reg. 55 Rev., Art. 135.)

When taxable. Powers of attorney are taxable when executed and delivered and not when the power is exercised. (Reg. 55 Rev., Art. 129; T. D. 2134.)

APPENDIX C

KENTUCKY WORKMEN'S COMPENSATION LAW

K. S. Sec. 4880. Application and scope of act. This act shall apply to all employers having three or more employes regularly engaged in the same occupation or business and to their employes except that it shall not apply to domestic employment, agriculture, steam railways, or such common carriers, other than steam railways, for which a rule of liability is provided by the laws of the United States. It shall affect the liability of the employers subject thereto to their employes for personal injuries sustained by the employe by accident arising out of and in the course of his employment, or for death resulting from such accidental injury; provided, however, that personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a pre-existing disease.

Any employers and employes who are, by the provisions of this section, excepted from the provisions of this act, including employers having less than three employes, may subject themselves thereto by joint voluntary application to the board, in writing, for such period as may be stated in the application, which shall be irrevocable during such period and effective thereafter until a written revocation be filed with the board or the employment be terminated. (Acts of 1916, Ch. 38; as amended by Act of 1918, Ch. 176, and Act of 1922, Ch. 50.)

APPENDIX D

FORM OF ACKNOWLEDMENT FOR CORPORATION

I, ——— (notary public or clerk of the county court), do certify that on this day the foregoing deed was produced to me in the county aforesaid, by ———, to me personally known and acknowledged by him as president of said ——— company, to be the act and deed of the said ——— company.

Given under my hand and seal of office this ——— day of ———, 19—, in the county and state aforesaid.

My commission expires on the ——— day of ———, 19—.

———.
(Title of Officer)

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1 If the paper is acknowledged before a notary public in this state, to be used or recorded in another state or foreign country should also be attached a county clerk's notarial certificate, certifying that the notary before whom the paper is acknowledged is duly licensed and entitled to take such acknowledgment.

APPENDIX E

FORM OF VOTING TRUST AGREEMENT

AGREEMENT, Made this ——— day of ———, 19—, between all the stockholders of the ——— Company, a corporation organized under the laws of the State of ———, and having its principal office at ———, Kentucky, who shall become parties to this agreement by signing the same, hereinafter called the stockholders, parties of the first part, and ——, and ——— of ———, ———, and ———, of ———, ——, hereinafter called the Trustees, parties of the second part:

WHEREAS, the said ——— Company is indebted to sundry persons and corporations in a considerable amount for the construction, equipments and betterments of its plant, and is in need of funds for the purpose of paying such indebtedness, and also for the purpose of developing its plant and earning capacity, and placing it upon a dividend paying basis, and

WHEREAS, certain stockholders of said Company, as a means, and for the purpose of enabling said Company to raise and obtain the necessary funds to pay said indebtedness and to improve and develop its plant and earning capacity heretofore, donated and surrendered a certain percentage of the capital stock of said Company owned by them, and deposited the same in the hands of said ——— and ———, as Trustees and Agents, to sell the same for the benefit of said Company, for a sum of not less than ——— Dollars ($———), and

WHEREAS, said ——— and ——— thereafter formed a syndicate for the purchase of said stock so deposited with them, and at the request, and with the consent of all the parties hereto, sold said stock so deposited with them to the members of said syndicate for the sum of ——— Dollars ($———), with the express understanding and agreement, which was made a part of the consideration for the purchase and sale of said stock, and which understanding and agreement was, and hereby is, ratified and confirmed by all the parties hereto, that the stockholders of said Company owning a majority of the capital stock thereof would act together, jointly and severally, in the manner hereinafter set forth, and

WHEREAS, the stockholders believe it to be essential to their interests to protect themselves against the purchase of a majority of the shares of the Company by parties acting on behalf of corporate or other interests, to which the rights of the remaining stockholders would be subordinated, and also believe that it is essential for the success of said Company, and for the best interests of all the stockholders thereof, that the said Company shall be managed and directed during the next ——— years

of its existence under a definite and fixed policy, to secure a union of all the interests in order to properly develop the rights, privileges, franchises, property, and earning capacity of said Company, and

WHEREAS, they believe that their object can be best accomplished by acting together, jointly and severally, in the manner hereinafter set forth, the agreement of each constituting one of the considerations for the agreements of the others, and in particular by giving to the Trustees as their Agents and Attorneys in fact an irrevocable power of sale upon the terms and conditions hereinafter set forth, and

WHEREAS, for the purpose of this protection the stockholders have requested the Trustees to take and hold for the period hereinafter stated the legal title to said shares, the same to be held by them upon an active Trust, and to act under the terms of this agreement, and the Trustees have agreed to do so.

