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~~Hist. of Com Room, T Seat B 7.~~

~~Eco. Hist of U.S. Room K~~

Assignments

"Chap. II and I."

Chapter 4-5  
Page 77-90 115-5

12 3 4 5 6 7 8 9 10  
Copy of Constitution  
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3, 1920

Mar. Copy paper

Prof Prof P Prof  
Economic Division of Constitution  
of U.S. Boston

Mar. 10 - 119 - 161

M Mar K. G. Takahashi

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## Legal advantages of Corp.

- a - Suite bought as entity
- b - Right to own & convey land
- c - Right to ~~transfer~~ dispose shares without consent of Corp.
- d - Limited liability for share holders.

## Economic Advantages

- a - Facility to gather capital from wide source.
- b - Create impersonal relationship which should exist bet bus. firms.
- c - Possibility of using stock for collateral to facilitate other bus. venture.
- d - Continuity of Corp.
- e - Centralization of mgt.

Joint Stock Co. = Contractual relationship bet ship  
bet share holders - Unlimited liability.

Corp. Finance = Investment, Capitalization  
and Bonded debts, securities

Com. Finance = check, notes, bills, notes etc.

Incidents of ownership { assume risk  
enjoy control  
Receive Income

Corp. Finance distributes above incidents of ownership to wide area.

Different class of ~~people~~ appeal for diff classes of incidents of control.

Dist of Incidents of ownership.

1,000,000 -	Com St.	Risk & Control
1,000,000 -	Pref	Moderate Risk & Control
1,000,000 -	Bond	Income

Corp. form has in every way adopted to appeal all classes of savers.

where there is great risk, like Mining Co. or where there practically no risk, such Family Co. generally one type of stock prevail.

Assig. Page 105

Sept. 27, 1920

Advantages of Corp.

- A. Economic
- B. Legal.

Eco. Adv.

1. Facility to gather capital wide sources.  
Investment appeal to diff classes; & incl diff  
sources of people - Incidents of owner is  
distributed
2. Divide incidents of owner to Income & Risk.
3. Permit impersonal relation in business.
4. Possibility of using stock for collateral  
security and facilitate other business.
5. Continuity
6. Permit concentration of magt.

## Legal advantage.

1. Suits can be carried on as ~~an~~ a corporate entity.
2. Right to hold real estate in Corp name.
3. Right to dispose shares without consent of corp.
4. Limited liability of Corp.

## Disadvantages of Corp.

1. Increased expenses.
2. Limited power of Corp. <sup>influence</sup>
3. Limited liability feature has limited access.
4. Much more liable to govt regulation and control than private enterprise.
5. Difficultly securing the adequate responsibility of officers.
6. Relation of monopoly problems to Corp.

Purpose of issuing different kind security is to distribute incidents of ownership to the various classes of investors.

## Right of stockholder

A. Right to vote      B. Right to share in dividends.

Bonds = Certif of indebtedness of Corp. or creditors' contract

Stock = Certif of ownership or proprietors' contract.

## Classification of Stocks ☐

1. Common Stock

2. Preferred Stock.

{ a. Pref as to assets

{ b. Pref as to income

3. Participating Preferred. Participate in dividend after common stocks is paid certain amount if any left over. This serves as additional attraction to the preferred stock holder.

4. Convertible preferred stock.

By option of St holders, ~~the~~ Convert stock may be converted into Com. Stock or Bonds.

5. Accumulative & non accumulative Pref.

Cummulative = Dividend piles up if not-paid in one year; the dividend accumulate until total is satisfied.

Non. Cummulative =

6. Redeemable Pref. = Redeemable ~~to the Com. Stock~~  
by the option of Corp.

North Pacific Cases

No. Pacific had \$1 million Com. & 75 Pref.

Morgan interest had 42 Pref & Bot 37 Com St.  
which is enough to control the No Pacific

Hill interest had 42 Com St. As they are majority holders of Com. they had referred to the feature of callable nature of Pref Stock & got control of N.P.

Oct 4, 1920

Investment Contracts varies widely according to the difference in the classes of security.

Bond holders contract is creditors contract; while stock holders contract is owners contract. Bond holders contract straight promise to pay.

Control  
by Bond  
holder Bond holders can exercise control upon the failure of corp to meet its obligation. The right to control of Bond holders is contingent.

(1) Actually Bond holder has immediate control over the corp. for the reason that the corp is in the position of borrower and very fact of existence of outstanding bond put a limitation upon the ~~the~~ activity of corp.

(2) Actual provision appearing in mortg. place responsibility - on the stock holders place limit on the activity of Corp.

For example, the assets of the corp should be liquid ~~the~~ or current assets should be in excess of aggregate liability etc.

(3) Limitation as to the condition in which interest to be paid.

(4) Some time place limitation ~~of~~ on the new issue of bonds.

(5) By specifying disposal of Gross earnings, the limit the activity.

## Characteristic of Corporate Mortgage.

### Mortgaged Bonds:

- (A) Issuing of Mort Bond by Corp involves three parties: (a) Corp. (b) Trustee (c) Investors. Corporation conveys the property to the trustee, and the trustee holds the title to the Corp. property for the interest of Investors.
- (1) Covenant covers Int & Princi to be paid when due.
- (2) Keep property in good shape.
- (3) Property to be insured.
- (4) Mortgagee pays taxes.
- (5) In case of default of payment, trustee may take foreclosure action.
- (6) Release is made by completion of obligation.

### Classification of Bonds

- (I) As to security -
  - (a) Prior Lien Bond
  - (b) Mortg Bonds 1st, 2nd, 3rd
  - (c) Terminal or Divisional Bond
  - (d) General or Blanket - ~~Blanket~~ <sup>mortg</sup> Bonds
  - (e) Collateral Trust
  - (f) debentures
  - (g) Participating Bond
  - (h) Receiver's certificate
  - (i) 1st and consolidated Bond
  - (j) Income Bonds



B) As to Purpose of

1. unifying Bond
2. refunding Bonds
3. Construction Bonds
4. Improvement
5. Consolidated
6. adjustment Bonds

C) Manner of Payment.

- ① Registered      ② Coupon Bonds

D) Condition of Redemption.

1. Gold Bond
2. Redeemable or callable
3. Serial Bond
4. Convertible Bonds.

what mean by limited open end mortgage?

Oct-11-1920

Mortgage Bonds:

A most secured type of Bonds. Mortgagees have right to take possession of property mortgaged upon the failure to meet the obligation of covenants. Actually such thing is not done in cases of R.R. for the interest of other creditors, and equity of the other bond holders. Practically, instead of taking property over, the court appoints the receiver and run the Road for the creditors.

Blanket mortgage = The Co pledges, not only property it owns but as well all its property to be added afterward.

Callable Bonds. = Convertible to stock at the option of stockholders, or redeemable.

Terminal Bond = Issued on the pledges of terminals.

Prior Lien Bonds = Prior right in the subsequent issue.

Collateral Trust Bonds = Represent the pledged property, deposit it securely with trustees for the issue of Bonds. Securities may be those of subsidiary Co. or of the other Co which it controls.

Debenture Bonds = Unsecured promised to pay of Co. - It carries no pledged property but it is issued on the <sup>General</sup> Credit of Co. The claims takes prior right ~~than~~ the general trade creditors. They are issued on a high credit of Co. or when no more property can be pledged.

Participating Bonds = Participate in the income with the stock holders. Two advantages are security and higher speculative income.

Consolidated Bond or Unified Bonds

Issued to consolidate outstanding issues in to one uniform Bonds.

Adjustment Bonds = Usually issued at the time of reorganization under which the Co try to reduce the fixed charge by issuing the adjustment Bonds in place of the other Bonds surrendered. The old Bonds may income Bonds.

~~Receiver's Certificates~~

Income Bonds: Usually debenture ~~from~~ principle.

It may be mortgaged. Interest payment depends upon the income of the Co.

Receiver's Certificate: The obligation of receiver. They have prior claims. Issued for the purpose of obtaining working capital and carry out his functions.

Equipment Trust Bonds: Bonds issued on the pledge of Equipments of the Co. Life of the Bonds should not be longer than the life of Equipments.

Refunding Bonds: issued to take up ~~matured~~ Bonds. Old debts exchanged for new debts.

Serial Bonds. Issued in series. Redeemable in series. One objection is difficult in marketing.

From Corp stand. which is advantageous to issue - ~~redeemable~~ Convertible Bonds or participating Bonds?

Oct. 18, 1920.

Legality of Corp dealing on their own stocks -  
It is legal provided the dealing is not detrimental to the other stock holders or creditors.

Protection of Pref stockholders.

What is close corp, how it is held, and its legality?

Liability of stockholders = up to par value of stock.

~~Corporate Capitalization~~

Capitalization & its relation as to Income & Assets

Capitalization involve two question (a) amt.

(b) distribution: } Cost basis.

To determine amount. 1st - Analysis of needs for Corp. 2nd method based on the earning of Corp. Capitalization on the basis of earning often involves over-cap.

Choice of security to be issued:

1st Character of bus.

2nd Condition of market.

Determine whether long time note or short time loan is desirable on the particular condition of market.

Relation of Income to Capital:

Trading on equity = Stockholder commitments are protection for Bond holders. In exchange Stockholders get control of business & larger income business.

Safety & Danger in trading in equity: depends on the following facts

1st Business risk = incidental of business ownership  
Involves income.

Safety <sup>danger</sup> depends on the relation of gross income, operating & ~~net~~ expense & net income.

If the Gross income & operating expense are constant, it is safe to pledge large portion for fixed expense. On the other hand, if the above factors are variable, it is unsafe to pledge large fixed charge.

Variation on the gross income varies by the nature of business. Most public utility Co's Gross incomes are constant compared with other line of industries. Consequently the Public utility Corp can pledge fairly large portion of income for fixed charge.

Operating expenses: operating ratio = % of gross income used in operation:

Public Utility Corp's operating exp are constant compared with industrial Corp.

Operating expense can not <sup>of Gross</sup> fluctuate & lower the

narrows the range of ~~gross income~~ operating, <sup>safe</sup> affects the equity;

2nd Financial Risk

Oct. 25, 1920

Capitalization:

1. Amt. 2. Kinds.

Amt determined by the needs of Corps = Cost basis  
(1)  
(2) Corp. w earning power.

Kinds determined by:

- (1) Character of bus.
- (2) Condition of markets.
- (3) Trading in equity.

Trading in equity meant by the commitment of capital by the Com. Stock holder trade made by him for protection of other security holders by ~~his~~ control of bus by Com St holders.

Com. Stock holders protect Bonds holders by his Capital Commitment and in turn Com. St. holders ~~the~~ secure control of Capital investment by bond holder.

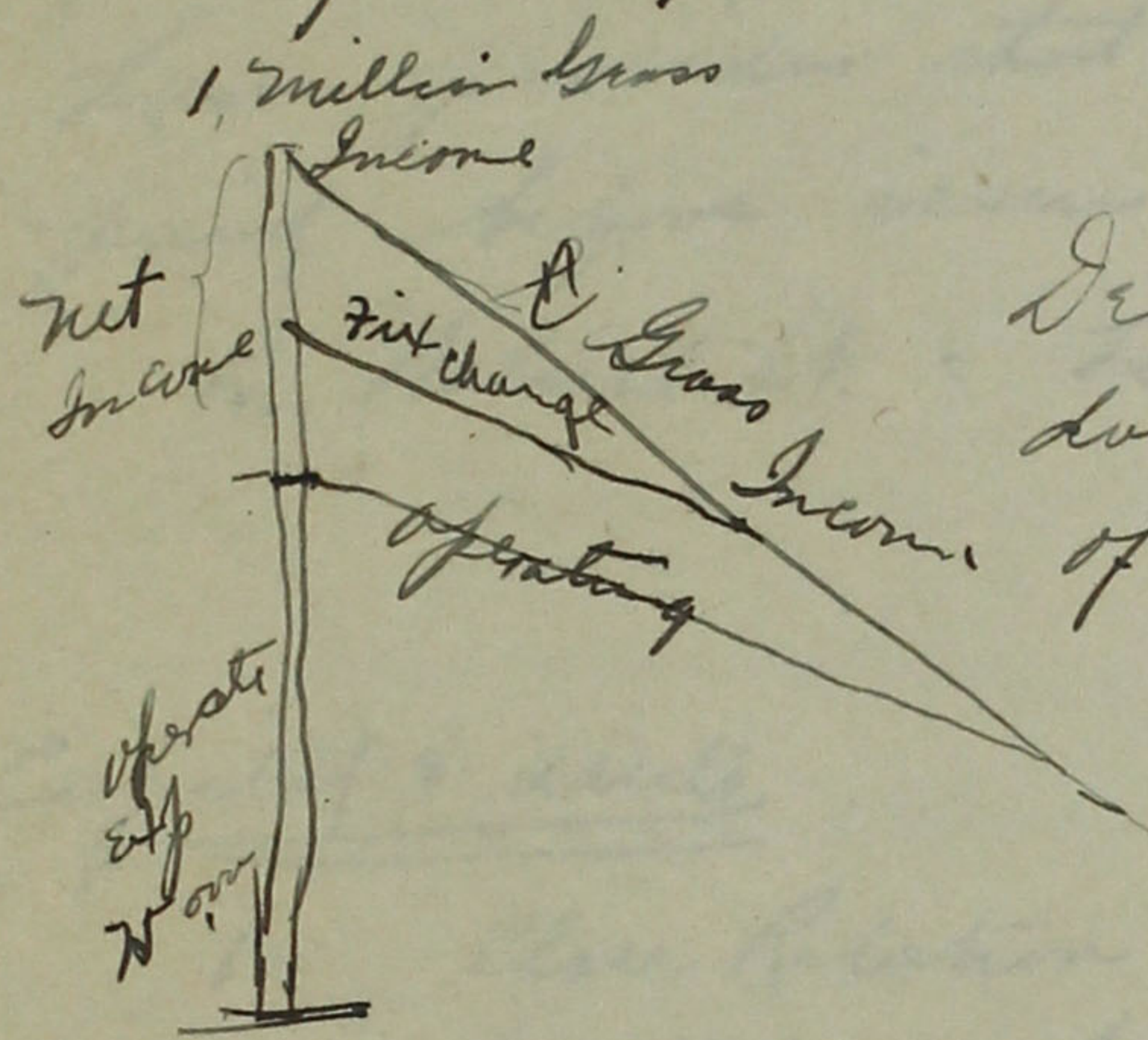
Larger the capital safer the bonds holders.

To determine borrowed capital:

- (1) Business Risk
- (2) Constancy of net income. that is relation of Gross income to ~~net~~ operating exp. & net income.

The more constant the net income safer to pledge the larger amt of income for fixed charge.

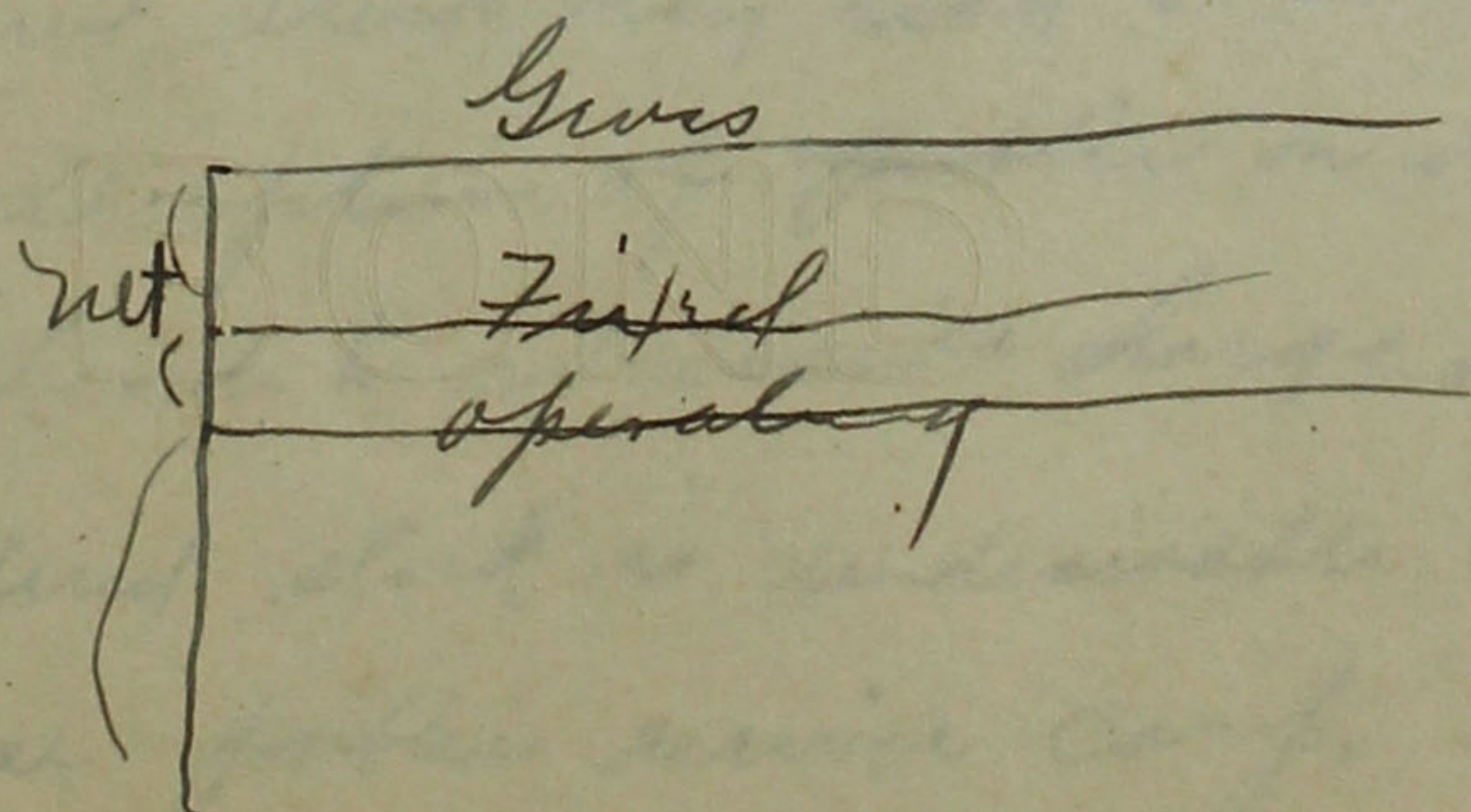
Financial risk: = Relation of net earnings to the Interest charge. Relation measured by the gross income operating exps. and net income. Declining gross means declining net income for the reason the operating cost does not follow in the ~~net~~ proportion to the declining gross. That is the reason for danger of assuming large interest charges.



Decline of operating expenses does not parallel with decline of Gross income.

For fixed charges are constant, declining of gross means ~~gross~~ still rapidly of the declining of net, that is surplus available to Com. St holders.

~~Constant Net Income~~  
Constant Gross Income



Capitalization and Assets:

Gen Concept of Cap.  
Cap. + income  
Cap. + assets  
Cap. + state

Two terms

1. Close relation between cap. & assets.

Par value of cap. st. outstanding must offset assets.

Reason for its favor are:

A - Watered Stock = may work frauds

There are tendency to believe that par value of stock is equal in assets behind it. The Law provides that cap. st. should be fully paid before issue.

B. Watered St. = Lead to excessive charges.

Nov. 1, 1920

Capital & assets

- 1 - Close Relation bet Cap & assets
- 2 - Capital on basis of income.

Watered ~~st~~ stock may be defrauded in part of purchase of security. Stock purchaser expect close ~~from~~ relation bet assets & price he paid.

This defrauded can be avoided by the stock without par value.

Watered Stock may lead to -

- o deception of public on the profit they make and
- Leads to excessive charge on goods they produce.

Watered stock is undesirable & intolerable in case public service corp. but for private industry it is not so.



Even corp start with close relation of cap & assets,  
in periods of years, the relation may be entirely changed.

Dry capital may earning excessive percentages of  
dividend on stock and that stock may go up to very  
high prices which is not very desirable thing for  
the Corp. On the other hand, watered cap.  
may bring fair returns to the stocks and  
retain fair price of stocks.

#### Favor of wet Capital

- ① It is useless to try dry capital.
- ② Issue of watered stock may facilitate  
issue of securities.
- ③ Without speculative ~~stock~~ games, it may be  
difficult to float security.
- ④ Float stocks in excess of plant value in order to  
secure working capital.

#### Stock watering during life of Corp.

1. Declaration of stock dividend.
2. Over-capitalization on improvement & construction.
3. Replacement of worn out property.
4. Failure to write off adequate depreciation.
5. Issue security to pay off current liability.
6. Co. in process of consolidation.
7. Through reorganization.

Nov. 8, 1920

In case of public utility Corp. - relation of cap + assets must be close and shareholders be in stock.

Reasons are +

1. There is <sup>no</sup> competition.

2. Reasonable earning to be allowed under the regulation of the state.

|| The reasonable rate of return determines the amt. of Capitalization ||

What is reasonable rate of return?

The earning dependant on the rate of returns therefore, if the Capitalization on the earning power is impossible.

The Capitalization should be based on the value of plants.

The value of plant may be based on the reproducing value or original cost basis.

The court decided the valuation of on the reproducing value.

Industrial Corp. there need not be close proportion bet. cap + assets.



NIBROC BOND

## Relation of Capitalization to State.

Why state should regulate or interfere with Capitalization:

- (1) Protect creditors of Corp.
- (2) To protect prospective share holders.
- (3) The State may interfere in interest of Gen. Public.  
Gen public interested in prices = prices are affected by the Capitalization.

What are the policies the State may pursue

1. Policy of "Let alone". ~~Let the competition regulate the business.~~ Under this policy the decision of the directors are absolute and consequent would be temptation to fraud. The process of promotion and the organization may be entirely hidden from the prospective purchaser of shares.

2. Policy to regulate capitalization and guarantee the adequate assets behind the capitalization.

Difficulties in these policies.  
Sanction of a Commission for the receipt of property for issue of shares calls for some arbitrary rules. (a) Can not issue stock for patent & Goodwill. (b)

The State must create expert to appraise the value of property.

### 3. Policy of publicity

This policy is middle way of 1st & 2nd.

Corp. can accept property tangible and intangible for exchange in stock, provided ~~to~~ acting in good faith.

### "Blue Sky Law"

1. Requiring License for dealers of security.
2. Municipal & State Bond
3. Require complete financial statement of Co. whose security are traded.
- 4.
5. Prevent unreasonable profit to dealer

### German C. Laws

1. Capitalization based on the dry theory with chief reliance on publicity.
2. It assumes that Corp. Law should show
  - a. value of property correspond to paid up capital.
  - b. Property of same value to continue.

### Provisions in articles of Corp.

1. Relating to history of Co.
2. Contain name from whom property acquired
3. Stock issued in exchange for service or intangible assets
4. Report of promoter required. For accuracy and completeness, promoters are criminaly liable
5. Provide for examination of by two boards

and file the report separately by each on  
the report of promoter and as to the fact of  
organization.

6. Provision of filing report by the outsiders  
if the either one of the board are interested in  
its promotion.

This makes less profitable for the promoter to  
secure profit.

Provision to prevent over-cap. after the organization.

1. Rigid exactness on preparation of balance sheet.
2. Security should be listed at the price or the  
at market or cost whichever lower.
3. Promotion expenses may not be capitalized
4. Goodwill can not be capitalized unless  
paid for.

Gen Conclusion

- 1st policy intallerable.
- 2nd Policy is impossible
- 3rd Logical policy to follow

10  
10  
10

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10

10  
10

## Financial Combinations

### Forms of Combination:

The simplest combination may be obtained by the agreement among the competitive concerns. However, this form is not effective enough to attain their end.

Next step was pool: The pool is contractual agreement but it was illegal and inforceible.

Essential thing in any pool is the factor which control the price.

### Example Plumbers Pool.

When a bid was offered by a city, the members sent it into the central office and every member bid on it honestly. ~~When a bid was~~ On the bid they decided who shall take the job. Then ~~central~~ they figure arbitral figure and sent bid into the city. But figures are higher than the original bid they ~~make~~ made. When job is completed, the difference ~~of~~ of original bid & city bid is turned into the pool and profit divided among the members.

Trust: Next development after pool is trust.

The trust is distinct financial combination.

How trust is formed: A group of

trustee is selected and two third of stockholders turn their stock into the hand of trustees.

The trustees issue trust certificate in the place of stocks turned in. This gives control to the trustees and economies of combination obtained.

This trust was declared illegal.

Holding Co. = a corp. organized for the purpose of holding the stocks of the other corporation and in exchange issue stocks of its own. Holding Co. is illegal under Sherman trust-act.

Merger:-

Lease:-

Avoid raising of large capital and make payment of rent instead of interest.

Financing <sup>Expenditure</sup> ~~problems~~

Raising of Capital: Issue of stocks. (2) Pref stock or bonds. Problems are safety and danger of equity; and changing voting power. Condition of market should be considered.

Issuing bonds: a. Are there any bond outstanding, what interest to be paid: short term or long term mortgage bonds. the amt. to be issued. Denomination of bonds to be considered - Denomination decided by to whom they are intended to sell. The terms of bonds. Registered or Coupon.

When Bonds are already outstanding: are there any mortgage open or close. When close, blanket or <sup>open</sup> close. Are the blanket mortg subject to call.

Nov. 29. 1920

Three types of trust:

1. Legal trust.
2. Combination trust.
3. Monopolistic trust.

Financing Expenditure:

Factors in financing exp.:

- a) Credit factors.
- (b) ~~Ext~~ Existing financing plan is determining factor in the future financing plan.
- (c) Market condition.

~~As stated above~~

The factors affects the terms of bonds:

- a - Credit of corporation.
- b. Life of assets pledged.
- c. Condition of market. - Both present & future condition of market should be taken in consideration.
- d. Coupon or registered.
- e) Mortgage under which old bond issued:  
whether it is open or closed.  
When mortgage is closed, the question comes up whether it is under ~~that~~ blanket.  
If blanket mortg. is it callable?  
~~If not callable~~

Suppose closed mortg. but not blanket mortg. Then new issue can be made on the new assets acquired.



When closed Blanket Mortg. exist, the Co.  
may finance divisional ~~new~~ first mortgage  
bonds. This is done by the device of the  
Construction Co. or subsidiary Co.

The Construction Co. builds the road and ~~issues~~  
issues first mortgage <sup>Bonds</sup> on the road and sells  
the road to the parent Co. which subject to  
the mortgage.

How may the original Co. lend its credit  
to Construction Co. It may guarantee the  
bonds. It may use the securities as collateral.

In financing subsidiary Co. the parent Co.  
may borrow temporarily and use the stocks of  
subsidiary as collateral. By this means the  
control of sub. Co. still remain in hand of  
parent Co.

Holding of today mostly used for  
assisting the financing of the Corp.

This particularly in public utility Corp.

Advantage:

## Amortization of Bonds.

A process by which wiping out or providing  
of extinction  
for wiping out of existing obligation.

1. Why amortize at all?

Two reasons

1st Permit corp to adjust the debts +  
meets the need of present condition.

2. To meet the ~~own~~ condition of public.

2. Refunding:

Refunding may take place:

a) when market conditions are favorable

b) when intends to increase financing

c) when the credit are good.

Refunding is unfavorable:

a. when the equity is thin

b. Business is declining

c. Market conditions are unfavorable.

Amortization is  
necessary when the  
wasting assets are  
behind.

11 Methods by which amortization may take place:

1 The test of the merits of amort plan.

1 what gives assurance of carrying of amort  
plan.

2 How amort plan affect market

3 How evenly distribute amt.

4 ~~what work~~ what difficulty in carrying out

5 what assurance do they give they will meet ~~carrying~~ <sup>amt.</sup> ~~amort.~~

6 How does the cost of Corp compared with  
other methods

chap. 18, 19, 20.  
9, 10, 11, 12, 16, 17, 18  
after Review

13.14.15.

## Methods of Amort.

1. Issue of bonds on serial;
2. Sinking funds:
  - a - Redemption fund in cash & turn to the trustees
  - b) Invest redemption fund in security of other G.
  - c) Use the redemption fund for purchasing of their own securities intended to amortize.

Dec. 6, 1920

## Serial maturity of Bonds:

1. objection: (1) marketability of securities = difficulties are that there is no way of getting uniform price.
2. Makes an ~~even~~ <sup>uneven</sup> distribution of debts. Unless the amortization is so calculated, the burden falls heavier in earlier years than the later yrs.

## Sinking Fund:

### objections

1. Temptation for corrupt public official to misuse the funds.

Cash Deposit: Too expensive, as the trustee will handle it very conservatively, return will be very small.

### Purchasing of securities of other G.

obj. 1 - uncertainty & risk.

(2) Difficulty in adjusting the cost of amortization.

(3) To get securities into cash depend on the market condition.

### Buying own Bond method:

Bonds must be issued subject to call.  
This method of issue is real objection.  
To offset the objection, call price are put above the par thus making speculative opportunity for investors.

The callable bonds are in the other hand may be advantage to the corp. for in case of financial prosperity the Corp. may call the bonds in.

#### Advantages

- 1) Distribute ~~the~~ amortization evenly.
- 2) Less expensive & safer.

#### Calling of bonds:

The Co. may buy bonds at the market, but if he cannot buy them, may call in the bonds.

#### After Bonds are called:

1. May keep alone and pay interest
2. or Cancel the issue.

Chap. 18

## Disposition of Corporate Income.

The point of examination of income sheet.

1. Gross Income = examine the source of income to see if they are not overstated or mixed up with income which do not properly belong to it. Acct Rec. also examined.

Dec. 13, 1920

The sources of Corp. Income:

1. Earning
2. Sales of property
3. Increasing value of property (Should not be considered as income until it is realized)

Examination of Corp. Income Sheet:

Gross income = See if represents truth.

Operating Exp = See if proper charges are made to capital or expense account. Secret surplus are often accumulated by charging capital ~~acc~~ ~~exp~~ to expenditures to expense accts.

Problem may arise as to charging up the expenses of such as advertising, training employees, and ~~and~~ recreations & welfare etc. These are often charged to different charges.

Operating charge should include adequate charges for replacement & depreciation for plants & machinery.

## Reserve accounts:

Depreciation ~~is~~ Reserve acct's deduction from assets; that is assets are overstated.

Understating of depreciation is often made to mislead the public. ~~that~~

Over-statement of depreciation create the secret surplus.

Depreciation should be provided for tangible assets as well as intangible assets.

## Additions & Betterments:

How the betterment to be paid for?

Jan. 3, 1921

### What kind of Betterment

Safest way to pay the betterment is by income.

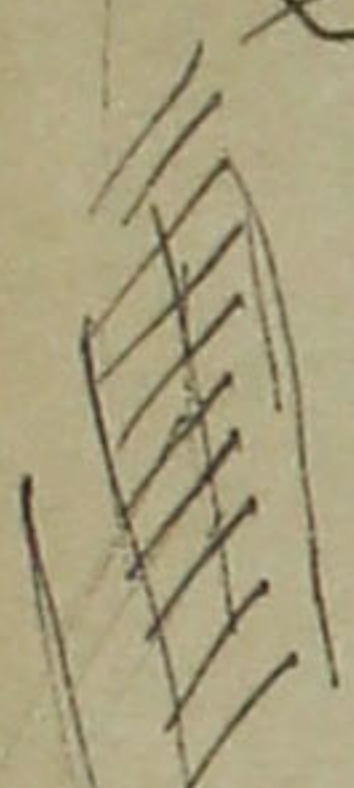
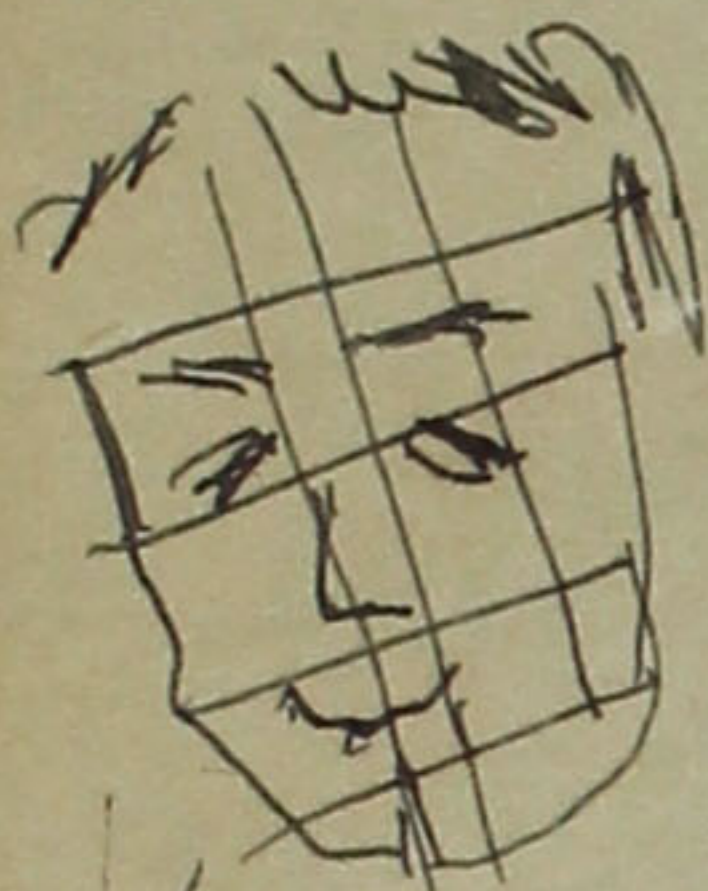
If the betterment increase the earning by improving the plant or machinery resulting greater ~~production~~ efficiency, then the betterment can be financed by the borrowing. It is capital charge.

On the other hand if the betterment do not bring direct increase in earning, then it should be paid by earning.

## Corporati Income.

### Dividend:

- a. Cash dividend
- b. Stock dividend
- c. Scrip dividend
- d. Property dividend



Stock dividend should be paid only when the increased earning ~~will~~ can pay regular dividend on the increased capital.

Factors to be considered before declaring dividend.

1. desirability of <sup>constancy</sup> continuity of dividend rate & make rate regular and in the good year make an extra dividend.

2. Cash requirements:

Borrowing money to be dividend is generally avoided, but if it temporary shortage of funds it is permissible.

Conservative policy in dividend declaration ~~is~~ ~~is~~ ~~is~~ should be ~~best~~ adopted.

Surplus.

Terms used, surplus, surplus reserve and surplus fund. The Surplus fund is separate fund created ~~is~~ for particular purpose.

Source of surplus.

- a) Sales of security at premium
- b) Gift
- c) Buying property of other Cap<sup>ts</sup> less than its worth & write it up to the value actual value.
- d) Sales of assets.
- e) Revaluation of assets

21-2-3-4  
omitted

(f) Additions from earnings

Jan. 10, 1920

Purpose of Surplus:

- 1. Expansion purpose
- 2. Safety margin or rainy day <sup>fund.</sup> purpose.

Secret surplus:

- a. Over charge for depreciation
- b. Charging betterment to expense.

Budget Plan:

Causes of Failure:

~~External~~

- 1. Psychological causes
  - a. ~~Ref~~ Defusing responsibility
  - b. Lack of knowledge of individual employee.
- 2. Excessive Competition
- 3. Unprofitable Expansion.
- 4. Change in public demands.
- 5. Financial cause:
  - a. Wrongly <sup>assessed</sup> ~~selected~~ financial plan.
  - b. Inprovident policy of dividend Payment.

Superficial Causes:

- a. Lack of working capital





## Process of Reorganization:

1. Selection of Committee by the different interest, such as stockholders, Bond holders ~~and~~ Committee ~~Creditors Committee~~
2. Meeting of these committee for new arrangement.

## Reorganization under the receivership.

The receiver takes over the control of business and run it for interest of creditors. Every action taken by him must be sanctioned by the Court.

## Process:

1. Examination of books & physical assets.
2. Legal question to be studied
3. Exam for outlook for refinancing.

## Investments

G. Takahashi

Feb. 7. 1921

Chamberlain's  
Bond Investments

Primary purpose of Investments is income.  
It looks for stability of income & security of principle.  
Bond holders have right to action in case of failure to pay interest while stockholders has no recourse for failure to pay dividend.

Pref. Stock is ~~classed~~ as speculative investment.  
Speculative Investment is security which has speculative element, that is, the appreciation in price of principal.

True investments are Bonds.

### Return & Yields of Bonds.

Bonds are offered in yields.  
Annual return is obtained by dividing interest by the purchase price.

### Different types of Bonds:

Bonds are direct obligation of issuers and they have lien on assets.

Government bonds are debenture bonds they are based on the goodwill and willingness of people to subject for taxation.

Municipal Bonds: value depends on the taxing power of Municipality and its physical assets.

Corporation Bonds: Value depends on the earning power & its assets.

Municipal Bonds & its type.

a. General assessment Bonds.

b. Special assessment Bonds.

Special assessment is taxable value of property which benefited by that bonds.

Corporation Bonds.

(a) Mortgage (b) debenture bonds.

Mortg. Bond has direct lien on assets

debenture is only promise to pay without ~~any~~ special lien on the assets.

Refunding bonds: Bonds which take place of already existing bonds obligation.

Consolidated Bonds. Mortgage on the number of property consolidated into one.

Gen. Mortgage Bonds. Have general claims on the general assets depends on the general ~~or~~ credit.

Prior Lien Bonds: have prior lien on the assets bonds.

(Chicago <sup>2007</sup> First lien 3's)  
(Refunding 3's)

(N.Y. Central Consolidated 4's)  
(Refunding 4.5's)

*Faint, illegible handwriting at the top of the page.*

*Faint, illegible handwriting in the middle section of the page.*

B Bar  
1 B B Bond



~~4, 5, 6, 7~~  
~~Refunding~~  
~~1st Line~~  
~~Ret 500 500~~  
~~Refunding~~

B

Feb Feb  
Allied Allied  
Allied Feb  
Allied Packet  
Allied  
Allied 50 or 60  
Sufficiency Feb  
50 or 60  
Sufficiency  
Sufficiency

Collateral Trust Bonds: Bonds issued on the deposit of other security in the hands of trustees.

Convertible Bonds - Bonds convertible to something else.

Feb. 14, 1921

Convertible Bonds are convertible to some other security at a stipulated price.

Purpose of these Bonds may be to reduce a fixed charge when the time comes ~~to~~ for conversion. Convertible bonds attaches a speculative feature in the investments. When the speculative fever is high, it will sell higher than its ~~extra~~ intrinsic value. The Company may finance cheaper in this way in speculative period.

### Mortgages

Closed mortgage: no further bonds may be issued under that mortgage.

Open mortgages: General mortgage covering entire property and that only portion of that mortgaged from time to time under that mortgage.

Disadvantage to investor is instability in the bonds ~~mortgage~~ markets.

Closed mortgage is advantageous to the investors.



## Coupon & Registered Bonds:

Coupon bonds - Interest & principal payable to the bearer. Bonds are negotiable.

Registered - (1) Principle = Carries coupon for interest payments.

" (2) Principle & Interest.

Primary purpose of registered bonds are safety.

Generally on accounts of difficulty in registering & transferring, the registered bonds sell lower than the coupon bonds. Coupon bonds are more marketable than reg. Bonds.

Serial Bonds: Bonds, certain portion of the Bonds matures ~~the~~ serial.

Sinking funds Bonds: Bonds carries stipulation that certain amt will be retired ~~at~~ annually either at fixed price or at purchase on the open markets.

There may be combination of callable & purchasing at the open market ~~at~~ up to certain point. From point view of borrower the purchase at open market may be more advantageous than callable feature. But ~~with~~ this carries uncertainty with it. ~~It is~~

The factors affects Bonds prices.

When the interest charges is assured the earning of the coupon effect little the bond holder.

Low price gives higher return.

Return of income governed by the what you pay for bonds.

Value of the return depends on the commodity price. that is what it will buy. Higher the commodity price lower the bond price. For the reason the return is fixed but what it will buy varies with commodity price.

The other factors are spending & saving of people, efficiency in production of wealth.

Controlling factor for Bonds prices are commodity prices.

Taxation:

Taxation increase the return & lower the prices of bonds. Non-taxable bonds have more demands in the period of high taxation.

② Relation of Current assets & Liab.

Real progress of the Co. & increase in surplus should show on the balance sheets as the increase in working Capital in the series of years, provided the Company did not re-invested in the ~~plant~~ fixed assets.

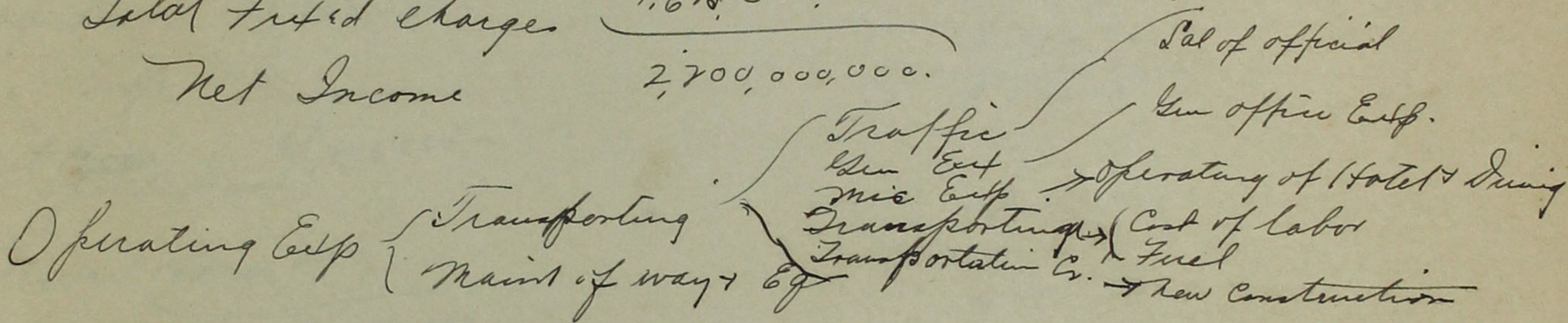


Operating Revenue	10000,000 -
" Expenses	6,000
Net Revenue	4
Taxes	375
Operating Income	3,625
Other Income	200
Total Income	3,825

Deduction:

Interest	1500,000
Rents	7000
Sinking fund	25,000
Hire of Equipment	25,000

Total Fixed charges	1,625,000,000 -
Net Income	2,200,000,000.



Transportation Expense is variable according to the cost of fuel & labor.

Maint of way = Expense is constant. Exp of maint of way should be compared on per mile basis.

Maint of Equip: varies according to the traffic density of the Rd. Basis of comparison is "ton mile" for freight, for passengers = "passenger miles".

Transportation charges are actual expense of moving traffic. This charge reflect efficiency in management. This charge has also direct ratio to the Gross Revenue. Ratio of gross ~~new~~ revenue to the trans Exp should be about 45%.

Operating Ratio = % of operating exp to Operating Revenue.

March 21, 1921

Relation of Fixed charge  
A to net Income. B

Op. Rev.	10,000,000 -		10,000,000 -
" Exp.	6		9,000,000 -
			<hr/> 1,000,000 -
Net <del>Rev</del> Operating Income	4,000,000 -		500,000 -
Fixed charge 2%			<hr/> 500,000 -
Surplus	2,000,000 -		
		Assuming Income Drop	8,000,000 -
Maint way	8,000,000 -		7,200,000 -
Transp. Exp.	4,800,000 -		<hr/> 800,000 -
	3,200,000 -		500,000 -
	2,000,000 -		<hr/> 300,000 -
	<hr/> 1,200,000		

The relation of net Income to ~~net~~ Fixed charge is directly dependant on the ~~relation of~~ operating Expense. "The number of times bonds interest is earned" is not important to the point to consider. The important point to be considered is the relation of Gross Income to the operating Expense.

Analysis of R.R. acct.

Divided operating expense into two, Transp. Exp. & maint of way.

Pay no attention to operating ratio.

Reduce the expense to the per mile basis.

Fixed should not be over 25% of Gross Income.  
operating expenses should not be over 45% of  
Gross.

---

NIBROC BOND

1) Amt Received by new financing

$$\begin{array}{r} 2,737,342.64 \\ \hline 1262656.36 \end{array}$$

$$\begin{array}{r} 15000000 \\ 1262656.36 \\ \hline 237343.64 \end{array}$$

$$\begin{array}{r} 190 \\ 237 \\ \hline 76.36 \end{array}$$

~~190~~  
~~237~~  
~~76.36~~

2) Tangible assets per share  
of Preferred Stock \$15.80

$$\begin{array}{r} 158 \\ 158 \\ \hline 237.343 \end{array}$$

3) Working Capital before new  
financing

$$\begin{array}{r} 575 \\ 173 \\ \hline 1920 \end{array}$$

4) Assets against Fixed Liability  
before new financing

$$\begin{array}{r} 1262.656.36 \\ 1000 \\ \hline 262,656.36 \end{array}$$

~~395~~  
~~4985~~  
262  
$$\begin{array}{r} 185 \\ 3923 \\ \hline 9 \end{array}$$

Assets: Cash on hand 48,538.74

Cash Rec for Expenses <sup>Expenses</sup>  
1,000,000.00  
1,048,538.74

Acct Rec 54,331.60

Indsr & materials 1,372,480.44

Property aut 1,936,250.00

Misc 10,641.86

<sup>will</sup> Good & Trade Mark 2,000,000 -  
6,422,242.64

Liab  
Acct Pay 85,000.00 -

St & Ref Bonds 3,000,000 -

<sup>80%</sup> 5y Gold Note 1,100,000 -

<sup>80%</sup> Pref 1,500,000 -

Surplus 739,242.64  
6,422,242.64

Working Capital before new financing

Cash 48,538.74

Acct Rec 54,331.60

Acct Pay 1,550.00

Working Capital 17,870.34

Working Capital 17,870.34

~~This Company~~ This Company offered 1,500,000 -  
preferred stock & received 1,000,000 for it;  
remainder gone to the Commission.

80% of 1,500,000 = \$1,200,000 - Int

Cash received 1,000,000 : 120,000 on 1,000,000 = 12%

It cost Co 12% to finance.

Mar. 28, 1921

Industrial Securities

Success of Ind. Enterprise depends on the  
Mgt. Investments of Capital little too do with  
its success.

Under the falling of Commodity prices, it is  
unfavorable to do business on the long term credit.  
Cash business or short term credit business is more  
likely to make profit. ~~Therefore~~

Type of product is another factor to be considered  
in investments.

Character of products; character of demands.

Financial back up of the Co is very important  
point to be considered.

Analysis on the balance sheet:

Must have sufficient working capital. This is  
first point to be look up.

Income sheet

Gross	8.00	-	-
Other income	99	-	-
Total	8.99		
Expenses	1.77		
Net	7.22		
Taxes	3.00		
Dividend	6.92		
	25.00		
	4.42		

Investor's interest is  
earning available  
to the security holders.  
It must be available  
for distribution. In order  
to be available it must be  
in current assets  
Income sheet must be  
checked to find out whether  
earnings is spent in such  
a way benefit the security holder.

## Balance Sheet

	1920	1919	
Cap assets	49,941,003 -	20,566,506 -	
Cash	825,181 -	483,589 -	341,592 +
Ac Rec.	1,200,926 -	349,185 -	951,741 +
Inventories	365,830 -	72,000 -	293,830 +
	52,432,940 -	21,471,280	
Cap Stock	10,000,000 -	2,250,000 -	
Sub Stock	1,985,895 -	1,822,310	
Reserve	300,000 -	74,666 -	
Ac Pay	52,000 -	—	
Surplus	40,094,785 -	17,324,204	
	52,432,940 -	21,471,280	

Net earning 7,663,731

Increase in Cash	341,592
Ac Rec	951,741
Inventory	293,830
Dividend Paid	2,576,930
	4,164,093 -
Deduct Increase in Liability	52,000
Available to Stock holders	4,112,093 -

The Co received 4,500,000 in Cash for issue of new Capital Stock. Therefore ~~actual~~ actual decrease in cash + current assets are over 387,000 for the year.

# Analysis of US Steel

## Credit

+ af Rec	51,000,000
+ Real Est	288,000
+ Royalty	1,400,000
+ af Pay	1,200,000
+ Dividend	32,000,000
+ Inc	37,000,000
	109,900,000

## Debit Side

Cash -	43,000,000
Sec. -	8,650,
af Inc	51,650,000
Available for Dividends →	58,250,000
Inc Subst. Figure	54,768,000

4430

2445  
54,768



U. S. Steel  
1920 Income ac

April

Gross Sales	1,755,477,000
Cost of Estp.	1,525,509,000
Net Income	<u>229,968,000</u>
Deduct: Inv. adjustment	5,500,000
	<u>224,468,000</u>
Other Income	6,800,000
Loss	
Net Profit of Subsidiary	<u>9,600,000</u>
Total Income	<u>240,868,000</u>
Deduct Int chge on Subsidiary	45,000,000
	<u>176,668,000</u>
Surplus	37,500,000
Int on Bonds	20,000,000
Prof Divid	9,000,000
Construction	30,000,000
Prof Dividend	25,400,000
	<u>54,768,000</u>
Am't av	
Com Dividend	27,555,000

Balance Sheet		Leaf	
	1920	1919	1920
Property	1,607,000,000	1,594,000,000	Com St. 508,302,000
Advance	23,000,000	21,600,000	Prof 360,280,100
deferred chg	3,000,000	2,200,000	Bonds 554,800,221
Royalty	31,000,000	32,500,000	Notes 31,200,000
Cash held by Trust	1,200,000	1,700,000	ac Pay 73,500,000
Deposits	-	93,000	Intalmt 4,660,000
Real Est	14,000,000	8,750,000	Instalmt 63,000,000
Assets available	24,500,000	42,000,000	app. cost 140,000,000
Sinking fund	258,000,000	226,000,000	Res 120,730,000
Inventry	139,000,000	88,000,000	Surplus 8,487,669
ac Rec 19	10,700,000	4,600,000	566,988,169
Bills Rec	1,750,000	1,270,000	
agents Bal	150,350,000	159,000,000	
Wholesale Sec.	900,000	900,000	
Trust Bank deposit	18,000,000	24,750,000	
Due from Cash	123,700,000	166,200,000	
Contingent fund	10,700,000	10,000,000	
	<u>2,430,000,000</u>	<u>2,364,763,000</u>	

Res 18.

Woolworth Co

Income Sheet

Net Sales 140,900,000  
 Net Inc. 9,775,000  
 Pfd Div 857,500  
 Com Div 4,600,000  
Surplus 7,318,000

Balance Sheet

	1920	1919
R. E.	16,400,000	14,100,000
Goodwill	50,000,000	50,000,000
Sec	1,341,000	1,370,000
Inventry	18,500,000	17,250,000
ap Rec.	470,000	440,000
Cash	4,270,000	4,850,000
	<u>90,981,000</u>	<u>88,100,000</u>

	1920	1919
Pfd	12,000,000	12,500,000
Com	65,000,000	50,000,000
alt Pay	2,300,000	1,600,000
Surplus	11,681,000	23,910,000
	<u>90,981,000</u>	<u>88,100,000</u>

Assets value behind Com Purchase ~~25,000,000~~ 65,000. - 26.681 per share

Earning available for Com Stock

Inc	1,250,000
ap Rec	30,000
Pfd Dividend	857,500
	<u>2,137,500</u>
Com	4,600,000
	<u>6,737,500</u>
	<u>3,380,000</u>
	<u>3,357,500</u>

Security	29,000
Cash	580,000
Surplus	<del>2,771,000</del>
	<u>3,880,000</u>

	15,000,000
	12,220,000
	<u>2,771,000</u>
	500
	<u><del>3,271,000</del></u>
	2,271

	844.12
	<u>1881</u>
	<u>2400</u>
	<u>2680</u>
	<u>2800</u>
	<u>800</u>
	<u>650</u>
	<u>1500</u>

Lucas Roebuck

April 11, 1921

Net Sales	233,856,872	Prof	600,000
Op. Exp.	3,199,570	Com Div	7,200,000
Profit			
Other Inc.	11,516,546		
Total	14,716,116		
Exp	<u>2,382,116</u>		
	12,400,000		

	1920	1919	1920	1919
R. E.	27,820,193	11,814,885	Refd	8,000,000
Eq.	30,000,000	30,000,000	Com.	105,000,000
Inv.	3,920,447	33,067,611	Notes	50,000,000
Def assets	3,908,606		Res.	3,423,749
Cash	3,763,353	7,185,855	Surp	7,564,374
L. Bonds	7,400,000	9,315,953	ap Pay	55,184,070
ap Rec	47,797,134	19,833,444	open	
Invest	105,071,243	42,685,776	Int	6,270,000
Sec.	1,487,140	881,108	Div	139,797
			Int	729,167
	<u>230,668,197</u>	<u>154,834,632</u>		
				<u>154,834,632</u>

Cash	4,000,000	Cash	4,000,000
ap Rec	28,000,000	L.B.	2,000,000
Inv	62,400,000		<u>6,000,000</u>
Sec	600,000	ap Pay	24,000,000
	<u>91,000,000</u>	Notes	50,000,000
Div	17,800,000	Int	729,000
	<u>98,800,000</u>	Res.	1,000,000
	81,729,000		<u>81,729,000</u>
Available	<u>17,071,000</u>		
for stock holders			

April 25<sup>th</sup> 1920

## Public Utility:

The condition which favorable to the investments of Public Utility is not favorable to the industrial securities. ~~The outlook~~

Factors which favorable to the public utility:

- (1) Stability of income & business.
- (2) Lack of competition. In the period of rising price, the competition is not much of weight. But when price is declining the competition is a most important factor.

Unfavorable factors

- (1) Regulation by public commission.
- (2) Probable demand by the public for lower rate.

## Examination of Utility Corp.

- (1.) Franchise - it may be perpetual non exclusive, or limited exclusive.

Expiration of franchise should extend beyond the due date of bonds.

- (2) Earnings of Corp.: Any Corp. should show at least 7% of annual increase in gross earnings preceding five years of bond issue.

Territory & character of business.

- (3) Capitalization & its character.

Proportion of bonds to the capital stock.

Security of Pub. Utility should not be more than 65% of capitalization.

Gross earning of Co. should not less than 20% Bonded indebtedness.

Operating ratio Elect Light 65%  
R.R. 70-80%

(4) Character management: The ability to handle public.

Earning of twice bond interest for past 5 yrs. should be considered ~~fair~~ favorable factor.

Elect Light & Gas Co

The outlook for further expansion for Electric light is much of greater than the Gas Co.

Gas Co.: = ~~Consider~~ Factor to be considered = density of population  
Increasing population decreases proportion of operating expenses:

Comparison of two, three Co Gas Co.

a) Rate charged = when two Cos are on the same condition one charges lower rate is more favorable.

b) Operating ratio 70%

c) Bonds not over 5 times of Gross income.

Elect Light Co.:

Better future & stability than Gas Co.

Factor to be considered

a) Lower rate.

b) Ratio of Bonds to Gross income 1-5

c) Depreciation & obsolescence should be

about 50% of Plant etc. &  
operating Exp. 60 - 65%

Power and light Co. when major portion of  
income comes from power its income more  
likely fluctuate.

Hydraulic electric power Co. when the Co develops  
stability of income, then ~~there is more~~ <sup>it</sup> ~~favorable~~ very  
favorable investments.

Point to be considered: Source of revenue that is  
where power is supplied and its character.

Operating ratio 30%

(Cost of Building Hyd Power per H.P. \$125<sup>00</sup>  
" " " Steam Elect " " 75<sup>00</sup>)

Bonded indebtedness 3 times of Gross earning.

May 2, 1921

### Street Railway

Average capitalization of R.R. \$65,000 -  
" " " St. Rway 100,000 -

The most of Street Ry is over capitalized.

Three types of St. Ry.

1. Surface
2. Inter-urban
3. Rapid transit.



high speed  
In an urban rapid line:  
Ratio operating 75%  
Population not less 5,000 -

### Surface line:

Important Point = Rate of Speed.  
In N.Y. rate of surface car speed is about 6 M. P.H.  
This is the cause of shifting traffic to rapid  
transit line in N.Y.

### Rapid transit line:

This most favorable type of investment.  
\$175,000 per mile capitalization in cities of  
2 million population.

Expansion of rapid transit line means  
increase in taxable value of municipality.

### Holding Company.

75% Public Utility Co. operated by the  
holding Co.

#### Economy of holding Co.

With comparatively small amount of capital  
it enable to control many subsidiary Co.  
Holding Co. buys stocks of subsidiary then  
use that stocks as collateral for issue of bonds.

Security for investments is collateral stocks only,  
while the subsidiary and operating Co. may issue  
mortgage bonds: thereby the hurting the  
equity of stockholders.



Benefit of holding Co. may:

Centralized operation

Centralized control

and economy of large scale operation

B  
G. Takahashi  
Corp. Finance  
Nov. 8, 1920

I. a. Watered stock means stocks of corporation issued in the excess of assets they own. For example a Company acquires a plant of \$1,000,000 - and issue the ~~stock~~ bonds for that amount and issue the stock as the bonus, it is watered stock.

b. Cumulative voting means the stock holder has a right to vote on each director they elect, ~~the~~ and instead of voting a whole directors they may concentrate upon the any number of director. The voter allowed to vote one vote each ~~vote~~ director. It is a method by which to protect minority interest. *no. of shares x no. of directors*

c. The limited partners are those whose liability is limited by the partnership contract. The names of the limited partner is not allowed to appear ~~in~~ the Massachusetts. If he allows <sup>v</sup> (to appear) (his ~~is~~ name), he is liable as a general partner; that is, his liability, - is unlimited.

d. The voting of trust is method by which to secure continuance of management - or the policy of the Corporation.

The stock certificates are turned over to the trustees, and in turn receive the trust certificates. The trustees are given the right to votes for those stockholders whose stocks they hold in trust.

e - The close corporation is the corporation of which stocks are held closely by the limited <sup>usually owned by a small group of persons</sup> selected number of persons. This is done by the agreement of among stockholders.

II. The preferred shares are protected as by

1. Preferential claim as to the assets in case of liquidation
2. Preferred as to income - It may be cumulative or non-cumulative
3. Participating preferred - Participate in earnings after the common stock get certain amount of dividend.
4. Convertible preferred. - Convertible into the common stocks by the option of the preferred stockholders.

*Rating + sinking fund redemption - See text p. 76*

III The corporate deed of trust ordinarily covers following point:

- a. Conveyance of property - to the trustee
- b. The manner of payment of interest - on the bond.
- c. Principal to be paid when due.
- d. Keep property in good shape
- e. Taxes to be paid by the Corporation
- f. Provision as to additional issue of securities
- g. Provision as to improvement & new purchases.
- h. In case failure to meet the provision of the covenant, the trustee may take foreclosure action; or force the corporation into receivership.

IV a - Stock dividend is dividend paid out of surplus ~~of~~ <sup>with</sup> the stocks not with cash. It is distribution of income provided the purpose was not watering the capitalization.

On other hand, the bonus shares are given as a bonus, it may not, and usually does not come out of surplus. In most cases it is watered capital.

b - Equipment trust bonds are bonds issued on the equipments. While the collateral trust bonds are issued on the security placed in the hand of trustees. The securities may be of the parent corporation or of subsidiary corporation. The trustee hold security as the collateral. On the equipment trust, the title to the equipment remain in the seller, but the corporation has right to use them.

~~Blanket~~ c - Blanket mortgage <sup>is</sup> bond issued on the mortgage of whole ~~of~~ property and the additional property; they may acquire later. Open mortgage is mortgage of specific property with provision of not including the additional property they may purchase.

d - Cumulative preferred stock is the stocks on which specified dividend accumulate if not satisfied in one year until the whole of dividend are paid. If the company can not pay, say, 5% dividend 3 years, then at the end of the

third year if Co. has earned enough, must pay 15%.

Participating preferred stocks are stocks which participate in dividend after the common stock receives the same amount - the preferred gets.

Any further distributions of dividend are divided between preferred and common at the specified rate.

*Very satisfactory work*

1. Three stages of promotions:

- a. 1. Investigations
2. Planning *Assembling*
3. Financing.

*A-*

(b) In the stages of investigation, promoters should assemble all the elements necessary to promote an industry and investigate each element thoroughly. In this primary investigation the promoters must examine such elements as possible earning, desirability of situation, population, possible competition, and markets for products etc.

After primary investigation is done, then the promoters task is <sup>of planning and</sup> planning the industry which he <sup>intends to</sup> promote. He must get in touch <sup>with</sup> financiers and provide sufficient cash to furnish expenses of promotion and make plans for floating of securities.

In Financing stages ~~comes~~ he must ~~be~~ decide what securities to be issued, the amount of capital investment required, proper working capital provided, and terms of securities, and to whom the securities to be sold etc. Proper ~~connecting~~ connection with the banking concern is necessary in order to carry out successfully.

But 3 elements were required. Be sure to read the requirements carefully as some times you might fail for lack of time.



or outright purchase. Then he ~~can~~ can proceed to form corporation. But any profit is made, it should be done openly.

#### 4. Factors affect working capital.

- a. Term of purchase
- b. Term of sale
- c. Period of production
- d. Turns over of goods
- e. Seasonal fluctuation.

If terms of purchase are long, that is long credit is granted on purchase less working capital necessary. The reverse is true, if term is cash or on short credit more working capital needed.

In the same way sales affect the working capital. Long credit means more working capital - Short credit or cash sale means less capital.

Period of production is very important element in the estimating working capital. During process of production, wages & salaries to be paid and other expenses to be met, while there will be no income until finished goods are sold. Longer the period of production more ~~cap~~ working capital required.

Turn-over affect requirements of working capital in such a way that faster the turn-over less working capital required.



For instance, news paper dealers who turns-over the goods every day requires practically no working capital while, tanneries which takes long period to produce leather may requires large amount of working capital. Same with jeweler who turns over its goods very slowly requires large capital.

Seasonal fluctuations affect working capital in such a way that at the time of large demand less working capital, when there is no demand, they must provide sufficient capital to carry out production.

L-3,4, Commercial Law  
Evening Division

Mid-year Examination

January 1921

- 45 1. The firm of A, B, and C, to which A contributed \$15,000, B \$10,000 and C \$5,000, owes \$30,000. In addition it owes a loan made by A of \$2500. It has assets of \$22,500, \$10,000 of which is in the form of real estate in the name of B, \$12,500 of which is personal property, of which \$5,000 is a debt due from X to whom C owes personally \$10,000. A is a wealthy man, B has a personal estate worth \$5,000 above personal debts, C is hopelessly insolvent. A and B go out in a canoe and are both drowned. Each leaves a son but no widow. What would you advise C concerning the settlement of the partnership affairs? Indicate the legal points involved and discuss them.

(Allow 45 minutes for this question)

- 
2. Give the name, significance and facts of what you consider the most important cases in the law of partnership.
- 
3. Discuss liability of a firm for the torts of the partners.
- 
4. Discuss the law relative to the transfer of partnership assets to one partner for the purpose of winding up the firm affairs.
- 
5. What is the law relative to the giving of notice of withdrawal of a partner from a firm?
- 
6. Upon dissolution of firm A, B, C, doing business under the name of X and Company, M, a creditor, discovered, for the first time that C was a partner. At the same time he discovered that by an agreement between A, B, and C, C's liability was to be limited to the amount he had already invested in the firm. Can M hold C personally upon a firm obligation to himself?

F-3, Corporation Finance  
Evening Division

Mid-year Examination

January 1921.

1. Prepare a list of questions that you would submit to a board of directors who ask you for advice as to whether or not they ought to pay dividends.
2. (a) State concisely the circumstances under which a corporation will amortize its debt rather than refund it.  
(b) What objections may be raised to a corporation applying its annual amortization charge to the purchase of securities other than its own?
3. "There are two distinct and opposed opinions as to the function and use of the surplus."  
(a) What is the surplus?  
(b) What are the opinions referred to in the quotation?  
(c) Write a defense of the one or the other.
4. Show how the existence of a blanket mortgage may be overcome so as to allow a company to finance an extension on what is essentially a first mortgage.
5. Explain concisely:  
(a) What is meant by stockholders "rights" and how their value is figured.  
(b) How the degree of safety in trading on a thin equity is affected by the variations in gross income and operating cost.
6. What are the important features of a corporate mortgage? What functions does the trustee under a corporate mortgage fulfill?
7. (a) Distinguish between "insolvency", "receivership" and "bankruptcy."  
(b) Outline the powers and duties of a receiver.
8. Explain concisely:  
(a) treasury stock  
(b) underwriting syndicate  
(c) serial bonds  
(d) stock holders' committees  
(e) depreciation reserve  
(f) deferred assets  
(g) income bonds  
(h) working capital  
(i) overcapitalization  
(j) secret reserves.

LAW ABSTRACTS

A. Nature of Partnership in General.

1. Definition

Pooley V. Driver. 3 Ch. D. (Eng) 458

Borrett & Hagden were partners in the manufacture of grease and pitch. Each contributed a certain part of the capital, and each gave his time to the business. The rest of the capital was contributed by other persons, among whom were the defendants, under an agreement that they should each have proportionate interest in the business, and should each receive a share of the profits in return for his investment. It was agreed that the money should be paid back preferentially when the partnership was wound up. It was also agreed that this arrangement should be called a loan, and that the contributors should not have a share in the management of the business. This suit is brought by Pooley, the holder of bills of exchange indorsed by Borrett & Company, which went into liquidation, to hold the defendants as partners.

*Calling it loan is immaterial, it is material what they have done. Court held it is a partnership*

Held that if a person intends to assume the obligations involved in a partnership, he becomes a partner and is liable for firm debts.

*1. share profit as such. 2. Intended in business. 3. Contract. Facts against partnership. 1. Preferential claim. 2. no voice in management. 3. money put in called as loan.*

2. Partnership as Agency.

Samstag and Hilder Brothers V. Ottenheimer, 90 Conn. 475.

The plaintiff corporation sues to recover the price of merchandise sold to the defendants, who formerly conducted a business in New Haven under the firm name of Ottenheimer, ordered goods of the plaintiff to be delivered to him in New York, where there was no firm business. Weil was ignorant of the entire transaction, and seeks to defend on the ground that this transaction was not within the scope of the partnership.

*Ottenheimer*

Held that a partner is not liable for debts incurred by another outside the scope of the partnership business.

*there may be scope of business as to territory or will as to transactions*

3. Contractual Basis.

Phillips V. Phillips 40 Ill. 437.

John S. Phillips, the son of John Phillips, worked for his father at making chairs, from an early age, and after attaining majority continued so to do. Other brothers did the same. John H. Phillips claims the right of a partner in the business, basing his contention upon the fact that the sons all devoted their time to it without regular salaries, that funds drawn from the concern for their support were debited to each one separately and that the father has stated to third persons that the sons were interested in the business. The defense is that there was no agreement to make a partnership but that the sons served the father under the distinct and often declared understanding that all should belong to him, during his life and at his death the business and property should be left to his children as he should think proper.

Held, that there can be no partnership without a contract express or implied.

Corps. can not ratify the act done before its existence.

### III

The third person can recover from the factors for the debts of person in the partnership by estoppel.

The point in this case is to find relation between fact & person. What the fact said to the other person is immaterial as to the partnership relation between themselves.

The intent to form corporation and failure to do so, and conducting business is not necessarily partnership. The intent to form corporation is inconsistent with partnership. Where there is no partnership, it is joined enterprise.

4. Necessity of Intent to Form Partnership.

Bacon V. Christian. 184 Ind. 517.

Bacon and Christian contemplated forming a corporation for the purpose of buying and selling lumber, but had not yet incorporated. In the meantime, each contributed money and drew on the capital and assets thus contributed for the purposes of the business, without actually intending to form a partnership. In a suit for an accounting, the question arises whether a partnership was formed.

Held, that without express intent, a partnership may be formed by acts of the parties.

5. Necessity of Community of Interest.

Dwinel V. Stone 30 Me. 384.

*Two issues in partnership case: 1) Is he a partner? 2) If not partner, is he estopped to deny? In this case issue is #1*

Dwinel sues Sawtell upon a claim in which he summons Stone as trustee for Sawtell. Stone defends on the ground that there was a partnership between himself and Sawtell and that he can accordingly not be held as trustee. Stone had purchased the right to take from certain property, and Sawtell assisted in cutting and hauling logs, under an agreement whereby he received a share of the profits. Title to all the property was in Stone. Sawtell had repeatedly said, however, that there was a partnership between himself and Stone. *Trustee is the person who holds goods in credit of the other. If it is partner, he can not be a trustee.*

Held, that there must be a community of interest in the subject matter in order to constitute a partnership.

B. TESTS OF EXISTENCE OF PARTNERSHIP.

Sharing Profits.

Eastman V. Clark 53 N.H. 276

Eastman sues C.C.Clark, D.Y.Clark, and Stillings to recover a balance due for corn sold by him to the defendants, who were engaged in running a line of stages between the Crawford House in the White Mountain Notch and the town of Jackson. The Clarks and Stillings each contributed teams and a driver for the line. There was some conflict in the testimony whether each party supported his stock at his own expense, or whether it was all supported at joint expense. There was also a conflict as to whether net or gross receipts were divided, and would be jointly liable to the plaintiff. The question arises whether the instruction was correct. *The court instructed if net profit divided they.*

Held, that division of profits is not in itself a controlling test of partnership.

Essentiality of Intent to Form Partnership

Bacon v. Christman, 104 Ind. 517.

Bacon and Christman contemplated forming a partnership for the purpose of buying and selling lumber, but had not incorporated. In the meantime, each contributed money and drew on the capital and assets thus contributed for the purpose of the business, without actually intending to form a partnership. In a suit for an accounting, the question arose whether a partnership was formed.

Held, that without express intent, a partnership may be formed by acts of the parties.

#V Sawtells declaration that he is partner is immaterial on the ground (1) It is not issue of estoppel (2) It is self declaration - If #

Stone has said that, then it is admission against interest, therefore can be taken as evidence.

Held, that there must be a community of interest in the subject matter in order to constitute a partnership.

FACTS ON EXISTENCE OF PARTNERSHIP

Shriver Profit

Eastman v. Clark 55 N.H. 279

Eastman and Clark, D.Y. Clark, and Shriver for some time had been partners in the business of buying and selling lumber. The parties were engaged in running a line of stages between the Crawford House in the White Mountain Hotel and the town of Jackson. The Clark and Shriver each contributed teams and a driver for the line. There was some conflict in the testimony whether each party supported his stock at his own expense, or whether it was all supported at joint expense. There was also a conflict as to whether the gross receipts were divided, and would be jointly liable to the plaintiff. The question arose whether the intention was correct.

Held, that division of profits is not in itself a controlling test of partnership.

## Telephone Co.

Independent Tel Co is not very favorable to investment,  
for the reason of possible competition.

Assets value of telephone is comparatively low.  
Outstanding bonds of telephone Co should not  
be more than 55% assets value.

Depreciation of assets greater than the other  
Public utility Co.

Obsolescence should be taken care carefully.

Capitalization per consumer \$200 -

Gross " " " \$50 -

Operating ratio for 5 year period should  
not be more than 70 to 75% of Gross.

Bonded debts about 1/2 of Capitalization that  
is assets should be twice the bonded debts.



2. Sharing Profits.Leggett V. Hyde. 58 N. Y. 272

Hyde invested money with the firm of A. D. Putman & Co. to be used in the business for one year, under an agreement that he was to receive one third of the profits, and be repaid the amount invested if at the end of the year he did not elect to become a partner. The plaintiffs seek to hold Hyde as a partner in an action for goods sold and delivered.

Held, that under the minority rule a person interested in the profits of a business as such, is a partner as to third persons. *This case will be held in other way at the present rule.*

3. Mutual Agency.Cox V. Hickman

*N. L. Case*  
~~8~~ Cas. (Eng) (269)

Smith and Son, who carried on business at the Stanton Iron Works, became financially embarrassed and executed a deed of trust to trustees selected from and by their creditors. These trustees were given power to carry on the business under the name of "Stanton Iron Company", to divide the net income (which was deemed the property of Smith and Son) among the creditors in ratable proportion and to make rules for conducting the business of winding it up. It was further agreed that after all debts had been discharged, the property should be turned back to Smith and Son. The trustees gave Hickman a bill of exchange accepted by themselves "per proc. the Stanton Iron Company." Hickman sues Cox and Wheatcroft, <sup>two of creditors</sup> alleging that they are partners in the business.

Held, that a partnership is created only when mutual agency arises.

4. Development of Test of Mutual Agency.Boston & Colorado Smelting Co. V. Smith 13 R.I. 27

B The Boston Smelting Company seeks to hold the defendants as partners in a chemical business conducted by the defendant, Smith. The other defendants had lent Smith \$5,000 for one year, agreeing to take as interest ten per cent of the net profits of the business.

Held, that sharing net profits as interest does not make the lender a partner.

Case of Nickman

From <sup>the</sup> old rule of profit-sharing rule, it is plainly profit.

In this case a new idea of necessity of mutual agency. The trustees are agents of Smith & Son, but Smith & Son are not agents of trustee.

Davis v. Davis

The inheritance gives co-ownership to the property. Sharing of profit as such is a prima facie evidence of partnership.

"Profit as such" means profit as a profit, not as any thing else - that is, not as sharing profit as something else.

From standpoint of law salaries of partners are not contemplated as salaries, but as sharing of profit. For salaries of employees, partners liable, but for salaries of partners no one is liable.

5. Intent of Parties.

Beecher V. Bush 45 Mich. 188.

Bush seeks to charge Beecher as a partner of Williams for a bill of supplies furnished the Biddle House in Detroit. Beecher owned the building and Williams hired it for use as a hotel at a rental determined by the gross receipts and gross earnings. *1. No net profit shared. 2. Payment as rent.*

Held, that a partnership does not exist unless the parties intend to create one.

6. Effect of Sharing Profits as between the Parties.

Davis V. Davis. (1894) 1 Ch. D. (Eng.) 393

Edward Davis by his will left his business to his sons, G. T. Davis, the plaintiff, and C. F. Davis, who continued to operate it without an agreement of partnership. Each drew three pounds a week but otherwise no division of the profits was made. During the administration of the estate of Edward Davis, the question arises whether there was a partnership between G.T. and C.F. Davis.

Held, that a joint interest in profits in prima facie evidence of a partnership.

7. What is Meant by Profits.

Buie V. Kennedy 164 N.C. 290.

Kennedy Brothers and Buie formed a partnership in the turpentine business. The parties contributed the capital equally but agreed that three-fourths of the profits should belong to Buie and one-fourth to the others. This case arises out of the settlement of the partnership dealings, and the nature of the "profits" contemplated by the agreement issue.

Held, that an agreement to share "profits" relates to net profits.

8. Sharing Profits to Satisfy Debt.

Mollwo, March & Co. V. The Court of Wards. L. R. 4 P.C. (Eng.) 4 19.

Watson & Co., doing business at Calcutta, entered into a written agreement with a Hindoo Rajah, whereby they agreed to carry on a merchandising business. The Rajah advanced money, received a commission of 20% of the profits until the whole of the debt should be paid, and had the right to control consignments of goods. Later the Rajah made further advances, and Watson & Co. executed a mortgage to him to secure the amounts. The firm of Watson & Co. became insolvent, and this suit is brought by Mollwo, March & Co. to charge the Rajah upon debts incurred by the firm. *Held that sharing profit in order to recover debts due does not make a person partner.*

Effect of Parties.

Becher v. Bush 4 Mich. 188.

That seeks to charge Becher as a partner of Wilson for a bill of supplies furnished the Little House in Detroit. Becher owned the building and Wilson hired it for use as a hotel at a rental determined by the gross receipts and gross expenses.

Held, that a partnership does not exist unless the parties intend to create one.

Effect of Partner Profits as between the Parties.

Davis v. Davis. (1884) 1 Or. D. (Sax.) 392

Edward Davis by his will left his business to his sons, C. F. Davis, the plaintiff, and G. F. Davis, who was to operate it without assumption of partnership. The business was a well established one and the plaintiff was to have the administration of the business. The question arises whether there was a partnership between G. F. and C. F. Davis.

Benson & Hunt.

When a partner draws partnership fund not other than in nature of distribution, he is liable for accounting. When he draws out fund he must show in such a way that it is separate from the firm transaction. otherwise he is liable.

Taft & Schamb

The thing a partner contributed to the firm belongs to the firm. Upon the dissolution if he can get the identical thing <sup>back</sup> you are allowed to do so. But if that thing is destroyed and replaced with firm fund you can not get it back.

A. Partnership Property.1. Nature of Partner's Interest.Morrison V. The Austin State Bank 212 Ill. 472.

The Austin State Bank was the innocent holder of non-negotiable vouchers issued by the town of Cicero for work done by the firm of Morrison & Co. & O'Brien, which were indorsed by O'Brien to his father in payment of a personal debt without authority from his partners. They repudiate the indorsement and bring this bill for an accounting against O'Brien. The question arises whether a partner may transfer partnership property without authority from other members of the firm.

Held, that a person who knowingly receives partnership property from one partner in payment of an individual debt acquires no title against the firm.

2. Nature of Partner's Interest.Clement's V. Jessup. 36 N.J. E.569.

Clement's purchased the interest of Shea in the firm property at a sale under an attachment in a suit against Shea on an ~~overdue~~ debt. The question is whether Clement's rights in the property should prevail over Jessup's. *Jessup is a firm creditor*

Held, that the interest of a partner in partnership property is his right to share after payment of partnership debts, and therefore Jessup's right has priority. *Clement can not purchase any more than the interest of Shea*

3. Property Acquired With Firm Funds.Hunt & Co. V. Benson 2 Hump (Tenn.) 459

Benson, a partner of the firm of Benson, Hunt & Company used a portion of the profits to purchase a house and stock, to which he took title in his own name. In a suit for an accounting the question arises whether the firm is entitled to profits from the property so bought or whether Benson is merely to be charged for the amounts so paid. *Had in it firm. all Shea had was remainder after payment of firm debts*

Held, that property acquired with partnership funds belongs to the firm.

4. Property Contributed to Capital.Taft V. Schwamb. 80 Ill. 289.

Taft, Schwamb and Crego formed a partnership to which Schwamb contributed a building and machinery. The building was destroyed by fire and rebuilt with partnership funds. After dissolution, this bill is filed to determine upon whom the loss should fall.

Held, that property contributed to firm capital belongs to the firm and therefore is to be borne in the proportion in which each shares losses.

*see note  
on the back  
H.P. 4.*

A. Partnership Property.

I. Nature of Partner's Interest.

Morrison v. The Atlantic State Bank 218 Ill. 473.

The Atlantic State Bank was the innocent holder of non-negotiable vouchers issued by the town of Chicago for work done by the firm of Morrison & Co., a partnership, which were indorsed by Morrison to his father in payment of a personal debt without authority from his partners. They repudiate the endorsement and bring this bill for an accounting against Morrison. The question arises whether a partner may transfer partnership property without authority from other members of the firm.

Held, that a partner who knowingly receives partnership property from one partner in payment of an individual debt acquires no title against the firm.

2. Nature of Partner's Interest.

Clement v. J. J. J. 88 N.J. 307.

Clement purchased the interest of J. J. J. in the firm property at a sale under an attachment in a suit against J. J. J. on an account due. The question is whether Clement's rights in the property should prevail over J. J. J.'s.

Held, that the interest of a partner in partnership property is his right to share after payment of partnership debts, and therefore J. J. J.'s right has priority.

3. Property Acquired With Firm Funds.

Hunt & Co. v. Benson & Hunt (Tenn.) 432.

Henson, a partner of the firm of Benson, Hunt & Company, used a portion of the profits to purchase a horse and truck, to which he took title in his own name. In a suit for an accounting the question arises whether the firm is entitled to profits from the property so bought or whether Henson is merely to be charged for the amount so paid.

Held, that property acquired with partnership funds belongs to the firm.

4. Property Contributed to Capital.

Tett v. Schwab 80 Ill. 189.

Tett, Schwab and Gray formed a partnership to which Schwab contributed a building and machinery. The building was destroyed by fire and rebuilt with partnership funds. After dissolution, this bill is filed to determine upon whom the loss should fall.

Held, that property contributed to the capital belongs to the firm and therefore is to be borne in the proportion in which each share losses.

5. Property Owned by Partners Individually,

Marcus V. McFarland. 119 Mass. 269.

McFarland, to whom had been assigned the right to use the name "Henry Marcus & Son" by the members of that firm, of which both he and the plaintiff Marcus had been partners, entered a new partnership with the plaintiff, and agreed that the name might be used for partnership purposes as long as the new firm should continue. After dissolution of the new firm, Marcus brings an action to restrain McFarland from using the name, "Henry Marcus & Son."

Held, that a partner may contribute property to the use of the partnership without destroying his own title.

6. Title to Firm Real Estate.

Kentucky Block Cannel<sup>Coal</sup> Co. V. Sewell 249 Fed. 840.

The plaintiff brings an action to determine the title to certain land. The main issue is whether a deed to "J.W. Sewell & Company" passed title to the members of that firm.

Held, that when real estate is deeded to a partnership, the partners take title as tenants in common.

7. Nature of Partnership Real Estate.

Woodward Holmes Co. V. Nudd 58 Minn. 236.

Woodward and Nudd were partners. Upon dissolution they sold partnership real estate to the plaintiff corporation, which brings this action against Mrs. Nudd to determine her right to dower in that real estate.

Held, that there is no right to dower as long as partnership real estate belongs to the firm.

8. Title to Firm Personalty.

Hendren V. Wing 60 Ark. 561.

Miller executed a mortgage on a boiler and engine firm, under the name of "Arkansas Machinery & Supply Company," not specifying the individual names of the partners. Hendren seized the boiler and engine upon a claim against Miller, and the Supply Company seeks to recover their property. The defense is that the mortgage to the Supply Company was not made in the name of any person.

Held, that a firm may take title to personal property in its firm name.

9. Good Will As Firm Property.

Rowell V. Rowell, Adm. 122 Wis. 1.

John S. Rowell, conducted a manufacturing business with successive partners, including Ira Rowell, through whom the plaintiffs claim. After the death of Ira Rowell, John S. Rowell formed a corporation which took over the assets and continued the business. The plaintiffs seek to recover Ira Rowell's share of profits realized by the corporation from the use of the assets of the old partnership, and contend that the good will should be considered as one of those assets.

Held, that good will is a firm asset to their share of, which the heirs of a deceased partner are entitled.

B. Relation of Partners To Third Persons.

1. Power of Majority of Partners to Bind Firm.

Johnston & Co. V. Dutton's Adm. 27 Ala. 245.

Johnston, Fogg and Vanderslice composes the firm of Johnston & Company, engaged in the business of running a saw mill. Johnston gave public notice that he would no longer be bound by any contracts made on account of the firm without his consent. Thereafter Fogg, without Johnston's consent gave notes in settlement of firm accounts. Johnston contends that he is not liable on them as Dutton had notice of Johnston's refusal to be bound.

Held, that a majority of the partners may bind a dissenting partner within the scope of the partnership business.

2. Firm Liability That of Principal.

Burgan V. Lytell, 2 Mich. 102.

Burgan rendered services to the defendants, who were partners under the name of the United States Mining Company. Burgan was employed by Harvie, a member of the firm who by an express provision of the articles of partnership was forbidden to make such a contract of employment. After the services were rendered, Burgan received from the defendants' superintendant a certificate showing the amount due him, upon which Windor, another member of the firm, paid him forty dollars. He now sues for the remainder.

Held, that third parties are not bound by secret limitations upon a partner's authority.

3. General Powers of partner.

Salt Lake City Brewing Co. C. Hawke & Andrews. 24 Ut. 249.

The Brewing Company sues the defendants as partners to recover money lent Hawk by the plaintiff for the purpose, as alleged, of cashing checks at the saloon which the defendants



K

Hawke absconded with this money, and the plaintiff seeks to hold Andrews, the other partner.

Held, that all partners of a trading partnership are bound by the act of one partner in borrowing money ostensibly for trade purposes.

4. Distinction Between Trading And Non-Trading Partnership.

Pease V. Cole, 53 Conn. 53.

Cole & McCarthy were partners conducting a theater in Hartford. McCarthy gave a firm note to his father for money which he borrowed. The note was transferred to the plaintiff Pease as a holder in due course, who now seeks to hold Cole upon the note. Cole defends on the ground that McCarthy had no authority to borrow money in the firm name.

Held, that a partner in a non-trading partnership has no implied authority to borrow money.

5. What is a Trading Partnership.

March V. Wheeler, 77 Conn. 449.

Marsh, a member of the firm of Wheeler & Company, plumbers, signed notes payable to the order of Marsh Brothers, a firm of which he was also a member. Marsh had no authority to execute the notes nor was there ratification. This action is brought by the bank at which the notes were discounted against Wheeler, who denies liability on the ground that Marsh had no authority to sign negotiable instruments in the name of the firm.

Held, that the authority of partner in a trading firm includes the making of firm paper.

6. Power to sell Real Estate.

Robison V. Daughtry, 171 N.C. 200.

Lowe, a member of the firm of Robison & Company, sold land belonging to the partnership to Daughtry, giving him a deed signed in the name of the firm, contend that this deed conveyed only Lowe's interest in the property, and seek to recover the remainder from Daughtry.

Held, that while one partner cannot give a deed to firm property, he may make a contract to convey it.

Held, that sharing net profits in order to recover a debt due does not make a person a partner.

9. Sharing Profits as Interest.

Meehan V. Valentine. 145 U.S. 611.

Perry lent L. W. Counselman & Co. \$10,000 and it was agreed that he would receive in addition to interest one-tenth of the net profits above that amount. In a suit by Meehan against Perry's estate on a claim due from Counselman & Co. Valentine, the executor, contends that this agreement did not make Perry a partner.

Held, that sharing net profits as interest on a debt does not create a partnership.

10. Sharing Profits as Co-Owners.

Butler Savings Bank V. Osborne. 159 Pa. St. 10.

Two firms, Osborne & Brothers and Carruthers & Peters, bought each an undivided half of two oil leases, which they operated jointly, dividing expenses, and each taking half the returns. The question arises, upon a sheriff's sale of the property of Osborne & Brothers, whether this arrangement makes the two firms partners.

Held, that tenants in common do not become partners because of joint transactions.

No. 510-a

*Boston Mass  
USA*

7. Power to execute Instrument Under Seal.Pierson & Pierson V. Hooker, 3 Johns. (N.Y. 68

The plaintiff firm sue Hooker on a bill of exchange drawn in their favor. The defence is a sealed release executed by one of the firm. The Piersons contend that one partner has no authority to release firm debt without authority from the other partners

Held, that one partner may execute a release of a firm debt without express authority from the others.

8. Power to Assign for Creditors.The H. B. Clafflin Co. V. Evans. 55 Oh. St. 183

The Snodgrass Brothers, a trading partnership, became insolvent and J. F. Snodgrass, the managing and only partner within the state, made an assignment for the benefit of creditors. This action is brought by general creditors against the assignee in insolvency to determine the right of one partner to make an assignment without the assent of the other.

Held, that while a partner may not make an assignment without the consent of the other active partners, the rule does not apply when he is the only partner conducting the business.

9. No Power to Submit Firm Claim to Arbitrator.St. Martin V. Thrasher. 40 Vt. 460

St. Martin & Company sue for work done under a written agreement. The defense is that the amount due is conclusively settled by an award of Hale, to whom the dispute was previously submitted for arbitration with the concurrence of St. Martin's partner. St. Martin never agreed to a final award by Hale.

Held, that a partner has no implied authority to submit a firm claim to arbitration.

10. No Power to Guarantee Debt of Another.Persons V. Oldfield. 101 Miss. 110.

Ruggles, a partner of Persons in the firm of Ruggles & Company, guaranteed in the firm name, payment for material ordered by Adams Brothers from Oldfield, who now seeks to hold Persons upon the guarantee.

Held, that a partner has no authority to guarantee the debt of another.

12. Assent of Firm to Act Otherwise Beyond Powers of Partner.

Erdman V. The Trustees of Eutaw Methodist Protestant Church  
129 Md. 595

The Church sues Erdman, the surviving partner of the firm of Erdman & Son, on a note executed in the firm name in behalf of a deceased partner as a personal subscription. The defendant knew of the subscription and assented thereto.

Held, that while a partner has no authority to issue firm paper for a personal debt, the firm may be bound if the other partners assent thereto.

13. Liability of Firm for Torts of Partner.

Page V. Citizens Banking Co. 11 Ga. 73

Page sues the partners composing the Citizens Banking Company for malicious prosecution arising out of the arrest of Page upon charges by three members of the firm that he was concealing stolen property. The question concerns the extent to which other partners are liable for a tortious act of one partner.

Held, that when one partner acts for firm purposes in the commission of a tort, the firm will be bound.

14. Liability of Firm for Torts of Partner.

Boston Foundry V. Whiteman. 31 R. I. 88.

Abe Whiteman, a partner in a business conducted under the name of Harry Whiteman, secured goods from the Boston Foundry Company by means of false representations, for which the plaintiff now sues Harry Whiteman.

Held, that a partnership is liable for the fraud of a partner committed in the course of partnership business.

15. Right of Firm Creditors to Attach Property of Partner.

Stevens sued Perry & Grimes on a firm debt, and attached personal credits belonging to Perry in the hands of the Bay State National Bank. Later, the credits of Perry in the hands of the same bank were attached by the Swampscott Machine Company in a personal suit against Perry. The question is whether the first or the second attachment will prevail.

Held, that a debt due one partner singly may be attached in a suit against the partnership; and the attachment is not dissolved by a subsequent attachment of the same debt by an individual creditor.

No. 510-c

*+ personal creditor*  
 when a firm creditor attach personal assets, one first  
 attaches is good.  
 If personal creditor attach firm assets, he must  
 wait until firm creditors are satisfied.

4. By War.

Stevenson & Sons, Ltd, v. Aktien.gesellschaft Cartennagen Industrie. (1916) 1 K.B. (Eng.) 763.

At the outbreak of the World War, the parties, respectively subjects of Great Britain and Germany, were partners in the manufacture of mill edgings for boxes, for which the plaintiffs were sole agents in Great Britain. The plaintiffs seek to determine the effect of the war upon the partnership.

Held, that a partnership is dissolved by war between the countries of the parties.

5. By Incapacity of Partner.

Barclay v. Barrie. 209 N. Y. 40.

Barclay brings suit to procure dissolution of a partnership between himself and Barrie, in a manufacturing business, on the ground that Barrie had become incapacitated by reason of paralysis from performing his duties as a partner.

Held, that upon permanent incapacity of one partner the partnership may be dissolved.

6. By Misconduct of Partner.

Rosentein v. Burns. 41 Fed. 841.

The parties were partners under a written agreement of partnership for the canning of fish, which was to last for five years. Before the expiration of time, a bill is brought by ... one of the partners for a decree of dissolution, on the ground that the defendants had failed to comply with the terms of the agreement, that the business was conducted at a great loss, and that the plaintiffs were induced to enter the partnership by false representations on the part of the defendants.

Held, that a partnership may be dissolved on account of misconduct of one of the partners.

8. Suits at Law Upon Separate Transactions.Wilson v. Wilson.

The plaintiff sues the defendants at law upon a note made by them to him for advances to the firm of which they were all members. The defense is that the note does not represent a firm transaction, and for that reason is not enforceable except in a suit in the nature of an accounting.

Held, that a partner may maintain an action at law against the other partners upon a transaction separate from firm affairs.

A. Termination of Partnership.1. By act of the Parties.Karrick v. Hannaman. 168 U. S. 328.

Hannaman seeks to dissolve a partnership with Karrack in a mercantile and laundry business which was to continue for five years. The suit is brought before the expiration of the five years and the question arises whether a partner who has agreed to continue partnership for a term of years may dissolve it at will.

2. By Completion of Purposes.Seufert v. Gille. 230 Mo. 453.

Gille and Van Peyma were partners in the hardware business under the firm name of Gille & Van Peyma. They later formed a corporation which took over all the assets of the partnership. Later, still, Van Peyma gave a note signed in the firm name to Seufert, who now seeks to hold Gille, without whose knowledge or consent the note had been given. The defense rests upon the ground that the firm had been dissolved, thereby terminating the authority of Van Peyma.

Held, that a partnership is terminated by the transfer of its entire assets.

3. By DeathMartlett v. Jackman. 3 Allen Mass. 287.

Jackman, Hathaway, Chick, and Leach were partners engaged in constructing railroads under the firm name of Hathaway & Co.,. After the death of Chick, Leach signed the firm name to a note which he gave to the plaintiff. The other partners contend that the partnership was dissolved by the death of Chick and that they were not bound to give notice of dissolution to the plaintiff.

In a suit for an accounting between the parties, formerly partners, the plaintiff seeks to be credited with interest on a note for money loaned by him to the firm.

Held, that a partner is entitled to interest upon money loaned to the firm.

5. Right of Partner to Contribution for Money Advanced for Firm.

Thomas V. Atherton. R. 10 Ch. D. (Eng.) 185

Thomas, the managing partner of a colliery, received notice from an adjoining owner that work was being carried on beyond the boundary. He insisted that he was entitled to the disputed ground, and carried on the work. For this act, he was sued for trespass by the adjoining owner, who recovered damages against him. He brings this bill to compel his partners to contribute to the amount so paid by him.

Held, that while a partner is ordinarily entitled to contribution for money advanced for the firm, he is not so entitled if the expenditure has been necessitated by his own fault.

6. Right to Accounting.

Lord v. Hull. 178 N.Y. 9.

Two partners bring this action against the third for an accounting without a dissolution. The defense is that there was only one point of difference to dispute and that a matter of internal regulation, so that an accounting was unnecessary.

Held, that an accounting between partners will not ordinarily be granted prior to dissolution.

7. Suits at Law Between Partners.

King v. Moore. 72 Ark. 469.

Moore brings an action at law against C.A. & M.G. King, a firm of which he was member, for the services of himself and of his minor son, who was employed by the firm.

Held, that a partner cannot maintain a suit at law against the other partners upon matters arising out of partnership transaction.

16. Right of Individual Creditor to Attach Firm Property.Johnson v. Wingfield. 42 S.W. 203.

Johnson, in a personal suit against Wingfield, attached property of Hazelhurst & Company, a firm in which Wingfield was a partner. The right of an individual creditor of one of the partners to attach firm property is questioned.

Held, that only the interest of a partner in the firm property may be attached in an individual suit against him.

C. Relations of Partners To Each Other.1. Duty to Account for Profits.Latta v. Kilbourn 150 U.S.524.

Kilbourn, Latta and Olmstead were a firm of real estate brokers and auctioneers, doing business under the name of Kilbourn & Latta. Latta entered into a joint speculation in real estate with Stearns, without obtaining the assent of the partners. They now charge Latta with the profit on these sales, although they had all from time to time purchased property for speculation on individual account.

Held, that a partner is not responsible to the firm for profits acquired outside the scope of the firm's business.

2. Right to Choose Co. Partners.Kingman v. Spurr. 7 Pick. (Mass.) 234.

The Boston and Providence Commercial Stage Company, a partnership, issued share certificates which provided that they were not transferable without the consent of the directors and treasurer. Kingman, to whom a share belonging to Robbin, had been accepted without such consent, seeks to compel the associates to account with him as a partner.

Held, that he was not a partner since consent of all the partners to his admission is necessary.

3. Right to Special Compensation.Emerson v. Durand 64 Wis. 111.

Emerson and Durand were members of a firm manufacturing linseed oil under the name of Emerson & Company. After dissolution, Emerson contends that he is entitled to compensation for services in addition to his share in the profits.

Held, that ordinarily a partner is not entitled to compensation beyond his share in the profits, but that circumstances may imply an agreement to that effect.

4. Right to Recover Interest on Loans.Rodgers v. Clement. 162 N. Y. 422.



Contract on Contracts With Firm.Gross. 166 Mass. 61.

Hughes had a contract to work for the firm of Gross & Strauss for one year. Hughes also had the right to renew the contract for another year. Strauss died during the first year the business was carried on by Gross. The question is whether the death of Strauss ended the contract.

held, that a contract made by a firm is a joint contract and is not necessarily terminated by the death of one of the partners.

Effect of Expiration of Agreed Term of Partnership.Willoughby L. R. 13 Ch. D. (Eng) 863,

Lord and Cox, attorneys at law, entered into a partnership agreement which provided among other things, by article 19, that in case Cox died, certain payments would be made to his estate. The duration of the partnership was to be fifteen years, and provision was made for the entry of Willoughby into the firm in the event of his death. Willoughby entered the firm which continued to operate for the specified term without a new agreement. After Lord and Cox died, Willoughby carried on the business. He now contends that as the term of the partnership expired prior to the death of Lord and Cox, he is not bound by the agreement relative to payments to the estate of Cox.

It is held that if the partners continue to transact the business of the firm after the expiration of a partnership agreement, the provisions of the original contract which are not inconsistent with a partnership at will, continue in force.

B. Rights of Creditors.21 Wis. 276.

to determine the respective rights of creditors of the firm and of Gross & Company, and of Gross & Company, and of the insolvent.

the joint assets of a firm are to be used to satisfy the demands of individual creditors and the individual demands of individual creditors.

2. Rule of Marshalling.

Murrill v. Neil 8 How. (U.S.) 414.

Tiernan was a partner in the firm of Tiernan, Cuddy & Co. which became bankrupt. This suit is brought by firm creditors to reach property belonging to Tiernan, in the hands of Neil, to whom Tiernan conveyed assets out of his personal estate for the settlement of private debts. The question at issue turns upon the right of firm creditors to share in the personal estate of a member of a bankrupt firm.

Held, that the rule of marshaling applies in bankruptcy without exception.

3. Administration of Estate of Members of Insolvent Firm.

Francis v. McNeal. 228 U.S. 695.

Francis was a member of a firm trading as The Provident Investment Bureau, which was petitioned into bankruptcy. The bankruptcy court ordered that the separate assets of Francis be turned over to McNeal, the trustee in bankruptcy of the firm. The validity of this order is questioned.

Held, that upon bankruptcy of a firm, the assets of the individual partners may be administered by the bankruptcy court.

4. Right to Proceed against Estate of Deceased Partner.

Doggett. Ex'x v. Dill 108 Ill. 560.

Dill was a creditor of Doggett, Barrett & Hills, a partnership. Upon the death of Doggett, he seeks to prove his claim against Doggett's estate without previously attempting to collect from the firm.

Held, that a firm's creditors may proceed against the estate of a deceased partner for collection of the firm debts without previous recourse to firm property.

5. Transfer by Firm to Secure Individual Creditors.

Jackson Bank v. Durfey. 72 Miss. 971.

The bank, a firm creditor of Durfey & Ascher, seeks to annul deeds of trust whereby at a time when the firm and its members were hopelessly insolvent, firm assets were mortgage to secure individual debts of the partners.

Held, that members of an insolvent partnership cannot lawfully convert a joint asset into a several asset to the detriment of the firm creditors.

6. Effect of Transfer By Partner to Individual Creditor.

Menagh v. Whitwell. 52 N.Y. 146.

Suit is brought by Menagh against Whitwell for the conversion of property formerly belonging to the firm of Smith Company. The firm was indebted to the Geneva National Bank, which recovered judgment and which caused the property in suit to be seized by Whitwell, a sheriff. Menagh claim the title to an undivided part through a chattel mortgage given by Smith on his share of the firm assets as security for a personal indebtedness to the plaintiff. The question is whether a transfer of firm property by a partner to pay an individual debt, when the firm is insolvent, is good against partnership creditors, as was held in the lower court.

Held, that a transfer by one partner is good against creditors only if the firm is solvent and sufficient remains to pay partnership debts.

7. Effect of Transfer by Partner to Partner.

Stanton v. Westover. 101 N.Y. 265.

W. G. Westover, a partner of the firm of O.M. & W.G. Westover, sold his interest in the partnership in good faith to O.M. Westover, and retired from the business. The firm was then solvent but O.M. Westover was insolvent though neither partner knew this at the time. The receiver of the firm seeks now to set aside this sale as void against creditors.

Held, that a transfer by one member of a firm to another of his interest in that firm is valid if the firm is solvent and the transfer made in good faith.

C. Effect of Dissolution on Property Rights and Duties of Partners.

1. Effect of Property in General.

Dyer v. Clarke. 5 Metc. (Mass.), 562.

Dyer and Burliegh, transacting business under the firm name of Burleigh & Dyer, took title to real estate jointly. Dyer sues Clark, administrator of the estate of Burleigh, for selling an undivided half of the firm real estate as the individual property of Burleigh, who was found to be indebted to Dyer upon partnership accounts.

Held, that partnership real estate descends to the heirs of a deceased partner subject to the satisfaction of firm obligations.

2. Title to Partnership Real Estate.

Sherrod v. Mayo 156 N. C. 144.

Sherrod, the surviving partner of Sherrod & Brother, sues Mayo, the administrator of the deceased partner, to secure possession of partnership real estate for the purpose of winding up the affairs of the partnership, all debts having been paid.

Held, that the heirs of a deceased partner are entitled to their share of the real estate of the partnership after all debts are paid.

3. Title to Personal Property.

Tennant v. Dunlop.

The heirs of Tennant bring a bill to cause Dunlop, the surviving partner of Tennant & Company to account for the use of a brand of tobacco owned by Tennant but used by the firm. Dunlop purchased from the executrix of Tennant's estate the good will of the brands of Tennant & Company, and the private brand of Tennant under circumstances which the plaintiffs claim were a breach of duty on the part of both. The question was raised whether the surviving partner is entitled to the good will of the property.

Held, that the good will of a firm is a part of its assets to be held accounted for the heirs of the deceased partner.

4. Nature of Title of Surviving Partner.

Holbrook v. Lackey.

Holbrook the surviving partner of Holbrook & Houghton, sues Lackey on a note given by him to the firm. Lackey attempts to set off a personal debt owed to him by Holbrook.

Held, that the surviving partner of a firm dissolved by death of the other members becomes the sole creditor of partnership debtors.

5. Authority of Partner after Dissolution.

Gates v. Beecher. 60 N.Y. 518.

Gates, the holder, sued Beecher as indorser of a note made by the firm of Bassett, Beecher & Co. The note was presented to Bassett alone after the firm had become bankrupt. Beecher claims that on account of the dissolution of the firm, presentment should have been made to all the members.

Held, that after dissolution a partner still has authority to bind the firm in reference to pre-existing liabilities of the firm.

6. Authority of Surviving Partner.

Emerson v. Senter 118 U. S. 3/

Moore, the sole surviving partner of Butler & Company, made an assignment for the benefit of creditors of the firm. This suit was between Emerson, to whom Moore assigned, and creditors of the firm who attached the property and as plaintiffs seek to enforce the attachment. The question turns upon the validity of the assignment.

Held, that a surviving partner may assign for the benefit of creditors.

7. Limitations of Authority of Partners after Dissolution.

Hart v. Woodruff. 24 Hun. (N.Y.) 510.

The firm of Woodruff & Robinson, dissolved at a time when they were indebted to Hart, the plaintiff. Robinson rendered an account to Hart without the knowledge of Woodruff and Hart now seeks to hold Woodruff upon the account stated. Woodruff contends that Robinson had no power to bind him by an admission as to the amount due.

Held, that after dissolution, one partner cannot bind the others by admissions.

8. Necessity of Notice by Retiring Partner.

Thayer v. Goss. 91 Wis. 90.

A. J. Goss and Putnam did a milling business under the firm name of Putnam & Company. Notice of dissolution was published, and stated that thereafter the business would be carried on under the firm name of J. B. Goss & Company. The partnership property was conveyed to J. B. Goss & Company and A. J. Goss had no further interest. The plaintiff sues A. J. Goss and J. B. Goss upon a note taken from J. B. Goss & Company in cancellation of a note of Putnam & Company under the belief that A. J. Goss was still a member of the firm.

Held, that in order to release himself from new liability a retiring partner must bring home to old customers by actual notice the fact that he is no longer a member of the firm.

9. To whom Actual Notice Must Be Given.

Askew v. Silman 95 Ga. 678.

Mrs. Silman sues Askew, seeking to hold him as a member of the firm of Austin & Company upon a firm note dated two years and a half after he had withdrawn from the firm. At the time of his withdrawal an announcement to that effect was published in the paper to which Mrs. Silman was a subscriber, but she did not see the notice nor did she have knowledge of the dissolution of the firm. She supposed that Askew was still a member. She had been a customer of the firm as a purchaser of goods during Askew's connection with it, but had not been a creditor before the date of the note.

Held, that an outgoing partner is relieved of liability to all except creditors, by publication of notice of dissolution.

10. Liability of Incoming Partner.

Wood v. Macafee 172 N.Y. S. 703

D. J. and S.B. Macafee, partners admitted Fox to a third interest in the firm upon his contributing a certain amount of capital. This action is brought against all the defendants upon a note originally made by the two Macafees to the plaintiff, but renewed after Fox came into the firm. The question arises whether they may hold Fox upon this note, as they did not know that he had become a member.

Held, that an incoming partner who agrees to the assumption of firm indebtedness may be held upon a previous firm debt.

11. Effect of Sale of Good Will Upon Right to Compete.

Hutchinson v. Nay. 187 Mass. 262.

The administratrix of the estate of Hutchinson, a partner in the firm of Nay & Company, brings a bill to force Nay to account for the proceeds of the sale of the good will of the firm. For nearly two years after Hutchinson's death, Nay had conducted the business as his own and had himself built up an independent good will.

Held, that upon a sale of the good will of a partnership dissolved by death, the right of the surviving partner to compete cannot be taken away.

12. Effect of Sale of Firm Name.

Bagby & Rivers Company v. Rivers 87 M. 400.

Rivers seeks to enjoin the Bagby & Rivers Company from using the name of "Rivers" as part of its corporate name. Bagby and Rivers had been in partnership under the firm name of Bagby & Rivers, and dissolved by mutual consent. By the terms of the agreement of dissolution, Bagby was given the right to continue the use of Rivers' name. The question is whether Bagby can transfer that right to the corporation.

Held, that the sale to a partner of the right to use the former firm name does not authorize him to assign it further.

D. Winding up of Partnership.

Order of Distribution of Assets.

1. Groth v. Kersting. 23. Col. 213.

In an action by Kersting and Wilmsmeier against Groth for an accounting of the funds of the firm of which all three were members the decree failed to provide that each partner should be repaid his contribution to the business. From this decree Groth appeals.

Held, that although contributions of capital are ordinarily to be repaid upon dissolution of the firm, and agreement to another effect may be made.

2. Profits and Contributions of Capital.

Johnson v. Jackson 130 Ky. 751.

Johnson and Jackson were partners in a saloon business which was sold to Jarboe. Jackson furnished the whole of the capital. He now seeks to recover from Johnson that half the purchase price which Jarboe paid directly to Johnson, as the entire amount was less than the original contribution by Jackson.

Held, that contributions of capital to the firm are to be repaid to the partners so contributing regardless of the way in which they share profits.

3. Loans Made By Partners.

Leserman v. Bernheimer. 113 N. Y. 39.

Leserman brings an action against Bernheimer and Goldsmith, his partners, upon dissolution of the business which the three had been conducting under the name of the Oleophene Oil Company.

The original capital was \$225,000, of which each contributed \$75,000. At the time of dissolution, Leserman had withdrawn about \$10,000; Goldsmith had drawn out the whole of his contribution and owed the firm about \$900; while Bernheimer's share had increased about \$56,000. After paying the liabilities there remained about \$129,000, concerning the disposition of which the issue arises.

Held, that loans made by partners to the firm are to be repaid before assets are divided.

4. Sharing of Losses.

Whitcomb v. Converse. 119 Mass. 38.

Articles of co-partnership for the transaction of a commission business between Converse, Whitcomb, Blagden and Stanton, provided that Converse should contribute \$25,000 and Whitcomb, \$50,000, the entire capital of the firm; that Converse should contribute such time as he might be able to give, and the others all of their time to the business; that each partner should receive one-fourth of the net profits; and that Converse and Whitcomb should receive interest on the capital contributed by them. The partnership was afterwards dissolved by mutual consent and the business sold at a loss. Whitcomb brings a bill to compel contribution by the other partners.

Held, that the capital of a firm is a debt of the partnership to which all the partners are bound to contribute equally.

No. 551-h



A. Nature of Corporations.

Trustees of Dartmouth College v. Woodward. 4 Wheat. (U.S.) 518

In 1769, George III, King of England, granted to the trustees of Dartmouth College a charter fixing their number and defining their duties. In 1816, the legislature of New Hampshire passed an act amending the charter of the College, whereby, among other changes, the number of trustees was increased; trustees might be appointed by the governor; and a Board of Overseers was created. The original trustees refused to accept this amended charter, and bring suit to regain possession of certain property belonging to the college.

<sup>1831</sup> Held, that in the absence of a reservation in the grant, a corporate charter is a contract which cannot be amended at the pleasure of the sovereign.

2. Essential Elements.

Thomas v. Dakin 22 Wend. (N.Y.) 9.

Thomas, as President of the Bank of Central New York sues Dakin as a party to three bills of exchange discounted by the bank. A statute authorized the bringing of such a suit in the name of the president. The defense is that the statute is unconstitutional, on the ground that the legislature could not authorize a corporation to sue in any name other than its own.

Held, that while a corporation must ordinarily sue in its corporate name, legislative authority to sue through an officer may be given.

3. Corporation as Creature of Sovereign.

The People v. The Pullman's Palace Car Co. 175 Ill. 125.

This action was brought by the attorney general of the state of Illinois against The Pullman's Palace Car Company to obtain a forfeiture of its charter on account of alleged usurpations of power, particularly holding real estate for purposes foreign to its business of constructing railway cars and supplies.

Held, that a corporation has only those powers expressly given, and such as are necessary to carry those express powers into effect.

4. Necessity of Acceptance of Charter.

State v. Dawson. 16 Ind. 40.

In 1849, the legislature of the state of Indiana enacted a special charter of incorporation for the Fort Wayne & Southern Railroad. No application for such a charter has been made. The persons named in the charter as directors did not accept the charter until 1852. In 1851, the constitution of the state was changed so as to prohibit the creation of such charters by special act; and this action is brought to prevent the exercise of corporate powers by the railroad.

Held, that until acceptance, the grant of a charter is a mere offer which may be withdrawn.

5. Corporation as Legal Person.

2

Button v. Hoffman. 61 Wis. 20.

Button, the sole owner of all the capital stock of the Hayden & Smith Manufacturing Company, sues the defendant to replevy property belonging to the corporation. The defense is that he has no title.

Held, that stockholders have no title to the assets of the corporation.

6. Relation of Members to Corporation.

People ex rel Winchester v. Coleman 133 N.Y. 279.

The respondents, the commissioners of taxes of New York City, assessed certain taxes upon the capital stock of the National Express Company, a joint stock company, in accordance with the law relative to the taxation of corporations. This suit is brought at the instance of the treasurer of the Express Company to determine whether the taxes were properly assessed.

Held, that a joint stock company is not taxable as a corporation.

B. Particular Kinds of Corporations.

Corporations Aggregate.

Hope v. The Valley City Salt Co. 25 W. Va. 789.

Hope, a creditor of the Valley City Salt Company, seeks to set aside a conveyance made by the corporation to Harpold, its President to secure him upon a contract whereby he had guaranteed the credit of the corporation.

Held, that a corporation aggregate may contract with its members.

2. Corporations Sole.

Codd v. Rathbone 19 N. Y. 37.

Codd, the sole owner of the Exchange Bank of Buffalo, an individual bank which was doing business under the provisions of a statute, sues Rathbone upon two notes. The defense is in part that Codd cannot maintain this action in his own name as he becomes a corporation sole in the operation of the Bank.

Held, that a person conducting business under statutory restrictions does not thereby become a corporation sole.

Corporation as legal person.

Whitton v. Holman, 41 W. 22

#3 The charter of private Corp is

Contract between Corp & State, while charter of public Corp is not contract. Corp is created to administer the public business.

Quasi-public Corp's. Corp which serve public function with private gain.

Particular kinds of Corporations.

Corporation types.

How v. The Valley City Co., 25 W. 102

Defectively formed Corp is not partnership for failure to incorporate is inconsistent with partnership.

~~De facto & fact Corp.~~

Gold v. Rathbone 19 N. H. 17

Gold, the sole owner of the Exchange Bank of Hallowell, an individual bank which was doing business under the provisions of a statute, was Rathbone upon two notes. The defense is in part that Gold cannot maintain this action in his own name as he became a corporation sole in the operation of the bank.

Held, that a person conducting business under statutory restrictions does not thereby become a corporation sole.

3. Public and Private Corporations.

3

Trustees of Carrick Academy v. Clark 112 Tenn. 483.

The trustees of Carrick Academy seek to have declared void a lease of property of the Academy made by former trustees to the Winchester Normal College. The lease was made under an act of the legislature giving the former trustees the necessary authority. The plaintiffs contend that the legislature could not grant this authority, as the property was dedicated to the purposes of the Carrick Academy by the state which had founded the Academy without shareholders and without specified beneficiaries.

Held, that the legislature may change the charter of a public corporation at will.

*Public Corp. has not charter with contractual relation. Private Corp has charter which is contract itself.*

4. Quasi-Public Corporations.

McCarter v. Firemen's Insurance Co. 74 N.J. E. 372.

Eight fire insurance companies entered into an agreement whereby they fixed premium rates and indicated brokers who should handle their fire insurance business. McCarter, as attorney general seeks a decree to set aside this agreement on the ground that it tends to the injury of the public.

Held, that a corporation engaged in business of a public nature must serve the interests of the public.

5. Eleemosynary Corporations.

The People ex rel. The New York Inst. for the Blind v. Pitch 154 N.Y. 14.

The New York Institution for the Blind sues to establish its right to payment by the Comptroller of the city of New York for clothing furnished its inmates who resided in the city. The city refuses to pay these claims on the ground that only charitable institutions are entitled to such contributions, and that as some pupils had paid their tuition, the corporation is not to be regarded as a charitable corporation.

Held, that a corporation may be partly educational, and partly eleemosynary.

6. De Jure and De Facto Corporations.

Gibba's Estate Hallstead's Appeal. 157 Pa. St. 59.

Hallstead, as guardian of Clapp, attempts to secure from Gibb's estate the amount of a deposit in the Home Savings Bank of which Gibbs was a stockholder. Hallstead bases his claim upon the theory that the Bank was a general partnership and that the stockholders were liable as partners because of the fact that there was no record of the incorporation of the Bank.

Held, that failure to prove a record on incorporation does not constitute the parties interested a partnership.

Section 17(1) of the Companies Act, 1956  
The provisions of Section 17(1) of the Companies Act, 1956, which relate to the issue of shares, are subject to the provisions of the Companies Act, 1956, and the Companies (Share Capital and Structure) Regulations, 1956. The law was made under an act of the Parliament of India, and the provisions of the Companies Act, 1956, are subject to the provisions of the Companies Act, 1956, and the Companies (Share Capital and Structure) Regulations, 1956.

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*If mandatory provision is violated it*

*not de jure nor de facto conform*

*The violation of directory provision is*

*de facto conform*

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7. Nature of the De Facto Corporation.

4

Society Perun v. Cleveland 43 Oh. St. 481.

The city of Cleveland conveyed real estate, on which it took a mortgage to secure the unpaid purchase price, to the Society Perun, an unincorporated school and library which had taken certain steps toward incorporation and had for nearly six years acted in good faith as a corporation. Before the city's mortgage was filed, the society, purporting to act as a corporation, transferred this property. The city seeks to avoid this conveyance on the ground that the society was not a corporation and that its acts were void.

Held, that a de facto corporation may contract as if it were a de jure corporation.

8. Necessity of Valid Law to De Facto Corporation.

Imperial Bldg. Co. v. The Chicago Open Board of Trade 238. Ill. 100.

The plaintiff, the Imperial Building Company, sues the Board of Trade upon a lease made by it to the Board of Trade. The defendants raise the defense that the plaintiff is a corporation organized for the purpose of holding real estate, which is unlawful according to the law of Illinois. The Building Company insists that it is in any event a de facto corporation for this purpose.

Held, that there can be a de facto corporation only where there is a law under which the corporation might legally be organized.

9. Effect of Failure to Follow Directory Provisions.

The Butler Paper Co. v. Cleveland 220 Ill. 128.

The Butler Paper Company sues to recover for merchandise sold the defendants as officers and directors of the C. & C. Company. It seeks to hold them on the ground that the C. & C. Company was defectively organized, in that the meeting of the subscribers for incorporation was not properly called in the manner prescribed by the statute, which further provides that persons purporting to be directors of a corporation not properly organized, shall be personally liable.

Held, that failure to follow a directory provision of a statute will not necessarily prevent a corporation from becoming one de jure.

10. Foreign Corporations.

In re C.B. Comstock & Co. 3 Sawyer (D.C.) 218.

The Bank of British Columbia filed proof of a debt against the estate of Comstock & Company for payment by the assignee, who objects to the proof on the ground that the Bank is a foreign corporation which has not complied with conditions precedent to the transaction of business within the state.

Held, that a foreign corporation may conduct business within a state only upon compliance with its laws.

Boyd v. United States, 138 U.S. 455 (1891)

Commonly = Court's recognition of international affairs acts of other

Held, that a de facto corporation may contract as if it were a de jure corporation.

8. Necessity of Valid Law to De Facto Corporation

Imperial Bldg. Co. v. The Mayor, Board of Trade, 112 U.S. 130 (1884)

The plaintiff, the Imperial Building Company, was the Board of Trade upon a lease made by it to the Board of Trade. The defendant raises the defense that the plaintiff is a corporation organized for the purpose of holding real estate, which is unlawful according to the law of Illinois. The Building Company insists that it is in any event a de facto corporation for this purpose.

Held, that there can be a de facto corporation only where there is a law under which the corporation might legally be organized.

9. Effect of Failure to Follow State Law

Mr. N.H.H.R.R. has lawfully acquired the land but has not right to use it contrary to its power. The N.H.H.R.R. had no right to engage in real estate speculation although they had right to invest surplus funds in real estate.

10. Foreign Corporations

In re U.S. Cemetery & Co. 2 Sawyer (D.C.) 218.

The Bank of British Columbia filed a writ of a debt against the estate of Cemetery & Company for payment by the assured who estate to the pool on the ground that the Bank is a foreign corporation which has not complied with certain provisions of the legislation of business within the state.

Held, that a foreign corporation may contract business within a state only upon compliance with the laws.

11. Necessity of Compliance With Laws of Domicile of Foreign Corporation.

The Land Grant Railway & Trust Co. v. The Board of County Commissioners of Coffey County 6 Kas. 245.

The plaintiff corporation seeks a decree ordering the county commissioners to subscribe to stock of a railway company in accordance with a contract made by the corporation with the commissioners. The commissioners defend on the ground that the corporation was not properly formed in Pennsylvania, its domicile, and can have no legal existence elsewhere.

Held, that a corporation cannot exercise powers as a foreign corporation if not properly formed according to the law of its domicile.

12. Internal Management of Foreign Corporation.

Madden v. Electric Light Co. 181 Pa. St. 617.

This was an action brought in Pennsylvania by stockholders against the Electric Light Company, a New Jersey corporation, alleging corporate mismanagement by the directors. As the Electric Light Company had certain franchises in the city of Philadelphia the complainants contend that the courts of Pennsylvania have jurisdiction to entertain the suit.

Held, that matters relating to the internal management of a foreign corporation must be determined by the courts of its domicile.

C. Powers of Corporations.

1. In General

Williams v. Johnson 208 Mass. 544.

The New York, New Haven & Hartford Railroad Company, the owner of a large tract of land in Boston which had formerly been used for a station, conveyed that land to trustees for the purpose of conducting a business relating to the improvement, sale and management of this and other real estate. In a proceeding to register the title to this land the defendant stockholders attack the scheme, contending that the corporation had no right to engage in it.

Held, that a corporation has only those rights invested in it by its charter.

2. What Purposes are Incidental to Charter.

Bradbury v. The Boston Canoe Club 153 Mass. 77.

Bradbury sues the Canoe Club, a corporation, upon a promissory note made by it for the purpose of borrowing money with which to build a boat house.

Held, that a corporation may incur liabilities not inconsistent with the objects of its charter.  
No. 677



11. Necessity of compliance with laws of domicile of corporation.

The fact that a corporation is organized in a state does not make it a corporation of that state for all purposes. It is a corporation of that state only for purposes of the laws of that state which relate to its internal management and the rights of its shareholders.

Ultra Vire Contract.

Mass. Rule: A contract made by a corporation which is not authorized by its charter is void.

Executory Contract void.

Executed Contract void but may recover on the benefit conferred.

If there is illegality in the ultra vire contract, the court will not interfere and leave it where it finds.

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1. Powers of Corporations.

In General.

Williams v. Johnson, 208 Mass. 244.

The New York, New Haven & Hartford Railroad Company, the owner of a large tract of land in Boston which had formerly been used for a station, conveyed that land to trustees for the purpose of conducting a business relating to the improvement of the city and management of the same and other real estate. It is provided in the charter of the trustees that the trustees should not be liable for the debts of the corporation but the corporation had no right to engage in it.

Held, that a corporation has only those rights invested in it by its charter.

What Purpose are Essential to Charter.

Bradbury v. The Boston City Club, 183 Mass. 37.

Bradbury sued the City Club, a corporation, upon a contract made by it for the purpose of borrowing money with which to build a hotel house.

Held, that a corporation may have liabilities not inconsistent with the objects of its charter.

11. Effect of Ultra Vires Contract : United States Rule.

St. Louis etc. Railroad Co. v. Terre Haute etc. Railroad Co.  
145 U.S. 393.

The St. Louis Railroad Company seeks to cancel a conveyance of its railroad and franchises to the defendant for a period of 999 years. After the lease had been in effect for some 17 years, it contends that this conveyance was beyond the authority of its own charter and of the charter of the defendant road.

Held, that equity will not interfere to cancel an ultra vires contract which is no longer executory.

12. Liability of Corporation for Torts.

Goodspeed v. The East Haddam Bank. 22 Conn. 530.

Goodspeed sues the Bank for instituting a vexatious suit charging him with an attempt to defraud the Bank. The corporation contends that it is not responsible for intentional torts.

Held, that a corporation is liable for its torts.

13. Liability for Tort in Ultra Vires Transaction.

Nims v. Mount Hermon Boys' School. 160 Mass. 177.

Nims was injured through the negligence of a ferryman employed by the defendant, an educational corporation which allowed the public to use its ferry for hire. The corporation contends that it is not liable for its ultra vires torts.

Held, that a corporation is liable for torts committed in an ultra vires undertaking. *own wrong is not defense*

14. Criminal Liability.

United States v. John Kelso C. 86 Fed. 304.

The defendant corporation is charged with criminal violation of an act relating to hours of labor of persons employed upon certain works. The corporation defends in part on the ground that it is incapable of entertaining a criminal intention.

Held, that a corporation may be criminally liable for acts done by it.

Rule on U.S. C. Rule on Ultra Vires

1. void
2. void with some illegality + immorality
3. Court will find some technical ground in order to work out justice.

#10 - Plaintiff cannot sue on the rent because to do so must sue on the contract. the contract is void for it is ultra vires.

7. Effect of Conveyance of Real Estate to Corporations.

Kerfoot v. The Farmers' & Merchants' Bank 218 U.S. 261.

The heir of Kerfoot seeks to set aside a conveyance of real estate by Kerfoot to the First National Bank of Trenton, made in pursuance of an agreement by which title to the property was to be held in trust by the Bank, subject to directions of the grantor. The ground of suit rests upon the fact that a National Bank is not authorized to hold real estate.

Held, that the effect of a conveyance to a corporation not entitled to hold real estate is to make the title voidable, not void.

8. Ultra Vires Contract of Which Corporation Has Benefit.

Denver Fire Insurance Co. v., McClelland. 9 Col. 11.

McClelland insured his crops with the Fire Insurance Company against damage by hail. The crops were injured by the peril insured against, and McClelland seeks to recover the amount of the insurance. The defendant contends that the granting of hail insurance is not within the scope of its charter and that it is accordingly not liable.

*Contract is already executed therefore Corpore must pay Contemplated benefit.*  
Held, that a corporation is bound by contracts beyond the scope of its authority of which it has had the benefit.

9. Ultra Vires Contract of Which Other Party Has Benefit.

Bath Gas Light Co. v. Claffy. 151 N.Y. 24.

The Bath Gas Light Company, the plaintiff, leased to the United Gas, Fuel & Light Company all its property and franchises for a term of 25 years. The Fuel & Light Company executed a bond conditioned upon the faithful performance of the terms of the lease. After a default in a payment due, the plaintiff reentered and sues on the bond for the rent due and unpaid. Claffy, one of the sureties, defends on the ground of ultra vires.

Held, that by the general rule a corporation may recover on an ultra vires contract against a person receiving the benefit of that contract.

10. Ultra Vires: United States Rule.

Central Transportation Co. v. Pullman's Palace Car Co. 139 U. S. 24.

The Central Transportation Company leased all its personal property to the Pullman's Palace Car Company under an indenture whereby the Pullman's Palace Car Company agreed to pay a certain annual rental. Both companies were engaged in the business of manufacturing railway cars. The charter of the plaintiff company was not drawn in such a way as to authorize the transfer of the assets which was made. The Pullman's Palace Car Company took possession of the Transportation Company's cars and retained them for several years, operating under the provisions of the contract. It then cancelled the contract in accordance with a provision therein contained; and the plaintiff sues to recover rent due.

Held, that according to the U. S. rule, an ultra vires contract is void.

Harlow v. The Farmers' & Merchants' Bank, 118 U.S. 381.

The bill of lading was not a conveyance of real estate by Harlow to the First National Bank at London, and no purchase of an agreement by which the property was to be held in trust of the bank, subject to the direction of the grantor. The ground of the bill of lading was that a National Bank is not authorized to hold real estate.

Held, that the effect of a conveyance to a corporation, not authorized to hold real estate is to make the title void, not void.

Ullrich v. The Farmers' & Merchants' Bank, 118 U.S. 381.

Denver Wire Insurance Co. v. MacCallister, 201 U.S. 11.

MacCallister insured his crops with the Wire Insurance Company against damage by fire. The crops were injured by the fire. The contract provided that the company should recover the amount of the loss. The contract also provided that the company should not be liable for the loss of the crops if the loss was caused by the negligence of the insured.

Held, that a corporation is bound by contracts made in the scope of its authority of which it has had the benefit.

Ullrich v. The Farmers' & Merchants' Bank, 118 U.S. 381.

First Gas Light Co. v. City, 151 U.S. 24.

The First Gas Light Company, the plaintiff, leased to the City of Denver, the defendant, all the property and franchises for a term of 25 years. The First Gas Light Company owned a franchise to supply gas to the City of Denver. The City of Denver, after a default in a payment due, the plaintiff requested and was on the bond for the rent due and unpaid. The City of Denver, however, refused to pay the rent and the plaintiff sought recovery of the amount of the rent.

Held, that by the general rule a corporation may recover on an express contract against a person receiving the benefit of that contract.

Ullrich v. The Farmers' & Merchants' Bank, 118 U.S. 381.

Central Transportation Co. v. Pullman's Palace Car Co., 117 U.S. 31.

The Central Transportation Company leased all the personal property to the Pullman's Palace Car Company under an agreement whereby the Pullman's Palace Car Company agreed to pay a certain amount for the use of the property. The Central Transportation Company, however, refused to pay the amount and the Pullman's Palace Car Company sought recovery of the amount. The Central Transportation Company, however, argued that the Pullman's Palace Car Company was not a corporation and that the Central Transportation Company was not authorized to lease the property to the Pullman's Palace Car Company.

Held, that according to the U.S. law, an express contract is void.

3. Right to Hold Stock in Another Corporation.

State v. Atlantic City & Shore Railroad Co. 77 N.J.L. 465.

The attorney-general in behalf of the state brings this action against the defendant, alleging certain usurpations of corporate powers not granted by the state, one of which was the acquisition of the bonds and practically all the stock of the Central Passenger Railway Company.

Held, that a corporation may hold stock of another corporation so far as is incidental to the prosecution of its own business.

4. Power to Purchase its Own Stock-Majority Rule.

Atlanta & Walworth B. & C. Association v. Smith. 141 Wos.377.

The Superior Produce Company was indebted to Smith, one of its stockholders. It transferred most of its property to Smith in exchange for his stock at par, his assumption of certain encumbrances on the property, and his release of the debt. This transaction left the Company insolvent, although Smith did not intend to act in fraud of creditors. The plaintiffs, a subsequent creditor of the Superior Produce Company, seeks to enforce payment of a debt of the Company to it from Smith on the ground that the purchase by the company of its own stock was void.

Held, that a corporation may take its own stock in exchange for property, unless the transaction is fraudulent as to creditors.

5. Power to Purchase Its Own Stock-Minority Rule.

Morgan v. Lewis 46 Ohio St. 1.

Morgan sold a furnace property to the Alliance Rolling Mill Company, taking stock in payment. The furnace did not prove as successful as had been hoped, and Morgan took the property back at a time when the company was solvent in exchange for the stock which he had received. Subsequently, the company became indebted to Lewis, who seeks to enforce against Morgan a statutory liability of a stockholder for the debts of the company, contending that the purchase by the corporation of its own stock was void as against creditors.

Held, that according to the minority rule, a corporation may not traffic in its own stock, yet it may receive its own stock as security for a debt and for other similar purposes.

6. Right of Corporation to Hold Real Estate.

Nicoll v. The New York & Erie Railroad Co. 12 N.Y. 121.

Dederer conveyed to the Hudson & Delaware Railroad Company certain real estate which it in turn conveyed to the New York & Erie Railroad Company. The plaintiff, Nicoll, became the owner of the remainder of the land owned by Dederer and insists

that the land in suit is included in his grant for the reason that corporation cannot hold real estate.

Held, that a corporation may hold real estate unless forbidden by its charter or by statute.

Right to hold stock in another corporation.  
State v. Atlantic City & Ocean Railroad Co. 77 N.J.L. 488.  
The attorney-general in behalf of the state brings this action against the defendant, alleging certain violations of corporate powers not granted by the state, one of which was the acquisition of the bonds and practically all the stock of the Central Passenger Railway Company.

Held, that a corporation may hold stock of another corporation so far as is incidental to the transaction of its own business.  
Power to Purchase its Own Stock-Ministry Rule.  
Atlanta & West Point S. & O. Association v. Smith. 241 Ga. 577.

The Superior Business Company was incorporated to acquire one of its stockholders. It transferred most of its property to Smith in exchange for its stock at par, the assumption of certain encumbrances on the property, and the release of the debt. This transaction left the company insolvent, although Smith did not intend to act in fraud of creditors. The plaintiff, a stockholder of the Superior Business Company, seeks to enforce payment of a debt of the company to its own stock on the ground that the purchase by the company of its own stock was void.

Held, that a corporation may take its own stock in exchange for property, unless the transaction is fraudulent as to creditors.

Power to Purchase its Own Stock-Ministry Rule.  
Wagon v. Lewis & Otto Co. 50 N.J. 1.

Wagon sold a business property to the Atlantic Mill Company, which was a corporation at the time. The terms of the contract were that the company was to pay for the property in installments. The company was solvent at the time of the purchase, but later became insolvent. The plaintiff, who was a stockholder of the company, seeks to enforce payment of the debt on the ground that the purchase of the property by the company was void as against creditors.

*#3 The entry in the book become a novagation of Contract. New stockholder become a new Contracting party. It is acceptance of Contract.*

Held, that according to the contract, the company was to pay for the property in installments. The company was solvent at the time of the purchase, but later became insolvent. The plaintiff, who was a stockholder of the company, seeks to enforce payment of the debt on the ground that the purchase of the property by the company was void as against creditors.

Right of Corporation to Hold Real Estate.  
Nicoll v. The New York & Erie Railroad Co. 18 N.Y. 181.  
Debeter conveyed to the Hudson & Delaware Railroad Company certain real estate which it in turn conveyed to the New York & Erie Railroad Company. The plaintiff, Nicoll, became the owner of the remainder of the land owned by Debeter and his estate. That the land in suit is included in the grant for the reason that a corporation cannot hold real estate.  
Held, that a corporation may hold real estate in fee purchased by its charter or by statute.

A. Nature of Stock and Ownership Thereof.

1. Capital Stock.

The People ex. rel. The Union Trust Co. v. Coleman 126 N.Y. 433.

The Union Trust Company brings this action against the defendants commissioners of taxes, to determine the propriety of taxation upon the actual value of its capital stock. The assessors have taken as actual value of the market value of the shares of the Trust Company, which contends that the true purpose of the statute is to tax the value of its property.

Held, that the capital stock of a company is to be distinguished from capital stock held in shares by the corporators.

2. Capital and Capital Stock.

Person & Riegel Co. v. Lipps. 209 Pa. 99.

The plaintiff, a New Jersey corporation, sues Lipps upon an agreement made by him to invest certain money in a reorganization of the corporation proposed by him. He defends in part upon the ground that the corporation was not properly organized and did not have capacity to carry out its contract, for the reason that the preferred stock, part of which he had agreed to buy, was an over-issue, as it represented more than two-thirds of the nominal capitalization, and was consequently illegal and ultra vires.

Held, that the legality of an issue of preferred stock under the New Jersey statute is to be determined in reference to capital actually invested, not in reference to the nominal capital.

3. Right to Membership in Stock Corporation.

National Bank v. Watson town Bank 105 U.S. 217.

The Cecil National Bank brings a bill in equity to compel the Watson town Bank to issue to it a certificate for 200 shares of the capital stock of the latter. The stock in the Watson town Bank had been acquired by the Cecil Bank as collateral security for a loan to Powell & Company who failed at a time when Powell & Company were indebted to the Watson town Bank which claimed a lien upon the stock until the indebtedness should be paid. Nevertheless, the cashier of the Watson town Bank accepted the stock certificate, agreed to forward a new one, and made corresponding entries in the stock ledger. The question is whether by the act of Tome, its president, in its behalf, the Cecil Bank became a stockholder in the Watson town Bank and so entitled to a stock certificate.

Held, that a transfer of stock duly recognized by a corporation constitutes the transferee a stockholder.



Nature of Stock and Ownership Thereof.

1. Capital Stock

The People ex. rel. The Union Trust Co. v. Coleman  
N.Y. 1937

The Union Trust Company brings this action against the defendants commissioners of taxes, to determine the propriety of taxation upon the actual value of its capital stock. The assessors have taken as actual value of the market value of the shares of the Union Company, which contends that the true purpose of the statute is to tax the value of its property.

Held, that the capital stock of a company is to be distinguished from capital stock held in shares by the corporation.

2. Capital and Capital Stock

*What restrictions can Corp. make on the transfer of stocks?*

The plaintiff, a New Jersey corporation, upon an agreement made by it to invest certain money in a corporation of the corporation, upon the ground that the corporation was not properly organized and did not have capacity to carry out its contract, for the reason that the preferred stock, part of which he had agreed to buy, was an over-issue, as it represented more than two-thirds of the nominal capitalization, and was consequently illegal and ultra vires.

Held, that the legality of an issue of preferred stock under the New Jersey statute is to be determined in reference to capital actually invested, not in reference to the nominal capital.

3. Right to Membership in Stock Corporation

National Bank v. Watsontown Bank  
108 U.S. 917

The Cecil National Bank brings a bill in equity to compel the Watsontown Bank to issue to it a certificate for 200 shares of the capital stock of the latter. The stock in the Watsontown Bank had been secured by the Cecil Bank as collateral security for a loan to Powell & Company who failed at a time when Powell & Company were indebted to the Watsontown Bank which claimed a lien upon the stock with the indebtedness should be paid. Nevertheless, the cashier of the Watsontown Bank accepted the stock certificate, issued to Powell & Company, and made corresponding entries in the stock ledger. The question is whether by the act of Powell & Company, in the hands of the Cecil Bank became a stockholder in the Watsontown Bank and so entitled to a stock certificate.

Held, that a transfer of stock duly recognized by a corporation constitutes the transferee a stockholder.

4. Right to Membership in Non-Stock Corporation.

The American Live Stock Commission Co. v. The Chicago Live Stock Exchange 143 Ill. 210.

The American Live Stock Commission Co. seeks a decree entitling it to membership in the Chicago Stock Exchange, a private non-stock corporation. It bases its claim upon a certificate of membership assigned to it by Rogers, formerly its manager. It contends that the possession of this certificate gives it the right to membership.

Held, that a non-stock corporation may make such rules for admission of members as it sees fit.

5. Restriction of Transfer of Shares.

Miller v. The Farmers Milling & Elevator Co. 74 Neb. 441.

The Farmers Milling & Elevator Company adopted a by-law to the effect that no person should be allowed to hold more than 5 shares of its stock at one time. Miller bought 64 shares of the stock, which the directors refused to transfer to him. Miller brings this action to enforce his rights as a stockholder.

Held, that an unreasonable restraint upon the transferability of shares of a corporation is void.

6. Nature of Stock Certificates.

East Birmingham Land Co. v. Dennis 85 Ala. 585.

Dennis brings a bill against the Land Company to compel it to transfer to him on its books ten shares of its stock. The certificate under which Dennis claims was issued in the name of Dearborn and indorsed by him to a holder who sold it to Dennis. This certificate was subsequently lost or stolen. Mudd claims title to the certificate through purchase from a firm of stockbrokers.

Held, that in the absence of statute, a stock certificate is not negotiable. *Under the statute Mudd got title for stock. He is innocent holder in due course.*

7. Effect of Statute Upon Transferability of Stock Certificate.

Clews v. Friedman 182 Mass. 555.

The plaintiffs, bankers in the city of New York, bought stock belonging to Mrs. Zunz on March 1, taking a written transfer signed by her on the back of the certificate. On March 3, they presented the certificate to the corporation for transfer to them and found that it had been attached by Friedman on February 20. They seek to restrain Friedman from enforcing the attachment.

Held, that under the Uniform Stock Transfer Act, a stock certificate is transferable by delivery.

Right to Membership in Non-Stock Corporation.

The American Live Stock Commission Co. v. The Chicago Live Stock Exchange, 193 U.S. 111.

The American Live Stock Commission Co. seeks a decree compelling it to membership in the Chicago Stock Exchange, a private non-stock corporation. It bases its claim upon a certificate of membership assigned to it by Rogers, formerly its manager. It contends that the possession of this certificate gives it the right to membership.

Held, that a non-stock corporation may make such rules for admission of members as it sees fit.

Restriction of Transfer of Shares.

Miller v. The Farmers Milling & Elevator Co., 74 Neb. 441.

The Farmers Milling & Elevator Company adopted a by-law to the effect that no person should be allowed to hold more than 5 shares of its stock at one time. Miller bought 24 shares of the stock, which the directors refused to transfer to him. Miller brings this action to enforce his rights as a stockholder.

Held, that an unreasonable restriction upon the transferability of shares of a corporation is void.

Nature of Stock Certificates.

East Birmingham Land Co. v. Dennis, 85 Ala. 555.

Dennis brings a bill against the land company to compel it to transfer to him on its books ten shares of its stock. A certificate under which Dennis claims was issued in the name of Leaborn and endorsed by him to a holder who sold it to Dennis. This certificate was subsequently lost or stolen. Held, claims title to the certificate through purchase from a third party.

Held, that in the absence of statute, a stock certificate is not negotiable.

Increase in Capital Stock affects equity of stock holder.

Ellis v. Friedman, 182 Mass. 453.

The plaintiff, holder in the city of New York, bought stock belonging to his son on March 1, 1891, and a written transfer signed by him on the back of the certificate. On March 5, they purchased the certificate to the corporation for transfer to them and found that it had been attached by Friedman on February 20. They seek to recover the stock from Friedman.

Held, that under the Uniform Stock Transfer Act a stock certificate is transferable by delivery.

*Handwritten notes:*  
13  
Boston  
University  
14

8. Effect of Transfer of Stock.

Russell v. Easterbrook 71 Conn. 50.

The receiver of the Connecticut Pipe and Manufacturing Company, an insolvent corporation, seeks to recover from Easterbrook, a shareholder of record the balance due on shares of stock which had not been fully paid in. Phipps, the president of the Company had transferred the stock on the books of the Company to Easterbrook in pursuance of an agreement whereby the stock should become the property of Easterbrook if he continued in the employ of the Company. Easterbrook terminated his employment with the Company and notified Phipps and the Secretary of the Company that the stock should be reassigned to Phipps. The Secretary under the direction of Phipps refused to transfer the stock to Phipps, although the transfer was properly made out.

Held, that a corporation is not affected by a transfer of its stock until the transfer is made on its books.

9. Effect of Transfer of Stock.

Visalia & Tulare Railroad Co. v. Hyde. 110 Cal. 632.

The Railroad Company sues to recover from Hyde an assessment on stock originally subscribed for by Creighton, and transferred by him to Hyde., who registered the transfer upon the books of the corporation. Hyde defends on the ground that prior to the action brought against him he had transferred his stock to a third party.

Held, that a corporation may enforce liabilities against stockholders of record regardless of the real ownership of the shares.

10. Right of Subscriber to Withdraw.

Bryant's Pond Steam Mill Co. v. Felt 87 Me. 234.

Felt subscribed to the capital stock of the Mill Company when it was about to be organized. Before organization, he revoked the subscription and notified the promoters that he would not accept his stock. This action is to enforce the subscription.

Held, that until the organization of a corporation a subscriber to its stock may withdraw.

B. Rights and Duties of Stockholders

1. Nature of Stockholder's Right.

Stokes v. Continental Trust Co. 186 N. Y. 285.

The Continental Trust Company, a banking corporation, increased its capital stock and by resolution of the stockholders sold the increase to Blair and Company, a firm of private brokers at a price considerably above par. Stokes a stockholder of the Trust Company, brings a bill to compel the corporation to issue to him at par such proportion of the increase of capital stock as the shares held by him may bear to the number of shares originally issued.

Held, that a stockholder has a right to a proportionate share of new stock issued on increase of capitalization.

2. Relation of Stockholder to Corporation.

Smith v. Hurd. 12 Metc. (Mass.) 371.

Smith, a stockholder of the Phoenix Bank, sues the directors of the Bank for its failure, which caused by their negligence and lack of skill.

Held, that a stockholder cannot maintain an action against officers of the corporation on a liability incurred to the corporation.

*Corpn may bring action against the directors but stockholder has no direct right against directors in this case.*

3. Right to Inspect Books.

Shea v. Parker. 126 N.E. Rep. (Mass) 47.

Shea, a stockholder of the Nonquitt Spinning Company, seeks a decree requiring the company to allow inspection of its stock and transfer books. The Company refuses on the ground that the sole motive of Shea in asking for the examination was for purposes connected with his business as a stock broker.

Held, that while at common law a stockholder may inspect books of a corporation only for proper purposes, by statute he may do so without regard to his motives.

*Under the statute stockholder has absolute right.*

4. Liability of Stockholder.

Trustees of Free Schools in Andover v. Flint 13 Metc. (Mass) 539.

The trustees of the Free Schools sue Flint as a stockholder of the Andover Mechanic Association upon a note of that corporation signed by him as treasurer. A by-law of the corporation provided that members of the corporation should be personally liable for its debts. Flint contends that the by-law is invalid.

Held, that stockholders of a corporation are not personally liable for its debts.

5. Power of Legislature to Increase Liability of Stockholder.

Ireland v. The Palestine etc. Turnpike Co. 19 h. St. 369.

A statute authorized turnpike companies to issue, for the purpose of completing their roads, bonds upon which stockholders should be individually liable to the extent of their stock. The plaintiff Turnpike Company, of which Ireland was a stockholder accepted this act and now seeks to hold Ireland to this increased liability.

Held, that an act whereby a corporation may increase the liabilities of its stockholders is unconstitutional.

6. Liability Upon Stock Not Fully Paid

The Easton National Bank v. The American Brick & Tile Co., 70 N.J.E. 732.

In settling the affairs of the American Brick & Tile Company, an insolvent corporation, Green presented a claim for money lent by himself to the corporation, of which he was secretary and treasurer. The question arises whether Green is entitled to consideration of his claim in a proceeding brought by the receiver against Green and other stockholders to recover the unpaid balance of their stock subscriptions.

Held, that any creditor may hold stockholders of a corporation to full payment for their stock.

7. Liability on Unpaid Subscription: Necessity of Call

Braddock v. The Philadelphia Marlton & Medford Railroad Co. 45 N.J.L. 563.

The Railroad sued Braddock to recover the sum subscribed by him to the capital stock of the company when it was about to be organized. He contends that there was no proper call for his subscription.

Held, that upon a call for the amount of a subscription to capital stock, the subscriber is bound to pay when notified.

8. Liability on Subscription to Illegal Issue of Stock.

Scovill v. Thayer 105 U.S. 143.

The assignees of the Fort Scott Coal & Mining Company sue Thayer for unpaid subscriptions to the capital stock of the corporation in order to apply the amount to claims of creditors. The corporation had increased its original capital of \$100,000, to \$200,000, then to \$300,000, and finally to \$400,000. The statute of Kansas under which the corporation was organized allowed increase of capital stock only to an amount double its original capital. Consequently the last two issues of stock were illegal. Thayer contends that he is not liable to pay an assessment on the void issue.

Held, that a stockholder is not liable for unpaid subscriptions to a void issue of capital stock.

9. Powers of Majority Stockholders.

Dudley v. Kentucky High School 9 Bush. (Ky) 576.

Dudley, a stockholder in the Kentucky High School, an educational corporation, seeks to enjoin the directors from purchasing certain property, from Gaines, on the ground that the investment would result in the bankruptcy of the corporation.

Held, that stockholders are bound by the will of the majority within the scope of the business of the corporation.

Stevens v Rutland

When Corp<sup>y</sup> organized for a particular purpose  
and if the Corp<sup>y</sup> changes its purpose, then  
the original stockholders is not bound, for  
he is not contracting party.

Under the statute he has remedy to  
have his stock appraised & refunded by  
the Corp<sup>y</sup>.

10. Rights of Minority Stockholders.

Stevens v. The Rutland & Burlington Railroad Co. 29 Vt. 545.

Stevens, a stockholder in the Rutland & Burlington Railroad Company seeks to enjoin it from applying the funds of the corporation to the construction of a railroad from Burlington to Swanton. The Railroad Company was originally incorporated to run from Burlington to some other point on the west bank of the Connecticut River, and afterwards secured an act of the legislature amending its charter so that it became authorized to build the road in question. Stevens, as a stockholder in the corporation formed for its original purpose, contends that the act authorizing the contemplated project is unconstitutional in so far as it purports to bind the original stockholders.

Held, that while a minority stockholder is bound by the acts of the majority, the majority may not change the purposes of the corporation.

A. Management of Corporate Affairs.

1. Business Conducted by Directors.

Charlestown Boot & Shoe Co. v. Dunsmore 50 N.H. 85.

The Charlestown Boot & Shoe Company brings suit against two of its directors for refusal to act with a third person, Osgood, whom the stockholders elected to cooperate with the directors in settling the affairs of the corporation.

Held, that the management of a corporation is in the hands of directors, who are not obliged to act with third persons.

2. Nature of Management by Directors.

Hoyt v. Thompson's Executor 19 N.Y. 207.

Hoyt seeks to enforce a bond and mortgage made by the Long Island Railroad Company to the Morris Canal & Banking Company through whose receivers he claims. Thompson holds the mortgage under a previous assignment made by a minority of the directors of the Canal & Banking Company to him. Hoyt contends that the previous assignment was invalid on the ground that it was not the act of the corporation, even though the by-laws authorized the transaction of business by less than a majority of the directors.

Held, that the management of the affairs of a corporation is invested in the directors acting under suitable by-laws; and that their authority is not delegated.

3. Necessity that Directors Act as Board.

Baldwin v. Canfield 26 Minn. 43.

Baldwin, on behalf of creditors, brings this bill for the cancelation of a deed given by the Minneapolis Agricultural & Mechanical Association to Canfield. The deed was executed by the directors, who signed separately and at different times, without any meeting authorizing the conveyance of the property.

Held, that directors of a corporation may exercise their powers only as a board.



4. Effect of Disqualification of Director.

Kuser v. Wright 52 N.J.E. 825.

Wright, receiver of the Ott & Brewer Company, seeks to set aside mortgages given to Kuser and others to secure a pre-existing indebtedness. He contends that two directors has no power to establish a lien upon corporate property in the absence of the third director, who had made an assignment for the benefit of creditors and had left the state.

Held, that as to third persons a corporation may properly act by defacto officers.

5. Interference by Stockholder Ordinarily Impossible.

Ellerman v. Chicago Junction Railways & the Union Stockyards Company 49 N. J. E. 219.

Ellerman a stockholder in the defendant Company seeks to enjoin it from carrying into effect an agreement made with Armour & Company and others relative to a combination of interests which Ellerman considers injurious to the corporation.

Held, that a stockholder cannot interfere in the management of a corporation by the directors so long as they act in good faith.

6. When Stockholder May Interfere.

Brewer v. The Boston Theater 104 Mass 378.

Brewer and other stockholders of the Boston Theater seek to recover for the benefit of the corporation profits personally realized by certain of its officers. These officers leased corporate property to parties with whom they secretly conspired to share in the advantage of the contract.

Held, that when redress cannot be gained through the corporation, stockholders may bring action for injury to corporate property by the officers.

7. Right of Stockholders to Vote.

Peder v. Lushington 6 Ch. D. 70.

Pender sues the Direct United States Cable Company. Ltd. and the directors of the Company to establish the right to have votes given by him, and others at a stockholders' meeting made effective. These votes were rejected in party on the ground that they were given for a purpose inconsistent with the best interests of the corporation.

Held, that the motive of a stockholder in voting is not open to attack.

8. Voting by Proxy

Cone v. Russell 48 N.J.E. 208.

The plaintiffs bring a bill to set aside an irrevocable proxy given to the defendants to vote the plaintiffs' stock in the Upper Delaware River Transportation Company. The defendant agreed so to vote the stock that one of the plaintiffs should be employed at a salary of \$2500 a year.

Held, that an irrevocable proxy is invalid when the purposes for which it is granted are improper.

9. Cumulative Voting.

Bridgers v. Staton 150 N.C. 216.

The plaintiff seeks to compel the reconvening of a meeting of the stockholders of a corporation in order that he may receive proper representation under a statute authorizing cumulative voting.

Held, that a statute may provide for cumulative voting.

10. Voting Trusts

Luthy v. Ream 270 Ill. 170.

Ream held 2001 of the 4000 shares of the Peru Plough & Wheel Company as trustee under a voting trust declared irrevocable for a term of years. Seventy of the shares held in the voting trust were assigned to Cahill, who demanded from the trustee the release and delivery to him of this number of shares. Upon refusal by Ream, Cahill and other stockholders not in the trust seek its cancellation as to Cahill.

Held, that a voting trust is illegal if its effect is to place the management of the corporation in hands other than those of its stockholders.

11. Voting Stock Held by Corporation.

American Railway-Frog Co. v. Raven 101 Mass. 398.

A stockholder seeks a declaration that certain persons were elected officers of the Company. The defendants, also stockholders, deny the election of these persons on the ground that Clark, who held 400 shares in trust for the corporation, had voted this stock against them, and that they had consequently not received a majority of the votes. The plaintiff contends that Clark could not vote stock held by him for the corporation.

Held, that stock belonging to a corporation, whether held in trust for it or not, may not be voted.

12. Control of One Corporation by AnotherMemphis & Charleston Railroad Co. v. Woods 88 Ala. 630.

Woods and others, stockholders of the Memphis & Charleston Railroad Company, seek to enjoin the East Tennessee, Virginia & Georgian Railroad Company from voting stock held by it, a majority of all the stock of the Memphis & Charleston Railroad Company at an election of directors. The bill alleges mismanagement of the business affairs of the Memphis & Charleston Railroad Company by officers elected by the votes of the other corporation. This mismanagement consisting of incurring unnecessary expenses, making improper application of earnings, and increasing the profits of the East Tennessee Company at the expense of the Memphis & Charleston Railroad Company.

Held, that while one corporation may control another through holding its stock, it must exercise its power for the benefit of the controlling corporation.

13. Corporations with Common Directors.O'Connor Mining & Manufacturing Co. v. Coosa Furnace Co. 95 Ala. 614.

The O'Connor Company, a creditor of the Coosa Furnace Company, seeks to set aside transfers of property made by the Coosa Furnace Company to other corporations whose directors were likewise directors of the Coosa Furnace Company.

Held, that the mere fact that two corporations have common directors will not justify a creditor in setting aside conveyances made between them.

B. Authority and Duties of Officers.1. In GeneralBeach v. Palisade Realty & Amusement Co. 86 N.J.K. 238

Beach, receiver of the Columbia Real Estate Company, sues the Amusement Company upon an agreement signed by its second vice-president, to purchase a certain amount of its own capital stock and bonds from the Real Estate Company. The contract was not authorized by the board of directors of the Amusement Company.

Held, that in the absence of estoppel, a corporation is not bound by the act of an officer which he has not authorized to perform and which it is not usual to his office.

2. Duty of Directors to Corporation

Hun v. Cary 82 N.Y. 65.

Hun, receiver of the Central Savings Bank, sues the defendants, who were trustees of the Bank, for damages caused the Bank by their misconduct as trustees arising out of improper investment of the Bank's funds.

Held, that directors of a corporation owe it the duty of conducting its affairs with the prudence ordinarily exercised by men of common prudence in conducting their own affairs.

3. Duty of Officer to Account for Secret Profits.

McClure v. Law 161 N.Y. 78.

McClure, receiver of the Life Union, sues Law, a former president and director, to recover the sum of \$3,000 paid to him by Robertson and Levy for securing the resignation of himself and other directors and the election in their stead of parties indicated by Robertson and Levy.

Held, that a director of a corporation is bound to account for profits improperly made by him in relation to the business of the corporation of which he is a director.

4. Relation Between Officer and Stockholder.

Hooker v. Midland Steel Co. 215 Ill. 444.

Hooker, a stockholder in the Midland Steel Company, sold stock to Beatty, the president of the Company, at a price which he contends was less than its true value, induced, as he claims by misleading representations of Beatty. Beatty offered to return Hooker's stock to him, but Hooker brings this bill to determine the true financial status of the corporation and to adjust the stock sale in accordance with what should appear to be the true condition of the corporation's affairs.

Held, that an officer of a corporation is not in a fiduciary relationship to an individual stockholder.

5. Right of Directors to Contract with Corporation.

United States Steel Corporation v. Hodge 64 N.J.E. 807.

Hodge, a stockholder of the United States Steel Corporation, seeks to restrain it from executing a mortgage pursuant to resolutions of the stockholders providing for the reduction of two hundred million dollars of its preferred stock and the retirement thereof. Hodge attacks the transaction on the ground that the directors of the corporation were members of the banking syndicate which had contracted with the corporation to finance the proposed reduction.

Held, that directors of a corporation may make such contracts with it as are known to the stockholders and ratified by them.

6. Powers of President.

Mausert v. Frigenspan 68 N.J.E. 671.

By a lease under seal, the Feigenspan Corporation & Brewing Company leased certain premises to Mausert, a saloon keeper, under certain conditions relating to the brand of liquors to be sold upon the premises. Later, the president of the Feigenspan Company gave Mausert permission to sell beer brewed by other companies. Mausert now seeks to obtain a lease containing the modified agreement made with him by the president.

Held, that the president of a corporation has no implied power to modify contracts entered into by the corporation itself.

7. Estoppel to Deny Power of Officer.

St. Clair v. Rutledge 115 Wis. 583.

Bowen, President of the Peerless Iron & Land Company, acting in accordance with a vote of the directors, sold to Rutledge, the defendant, timber privileges on land belonging to the corporation. Without such a vote, he extended the time for removal to a date later than that upon which the corporation conveyed the land in question to the plaintiff, who seeks to secure complete title to the land.

Held, that a corporation is bound by the exercise of the ostensible powers of its officers.

8. Powers of Treasurer.

Jacobus v. Jamestown Mantel Co. 211 N.Y. 154.

Jacobus, assignee of a note of the Jamestown Mantel Company, signed by Turner as treasurer, sues the corporation thereon. The note was made by Turner for the accommodation of Welch, who discounted it. The corporation defends on the ground that its treasurer has no authority to make accommodation paper and on the further ground that no estoppel arises if such paper is in fact made by him.

Held, that the treasurer of a corporation has no implied power to sign notes.

## C. Dissolution

1. How Dissolution is Effected

Boston Glass Manufactory v. Langdon 24 Brick. (Mass.) 49

The plaintiff corporation sues on a promissory note given by the defendant, who denies the existence of the corporation on the ground that it has made an assignment for the benefit of creditors.

Held, that a corporation is not dissolved by making an assignment for the benefit of creditors.

2. Power of Majority to DissolveBowditch v. Jackson Co. 76 N.H. 351.

*Majority case*

Bowditch and other minority stockholders of the Jackson Company seek to enjoin a sale of its assets to the Nashua Manufacturing Company. The question arises whether a majority of the stockholders have a right to sell the corporate assets and consequently dissolve the Company against the protest of the minority.

Held, that a corporation may be dissolved by majority vote if the majority act for the interest of the corporation.

3. Continuance after DissolutionFriendship Tel. Co. v. Newark Tel. Co. 88 N.J.E. 562

The Newark Telephone Company's charter expired in 1915 and McCarter was appointed receiver. To wind up its affairs, he sold the property to the Friendship Telephone Company. The city of Newark attacks this conveyance on the ground that the court had no power to direct a sale after the termination of its charter for purposes of winding up.

Held, that by a statute a corporation exists after the termination of the charter.

4. Effect of Dissolution on Corporate Property.Richards v. Northwestern Coal & Mining Co. 221 Mo. 149.

Richards made a deed of coal underlying property owned by him to the Central Coal & Mining Company, through whose assignee in bankruptcy the Northwestern Coal & Mining Company holds. Richards' son, the plaintiff contends that a portion of this land was not disposed of by the assignee in bankruptcy and that it reverted to Richards upon the expiration of the charter of the Central Coal & Mining Company without a previous conveyance.

Held, that upon termination of the charter of a corporation, its property does not revert to the grantor but is held by the directors for the benefit of stockholders.

Partnership:

Law of merchants looked firm as entity while  
 Com Law looked as individuals composed.  
 Conflicts of these two laws led to the adoption of  
 uniform partnership law. Mass. has not adopted the  
 uniform partnership law. This law looks as the  
 "quasi-entity".

Partnership must consist of

- a. Contract, expressed or implied.
- b. Business for profit.
- c. By the agreement, profit or property belongs to co-owners.

Co-owners of profit is important element of partnership.  
 Share in profit only does not mean partnership.

Test of Partnership:

- 1. Mutual agency Test.
- 2. A share in profits as such. = Profit to be shared  
 must be net profit only.

Com  
 Law

Case A - In which I say to you "I have an auto  
 you can have it for purpose of running jitney  
 a Franqon - pay me a half profit. you  
 assent. no partnership

Case B - I have auto, let us engage in  
 business run jitney, each taking half profit.  
 I will allow auto to be used in business  
 you assent. Has a firm; but property  
 belong to me.

Case C - Have auto, you ~~run jitney~~  
~~not~~ for I let you have profit.  
 no partnership. Profit as wages.

Case D - Let us run jitney. Share profit  
 I put in auto you put in service.  
 There is partnership & co-ownership of property.

## Two basis of partners.

- (1) Partner as partner
- (2) Allowing himself holding out as member of a firm.

Partnership intercede.

Partnership <sup>as to</sup> third person.

Partnership intercede liable as the member of firm.

Partnership as to 3rd person: liable by holding out to the third person as a partner.

Ex A, B, C are members of a firm. C withdrawn and the firm continues under the same name. If C neglect to give proper notice to creditors and public, he is liable.

## Partnership.

Sept. 26, 1920

A Partnership is the relation which results from association of two or more persons to carry on a business for profit, by virtue of contract, express or implied, under which the property and profit, or the profit alone, belong to the parties as Co-owners.

I. Partnership is a legal relationship which can be brought about through a contract, express or implied. Without ~~contract~~ or contract a partnership is not created.

If parties do those things which the law declares constitute a partnership, the parties are partners.

II. A Partnership must be business venture.

III. By the agreement the property and profit, or the profits alone, belong to the parties as Co-owners.

A. Joint interest in profits is not enough to create partnership. There must be element of mutual ownership.

B. Members of firm may be Co-owners of both the business and profit, or they may be Co-owners of profits alone.

C. The profit as such must be shared.

## Difference between a Corp. and a partnership.

1. A Corporation is an artificial being, a legal person created by the state through a charter which grant certain powers, but partnership does not exist apart from its members.



## Partnership as an entity:

Common law does not recognize partnership as an entity, but look upon it as the individual components of it.

Uniform Partnership Law recognize partnerships as an entity.

## Sale of Goodwill

1. Voluntary sale.
2. Involuntary sales.

On voluntary sale, he can not set up competing firm.

Mass Rule: when one sell business he can start the same kind of business but can not do any act to attract old customers, nor can start the bus. in such a place resulting in direct competition.

## Involuntary sale:

May start competing firm.  
When the firm name is sold, they may not use that name to get the old customers back.

## Re-sale of Goodwill:

7. A corp. acts through its officers, who are required by law to direct its business. A partnership acts as an aggregation of individuals through the agency of its members.

3. Corporation shares are transferable; partnership shares are not.

4. Death of share holder does not affect a corp. Death of partner terminates it.

5. Share holders are not liable for the debts of corp. as a general thing; partners are liable to the full extent of their property for firm debts.

6. Share holders of corp are not agent of the corp. where as each partner is an agent of the other and of the firm.

## Test of partnership.

1. Test of mutual agency.

Each of partner must have a proprietary interest in each dollar of profit as it is earned so that he then has a right of possession for the purpose of retaining his share. Through this comes implied agency on which the liability of partners for the contract of his Co-partners founded.

7. A share in profit as such, a share in profit as such is a prima facie evidence of an intent to create a partnership.

## Principle arising from the Test

1. Sharing of profit of a business gives rise to the ~~fact~~ presumption that a partnership exist between participants and one who shares the profits as

4. To bind the firm by its admission.

Example

A & B Co hires Z to pick apples. Z falls off and gets injured. A hires doctor. Can <sup>doctor</sup> hold B?

Question arise whether it is within the scope of business or he acted in ostensible authority? ~~ostensible authority~~ Can not arise out of person who act on it.

Z did ~~not~~ this was not within the scope of business provided there was no negligence in part of A & B Co.

A & B Co make out a note for accommodation of Z. Z discount at Bank.

Bank is innocent holder in due course.

Z make out note. A & B Co indorse it. Z takes it bank and discount.

Bank must have notice of the fact that it is accommodation indorsement. Therefore must inquire whether the partner has right to sign accommodation note or not.

a Co-owners, must share loss.

7. An agreement between business associates that they shall share the loss of business but not the profit will not create a partnership.

3. Partnership is not the result of an agreement to share gross profit.

4. If the profits are ~~not~~ taken not as a profit but as interest, rent or compensation, the presumption of partnership is rebutted.

Co-ownership vs. Partnership

Co-ownership of assets is not necessarily partnership - Co-ownership of profit constitute partnership.

Business Conducted under delegation of Trust.

The shares represented by Certificate. The question whether certificate holders are partners or not, depends upon the control which they have over the trustees. If the trustees are controllable by certif holders, they merely act as agent, therefore there is partnership.

Joint Stock Co.

A joint stock Co is in reality a form of partnership.

A member of joint stock Co is liable to the same extent and same manner as ordinary Partner.

Partnership by Estoppel.

A person not a partner is liable by conducting himself as to lead other people suppose that he is willing to be regarded by them as a partner in fact.

In order to create a liability by estoppel, it is necessary,

1st. the party charged held himself out as a partner, or knowingly permitted others to hold him out as a partner.

2d Those seeking him as a partner have relied upon such statement or acts and have been misled thereby.

### Competency of Parties

Parties competent to enter into any contract are competent to form partnership.

An infant may disaffirm his contract of partnership, though he may not recover to the prejudice of the creditors.

Corporation cannot go into a partnership.

A married woman may not be the member of a firm of which her husband is a member.

### Classif of Partnership.

1. General. 2 Special.

### Classif of Partners

1. General Partner is one whose liability as a partner is unlimited.

2. Special Partner is one liable on his particular contract.

3. A secret partner is one whose contract with firm is concealed.

4. A silent partner has no voice in mgt.

5. A dormant partner is combination of both secret and silent partner.

6. Nominal partner is not partner at all, but if he lead a person to believe that he is a partner, and if they act upon that belief to their injury, he is liable by the principle of estoppel.

### Nature of Partnership.

A contract to form a partnership is not specifically enforceable.

For the same reason partnership may be terminated at any time by the parties, even it constitute a breach of contract.

### Partnership as an entity.

Partnership is not distinct entity. The suits are brought against the individual members composing the firm.

### Partnership Name.

Revised Mass Law:

Only the name of general partner should be inserted. If special partner allow his name appear he shall be liable as a general partner.

### Goodwill

Goodwill is the "expectation of continued public patronage". The G.W. can be sold, taxed or transferred.

When G.W. is sold an outgoing partner can not set up a competing business, by so doing he is liable for damage.

When G.W. sold and name is sold at judicial sale, the member of firm has right to compete.

### Power of partners to Bind the firm in their contracts.

The partner has a right power to bind the firm if the act done is within in the express or implied scope of his authority.

### Implied Power:

1. In trading firm to borrow money.
2. To mortgage or sell all the assets in the course of business.
3. To give promissory note.
4. To bind the firm by admission.  
Rule is that there is implied authority with respect to firm transactions.

### Powers not within in the scope of authority.

1. To give negotiable paper for private debts, or accommodation of third persons.
2. Partners has no implied power to execute a deed or sealed instruments.

### Exception to rule:

- a. If one partner has given a deed & the other partners ratify, it is binding.
  - b. A partner may give a debtor a release under seal of all claims.
3. ~~A~~ Partner has no power to bind the firm by guarantee of debts of another.
  4. ~~When~~ when a firm is dissolved there is no authority to impose new obligation.

### Power of partner to bind the firm in their torts.

The members of a partnership are liable for torts committed by a partner while acting in the ordinary course of partnership business.

### Right and duty of partners among themselves.

Partners are in trusts relation to each other. He must not compete with firm - Must deal openly.

1. There is a responsibility for a secret profits made by a partner out of transaction in competition with the firm.

2. A partner may not carry on for his individual profit a business which, but for his connection with the firm, he would not have been able to secure.

### Suits between Partners.

Suits can not be brought at law upon any transaction involving an investigation of partnership affairs. Remedy can may be obtained by a bill in equity for an accounting, which usually results in dissolution.

### Partnership Property.

Partnership property includes everything of value which belongs to the partners as a firm.

### Personal Property.

The title to personal property may be held in the firm name, or by one or more members. Irrespective of method of acquiring or holding title to partnership personality, real ownership of property is in the partners as a firm.

### Real property.

A partnership cannot hold the legal title to real estate in its firm name. The title must be taken in the names of individuals and title vests in them in trust.

### Survivorship of title.

With respect to real estate, the title passes upon the death of a partner to his heirs who become in common tenant in common with the surviving partners.

Power to bind firm is  
then starts

### Cases I

The firm authorizes  
to buy goods on fraud.  
firm liable.

II Authorize to buy goods.  
a do it on fraud.

The firm liable.  
Buying is within the  
scope of business.

When an agent commits  
tort whether he do it  
wilfully or on negligence,  
principal is liable.

### Case III

A member has ~~intentional~~  
authority to buy goods.  
The partners decided that  
A shall not buy any  
more. A buys on  
fraud.

The firm is liable  
on the ostensible authority.

### 4

Drive auto to deliver  
goods. After delivery  
go out on the  
joy riding and run  
over K.

The firm is not  
liable. There no  
ostensible authority upon  
which K relied upon.

Firm is liable on the  
for the act of partner  
committed within the  
ostensible authority  
of that partner, when  
that authority is material.

that is when the act <sup>intentional</sup> ~~defends~~ in  
advance firm. When the  
authority is not material as  
to run over a man the  
ostensible authority can <sup>not</sup> create  
no liability. For the reason  
that third person does not  
rely upon it.

### Partnership Property.

Real estate is regarded as the  
personal property in adjusting the  
firm property that for the  
any other purpose it is regarded  
as real estate.

¶ In case of the death of the  
partner, all ~~the~~ personal property  
belong to ~~the~~ surviving  
partner. While the real estate  
belong to the heir of the  
dead partner; But to satisfy  
firm debts, the real estate is  
regarded as the personal property  
and after ~~the~~ paying the  
debts, remainder is regarded as  
real estate again.

By statute the allowances of  
the widow comes ahead of the  
creditors right. This differs  
from widows right for dowry.

Conversion of real estate to  
the personal property is made  
while the partnership is adjusted  
as the going concern. But when  
by the death of the partner and  
firm ceases to exist the  
real estate is not personal  
property.

The real estate is treated as the personal property in adjusting the affairs of partnership.

In case death of a partner the surviving wife has right for dower provided the personal property is sufficient to pay off the firm debts.

The title to the personal property vests absolutely in the surviving partner. However, his subject to an obligation to account to the deceased partner's representatives.

### Partners Interest.

The partner's interest is an interest in the net balance due the partner after the payment of debts.

### Right of Creditors

A creditor has no interest in the property of his debtor, but he may through judicial proceedings obtain an interest.

Firm creditors may seize on attachment either firm or individual property.

The individual creditors may not seize firm property on attachment; according to Mass. Rule, he may reach the interest of partner through a bill in equity.

1. A debt due a partner singly may be attached by a firm creditor.
2. A debt due the firm cannot be attached in a suit by a separate creditor of one partner.

### Rule of Marshalling.

Upon insolvency or bankruptcy the rule is that of marshalling, that is firm creditors are entitled to the firm assets and individual creditors individual assets.

By the Common Law in Mass. one partner may convey all his interest to his co-partner so as to constitute assets as private property of the transferee partner, and there by defeat the priority of the firm creditors even though the partners are insolvent at the time, the transaction valid if done in good faith.

Other states more generally hold that the fact of insolvency is an evidence of bad faith and the rule of marshalling would follow.

The right of ~~out going~~ creditor to hold out going partner is not changed.

### Agreement of the Condemning Partner.

When the solvent partner transfers to another under the agreement to pay the debts, the agreement may be personal contract or it may be the creation of trust fund for creditors. If it is not trust for creditors, firm creditors derive no benefit therefrom.

### Dissolution of the Partnership

Partnership may be terminated by:

1. an act
- 2 or 3. acts of parties
3. operation of law
4. Judicial decree.

1. When members of a firm have agreed to dissolve firm at a definite time its relation terminate at that time.

2. When the firm has been created at a fixed time, it may be said that a partner has the power to dissolve the partnership by withdrawal, but not necessarily the right to do so.

If he exercises the power without the right, he is liable in damage for breach of contract.

3. If all partners agree to dissolve they may do so regardless of prior agreement.

4. If the partnership has been formed for performance of certain work it will terminate upon the completion of that work.

5. Death of a partner operate as a dissolution of the firm.

6. Bankruptcy of one partner will cause dissolution.

7. War between the two countries where they conduct business, firm dissolved if it is suspended at the time of the declaration of war.

### Dissolution by Judicial decree.

In case of fraud in the formation, a court of equity grant rescission.

Misconduct is often a ground for dissolution - The misconduct must be such as to render it decidedly injurious to the partnership business.

### Notice of Dissolution

Upon the involuntary dissolution no notice is necessary.

In the case of voluntary dissolution, actual notice must be given to those who dealt with firm before, to the others a general notice is sufficient.

### Right to Contribution

A partner who has been forced to pay the firm debts has the right to ~~to~~ Co of Contribution from other partners and can collect from them their proportional shares.

### Settlement and Accounting among the Partners.

First partnership debts paid, after the payment of all claims to the third persons, next repay any loans made by the partner to the firm. Then the firm should repay to each partner his original contribution of Capital. The surplus, if any, should be divided among the partners as profit.

In absence of an agreement to the contrary, the profit are divided equally.

COMMON ERRORS IN SPOKEN ENGLISH

- 1 Between you and (~~I~~, me) things look dark. *Preposition take objective case*
- 2 I (did, done) my examples. *done can not be used without have + has.*
- 3 It (doesn't, ~~don't~~) seem possible.
- 4 He always behaves (~~good~~, <sup>well</sup>). *Good must describe thing or person not action*
- 5 Please pass me (those, ~~them~~) books.
- 6 (~~Who~~, whom) did you give the pencil to?
- 7 Please let John and (~~I~~, me) go to the ball game.
- 8 I wish I could sing (as, ~~like~~) she can. *Like used for simple comparison.*
- 9 I have (~~most~~, almost) finished my work.
- 10 I (saw, ~~seen~~) him do it.
- 11 It was (~~him~~, he) who did it.
- 12 She invited Mrs. B and (me, myself) to go driving.
- 13 (~~Will~~, shall) we pass our papers now?
- 14 (Whom, who) are you going to vote for?
- 15 Nobody in (~~their~~, his) senses ever thinks of doing that.
- 16 Why (doesn't, ~~don't~~) she come?
- 17 (~~Can~~, may) I have another piece of cake?
- 18 He is taller than (I, ~~me~~).
- 19 Neither of the men would tell what (he, they) saw.
- 20 He is (~~some~~, somewhat) better this morning.
- 21 They met Robert and (me, ~~I~~) in the village.
- 22 Has everybody finished (~~their~~, his) exercise?
- 23 You (ought not, ~~hadn't ought~~) to do it.
- 24 He writes (~~good~~, well).
- 25 I cannot go (unless, ~~without~~) father sends me some money.



English Grammar

Sept. 24, 1920

{ Kittredge & Hazely,  
Concise Grammar. }

Assignment I.  
1-18

{ Practical Exercises  
in English - by Ray Davis }

(a) Nominative case is the case, <sup>the subject of which is a</sup> ~~of~~ does of action.

(b) Possessive case denotes possession.  
Sign of possession is "s"

(c) The objective case is

<del>acclinate</del>	acclinate	address	
<del>admirable</del>	admirable	adult	alias
condolence	constate	construe	data
illustrate.			

Eng

- Verbatim = repeating the words
- Grantor = <sup>one who</sup> transfers property
- Sagacious = wise
- imperative
- venerable = old & honorable
- Elusive = beyond grasp.
- criterion = set of standard or judge with.
- Complacent = satisfaction
- laconic

alterna'te	illustrate
gon'dola	in'pious
gnat'mace	incog'nito
har'ass	in'quary
hercule'in	pi'anist
hospi'table	veg'ary =

It is I. = "It" is in nominative case  
 the subject "I" is in predicate nominative case, "I" describe

Preposition is the word placed before noun and shows  
 relation to the other rest of sentence.

Oct 22, 1920

persuasive = Power to persuade

Correlative = Having mutual relation.

itinerate =

Lethargy = dull

volition = own will

aptitude = ability to do work

garrulous =

arrogant =

pellucid = transparent

~~Almanac~~  
 almanac

apparatus ~~gas~~

~~brooch~~

cantalope

crepe'ol

Constable

Couper

Cunary

~~ff~~ efficaciously = applied with good result.

Ande cions =

vitiate = impaired

Vaunt =

Lachadical =

facilitate =

~~respete~~ respete =

ossification = change to bone stone.

incompatible =

licentious

J-31. Current Events, 1920-21

Ten hours credit will be given for each semester in Current Events under the following conditions:

1 Attendance records will be kept. Students will be required to attend at least 12 of the 15 lectures in each semester.

2 At the end of the first semester, January 21, and at the end of the second semester, May 20, students desiring credit for the course must present at the Department of Journalism written reports, not less than 1200 words in length, upon some news topic of their own selection. These reports must give evidence that the student has faithfully and consistently followed the development in the news columns of the selected topic. Editorials are not wanted.

3 Without any desire to restrict the student in his reading, but in order that written work may more surely conform to the intent of the course, a list of subjects from which choice may be made will be furnished to students in Current Events about a month before the end of each semester. Also, in order that reading may be more definitely directed, "The LITERARY DIGEST" will be used as the source from which these subjects will be selected. The student, however, should not confine his reading to this periodical, but should supplement it with regular reading from newspapers and other reviews.

The LITERARY DIGEST may be secured at the greatly reduced rate of six cents weekly, if ordered for a period of 10, 20, 40 or 52 weeks. Students desiring to subscribe at this rate should consult with Professor Center, head of the Department of Journalism.

Students in Current Events will please note the catalogue synopsis: "Reservation of part of each lecture period for answering questions submitted in writing during the preceding week." You are urged to ask questions, and Mr. Carberry will be glad, so far as he can, to answer them. Questions must be submitted in writing, and should be left on or before Friday evening of each week, in the basket on Professor Center's desk in the Journalism Office, Room 109, first floor. They should be enclosed in envelopes marked "CURRENT EVENTS QUESTION BOX." Questions which are plainly asked for the purpose of arousing controversy will be ignored.

J-32 CURRENT EVENTS SEMESTER CREDITS

Credit of 10 hours will be given to students formally registered in this course upon the completion of a written report upon one of the current news topics listed below.

The report must show that the student has carefully and consistently read the news on his chosen topic during the semester.

Argumentative essays are not wanted. The report should detail the progress of events and the course of newspaper and magazine comment on these events. Both sides of any disputed question should be fairly presented.

Reports should be not less than 1000 words in length; they may be as long as is necessary for a fairly thorough review of the subject.

Lists of suggestive questions in connection with each of the subject will be placed in C.B.A. library this week. These are to be consulted in the library only, and not to be removed under any circumstances. Students are free, however, to make copies.

SUGGESTED TOPICS

1. President Harding's Peace Plan
2. Lifting the Burdens of War Taxation
3. England's "Industrial Revolution."
4. Relations between the United States and Germany.
5. The British Coal Strike.
6. Proposed Solutions of the Building Problem.
7. Financing the Federal Government.
8. Europe and Bolshevism
9. Present Relations of Capital and Labor in the United States.
10. American Naval Policy and the Disarmament Question.
11. The Tangle in Upper Silesia.
12. The Government and Railroad Wages.
13. The Colombian Treaty.
14. The Irish Problem.
15. United States--Japan Relations.
16. The German Indemnity.
17. The Harding Cabinet and its Problems.
18. The British Empire and its Organization.
19. The World's Shipping.
20. The American Immigration Problem.
21. The New Tariff Law.
22. The Future of Poland.
23. Business and National Prosperity.
24. The Yap Mandate and the Pacific Situation.
25. Russia's Relations with her Neighbors.
26. The Transcaucasian Republics and their Future.
27. South Africa and Secession.
28. Profiteering; the Lever Law.
29. Mr. Hoover and the Re-organization of the Department of Commerce.
30. North Dakota and the Non-Partisan League.
31. The Near East; France, Syria and Turkey.

REPORTS MUST BE TURNED IN ON OR BEFORE THE LAST DAY OF THE FINAL EXAMINATION PERIOD. Under no circumstances will the time be extended.

Credit of 10 hours will be given to students formally registered in this course upon the completion of a written report upon the current news topics listed below.

The report must show that the student has carefully and conscientiously read the news on his chosen topic during the semester.

Argumentative essays are not wanted. The report should detail the progress of events and the course of newspaper and magazine news on these events. Both sides of any disputed question should be fairly presented.

Reports should be not less than 1000 words in length; they may be longer as is necessary for a fairly thorough review of the subject.

Lists of suggestive questions in connection with each of the subjects will be placed in C.S.A. library this week. These are to be consulted in the library only, and not to be removed under any circumstances. Students are free, however, to make copies.

SUGGESTED TOPICS

1. President Harding's Peace Plan
2. