

Chapter 57

Private Corporations Generally

Chapter 57

NOTES OF DECISIONS

Corporation laws could be altered, amended or repealed, but not so as to impair any vested rights by Ore. Const. Art. XI, §2, prior to 1906. *Lorntsen v. Union Fisherman's Packing Coop. Co.*, (1914) 71 Or 540, 143 P 621; *Ex parte Koehler*, (1885) 23 Fed 529, 531.

Statutes imposing conditions on foreign corporations must be sustained unless they plainly conflict with the Oregon Constitution. *Herbring v. Lee*, (1928) 126 Or 588, 269 P 236, 60 ALR 1165; *Cunningham v. Klamath Lake R. Co.*, (1909) 54 Or 13, 101 P 213, 1099.

A private corporation was constituted by organization under the former statute. *Miller v. Bank of British Columbia*, (1868) 2 Or 291, 293.

Substantial compliance with the former statutory requirements was essential to corporate existence. *Goodale Lbr. Co. v. Shaw*, (1902) 41 Or 544, 69 P 546.

Independent existence of a corporation is a fiction. A corporation's rights and duties are the rights and duties of the persons composing it. *State v. Ross*, (1910) 55 Or 450, 104 P 596, 106 P 1022, 42 LRA(NS) 601.

The former statutes were mandatory as to the procedure for corporation organization. *Carpenter v. Lord*, (1918) 88 Or 128, 141, 171 P 577, LRA 1918D, 674.

ATTY. GEN. OPINIONS: Application to industrial loan corporation, 1962-64, p 101; application to architectural corporations, (1969) Vol 34, p 802.

LAW REVIEW CITATIONS: 47 OLR 320-332.

57.002

LAW REVIEW CITATIONS: 7 WLJ 77.

57.004

ATTY. GEN. OPINIONS: Authority of state credit union to merge with federal credit union, 1960-62, p 343; earned surplus, 1962-64, p 38.

LAW REVIEW CITATIONS: 39 OLR 128; 45 OLR 202.

57.025

NOTES OF DECISIONS

Under the former law, a corporation could execute a deed as the attorney in fact of another. *Killingsworth v. Portland Trust Co.*, (1890) 18 Or 351, 23 P 66, 17 Am St Rep 737, 7 LRA 638.

Under the former law, the statute was not restricted to schemes for making money. *Maxwell v. Akin*, (1898) 89 Fed 178, 181.

Under the former law, although its purpose was charitable, a corporation, with capital stock, could be organized and the fact that it had such stock was not the sole test

of its nature. *Carson v. Schulderman*, (1916) 79 Or 184, 189, 154 P 903.

ATTY. GEN. OPINIONS: Power of domestic life insurance corporation to merge, 1958-60, p 208; practice of veterinary medicine by a corporation, 1966-68, p 642.

57.030

NOTES OF DECISIONS

1. Corporate powers
2. Contracts
3. Seal
4. Ownership of property
5. Bylaws

1. Corporate powers

A corporation has no powers other than those incidental to its existence, or those found in its articles of incorporation, or expressly conferred by statute. *Oregon Cascade Ry. v. Bailey*, (1869) 3 Or 164; *Lakin v. Willamette Valley & C. Ry. Co.*, (1886) 13 Or 436, 438, 11 P 68, 57 Am Rep 25; *Oregon Ry. & Nav. Co. v. Oregonian Ry. Co.*, (1888) 130 US 1, 20, 9 S Ct 409, 32 L Ed 837.

A corporation cannot be a partner with another corporation, or a natural person, but may become part owner of a business or utility. *Hackett v. Multnomah Ry. Co.*, (1885) 12 Or 124, 6 P 659, 53 Am Rep 327; *Calvert v. Idaho Stage Co.*, (1894) 25 Or 412, 36 P 24.

Courts cannot disregard as illegal or unauthorized, in the absence of proof, the dealings and acts of private corporations, which on their face or according to their apparent import are within their charter or articles. *Fink v. Canyon Road Co.*, (1874) 5 Or 301.

A corporation is entitled to rights and remedies to the same extent as is an individual. *Capital Lumbering Co. v. Learned*, (1900) 36 Or 544, 59 P 454, 78 Am St Rep 792.

A corporation cannot exercise powers or privileges unless they are enumerated in the articles of incorporation and authorized by statute. *State v. Portland Gen. Elec. Co.*, (1908) 52 Or 502, 95 P 722, 98 P 160.

A corporation could not avail itself of one's labor, and then screen itself from responsibility upon the plea that it never passed a resolution hiring the person. *Tyler v. Tualatin Academy*, (1887) 14 Or 485, 491, 13 P 329.

Transfer of a franchise by a corporation with no power to do so was void. *State v. Portland Gen. Elec. Co.*, (1908) 52 Or 502, 95 P 722, 98 P 160.

A corporation empowered to construct a ditch for irrigation and to acquire water rights had the power to convey to an individual a perpetual right to water, to be delivered at his headgate through the company's ditch. *Old Mill Ditch & Irr. Co. v. Breeding*, (1913) 65 Or 581, 585, 133 P 89.

The powers specified in the articles of incorporation should be read in connection with the purposes listed therein and the statutes. *Edward Hines W. Pine Co. v. First Nat. Bank*, (1931) 1 F Supp 550.

2. Contracts

Prima facie the contracts of a corporation are valid, and the party seeking to avoid them must do so by affirmative defenses. *United States Mtg. Co. v. McClure*, (1902) 42 Or 190, 70 P 543.

3. Seal

The deed of a corporation must be sealed with the corporate seal, and such conveyance must purport to be the act of the corporation. *Eagle Woolen Mills Co. v. Monteith*, (1868) 2 Or 277; *Moore v. Willamette Trans. and Locks Co.*, (1879) 7 Or 359.

A corporation cannot execute a deed unless it is under its seal, and a lien by way of mortgage can only be created by such a deed. In re *St. Helen Mill Co.*, (1875) 3 Sawy 88, Fed Cas No. 12,222.

4. Ownership of property

The power to purchase lands at common law was incidental to corporations. *Kelly v. People's Transp. Co.*, (1870) 3 Or 189.

The incorporators may receive and hold property for the use of the corporation to be formed by them, and a person may be an incorporator who is not a stockholder. *Coyote Gold & Silver Min. Co. v. Ruble*, (1880) 8 Or 284.

5. Bylaws

Bylaws must be general in nature, and any resolution directed against a particular stockholder is not such a bylaw. *Budd v. Multnomah St. Ry.*, (1887) 15 Or 413, 417, 15 P 659, 3 Am St Rep 169.

ATTY. GEN. OPINIONS: Credit union as assignee for benefit of creditors, 1956-58, p 32; authority of credit union to invest in real property, 1960-62, p 246; power of industrial loan company to loan for longer than two years with realty for additional security, 1960-62, p 378; authority of union to have branch offices, (1968) Vol 34, p 35.

57.040

CASE CITATIONS: *Goodman v. Ladd Estate Co.*, (1967) 246 Or 621, 427 P2d 102; *Ladd Estate Co. v. Wheatley*, (1967) 246 Or 627, 426 P2d 878.

LAW REVIEW CITATIONS: 43 OLR 77.

57.045

NOTES OF DECISIONS

The Corporation Commissioner, in passing on the selection of a name of a corporation, was presumed to have examined the articles of incorporation and to have found no objection thereto. *Umpqua Broccoli Exch. v. Um-Qua Valley Broccoli Growers*, (1926) 117 Or 678, 680, 245 P 324.

ATTY. GEN. OPINIONS: Bank names classified as "deceptively similar" at discretion of Superintendent of Banks, "Bank of Oregon" and "The Oregon Bank," 1958-60, p 408; assumed business name that is not a corporate name but uses "corp." or "inc.," 1964-66, p 55; registering corporate name omitting the "inc." as an assumed business name, 1964-66, p 87; necessity for assumed business name of corporation to contain a corporate designation, 1964-66, p 217.

57.055

ATTY. GEN. OPINIONS: Requiring foreign corporation to remove the word "engineering" from its name, 1952-54, p 168.

57.065

ATTY. GEN. OPINIONS: Duty of banks and trust companies, industrial loan companies and credit unions to maintain a registered office and agent in this state, 1952-54, p 201.

LAW REVIEW CITATIONS: 36 OLR 54.

57.075

LAW REVIEW CITATIONS: 46 OLR 194.

57.090

NOTES OF DECISIONS**1. In general**

Under the former law, the subscription was binding on the subscriber and the corporation after organization. *Atwell v. Schmitt*, (1924) 111 Or 96, 105, 225 P 325, 328.

2. Assessments and liability of subscribers

(1) **Under former similar statute.** After organization of the corporation, assessments could be made upon the unpaid subscriptions; but it was otherwise, where subscriptions to all the shares of the original as well as any contemplated increase of stock had been made a condition precedent to the exercise of the power of levying assessments. *Willamette Freighting Co. v. Stannus*, (1872) 4 Or 261; *Astoria and So. Coast Ry. v. Hill*, (1890) 20 Or 177, 179, 25 P 379.

To render a person liable as a stockholder, he had to sign his name to the subscription of stock, or expressly authorize an agent to do it for him. *Grangers' Market Co. v. Vinson*, (1872) 6 Or 172; *Coyote G. & S. Min. Co. v. Ruble*, (1880) 8 Or 284.

A conditional subscriber relying on a breached condition should promptly require his subscription to be canceled. *Lee v. Imbrie*, (1886) 13 Or 510, 11 P 270.

The power to make "calls" upon stock could be exercised by the directors from and after their first meeting. *Budd v. Multnomah St. Ry. Co.*, (1887) 15 Or 413, 416, 15 P 659, 3 Am St Rep 169.

The tender of a certificate for the share subscribed was not a condition precedent to recover assessments. *Astoria and So. Coast Ry. v. Hill*, (1890) 20 Or 177, 25 P 379.

Where assessments were levied by virtue of a bylaw framed and adopted by the stockholders, one who assisted in framing and voted for the bylaw was estopped from questioning the assessments. *Willamette Freighting Co. v. Stannus*, (1872) 4 Or 261.

One who signed a preliminary subscription and consented to the first meeting, and participated in such meeting, was a stock subscriber, although he did not sign the stock subscription book after the filing of the articles. *Nickum v. Burckhardt*, (1897) 30 Or 464, 469, 47 P 788, 48 P 474, 60 Am St Rep 822.

The alleged fact that money paid in by subscribers to additional stock has not been used by the corporation in accordance with its contract with its stockholders was not a defense to the subscription contract. *Pacific Mill Co. v. Inman*, (1905) 46 Or 352, 362, 80 P 424.

FURTHER CITATIONS: *Fairview R. R. Co. v. Spillman*, (1893) 23 Or 587, 32 P 688; *Sears v. Orchards Water Co.*, (1925) 115 Or 291, 236 P 502, 237 P 1118; *Doyle v. Chladak*, (1965) 240 Or 598, 401 P2d 18, 403 P2d 381.

57.100

ATTY. GEN. OPINIONS: Distribution of stock dividend by reserve fund savings and loan association upon capitalization of earned surplus, 1962-64, p 38.

57.106

NOTES OF DECISIONS

1. In general

Payment may be made by a promissory note. *Doyle v. Chladek*, (1965) 240 Or 598, 401 P2d 18.

The giving of a promissory note does not extinguish the obligation on the stock subscription unless the note is intended as absolute payment. *Doyle v. Chladek*, (1965) 240 Or 598, 401 P2d 18. **Distinguished in** *Kittleson v. Tennant Agency, Inc.*, (1966) 242 Or 610, 411 P2d 94.

Evidence required the conclusion that the shareholders exercised sound business judgment. *Robinson v. Malheur Publishing Co.*, (1967) 272 F Supp 57.

2. Under former similar statute

A payment of subscriptions with property could be attacked by creditors for either actual or legal fraud, but the manner of proof was different. *Macbeth v. Banfield*, (1904) 45 Or 553, 564, 78 P 693, 106 Am St Rep 670; *Smith v. Schmitt*, (1924) 112 Or 687, 231 P 176.

The directors' judgment as to the value of property had to result from their honest attempt to fix true valuation, and not for their individual interest, anything less being dishonest and fraudulent. **Transfer of recipe**, *Joplin v. Nunnelly*, (1913) 67 Or 566, 134 P 1177; **options**, *Atwell v. Schmitt*, (1924) 111 Or 96, 225 P 325, *Smith v. Schmitt*, (1924) 112 Or 687, 231 P 176; *Laing v. Hutton*, (1932) 138 Or 307, 6 P2d 884; **lease valuation**, *Compton v. Perkins*, (1933) 144 Or 346, 24 P2d 670.

The directors could receive property in payment for stock but such property had to be equal in worth to the par value of the stock. *Macbeth v. Banfield*, (1904) 45 Or 553, 564, 78 P 693, 106 Am St Rep 670.

In determining whether directors were guilty of fraud in taking property for stock, it was competent to consider its nature, the purposes for which it was accepted, and all the circumstances attending the transaction. *Id.*

Where the directors had acted in good faith, their judgment as to the value of the property was conclusive to all who participated in and had knowledge of the transaction. *Huson v. Portland & S.E. Ry.*, (1923) 107 Or 187, 211 P 897, 213 P 408.

Stock issued as fully paid in consideration of services to be rendered, and for the use of the subscribers' names, good will, prestige and influence was not paid up within the provision. *Laing v. Hutton*, (1932) 138 Or 307, 6 P2d 884.

Where property had been transferred to the corporation at a gross overvaluation, and where the directors had an individual interest therein, the provision as to the judgment of the directors on the value of property purchased was not controlling. *Rugger v. Mt. Hood Elec. Co.*, (1933) 143 Or 193, 20 P2d 412, 21 P2d 1100.

FURTHER CITATIONS: *Ladd v. Cartwright*, (1879) 7 Or 329; *Powell v. Oregonian R. Co.*, (1889) 13 Sawy 543, 38 Fed 187; *Farrell v. Davis*, (1917) 85 Or 213, 217, 161 P 94, 703.

ATTY. GEN. OPINIONS: Issuance of fully paid stock for services not yet rendered, 1922-24, p 21.

57.111

LAW REVIEW CITATIONS: 45 OLR 202.

57.121

NOTES OF DECISIONS

Under former similar statute, a certificate of stock was evidence of the right of the owner to a pro rata share of the net profits of a corporation when declared, or to a like share of the assets after payment of its debts in case of

dissolution. *Beckwith v. Galice Mines Co.*, (1908) 50 Or 542, 548, 93 P 453, 16 LRA (NS) 723.

FURTHER CITATIONS: *Doyle v. Chladek*, (1965) 240 Or 598, 401 P2d 18.

57.131

NOTES OF DECISIONS

1. Under former similar statute

(1) Subscriber's liability. A stockholder's liability on his subscription to a corporation creditor was limited to the amount of his stock subscribed and unpaid. *Bush v. Cartwright*, (1879) 7 Or 329; *Branson v. Oregonian Ry. Co.*, (1882) 10 Or 278; *Lee v. Imbrie*, (1886) 13 Or 510, 11 P 270.

An unconditional subscription became irrevocable as to the creditors upon the formation of the company within a reasonable time thereafter and an agreement by the promoters to relieve the subscriber had no force, in the absence of a sufficient revocation. *Balfour v. Baker City Gas Co.*, (1895) 27 Or 300, 305, 41 P 164.

Where the purposes designated in the articles of incorporation did not correspond with those in the preliminary subscription, a subscriber could not escape liability if he had participated in the organization under such articles. *Nickum v. Burckhardt*, (1897) 30 Or 464, 469, 47 P 788, 48 P 474, 60 Am St Rep 822.

After the statute of limitations had barred the corporation's right to collect subscription, creditors could not enforce the liability of stockholders. *Hawkins v. Donnerberg*, (1901) 40 Or 97, 66 P 691, 908.

After bankruptcy of corporation, the trustee in bankruptcy was the only person who could recover unpaid stock subscriptions. *Falco v. Kaupisch Creamery Co.*, (1903) 42 Or 422, 70 P 286.

(2) Stockholder's liability. Stockholders were liable to or for the benefit of creditors of the corporation in case of its insolvency to the extent of the amount unpaid on their subscriptions or shares. *Sargent v. Waterbury*, (1917) 83 Or 159, 167, 161 P 443, 163 P 416; *Crocker v. Gentry*, (1928) 127 Or 168, 174, 271 P 38, 40; *Laing v. Hutton*, (1932) 138 Or 307, 6 P2d 884; *Patterson v. Lynde*, (1883) 106 US 519, 1 S Ct 432, 27 L Ed 265; *Faull v. Alaska Gold & Silver Min. Co.*, (1883) 8 Sawy 420, 14 Fed 657; *Powell v. Oregonian R. Co.*, (1888) 13 Sawy 535, 36 Fed 726, 728.

Unpaid subscriptions constituted a fund on which creditors had a right to rely for the payment of their debts. *Lee v. Imbrie*, (1886) 13 Or 510, 11 P 270; *Macbeth v. Banfield*, (1904) 45 Or 553, 564, 78 P 693, 106 Am St Rep 670.

The provisions imposing liability on stockholders applied only to those who were, or had been, holders of the legal title, in unpaid stock. *Branson v. Oregonian Ry.*, (1882) 10 Or 278.

Where a transfer of shares had not been recorded on the books of the corporation, the transferor was liable to a creditor to whom the corporation became indebted before the transfer. *Hawkins v. Citizens' Inv. Co.*, (1901) 38 Or 544, 554, 64 P 320.

The liability of a subscriber was determined by the written contract, and it could not afterwards be changed as against intermediate creditors by any action of the corporation or its officer. *Id.*

The indebtedness of every stockholder on unpaid subscriptions was liable to any creditor of an insolvent corporation after the remedies against corporation were exhausted. *Laing v. Hutton*, (1932) 138 Or 307, 6 P2d 884.

Creditors, believing that stock had been fully paid, were not bound by agreements between the directors and subscribers whereby the latter received the stock without being required to pay its par value. *Compton v. Perkins*, (1933) 144 Or 346, 24 P2d 670.

A trustee in bankruptcy was not bound by any transac-

tions whereby a subscriber was permitted to secure stock without making payment for its par value. Id.

Where a debtor transferred stock to a trustee to sell to anyone who would pay his indebtedness to the corporation the trustee was not a purchaser incurring liability. *Powell v. Willamette Val. R. Co.*, (1887) 15 Or 393, 402, 15 P 663.

57.136

LAW REVIEW CITATIONS: 45 OLR 175.

57.141

CASE CITATIONS: *Jackson v. Nicolai-Neppach Co.*, (1959) 219 Or 560, 348 P2d 9.

57.145

ATTY. GEN. OPINIONS: Articles of incorporation that conflict with this section, 1858-60, p 189; articles providing manner of calling shareholders' special meeting, 1958-60, p 189.

LAW REVIEW CITATIONS: 39 OLR 128.

57.150

NOTES OF DECISIONS

Under former similar statute unless called upon proper notice, a meeting of stockholders and their acts were invalid. In re *St. Helen Mill Co.*, (1874) 3 Sawy 88, Fed Cas No. 12,222; *Pacific Rolling-Mill v. Dayton S. & G.R.R. Co.*, (1881) 7 Sawy 61, 5 Fed 852, 856.

FURTHER CITATIONS: *Nickum v. Burckhardt*, (1897) 30 Or 464, 471, 47 P 788, 48 P 474, 60 Am St Rep 822.

57.175

CASE CITATIONS: *Standard Lbr. Co. v. Commr. of Int. Rev.*, (1962) 299 F2d 382.

57.180

NOTES OF DECISIONS

1. Under former similar statute

(1) In general. A director was qualified although transfer of shares to him had not been registered on the books of the company as provided by the bylaws. *State v. Smith*, (1887) 15 Or 98, 14 P 814, 15 P 137, 386.

A corporation was entitled to the benefits of a transaction wherein the majority stockholders purchased outstanding corporate notes at a discount. *Young v. Columbia Land & Inv. Co.*, (1909) 53 Or 438, 441, 99 P 936, 133 Am St Rep 844.

(2) Director's functions and powers. The powers of the corporation were exercised by the directors and by officers and agents who acted under their supervision. *Moore v. Willamette Transp. Co.*, (1879) 7 Or 359, 372; *Baillie v. Columbia Gold Min. Co.*, (1917) 86 Or 1, 166 P 965, 167 P 1167; *Ramsey v. Wellington Co.*, (1925) 114 Or 355, 368, 235 P 297; *Linster v. E. Lake Health Resort*, (1927) 123 Or 208, 214, 261 P 686, 688; *Oregon R. Co. v. Ore. R. & Nav. Co.*, (1886) 28 Fed 505; In re *Quartz Gold Min. Co.*, (1907) 157 Fed 243.

Unauthorized acts of directors could become binding by reason of lapse of time, estoppel or ratification. *Finnegan v. Pac. Vinegar Co.*, (1894) 26 Or 152, 37 P 457; *Silsby v. Strong*, (1900) 38 Or 36, 41, 62 P 633, 13 Am & Eng Corps Cas (NS) 574; *Pacific Mill Co. v. Inman, Poulsen & Co.*, (1907) 50 Or 22, 28, 90 P 1099.

The stockholders did not directly exercise authority.

Steelman v. Ore. Dairymen's League, (1920) 97 Or 535, 539, 192 P 790, 792; *Harvey v. Campbell*, (1923) 107 Or 373, 437, 209 P 107, 214 P 348; *Powell v. Oregonian R. Co.*, (1889) 13 Sawy 543, 38 Fed 187, 189.

A corporation could not make a deed unless the directors, or a majority of them, met together as a board and so determined. In re *St. Helen Mill Co.*, (1874) 3 Sawy 88, Fed Cas No. 12,222.

The directors were trustees for the stockholders and creditors. *Corbett v. Woodward*, (1879) 5 Sawy 403, Fed Cas No. 3,223.

A director was not entitled to compensation for services rendered that appertained to his office, unless it was provided for by a resolution or a bylaw adopted prior to the rendition of such services. *Wood v. Lost Lake Mfg. Co.*, (1890) 23 Or 20, 23 P 848, 37 Am St Rep 651.

The declaring of dividends was a function of the directors. *Baillie v. Columbia Gold Min. Co.*, (1917) 86 Or 1, 166 P 965, 167 P 1167.

(3) Dealings with the corporation. A corporation could borrow money of an officer or director and give a mortgage on its property to secure its payment. *Jones v. Hale*, (1898) 32 Or 465, 470, 52 P 311; *Patterson v. Portland Smelting Works*, (1889) 35 Or 96, 56 P 407.

A purchase by directors, made on behalf of the corporation, of property in which they were personally interested could be annulled by a stockholder. *Stanley v. Luse*, (1899) 36 Or 25, 34, 58 P 75.

The rule which disqualified a director from binding a corporation by a transaction in which he had an adverse interest was for the protection of the corporation and its stockholders. *Marsters v. Umpqua Oil Co.*, (1907) 49 Or 374, 377, 90 P 151, 12 LRA (NS) 825.

FURTHER CITATIONS: *Hedges v. Paquett*, (1867) 3 Or 77; In re *Pittock's Will*, (1921) 102 Or 159, 178, 199 P 633, 202 P 216, 17 ALR 218; *Thielsen v. Blake, Moffitt & Towne*, (1933) 142 Or 59, 17 P2d 560; *Carter v. Portland Gen. Elec. Co.*, (1961) 227 Or 401, 362 P2d 766.

57.185

NOTES OF DECISIONS

Under former similar statute, from the time of the first meeting of the directors, the powers of the corporation were exercised by them, and the functions of the incorporators then ceased. *Nickum v. Burckhardt*, (1897) 30 Or 464, 469, 47 P 788, 48 P 474, 60 Am St Rep 822.

FURTHER CITATIONS: *Jackson v. Nicolai-Neppach Co.*, (1959) 219 Or 560, 348 P2d 9.

ATTY. GEN. OPINIONS: Naming of first board of directors in the articles of incorporation, 1952-54, p 179.

LAW REVIEW CITATIONS: 5 WLJ 639.

57.200

NOTES OF DECISIONS

1. Under former similar statute

The defendant had to carry the burden of proof where he alleged that an insufficient number of directors were present. *Oregon R. Co. v. Ore. Ry. & Nav. Co.*, (1886) 28 Fed 505.

Where there were unfilled vacancies in the board of directors, the quorum was a majority of the entire board, as if all vacancies were filled. *Burton v. Lithic Mfg. Co.*, (1914) 73 Or 605, 608, 144 P 1149.

A majority of the members of the board of directors could exercise the powers vested in the board. *The Egeria*, (1924) 294 Fed 791, 793.

FURTHER CITATIONS: *Rugger v. Mt. Hood Elec. Co.*, (1933) 143 Or 193, 20 P2d 412, 21 P2d 1100.

57.211

NOTES OF DECISIONS

Under former similar statute, where the place of meeting was not specified in the bylaws, a meeting could be called at a place other than at the principal place of business of the corporation. *Corbett v. Woodward*, (1879) 5 Sawy 403, Fed Cas No. 3,223.

Under former similar statute, a written notice of a meeting of directors left at the business place of a director known to be ill at home and unable to attend was sufficient. *Id.*

FURTHER CITATIONS: *Doernbecher v. Columbia City Lbr. Co.*, (1892) 21 Or 573, 28 P 899, 28 Am St Rep 766.

ATTY. GEN. OPINIONS: Change of place of business, 1928-30, p 237.

57.216

NOTES OF DECISIONS

Under former similar statute, the question whether a corporate dividend shall be declared is ordinarily one of internal management with which courts will not interfere. *Ostlind v. Ostlind Valve Inc.*, (1946) 178 Or 161, 165 P2d 779.

57.226

CASE CITATIONS: *Ladd Estate Co. v. Wheatley*, (1967) 246 Or 627, 426 P2d 878.

LAW REVIEW CITATIONS: 42 OLR 113.

57.231

CASE CITATIONS: *Seeck Mfg. Co. v. Am. Trust Co.*, (1933) 143 Or 314, 20 P2d 1065, 22 P2d 327; *Loveland & Co. v. Doernbecher Mfg. Co.*, (1934) 149 Or 58, 39 P2d 668; *Patterson v. Thompson*, (1898) 86 Fed 85, 90 Fed 647; *Patterson v. Wade*, (1902) 115 Fed 770, 772, 53 CCA 1.

LAW REVIEW CITATIONS: 5 WLJ 338.

57.236

NOTES OF DECISIONS

Under former similar statute, power to make, accept or indorse any bill, note or bond which would be binding upon the company was not vested in the president or vice-president unless authority had been conferred by the bylaws or by the board of directors. *Du Bois-Matlack Lbr. Co. v. Henry D. Davis Lbr. Co.*, (1935) 149 Or 571, 575, 42 P2d 152; *Crawford v. Albany Ice Co.*, (1900) 36 Or 535, 60 P 14; *Wilson v. Inv. Co.*, (1916) 80 Or 233, 236, 156 P 249.

Under former similar statute, execution of a mortgage was outside the scope of the president's authority. *Luse v. Isthmus Transit R. Co.*, (1876) 6 Or 125, 25 Am Rep 506.

Under former similar statute, although the president was not authorized to mortgage property as security for a loan, without specific authority from the directors, acquiescence by them to unauthorized chattel mortgages was presumed. *Currie v. Bowman*, (1894) 25 Or 364, 372, 35 P 848.

57.246

NOTES OF DECISIONS

1. In general

Burden of establishing bad faith or improper purpose rests upon the defendant. *Rosentool v. Bonanza Oil & Mine Corp.*, (1960) 221 Or 520, 352 P2d 138; *Babbit v. Pacco Investors Corp.*, (1967) 246 Or 261, 425 P2d 489.

Shareholders under subsection (4) have the burden of proving a proper purpose, but shareholders under subsection (2) are entitled to make a demand without first establishing that demand is for a proper purpose. *Rosentool v. Bonanza Oil & Mine Corp.*, (1960) 221 Or 520, 352 P2d 138.

An original subscriber is a stockholder for the purposes of this section. *Babbit v. Pacco Investors Corp.*, (1967) 246 Or 261, 425 P2d 489.

The evidence was sufficient to support a finding of refusal to allow the examination of the books. *Id.*

2. Under former similar statute

(1) **Proceedings.** The proceedings of the corporation had to be shown by its records. *Coyote Gold & Silver Min. Co. v. Ruble*, (1880) 8 Or 284.

The minutes were part of the corporate record although the secretary adopted the record as written by a director; failure of the director to read the minutes before being signed by the secretary did not invalidate them. *Teiser v. Swirsky*, (1931) 137 Or 595, 2 P2d 920, 4 P2d 322.

(2) **Transfer of stock.** To compel transference of shares, mandamus was an appropriate remedy. *Durham v. Monumental Silver Min. Co.*, (1880) 9 Or 41. **Distinguished in** *Slemmons v. Thompson*, (1892) 23 Or 215, 31 P 514.

The corporation was bound by transfers of stock of which it had notice, notwithstanding that the bylaws forbade the transfer of stock except on the company books. *Steel v. Island Milling Co.*, (1905) 47 Or 293, 83 P 783.

If, with knowledge of a transfer of shares, the corporation paid dividends to the transferor, it was liable to the transferee; and entry of the amount to the credit of the transferor before notice was not a payment so as to protect the company. *Id.*

Where the corporation refused to perfect a transfer, the purchaser could sue at law and recover the full value of the stock; if this failed to afford a complete remedy, he could sue in equity to compel a transfer and the issuance of the certificates. *Davidson v. Almeda Mines Co.*, (1917) 66 Or 412, 415, 134 P 782, 48 LRA(NS) 847.

(3) **Inspection of records.** Where a corporation removed its records from the state, a mandatory injunction was issuable requiring their return to the state, and to keep them here for inspection as required. *Baillie v. Columbia Gold Min. Co.*, (1917) 86 Or 1, 34, 35, 37, 166 P 965, 167 P 1167, *aff'd* (1920) 95 Or 609, 188 P 418.

Mandamus was the appropriate remedy to compel production and inspection of books and records at the suit of a stockholder. *Ralston v. Grande Ronde Hosp.*, (1934) 149 Or 45, 39 P2d 362.

57.306 to 57.331

ATTY. GEN. OPINIONS: Application to title insurance companies, 1966-68, p 259.

57.306

NOTES OF DECISIONS

Under former similar statute, one who agreed to organize a corporation, in pursuance of which contract he purchases property to be turned over to the corporation was a fiduciary. *Johnson v. Sheridan Lbr. Co.*, (1908) 51 Or 35, 93 P 470.

Under former similar statute, a promoter could sell prop-

erty to the corporation which he was organizing. *Wills v. Nehalem Coal Co.*, (1908) 52 Or 70, 96 P 528.

FURTHER CITATIONS: *Abrams v. Puziss*, (1963) 235 Or 60, 383 P2d 1012.

57.311

NOTES OF DECISIONS

1. Under former similar statute

The sufficiency of incorporation was tested by the law of the place where the corporation originated. *Oregonian Ry. Co. v. Ore. Ry. & Nav. Co.*, (1886) 27 Fed 279, rev'd on other grounds sub nom. *Oregon Ry. & Nav. Co. v. Oregonian Ry.*, (1888) 130 US 1, 9 S Ct 409, 32 L Ed 837.

Incorporation did not imply authority to exercise a franchise the possession of which required a grant from the state. *State v. Portland Gen. Elec. Co.*, (1908) 52 Or 502, 516, 95 P 722, 98 P 160.

A corporation had a vested right to the name under which it had been incorporated. *Lorntsen v. Union Fisherman's Packing Coop. Co.*, (1914) 71 Or 540, 143 P 621.

A corporation could not have or issue capital stock unless authorized by statute. *Wemme v. First Church of Christ*, (1924) 110 Or 179, 199, 219 P 618, 223 P 250.

Capital stock was the sum fixed by charter as the amount paid in or to be paid in by the stockholders; it was a fund set apart by law for the prosecution of the corporate business and for the benefit of its creditors. *Loveland & Co., Ltd. v. Doernbecher Mfg. Co.*, (1934) 149 Or 58, 39 P2d 668.

ATTY. GEN. OPINIONS: Naming of first board of directors in the articles of incorporation, 1952-54, p 179; articles providing manner of calling shareholders' special meeting, 1958-60, p 189; assumed business name that is not a corporate name but uses "corp." or "inc.", 1964-66, p 55.

LAW REVIEW CITATIONS: 36 OLR 54; 5 WLJ 336, 338.

57.316

NOTES OF DECISIONS

Under former similar statute, legal and complete incorporation required filing and recording of articles of incorporation. *Kelly v. Ruble*, (1883) 11 Or 75, 102, 4 P 593.

Under former similar statute, liability as partners was not incurred where persons merely filed articles of incorporation although one of them incurred liability under the proposed corporate name. *Rutherford v. Hill*, (1892) 22 Or 218, 220, 29 P 546, 29 Am St Rep 596, 17 LRA 549.

ATTY. GEN. OPINIONS: Articles providing manner of calling shareholders' special meeting, 1958-60, p 189.

57.321

LAW REVIEW CITATIONS: 36 OLR 52; 5 WLJ 339.

57.326

NOTES OF DECISIONS

Under former similar statute, corporate existence had to precede the appointment of an agent. *Kelly v. Ruble*, (1883) 11 Or 75, 4 P 593.

Under former similar statute, a corporation had to have full and complete organization and existence as an entity before it could assume its franchises or enter into any kind of contract or business. *McVicker v. Cone*, (1891) 21 Or 353, 28 P 76.

Under former similar statute, where a corporation commenced business with less than \$1,000 capital, it could only be attacked by direct proceedings to forfeit its charter.

Temple Enterprises v. Combs, (1940) 164 Or 133, 100 P2d 613, 128 ALR 856.

FURTHER CITATIONS: *Holladay v. Elliot*, (1879) 8 Or 84; *Coyote Gold & Silver Min. Co. v. Ruble*, (1880) 8 Or 284; *Fairview R. Co. v. Spillman*, (1893) 23 Or 587, 590, 32 P 688; *Thielsen v. Linde*, (1929) 127 Or 639, 643, 271 P 983.

LAW REVIEW CITATIONS: 5 WLJ 336-338.

57.331

ATTY. GEN. OPINIONS: Naming of first board of directors in the articles of incorporation, 1952-54, p 179.

57.355

NOTES OF DECISIONS

Under former similar statute, an increase of capital stock made by the directors without authority, or by the stockholders irregularly, could be ratified as against the company. *Pacific Mill Co. v. Inman, Poulsen & Co.*, (1907) 50 Or 22, 90 P 1099.

Under former similar statute, stock issued before the increase in such stock was certified or the license fee paid did not prevent a subsequent purchaser from obtaining his proportionate interest in the corporation. *Zobrist v. Estes*, (1913) 65 Or 573, 133 P 644.

LAW REVIEW CITATIONS: 33 OLR 106; 45 OLR 164, 168.

ATTY. GEN. OPINIONS: Change of credit union name, 1942-44, p 320.

57.360

LAW REVIEW CITATIONS: 33 OLR 111; 39 OLR 128; 45 OLR 164, 176.

57.432 to 57.450

LAW REVIEW CITATIONS: 45 OLR 161-209.

57.455 to 57.480

ATTY. GEN. OPINIONS: Merger of state and federal credit unions, 1960-62, p 343.

LAW REVIEW CITATIONS: 45 OLR 161-209.

57.455

ATTY. GEN. OPINIONS: Merger of domestic life insurance corporation with any other domestic corporation, 1958-60, p 208; exchanging stock with parent of surviving corporation domiciled out-of-state, (1969) Vol 34, p 723.

57.465

LAW REVIEW CITATIONS: 45 OLR 163.

57.470

LAW REVIEW CITATIONS: 45 OLR 163.

57.475

LAW REVIEW CITATIONS: 45 OLR 163.

57.480

CASE CITATIONS: American Portable Irr. Co. v. State Tax Comm., (1969) 3 OTR 360, aff'd, 255 Or 116, 464 P2d 687.

ATTY. GEN. OPINIONS: Transfer by Fish Commission of license to parent corporation upon dissolution of license subsidiary, 1962-64, p 471.

LAW REVIEW CITATIONS: 45 OLR 171, 172.

57.485

CASE CITATIONS: American Portable Irr. Co. v. State Tax Comm., (1969) 3 OTR 360.

ATTY. GEN. OPINIONS: Authority of state credit union to merge with federal credit union, 1960-62, p 343; exchanging stock with parent of surviving corporation domiciled out-of-state, (1969) Vol 34, p 723.

LAW REVIEW CITATIONS: 45 OLR 163.

57.495

LAW REVIEW CITATIONS: 45 OLR 162, 163.

57.506

LAW REVIEW CITATIONS: 45 OLR 166.

57.511

NOTES OF DECISIONS

Under former similar statute, the personal interest of two stockholders and directors did not disqualify them from voting in favor of a motion to ratify a sale of corporate machinery and equipment, and the resolution adopted with their votes had the required two-thirds majority. Ostlind v. Ostlind Valve, Inc., (1946) 178 Or 161, 165 P2d 779.

LAW REVIEW CITATIONS: 45 OLR 162, 164, 166, 176, 202.

57.526

LAW REVIEW CITATIONS: 5 WLJ 639.

57.531

LAW REVIEW CITATIONS: 5 WLJ 639.

57.536

ATTY. GEN. OPINIONS: Transfer of fish commission licenses on reorganization of licensee, 1962-64, p 471.

LAW REVIEW CITATIONS: 45 OLR 176; 5 WLJ 640.

57.546

CASE CITATIONS: Klamath Lbr. Co. v. Bamber, (1915) 74 Or 287, 292, 142 P 359, 145 P 650.

57.551

NOTES OF DECISIONS

Under former similar statute, the stockholders could authorize and direct the sale of corporation property on its dissolution. Moore v. Willamette Trans. & Locks Co., (1879) 7 Or 359.

Under former similar statute, where stockholders conferred on directors the power of disposing of corporate

property, the directors could delegate ministerial duties connected with the sale, if discretionary matters were reserved under the control of the directors. Patterson v. Portland Smelting Works, (1899) 35 Or 96, 105, 56 P 407.

Under former similar statute, stockholders alone could not dissolve a corporation, but could authorize the directors to do so. Willamette Falls, C. & L. Co. v. Kittredge, (1877) 5 Sawy 44, 48, Fed Cas No. 17,105; Wells v. Ore. Ry. & Nav. Co., (1883) 8 Sawy 600, 15 Fed 561, 565; Powell v. Ore. Ry. & Nav. Co., (1889) 13 Sawy 543, 38 Fed 187, 189.

FURTHER CITATIONS: Anderson v. Burgess, (1924) 110 Or 265, 271, 223 P 244.

ATTY. GEN. OPINIONS: Transfer of fish commission licenses on reorganization of licensee, 1962-64, p 471.

57.560

CASE CITATIONS: McMunn v. M L & H Lbr., Inc., (1967) 247 Or 319, 429 P2d 798.

57.585

NOTES OF DECISIONS

1. Under former similar statute

Pleading dissolution required an allegation of the delinquency which authorized the Governor's proclamation. Dowd v. Am. Sur. Co., (1914) 69 Or 418, 139 P 112.

A strict construction was accorded to provisions relating to forfeiture of corporate powers. Klamath Lbr. Co. v. Bamber, (1915) 74 Or 287, 293, 142 P 359, 145 P 650.

Failure to pay fees did not ipso facto dissolve a corporation; the filing of a list and proclamation were necessary to dissolution. Klamath Lbr. Co. v. Bamber, (1915) 74 Or 287, 293, 142 P 359, 145 P 650; Deschutes Co. v. Lara, (1928) 127 Or 57, 270 P 913.

Recitals in the Governor's proclamation that delinquencies have been properly reported were prima facie evidence of such fact. Smyth v. Kenwood Land Co., (1920) 97 Or 19, 190 P 962.

A deed to a corporation which had been dissolved by proclamation of the Governor was void. Klorfine v. Cole, (1927) 121 Or 76, 252 P 708, 254 P 200.

During the period of revocation of the articles of incorporation a corporation had sufficient capacity to serve as a repository of title to realty, and as an obligor of a debt. Deschutes Co. v. Lara, (1928) 127 Or 57, 270 P 913.

The Supreme Court took judicial notice of the Governor's proclamation dissolving a corporation. Clatsop County v. Taylor, (1941) 167 Or 563, 119 P2d 285.

Abatement of county's action to foreclose tax certificates was not authorized by the mere fact that the dissolved corporation within the five years allowed to wind up its affairs conveyed its realty to defendant. Id.

FURTHER CITATIONS: Lents, Inc. v. Borstad, (1968) 251 Or 296, 445 P2d 597.

ATTY. GEN. OPINIONS: Reinstatement of corporation dissolved in 1945, 1962-64, p 289.

LAW REVIEW CITATIONS: 5 WLJ 639-662.

57.585

NOTES OF DECISIONS

1. In general

Actual benefit to the stockholders is a factor which may properly be considered in determining whether dissolution is to be granted. Jackson v. Nicolai-Neppach Co., (1959)

219 Or 560, 348 P2d 9; McMunn v. M L & H Lbr., Inc., (1967) 247 Or 319, 429 P2d 798.

Although for four years the board was deadlocked, so that a new board could not be elected but old board continued, when the corporation prospered, there was no alleged abuse by management, and substantial dividends were paid, the court would not decree dissolution. Jackson v. Nicolai-Neppach Co., (1959) 219 Or 560, 348 P2d 9.

The evidence showed that acts of those in control of the corporation were oppressive and wrongful. Browning v. C & C Plywood Corp., (1967) 248 Or 574, 434 P2d 339.

2. Under former similar statute

In the absence of expressed authority conferred by the stockholders, the directors could not pass a resolution admitting the corporation's inability to pay its debts and its willingness to be adjudged a bankrupt. In re Quartz Gold Min. Co., (1907) 157 Fed 243.

Directors could not make a general assignment for creditors. Gen S. S. Corp. v. Astoria Overseas Corp., (1924) 294 Fed 861. But see Rudebeck v. Sanderson, (1915) 142 CCA 207, 227 Fed 575, 577.

LAW REVIEW CITATIONS: 39 OLR 382-385; 5 WLJ 647, 662.

57.606

NOTES OF DECISIONS

The equity court may administer the property within its control, without regard to creditors whose claims have not been proved and allowed. Realty Associates v. Women's Club, (1962) 230 Or 481, 369 P2d 747.

57.625

NOTES OF DECISIONS

An unclaimed share of a stockholder in the fund available for distribution is not available to other known stockholders. Realty Associates v. Women's Club, (1962) 230 Or 481, 369 P2d 747.

ATTY. GEN. OPINIONS: Recovery by executor or administrator, 1956-58, p 24.

LAW REVIEW CITATIONS: 37 OLR 73; 5 WLJ 661.

57.630

NOTES OF DECISIONS

1. In general

A creditor of a corporation may satisfy his claim against the corporation out of the assets distributed to stockholders upon dissolution. Wakeman v. Paulson, (1971) 257 Or 542, 480 P2d 434.

2. Under former similar statute

(1) **In general.** Dissolution of a foreign corporation was governed by the law of the corporation's domicile. Dundee Mtg. & Title Ins. Co. v. Hughes, (1898) 89 Fed 182, 184.

A corporation had sufficient capacity during the period of revocation to serve as a repository of title to realty, and as an obligor of debt. Deschutes Co. v. Lara, (1928) 127 Or 57, 270 P 913.

Defendant corporation's motion to dismiss suit on grounds that, having been dissolved it could no longer violate a federal Act was denied, as it was still in existence for the purpose of defending on the merits, and plaintiff otherwise might not be able to enforce his judgment against defendant's successor. McComb v. Row. R. Lbr. Co., (1949) 177 F2d 129.

(2) **Subsection (1).** A grantee having obtained a waiver

of building restrictions from a corporation after the latter on dissolution had conveyed property to another, could not be enjoined from violating such building restrictions, where conveyance by the corporation was for the purpose of settling its affairs. Grussi v. Eighth Church of Christ, Scientist, (1925) 116 Or 336, 241 P 66.

A transferee was liable for goods bought from a corporation without compliance with the Bulk Sales Law where the transfer was made after the corporation was reinstated, but pursuant to bids made while it was subject to dissolution. Gillen-Cole Co. v. Fox & Co., (1934) 146 Or 208, 29 P2d 1019.

Dissolution of a building and loan association did not affect the circuit court's jurisdiction to render judgment in an action pending at the time of dissolution. Silbaugh v. Guardian Bldg. & Loan Assn., (1940) 164 Or 286, 97 P2d 943, 99 P2d 1017, 101 P2d 420.

(3) **Subsection (2).** This subsection allowed an additional five-year period for suits against dissolved corporations concerning their title to real property. Clatsop County v. Taylor, (1941) 167 Or 563, 119 P2d 285.

Abatement of county action to foreclose tax certificates was not authorized by the mere fact that the dissolved corporation within the five years conveyed its realty to defendant. Id.

57.655 to 57.745

CASE CITATIONS: Semler v. Cook-Waite Lab., Inc., (1955) 203 Or 139, 278 P2d 150.

ATTY. GEN. OPINIONS: Qualifying for purpose of insurance agent license, (1970) Vol 35, p 165.

57.655

NOTES OF DECISIONS

1. In general

The defendant was transacting business in this state and subject to service on the commissioner. Bohemia Lbr. Co. v. Eimco Corp., (1963) 223 F Supp 178.

2. Under former similar statute

(1) **In general.** Where there was a noncompliance with the statutory prerequisites for doing business in this state, no suit was maintainable on a contract which had been made with the view of conducting business in the state or while actually transacting such business. Major Creek Lbr. Co. v. Johnson, (1921) 99 Or 172, 195 P 177; Northwestern Mut. Life Ins. Co. v. Elliot, (1880) 7 Sawy 17, 5 Fed 225, 227.

Transactions constituting interstate commerce could not be regulated by the former state statutes imposing conditions upon the right of foreign corporations to transact business within the state. Rashford Lbr. Co. v. Dolan, (1927) 122 Or 572, 260 P 224; Mergenthaler Linotype Co. v. Spokesman Pub. Co., (1928) 127 Or 196, 270 P 519; La Moine Lumber & Trading Co. v. Kesterson, (1909) 171 Fed 980.

The former law permitted and invited foreign corporations to do business in the state on certain conditions, and by implication extended the powers and privileges necessary to carry on such business. Northwestern Elec. Co. v. Zimmerman, (1913) 67 Or 150, 152, 135 P 330, Ann Cas 1915C, 927.

(2) **Transacting business.** Foreign corporations were not "transacting business" in this state in the following instances. **Purchasing a promissory note, Commercial Bank v. Sherman, (1896) 28 Or 573, 43 P 658; trustees meeting; execution of trust deed to raise funds for foreign business; execution of contract to be performed in another state; hiring an agent, Major Creek Lbr. Co. v. Johnson, (1921)**

99 Or 172, 195 P 177; **suing for goods sold**, Alligator Oil Clothing Co. v. Baseel, (1926) 117 Or 527, 244 P 661.

Solicitation of orders for goods and forwarding the orders subject to approval to the home office, the orders being afterwards filled by shipments to the customer, did not constitute the transacting of business within the state. Bertin & Lepori v. Mattison, (1914) 69 Or 470, 139 P 330; Vermont Farm Machinery Co. v. Hall, (1916) 80 Or 308, 156 P 1073.

Asking the aid of the courts to enforce contracts that related to legitimate business to be done in other states, and that were not prohibited by the laws of the state, did not constitute the doing of business within the state. Major Creek Lbr. Co. v. Johnson, (1921) 99 Or 172, 195 P 177; Orange Nat. Bank v. Traver, (1881) 7 Sawy 210, 7 Fed 146.

Where the corporation's local business was incidental to principal interstate transaction, the corporation was not "doing business" in the state. Mergenthaler Linotype Co. v. Spokesman Pub. Co., (1928) 127 Or 196, 270 P 519.

FURTHER CITATIONS: Johnson v. Seaborg, (1914) 69 Or 27, 32, 137 P 191; Weiser Land Co. v. Bohrer, (1915) 78 Or 202, 204, 152 P 869; Crites v. Associated Frozen Food Packers, (1948) 183 Or 191, 191 P2d 650; Crites v. Associated Frozen Food Packers, (1951) 190 Or 585, 227 P2d 821.

ATTY. GEN. OPINIONS: Application to savings and loan company, 1962-64, p 119; mortgage investments by a foreign savings and loan association as "doing business" in Oregon, 1966-68, p 372.

LAW REVIEW CITATIONS: 39 OLR 292.

57.660

LAW REVIEW CITATIONS: 39 OLR 292.

57.685

NOTES OF DECISIONS

Under former similar statute, a certificate of authority to do business while a corporation was insolvent and in receivership did not give validity to its acts within the state. Johnson v. Seaborg, (1914) 69 Or 27, 33, 137 P 191.

FURTHER CITATIONS: McIntosh Livestock Co. v. Bufington, (1925) 116 Or 399, 241 P 393.

57.690

ATTY. GEN. OPINIONS: Duty of banks and trust companies, industrial loan companies and credit unions to maintain a registered office and agent in this state, 1952-54, p 201.

57.700

NOTES OF DECISIONS

1. In general

The purpose of this section is to require one who has transacted business in Oregon to consent to jurisdiction within a reasonable time after he has departed, on transactions which were occurring within the operating period. Stewart v. Allied Constr. and Engr. Co., (1968) 288 F Supp 541.

2. Service and venue

Service may be made upon the agent of a foreign corporation in a county where the cause of action did not arise. Semler v. Cook-Waite Lab. Inc., (1954) 203 Or 139, 278 P2d 150.

The defendant was transacting business in this state and

subject to service on the commissioner. Bohemia Lbr. Co. v. Eimco Corp., (1963) 223 F Supp 178; Hiersche v. Seamless Rubber Co., (1963) 225 F Supp 682.

3. Under former similar statute

(1) **In general.** A pleading could be verified by the agent or attorney appointed by the corporation. West v. Home Ins. Co., (1883) 9 Sawy 412, 18 Fed 622.

Where an inspection of the commissioner's public records would disclose whether defendant had filed a power of attorney, its existence could not be put into issue by a denial on information and belief. Ore. Mesabi Corp. v. Johnson Lbr. Corp., (1947) 166 F2d 997.

(2) **Service and venue.** Service of summons on any other person than the corporation's appointed agent was ineffectual. Cunningham v. Klamath Lake R. Co., (1909) 54 Or 13, 101 P 213, 1099.

The requirement of service on the commissioner did not apply to a foreign corporation whose business was entirely interstate. Winslow Lbr. Co. v. Hines Lbr. Co., (1928) 125 Or 63, 266 P 248.

Service of summons upon a resident agent would give complete jurisdiction to any court of the state where there was proper venue. State v. Updegraff, (1943) 172 Or 246, 141 P2d 251. Overruling Ramaswamy v. Hammond Lbr. Co., (1915) 78 Or 407, 152 P 223.

The only proper venue of transitory actions against foreign corporations was either the county where they maintained their principal place of business or that in which the cause of action arose. State v. Updegraff, (1943) 172 Or 246, 141 P2d 251.

FURTHER CITATIONS: Hirschfeld v. McCullagh, (1913) 64 Or 502, 517, 127 P 541, 130 P 1131.

LAW REVIEW CITATIONS: 46 OLR 194.

57.721

NOTES OF DECISIONS

Personal service on the commissioner is required under this section. Grabner v. Willys Motors, Inc., (1960) 282 F2d 644.

FURTHER CITATIONS: Enco, Inc. v. Russell Co., (1957) 210 Or 324, 311 P2d 737.

57.726

CASE CITATIONS: Pacific Tel. & Tel. Co. v. State Tax Comm., (1966) 2 OTR 469.

57.745

NOTES OF DECISIONS

Where there was noncompliance with the former statutory prerequisites for doing business in this state, no suit was maintainable on a contract which has been made with the view of conducting business in the state or while actually transacting such business. Major Creek Lbr. Co. v. Johnson, (1921) 99 Or 172, 195 P 177; Northwestern Mut. Life Ins. Co. v. Elliott, (1880) 7 Sawy 17, 5 Fed 225, 227.

FURTHER CITATIONS: Cyclone Min. Co. v. Baker Light & Power Co., (1908) 165 Fed 996; National Mercantile Co. v. Watson, (1914) 215 Fed 929.

57.755

ATTY. GEN. OPINIONS: Application to title insurance companies, 1966-68, p 259.

57.757

ATTY. GEN. OPINIONS: Application to title insurance companies, 1966-68, p 259.

LAW REVIEW CITATIONS: 39 OLR 128.

57.761 to 57.769

ATTY. GEN. OPINIONS: Application to title insurance companies, 1966-68, p 259.

57.761

NOTES OF DECISIONS

Under former similar statute, where property was devised for charitable purposes with the trustees empowered to incorporate and obtain all the stock in return for the devised property, the organization tax was \$5. *Carson v. Schulderman*, (1916) 79 Or 184, 154 P 903.

ATTY. GEN. OPINIONS: Authority to prorate fees payable with articles of amendment, (1969) Vol 34, p 402; refund of fees paid by foreign corporation because of error in Insurance Division instructions, (1970) Vol 35, p 165.

LAW REVIEW CITATIONS: 37 OLR 73.

57.767

NOTES OF DECISIONS

Under former similar statute, payment of the license fee does not exempt the corporation from other forms of taxation. *State v. Pac. St. Tel. & Tel. Co.*, (1909) 53 Or 162, 165, 99 P 427.

Under former similar statute, where a mining corporation had no existence in the year preceding application for a license, the fee was \$10 though there was no affirmative showing of output. *Standard Gold Min. Co. v. Crews*, (1926) 118 Or 629, 247 P 775.

Under former similar statute, until proclaimed by the Governor, forfeiture of articles of incorporation did not take place for its failure to pay license fee. *Deschutes Co. v. Lara*, (1928) 127 Or 57, 270 P 913.

ATTY. GEN. OPINIONS: Authority to prorate fees payable with articles of amendment, (1969) Vol 34, p 402.

LAW REVIEW CITATIONS: 37 OLR 73.

57.769

Authority of corporation commissioner as to delinquent fee, 1948-50, p 88; refund of fees paid by foreign corporation because of error in Insurance Division instructions, (1970) Vol 35, p 165.

57.779

NOTES OF DECISIONS

1. Under former similar statute

(1) **Subsection (2).** A plea in abatement had to be disposed of before a trial on the merits. *Harrison v. Birrell*, (1911) 58 Or 410, 417, 115 P 141; *McIntosh Livestock Co. v. Bufington*, (1925) 116 Or 399, 241 P 393. But where there was no objection and by common consent a trial on the merits was heard concurrently with the plea in abatement, the latter had to be submitted separately to the jury. *Vermont Farm Mach. Co. v. Hall*, (1916) 80 Or 308, 156 P 1073.

Whether the fee had been paid was a question of fact. *Oregon Timber Co. v. Seton*, (1911) 59 Or 64, 111 P 376, 115 P 1121.

The court on appeal could not determine the right of plaintiff to sue, where it was not raised by a plea in abatement below. *Callender Nav. Co. v. Pomeroy*, (1912) 61 Or 343, 346, 122 P 758.

Compliance with the requirement of payment of fees did not need to be pleaded by a corporation suing on a contract; the objection of noncompliance had to be taken by plea, unless the fact affirmatively appeared in the complaint, then a demurrer was sufficient. *Big Basin Lbr. Co. v. Crater Lake Co.*, (1912) 63 Or 359, 127 P 982.

The failure of a foreign corporation to pay the fees required did not avoid its contract with another corporation within the state; and a supplemental complaint showing compliance with fee requirements after suit was permissible. *Shipman v. Portland Constr. Co.*, (1913) 64 Or 1, 14, 128 P 989.

Where a delinquent foreign corporation assigned a note after maturity, the assignee took the note subject to the defense of non-payment of fees, but such defense failed when the fees had been paid. *Hirschfeld v. McCullagh*, (1913) 64 Or 502, 518, 127 P 541, 130 P 1131.

The objection of nonpayment of fees by a plaintiff foreign corporation had to be raised by plea in abatement. *Id.*

The issue of incorporation of one suing as a corporation could be raised by denial in the answer. *Hartford Fire Ins. Co. v. Central R.R. of Ore.*, (1914) 74 Or 144, 151, 144 P 417.

Filing of an answer to the merits did not of itself deprive the defendant of a separate plea in abatement, based on the corporation's delinquency. *Klamath Lbr. Co. v. Bamber*, (1915) 74 Or 287, 295, 142 P 359, 145 P 650.

A delinquent foreign corporation could not maintain suit in a state or federal court. *Cyclone Min. Co. v. Baker Light & Power Co.*, (1908) 165 Fed 996, 999.

(2) **Subsection (3).** The disability which resulted from delinquency on the part of a corporation was cured by subsequent compliance with the statutory requirements. *Zobrist v. Estes*, (1913) 65 Or 573, 580, 133 P 644.

The surety on the bond of a corporation could not set up the dissolution or delinquency of its principal as a defense for its liability. *Dowd v. Am. Sur. Co.*, (1914) 69 Or 418, 424, 139 P 112.

Trustee in bankruptcy of a delinquent foreign corporation was not precluded from maintaining suit. *Head v. Brainard*, (1925) 5 F 2d 289, 291.

An assignee of a contract, assigned to him by a foreign corporation which had not complied with the statutes authorizing it to continue doing business in the state, could enforce the contract after the foreign corporation had complied with the statutes subsequent to the time of making the contract. *Milton-Freewater Irr. Co. v. Skeen*, (1926) 118 Or 487, 247 P 756.

In case of a transfer, without compliance with the Bulk Sales Law, of assets of a corporation after its reinstatement, the transferee was liable for the value of goods bought by the corporation pursuant to bids made while the corporation was subject to dissolution but treated by the parties as sales made at the time of delivery, and also for sales prior to reinstatement but ratified by the corporation. *Gillen-Cole Co. v. Fox & Co.*, (1934) 146 Or 208, 29 P2d 1019.

57.781

NOTES OF DECISIONS

Under former similar statute, in proving the existence of a corporation created by a legislative Act it was sufficient prima facie to produce a duly authenticated copy of the charter with evidence that the company had transacted business. *United States Mtg. Co. v. McClure*, (1902) 42 Or 190, 200, 70 P 543.

Under former similar statute, where a copy of articles had been introduced, the burden was on the adverse party

to show that the corporation, thus prima facie established, was incompetent to transact business. *Pioneer Hdw. Co. v. Farrin*, (1910) 55 Or 590, 107 P 456.

LAW REVIEW CITATIONS: 42 OLR 232.

57.791

CASE CITATIONS: *Oregon Auto Ins. Co. v. Bateman*, (1971) 258 Or 360, 482 P2d 744.

57.796

ATTY. GEN. OPINIONS: Duty of banks and trust companies, industrial loan companies and credit unions to maintain a registered office and agent in this state, 1952-54, p 201; application to foreign savings and loan company, 1962-64, p 119; mortgage investments by a foreign savings and loan association as "doing business" in Oregon, 1966-68, p 372.

LAW REVIEW CITATIONS: 33 OLR 106; 45 OLR 166.

57.797

LAW REVIEW CITATIONS: 45 OLR 166.

57.798

LAW REVIEW CITATIONS: 45 OLR 166.

57.799

LAW REVIEW CITATIONS: 33 OLR 106, 111; 45 OLR 166.

57.811

NOTES OF DECISIONS

Existence of a de facto corporation cannot be questioned collaterally in a suit between private parties. *Marsters v. Umpqua Oil Co.*, (1907) 49 Or 374, 90 P 151, 12 LRA(NS) 825; *Brown v. Webb*, (1912) 60 Or 526, 120 P 387; *Grant Chrome Co. v. Marks*, (1919) 92 Or 443, 181 P 345.

Corporations may be divided into "de jure" with organization entirely and legally perfected; "de facto" where there has been a bona fide attempt to organize, and a user of

corporate powers, with a defective organization; and corporations not sufficiently organized, to come within the latter class. *Leavengood v. McGee*, (1907) 50 Or 233, 91 P 453; *Alder Slope Ditch Co. v. Moonshine Ditch Co.*, (1918) 90 Or 385, 176 P 593.

Failure to comply with statutory requirements may result in a de facto corporation. *Carpenter v. Lord*, (1918) 88 Or 128, 141, 171 P 577, LRA 1918D, 674.

57.815

CASE CITATIONS: *Oregon R. & Nav. Co. v. Oregonian R. Co.*, (1888) 130 US 1, 9 S Ct 409, 32 L Ed 837, 845; *Oregon Mesabi Corp. v. Johnson Lbr. Corp.*, (1947) 166 F2d 997.

LAW REVIEW CITATIONS: 46 OLR 159.

57.820

ATTY. GEN. OPINIONS: Loans by foreign banks secured by Oregon real estate, 1960-62, p 459; application to foreign savings and loan company, 1962-64, p 119; mortgage investments by a foreign savings and loan association as "doing business" in Oregon, 1966-68, p 372.

57.822

ATTY. GEN. OPINIONS: Loans by foreign banks secured by Oregon real estate, 1960-62, p 459; application to foreign savings and loan company, 1962-64, p 119.

57.824

ATTY. GEN. OPINIONS: Loans by foreign banks secured by Oregon real estate, 1960-62, p 459; application to foreign savings and loan company, 1962-64, p 119.

57.850

LAW REVIEW CITATIONS: 39 OLR 128.

57.992

CASE CITATIONS: *State v. Johnson*, (1969) 1 Or App 363, 462 P2d 687.