NOW THIS AGREEMENT WITNESSETH: The stockholders, in consideration of mutual agreements, and in consideration of the purchase of said stock by said syndicate, do agree to and with each other and with Trustees, and Trustees do agree with the stockholders, as follows:

First: Each party hereto of the first part, holding shares of the capital stock of said ——— Company, to the number set opposite his, her, or its name as hereunto subscribed respectively, hereby severally agree to deposit the same and the certificates therefor, with sufficient transfers thereof in favor of the persons hereinbefore named as Trustees with the ——— Trust Company of ——— (hereinafter called the Depository), and to receive in exchange therefor certificates hereinafter referred to, and upon the making of such deposit, all shares represented by the stock certificates so deposited shall be transferred upon the books of said ——— Company to the names of said Trustees, who are hereby fully authorized and empowered to cause such transfers to be made, and also to cause any further transfers of said shares to be made which may become necessary through the occurrence of any change of the persons holding the office of Trustee as hereinafter provided. And during the period this agreement shall be in force, said Trustees shall possess the legal title to such shares deposited, and be entitled to exercise all rights of every name and nature, including the right to vote, in person or by proxy, in respect of any and all such shares; it being, however, understood that the holders of the trust certificates to be issued by the Trustees shall be entitled to receive payments equal to the dividends, if any, collected by said Trustees upon shares of such stock standing in their names.

Second: The Trustees do hereby promise and agree with the stockholders and with every holder of certificates issued as hereinafter provided, that from time to time, upon request, they will cause to be issued to the several stockholders in respect of all stock deposited by them, certificates to an aggregate amount equal to the amount of all stocks so deposited, and which certificates shall be in substantially the following form:

——— COMPANY, COMMON STOCK TRUST CERTIFICATE

No. ———

——— Shares.

This certifies, that ——— has deposited ——— shares of the capital stock of the ——— Company, of the par value of One Hundred Dollars ($100) each, with the ——— Trust Company of ———, under an agreement between ———, ———, and ———, Trustees, and certain stockholders of said Company, bearing date the —— day of ———, 19—.

TRANSFER OFFICER

This certificate and the interest represented thereby is transferable only on the books of the said Trustees upon the presentation and surrender hereof. This certificate is not valid unless countersigned by the Transfer Officer of the Trustees and countersigned and registered by the Registrar. The holder of this certificate takes the same subject to all the terms and conditions of the aforesaid agreement between the Trustees and certain stockholders of said Company and becomes a party to said agreement and is entitled to the securities and benefits thereof.

IN WITNESS WHEREOF, the Trustees have caused this certificate to be signed by their duly appointed agent, this ——— day of ———, 19—.

———,
———,
———,
Trustees.

By their Agent hereunder ———.

Countersigned and registered this ——— day of ———, 19—.

———, Registrar.

Countersigned: ———.

By ———.

Third: From time to time, after this agreement shall have taken effect, the Trustees may receive any additional full paid shares of the capital stock of the said ——— Company, upon the terms and conditions of this agreement, and in respect of all such shares so received, will issue and deliver certificates similar to those above mentioned, entitling the holder to all the rights above specified.

Fourth: All dividends that may accrue upon the stock so deposited shall be paid by the Trustee to the said depository, who shall distribute the same pro rata among the holders of said certificates of interest, in the proportion in which they shall severally be entitled thereto.

Fifth: During the period from the date hereof to and including the ——— day of ———, 19—, stockholders agree with each other and with the Trustees, and the Trustees accept the trust upon the faith of this agreement, that they will not sell their respective shares, although they will be at liberty to deal with depository's certificates in the way of sale or otherwise, as to them shall seem meet.

Sixth: During said period the Trustees shall have the exclusive power to sell said shares; provided that no sale shall be made by said

Trustees saving of all the deposited shares in lump. No sale shall be made at a less price than at the rate of One Hundred and Fifty Dollars for each and every share so deposited.

Seventh: In case of a sale at any time during the period aforesaid, the proceeds of sale shall be deposited with depository, which shall distribute the same to and amongst the holders of its certificates upon the surrender thereof. The distribution shall be pro rata amongst the shares. There shall be no discrimination amongst the holders in the distribution. Any shares held or controlled by Trustees shall share pro rata with all shares deposited.

Eighth: In case of a failure to sell said shares during said period, the shares themselves shall be delivered to the Trustees by the depository for transfer by the Trustees to the holders of depository's certificates, in the proportion of their respective holdings, upon the surrender of said certificates to the depository and this agreement shall be at an end.

Ninth: The Trustees covenant and agree to deposit with the depository under this agreement the stock of the Company owned or controlled by them respectively and to take depository's certificates therefor. Nothing herein contained shall deprive the Trustees as individuals of the privilege to be enjoyed by all other depositors of selling or otherwise disposing of said certificates at their pleasure, or of purchasing additional certificates, or of purchasing additional stock and selling the same, or of joining in a syndicate to purchase under the power of sale herein given at not less than the price herein named.

Tenth: The Trustees shall not be entitled to any compensation for their services, but in case of a sale at not less than the price specified the expenses and disbursements incurred by the Trustees as such may be deducted from proceeds to be distributed.

Eleventh: In the event of the refusal or inability of the depository hereinbefore named as depository to act as such depository and as registrar of the voting trust certificates described hereunder, the Trustees shall have full power and authority to appoint another depository and registrar to act hereunder in its place, and to authorize and arrange for the delivery of the retiring depository to the depository so appointed of all certificates of stock then held hereunder by the former. Upon the acceptance of such appointment the new depository shall be clothed with all the power and authority, and be subject to all the duties and obligations hereby imposed upon the depository herein named. Any depository acting hereunder, and its or their successors, shall receive reasonable compensation for its and their services. Any depository may resign its trust hereunder by giving thirty days' notice in writing of its intention to do so, which notice shall be directed to all and delivered to any one of the Trustees then acting. In the event of such resignation, a successor may be appointed by the Trustees as hereinbefore provided.

Twelfth: Any Trustee may, at any time, resign by delivering to the other Trustees in writing his resignation, to take effect ten days thereafter, and in every case of death, resignation or vacancy arising through

other cause, the vacancy so occurring shall be filled by the appointment of the successor or successors to be made by the other Trustees by a written instrument filed with the said depository and the term "Trustees" as herein used shall apply to the parties of the second part and their successors hereunder.

Thirteenth: All the questions arising between the Trustees shall, from time to time, be determined by decision of the greater number of those then acting as Trustees, either at a meeting, or by writing, with or without meeting and in like manner they may establish their rules of action; the decision or act of a majority of the Trustees shall, for the exercise of the voting power and for all purposes of this agreement, be deemed the decision or act of all the Trustees.

Fourteenth: In voting the stock held by them, the Trustees will exercise their best judgment, from time to time, to select suitable directors, to the end that the affairs of the Company shall be properly managed, and in voting on other matters which may come before them at any stockholder's meeting will exercise like judgment; but it is understood that no Trustee incurs any responsibility by reason of any error of law or of any matter or thing done or omitted under this agreement, except for his own individual malfeasance.

Fifteenth: No depository hereunder shall incur any liability to any of the parties hereto or to any assignee of any trust certificate or certificates except for the failure to exercise ordinary care in the performance of its duties as hereunder prescribed.

Sixteenth: This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

Seventeenth: This agreement shall not be binding upon the parties until the same shall have been signed by the stockholders representing a majority of the capital stock of the Company.

IN WITNESS WHEREOF, the several parties hereto have hereunto set their hands and seals, and the Trustees have hereunto set their hands and seals in token of their acceptance of the trust hereby created.

STOCKHOLDERS

Name	Residence	No. of Shares
_____	_____	_____
_____	_____	_____
_____	_____	_____

TRUSTEES

_____
_____ } Trustees.
_____

The undersigned ——— Trust Company of ———, the depository and registrar named and referred to in the foregoing instrument, hereby acknowledges the receipt of a copy of the said instrument and notice of all the terms thereof, and hereby gives its assent to the same and agrees to act as depository and registrar under the terms and conditions therein set forth.

IS WITNESS WHEREOF, it has given its consent to be executed by its duly authorized officer and its corporate seal to be hereunto affixed this ——— day of ———, 19—.

_____

APPENDIX F

INHERITANCE TAX LAW

Sec. 4281a. (1) **Transfers of property when taxable.** All property which shall pass, by will or by interstate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body-politic or corporate shall become beneficially entitled in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax for the general use of the Commonwealth, upon the fair cash value of such property in excess of the exemptions hereinafter granted and at the rates hereinafter prescribed. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after passage of this act, provided that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax.

(2) **Beneficiaries classified—Tax rates.** When the property of any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

Where the person entitled to the beneficial interest in any such property shall be one of Class A. (i. e., the husband, wife, lineal issue, lineal ancestor of the decedent, any child adopted as such in conformity with the laws of this Commonwealth, any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child) at the rate of one per cent. of the fair market value of such interest.

Where the person entitled to the beneficial interest shall be one of Class B. (i. e., the brother, sister, descendant of a brother or sister, or widow of a son, or the husband of a daughter of the decedent) at the rate of one and one-half per cent.

Where the person shall be one of Class C. (i. e., the brother or sister of the father or mother, or the descendant of a brother or sister of the father or mother of the decedent) at the rate of three per cent.

Where the person shall be one of Class D. (i. e., the brother or sister of the grandfather or grandmother or the descendant of a brother or sister of the grandfather or grandmother of the decedent) at the rate of four per cent.

Where the person is one of Class E. (i. e., a person related in any other degree of collateral consanguinity than is mentioned in one of the preceding classes, a stranger in blood, or body-politic or corporate) at the rate of five per cent.

The foregoing rates are for convenience termed primary rates.

(3) **Scale of tax rates.** When the fair cash value of such legacy, distributive share, or interest exceeds twenty-five thousand dollars the rates of tax upon such excess shall be as follows:

Upon the excess over twenty-five thousand dollars and up to fifty thousand dollars, one and one-half times the primary rates.

Upon the excess over fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

Upon the excess of over one one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

Upon the excess over five hundred thousand dollars, three times the primary rates.

(4) **Exemptions—Charitable.** The following exemptions are allowed, to be taken out of the first twenty-five thousand dollars:

To the widow of the decedent and to each minor child of the decedent, ten thousand dollars.

To each other person in Class A., five thousand dollars.

To each person in Class B., two thousand dollars.

To each person in Class C., fifteen hundred dollars.

To each person in Class D., one thousand dollars.

To each person in Class E., five hundred dollars.

Property of any amount bequeathed or transferred to any municipal corporation within this State for public purposes, to institutions of purely public charity, to institutions of education not used or employed for gain by any person or corporation and the income of which is devoted solely to the cause of education, to public libraries, or to any person or persons, society, corporation, institution or association in trust for any of the purposes above mentioned, shall be exempt from such rate.

This act is intended to stand as a whole, and in the event that any part of it is held to be unconstitutional, then no part of the act shall be effective and Sec. 4281a of the Kentucky Statutes (Carroll's 1909 edition) shall remain in force.

(Act of 1906, Ch. 22, as amended by Act of 1916, Ch. 26.)

Sec. 4281a. (2) **Contingent remainders, how taxable—Exception.** When any grant, gift, devise, legacy or succession upon which a tax is imposed by Sec. 1 (4281-a) of this article shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be

a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, determined in the manner provided in Sec. 2 (4281k) of this article and the tax prescribed shall be immediately due and payable to the sheriff or collector of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid. Provided, That the person or persons, or body-politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body-politic or corporate shall execute a bond to the Commonwealth of Kentucky, in a sum of twice the amount of the tax arising upon personal estate, with such sureties as the county court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county. Provided, further, That such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year of the death of the decedent, and within that period enter into such surety and renew the same every five years.

Sec. 4281a. (1a) **Method and procedure for imposition of inheritance taxes on contingent interests.** When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the highest rate which, upon the happening

of any of said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the administrators, executors or trustees out of the property transferred, provided, however, that on the happening of any contingency whereby the said property or any part thereof is transferred to a person or corporation except from taxation under the provisions of the inheritance tax laws of this State or to a person taxable at a less rate than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which such person or corporation shall pay under the classification and provisions of chapter 26 of the Acts of 1916, together with legal interest from the time of such payment. Provided, further, That the bond provided for in Sec. 4281b of the Kentucky Statutes (Carroll's 1915 edition) shall not apply to the provisions of this act. (Act of 1918, Ch. 56.)

(2a) **Applies to all undistributed decedents' estates.** The provisions of this act shall apply to the estates of all decedents which have not been actually distributed under orders of a court of competent jurisdiction and also to property which is transferred in trust or otherwise and the rights, interests and estates of the transferees are now contingent as set out in Sec. 1 hereof, and shall apply also to the estates of all other persons who may die after this act takes effect.

(3) **Excess fees to executors or trustees taxable.** Whenever a decedent appoints or nominates one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees and said bequests, devises, or residuary legacies exceed what would be a lawful compensation for their services, such excess shall be liable to said tax, and the county court in which the personal representative of the decedent has qualified shall fix the compensation.

(4) **Tax due on decedent's death—Interest charge.** All taxes imposed by this chapter, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued. Provided, That if said tax is paid within nine months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in Sec. 2 (4281b) of this chapter for the payment of said tax, together with interest.

(5) **Exception—Interest charges.** The penalty of ten per centum per annum imposed by Sec. 4 (4281d) hereof, for the non-payment of said tax, shall not be charged in cases where, by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof, can not be settled at the end of eighteen months from the death of the decedent; and in such case only six per centum per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed.

(6) **Collection of tax by personal representative.** Any administrator, executor or trustee having in charge or trust any legacy or property for distribution subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the fair cash value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax, to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from

the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the county court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further orders relative thereto as the case may require.

(7) **Sale of property for taxes.** All executors, administrators and trustees shall have full power to sell so much of the property of the defendant as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(8) **Payment of tax to sheriff—When—Receipt to auditor of public accounts.** Every sum of money retained by an executor, administrator or trustee or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the sheriff or collector of the county in which the said tax is due and payable and the said sheriff or collector shall give, and every executor, administrator or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the Auditor of Public Accounts, whose duty it shall be to charge the said sheriff or collector so receiving the tax with the amount thereof, and said auditor shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the auditor, or a copy thereof certified by him.

(9) **Excess tax—How refunded.** Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property, from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee if the said tax has not been paid to the sheriff or collector or to the auditor, or by the auditor if it has been so paid.

(10) **Transfer of stock by foreign personal representative —Tax how payable—Duty of domestic corporations.** Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of a decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the sheriff or collector of the proper county on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax, and twenty per cent. penalty. All Kentucky corporations, upon the demand of the supervisor of revenue agents, shall furnish said supervisor a list of all transfers of stock of non-resident decedents made within the last five years prior to February 1, 1914, and shall annually thereafter on or before the first day of February furnish such list for each preceding year to said supervisor.

(11) **Jurisdiction of county court—Appraisals and assessments, how made—Contingent estates.** When the value of any inheritance devise, bequest or other interest subject to the payment of said tax is uncertain, the county court in which the said tax settlement proceedings are pending on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to

appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall by order, forthwith assess and fix the fair cash value, as hereinbefore provided, of all inheritances, devises, bequests, or other interests and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income, or interest shall, for the purpose of this chapter, be determined by the rule, method and standards of mortality prescribed by the mortality tables authorized by Kentucky Statutes for ascertaining the value of life estates, annuities and remainder interests save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report and certify the same to the court and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraisers shall be paid by the personal representative of the decedent, out of any funds that may be or may come into his hands on account of said tax, on the certificate of the court, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

(12) **Bribery of appraiser—Penalty.** Any appraiser appointed by virtue of this chapter who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail sixty days, or both so fined

and imprisoned, and in addition thereto the court shall dismiss him from such service.

(13) **County court.** The county court in the county in which is situated property of any nature or kind of a decedent who was not a resident of the State, or in which the will of said decedent might be probated, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter, and the court first acquiring jurisdiction hereunder, shall retain the same, to the exclusion of every other.

(14) **Collection of tax by county judge.** If it shall appear to the judge of the county court that any tax accruing under the provisions of this chapter has not been paid according to law, the clerk of said court shall issue a summons, summoning the persons known to own any interest in or part of the property liable to the tax to appear before the court on a day certain and show cause why said tax should not be paid. The service of said summons, and the time, manner and proof thereof, and the hearing and determination thereon, and the enforcement of the judgment or decree, shall conform to the provisions of the Kentucky Statutes and the Civil Code of Practice applicable to and pursuant in the levy, ascertainment and collection of taxes.

(15) **Collection of tax by sheriff.** Whenever the sheriff or collector of any county shall have reason to believe that any tax is due and unpaid under the provisions of this chapter, after the failure or refusal of the person interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if he has probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the county court, as provided in Sec. 14 (4281n) of this chapter, for the enforcement and collection of such tax.

(16) **Duty of county clerk.** The county clerk of each county shall, every six months, make a statement, in writing, to the sheriff or collector, of the property from which or the party from whom he has reason to believe a tax, under the provisions of this chapter, is due and unpaid.

(17) **County clerk's records.** The county clerk of each county shall keep a book to be furnished by the auditor, in which he shall enter the values of inheritances, devises, bequests and other interests subject to the payment of such tax, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which book shall be kept by him as public record.

(18) **Inheritance tax—Collection by sheriff.** The sheriff or collector of each county shall collect and pay to the auditor all taxes that may be due and payable under this chapter, who shall give him the receipt therefor, of which collections and payment he shall make a report, under oath, to the Auditor of Public Accounts at the same time and in the same manner as provided by law that he shall report and pay the State's revenue, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the auditor by the first day of March of each year he shall pay interest at the rate of ten per centum per annum.

COLLECTION OF TAX AND APPEALS

Sec. 4281b. (1) **Duty of county clerk.** On or before the the first day of February in each year the County Court Clerk of each county in the State shall, from the records in his office and from such other information as he may be able to obtain, make a report to the State Tax Commission giving the names of all taxpayers in his county who died during the preceding year ending December 31st. He shall, at the same time, make up a statement showing the assessed value of all property assessed for taxation by each decedent as of the last assess-

ing date prior to his death. He shall also show whether any personal representative has been appointed for the estate of any such decedent, and show the name and address of such representative. (Act of 1920, Ch. 44.)

(2) **Duty of tax commission.** When the State Tax Commission receives this report from the County Court Clerk, it shall be its duty to carefully examine same and where it is of the opinion that such an estate may be subject to an inheritance tax, it may request the County Court Clerk to make a copy of any appraisement or settlement of such estate showing the total value thereof and the name of each distributee.

(3) **Investigation by commission.** The State Tax Commission shall also direct some one of its representatives to make an investigation in any case where it deems fuller information necessary.

(4) **Tax not payable until decision by commission.** No inheritance tax shall be paid to any sheriff or other collecting officer until all of the facts in relation thereto have been submitted to the State Tax Commission and that body has determined the amount of tax due and has made certification thereof to the County Court Clerk; but in cases where distribution of any part of the estate is made, the personal representative or the beneficiary may obtain permission from the county court to pay the amount of the tax due to the sheriff or collector upon the amount so distributed, which shall be considered a credit on the total amount due.

(5) **Duty of personal representative.** In every case where a personal representative is appointed or qualified in any county court, it shall be the duty of such personal representative to file a copy of all appraisements, sale bills and settlements with the State Tax Commission at the same time such representative makes such reports to the county court.

(6) **Proceedings in county court for purpose of assessment valuation.** The personal representative shall have the right

to institute a proceeding in the county court at any time after qualification, for the purpose of determining the value of the estate subject to inheritance tax, and when the amount has been so ascertained a copy of the judgment of the county court shall be forthwith submitted to the State Tax Commission and that body shall ascertain the correct amount of tax to be paid and shall certify the same to the county clerk, who in turn shall make proper certification to the sheriff or collector.

(7) **Proceedings by county attorney.** The State Tax Commission may, at any time, instruct the county attorney in any county to institute a proceeding to have the value of any estate subject to inheritance tax determined, and when the value is so determined, a copy of the judgment shall be certified to the State Tax Commission, and that body shall determine the amount of tax due or which will be due, and shall make certification to the county court clerk, which officer shall certify to the sheriff or collector after the tax has become due and payable under the provisions of law.

(8) **Payment of tax may be made before due.** After the amount of inheritance tax has been ascertained by the State Tax Commission it may be paid by the personal representative or beneficiary before it is due under the law and in accordance with the provisions of the law. If any personal representative or beneficiary desires to pay the tax after the amount thereof has been ascertained and before it is due under the provisions of the law, such personal representative or beneficiary may notify the county court clerk and that officer shall immediately certify the amount due to the sheriff or collector.

(9) **Proceedings by tax commission—Notice to heirs, etc.** In cases where no personal representative has qualified the State Tax Commission may institute a proceeding at any time in the county court, the object of which shall be to ascertain the value of the estate subject to an inheritance tax, notice of which shall be given to the heirs, legatees, or devisees of such estate, and when the information has been thus obtained,

the State Tax Commission shall determine the amount of tax due and shall certify the amount thereof to the county court clerk, who shall certify the same to the sheriff or collector after it becomes payable under the provision of the law, and the sheriff or collector may proceed to collect the tax in the same manner that he collects taxes based upon assessments made by the County Tax Commission and the State shall have a lien on the property which passed to the beneficiary to secure the payment of the tax.

(10) **Right of appeal from county court.** In any proceedings to determine the value of the estate subject to inheritance tax, the personal representative, the beneficiary or the State Tax Commission shall have the right to appeal to the circuit court from the judgment of the county court, and shall have the right to appeal from the judgment of the circuit court to the Court of Appeals.

(11) **Forms.** The State Tax Commission shall prepare all blank forms that may be necessary to carry out the provisions of this law.

(12) **Fees to county clerk.** For his services in making the reports required of him the county court clerk shall be paid a reasonable compensation by the State. He shall make out his claim and submit it to the State Tax Commission, and upon the approval of that body, it shall be presented to the Auditor, who shall draw his warrant for the amount due.

(13) **Delinquent personal representatives and beneficiaries.** Nothing in this act shall be construed to change the time or method of paying any inheritance tax. After the expiration of eighteen months from the death of the decedent the personal representative or beneficiary shall be delinquent unless the period for the payment of the tax has been extended upon some statutory ground. When any personal representative or beneficiary becomes delinquent the State Tax Commission shall direct the sheriff or revenue agent to institute proceedings to ascertain the value of the estate subject to the tax,

and when the value is thus ascertained in any proceedings instituted by a sheriff or revenue agent, the procedure shall be the same as when the value of the estate subject to the tax has been ascertained in some proceeding instituted before the delinquency.

(14) **Investigation of delinquent estates.** The State Tax Commission shall cause a thorough investigation to be made in the counties of the State to ascertain whether there are inheritance taxes due which have not been paid, and in every instance where it is ascertained that a tax is due, the State Tax Commission shall take the necessary steps to ascertain the amount thereof and see that it is paid.

(15) **Power of tax commission.** The State Tax Commission may, at any time, require reports from any officer, which reports are necessary in ascertaining whether an estate is subject to the tax and the amount of tax due thereon. (Signed March 22, 1920; in effect ninety days thereafter.)

Sec. 1. Right of appeals. That in all proceedings in the county court of any county of this Commonwealth now pending, or that may hereafter be brought for the purpose of ascertaining the value of any estate subject to the inheritance tax laws of this Commonwealth, or for the purpose of collecting the inheritance tax due by any such estate, the Commonwealth and the parties interested in the estate subject to such tax, and the personal representative of the estate, shall have the right of appeal to the circuit court, and thence to the Court of Appeals, from any order of the county court fixing the value of any estate, and from any judgment of the county court fixing the amount of tax due by such estate. (Act of 1920, Ch. 47.)

Sec. 2. Such appeals shall in all respects be prosecuted as are appeals in other civil cases, but the Commonwealth shall not be required to execute an appeal bond or supersedeas bond in such cases.

Sec. 3. Whereas, there is some uncertainty as to the right of appeal in such cases, as the law now stands; and whereas, there are now pending cases involving large sums of money claimed to be due under the inheritance tax laws of the Commonwealth; and whereas, is it important that all parties to such cases be given the right to appeal, an emergency is hereby declared to exist, and this act shall become effective from and after the date of its passage and approval by the governor.

FORM FOR REPORT OF HEIRS AND BENEFICIARIES

Frankfort, Ky.

In Re: ———— Etate.

Dear Sir:

In order to assist us in arriving at the value of this estate for inheritance tax purposes will you please make a full, complete and detailed report upon this form and file same with this Commission at your earliest convenience. Please fill every blank and give all the information suggested, as it will be necessary to a final certification of the inheritance tax due.

Sincerely yours,

STATE TAX COMMISSION.

STATE TAX COMMISSION,
Frankfort, Ky.

———, Ky., ———, 192—.

Gentlemen:

I or We, ——— [name of personal representative, or heirs, if there is no personal representative], pursuant to the requirements of Chapter 44 of the Acts of the General Assembly of 1920, hereby give notice that ——— [name of decedent] died on the ——— day of ———, 19—, ——— [testate or intestate], a resident of ——— County, Kentucky; that ——— [name of personal representative] qualified as ——— [admr., admrx., exr., etc.] of the estate on the ——— day of ———, 19—; that the name, age, share of each distributee and relationship to decedent is as follows:

Name	Age	Share	Relationship
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

that decedent owned at his or her death property of the actual value (not assessed value) as follows:

Real Estate [if farm number of acres—city property number lots] $.....
Stocks, Bonds, Notes, Accounts, etc. ..... $.....
Cash, Certificates of Deposits, etc. ..... $.....
Life insurance for benefit of estate ..... $.....
Miscellaneous personalty ..... $.....
Property owned jointly [share of decedent and value]..... $.....
Other life insurance payable to [name of beneficiary]..... $.....
Other property not mentioned [describe]..... $.....
Total gross estate ..... $.....

DEDUCTIONS

Indebtedness ..... $.....
Costs of administration ..... $.....
Total deductions .... $.....
Net estate for distribution ..... $.....

——— [name of person reporting].
——— [address].

Subscribed and sworn to before me by ——— this ——— day of ———, 19—.

——— [name of officer].

APPENDIX G

MISCELLANEOUS TAX PROVISIONS WITH SCHEDULES OF TAXES, RATES AND EXEMPTIONS

The Constitution of Kentucky (Sec. 172) provides that all property, not exempted from taxation, shall be assessed for taxation at its *fair cash value.* Also that corporations shall be taxed the same as individuals. (Sec. 174.) In the Chapter on Corporation Tax Law (page 372) we have inserted the State tax laws particularly with reference to corporations, but since corporations are taxed the same as individuals (page 26), it may be pertinent here to consider briefly the tax system in Kentucky. Section 174 of the Constitution above referred to means that corporations are taxed, or exempted from taxation, for State, county, municipal, and school purposes to the same extent that individuals are. But in addition to this, corporations are taxed for the privilege of being incorporated, i. e., they are required to pay a license tax of one-tenth of one per cent. of their total authorized capital stock and upon any increase thereof (page 62), and an annual license tax to the State (page 386). Public service corporations, by reason of the fact that the Legislature has granted to them certain special privileges, not granted to individuals and other private corporations, are required to pay an ad valorem tax on their franchises, in addition to the regular property taxes (page 375). The franchise tax has been described by the Court of Appeals (page 29) as a tax upon the intangible property of corporations in Kentucky (pages 376, 377, 378). Public service corporations, however, are not subject to both a franchise tax and an annual license tax, but are specifically exempted from the latter (page 386). The governing motive of the Legislature when it met in special session in 1917 to revise the tax laws of

Kentucky was to encourage the investment of capital in Kentucky industry, particularly manufacturing and agriculture. To this end agricultural implements in use on farms, manufacturing machinery in use in factories, raw materials on hand at plants, and products in process of manufacture are exempt from local taxation. Cities are also authorized to exempt from municipal taxation new manufacturing companies for a period not to exceed five years (page 23).

The county taxes are levied by the Fiscal Courts of each county. County tax commissioners are elected for the purpose of assessing State and county taxes. These taxes are collected by the Sheriff of the county. The State Tax Commission at Frankfort has general supervisory power over county tax commissioners and other local State and county tax authorities, and has jurisdiction over the assessment of the property and franchises of railroad corporations and other public service corporations. The State Tax Commission now acts as the State Board of Equalization and Assessment, which formerly consisted of the Auditor of Public Accounts and one appointee of the Governor from each appellate district. When acting as such, the Tax Commission has power to revise, increase or decrease, the assessments made by the county authorities, as a whole, so as to equalize taxes. The power to equalize taxes by revision of the assessments does not, however, include the power to increase or decrease the assessment of any particular corporation, but only as to all corporations in a certain county (K. S., Sec. 4114i-16).

State Revenue Agents, one for each county, and four for the State at large, are now appointed by the State Tax Commission (K. S., Sec. 4258), whose duties consist of discovering, and collecting taxes on omitted property and delinquent corporations.

City taxes are levied by the councils or other municipal legislative bodies, and property is assessed independently of the assessment for State and county purposes, and on different dates.

MUNICIPAL TAX RATES[1]

Cities under 10,000 population	$0.75 per $100.00
Cities from 10,000 to 15,000 population	1.00 per 100.00
Cities over 15,000 population	1.50 per 100.00
Counties and taxing districts	.50 per 100.00
City school tax rates[2]	.50 to 1.00

Cities and towns of any class are authorized to levy taxes for governmental purposes, on personal property, tangible or intangible, based on income, licenses or franchises, *in lieu of an ad valorem tax* thereon, but while the amount of such taxes are within the discretion of the council, the amount must be reasonable (pages 28, 29).

SCHEDULE OF TAX RATES[3]

	State[4]	County	City	School	Total
Agricultural Products	$0.40	$0.15	$0.15	(x)	$0.70
Bank Deposits	.10	(x)	(x)	(x)	.10
Implements	.40	(x)	(x)	(x)	.40
Intangibles	.40	(x)	(x)	(x)	.40
Live Stock (in cities)	.10	.40	1.50	$0.60	2.60
Live Stock (not in cities)	.10	.40	(x)	.60	1.10
Machinery and Raw Materials	.40	(x)	(x)	(x)	.40
Real Estate (cities)	.40	.40	1.50	.60	2.90
Real Estate (not in cities)	.40	.40	(x)	.60	1.40
Tangibles (cities)	.40	.40	1.50	.60	2.90
Tangibles (not in cities)	.40	.40	(x)	.60	1.40

SCHEDULE OF TAXABLE PROPERTY AND PURPOSES FOR WHICH TAXED[5]

Real Estate

Lands and Improvements	State	County	2.
Mineral Rights and Leases, Timber	State	County	2.
Town Lots and Improvements	State	County	City

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1 City and county tax rates are limited as to maximum amount for governmental purposes, exclusive of school taxes, by the Constitution. (Sec. 157.)

2 Tax rates for school purposes are limited by legislative enactment.

3 Issued by Kentucky Tax Reform Assn., Bulletin No. 59.

4 State Tax Rates are exact, others averaged.

(x) Exempt.

5 Issued by Kentucky Tax Reform Assn., Bulletin No. 59.

Tangible Personal Property			
Building Material and Mineral Products	State	County	City
Coal Mines, Quarries, Gas and Salt Wells	State	County	2.
Engines, Boilers, Machinery, Tools	State	County	City
Motor and Other Vehicles	State	County	City
Merchandise, Provisions, Liquors	State	County	City
Patent Rights, Annuities, Royalties	State	County	City
Miscellaneous	State	County	City
Office Furniture and Fixtures	State	County	City
Raw Materials not at Plants	State	County	City
Steamboats and Water Craft	State	County	2.
Classified—Tangible Personal Property			
Agricultural Implements on Farms	State	(x)	(x)
Agricultural Products, Lower Local Rates	State	County	City
Live Stock, Lower State Rates	State	County	City
Manufacturing Machinery in Factories	State	(x)	(x)
Products in Process	State	(x)	(x)
Raw Materials at Plant	State	(x)	(x)
Intangible Personal Property			
Bank Deposits, Lower Rate	State	(x)	(x)
Bonds Issued by State, Counties, Cities	(x)	(x)	(x)
Bonds, Stocks, Accounts, Notes and Money	State	(x)	(x)
Franchises, Public Service Corporations	State	County	City
Other Taxes			
Bank Tax, Value of Shares	State	County	City
Building and Loan Associations, Value of Shares	State	(x)	(x)
Corporation License Tax	State	(x)	(x)
Gasoline Sales Tax	State	(x)	(x)
Inheritance Tax	State	(x)	(x)
Insurance Companies, Licenses and Fees	State	(x)	City
Licenses and Occupation Tax	State	(x)	City
Mortgage Recording Tax	State	(x)	(x)
Oil Production Tax	State	County	(x)
Road Tax	State	County	(x)
School Taxes (included in general levy)	State	County	City

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[2] Not located in cities.
(x) Exempt.

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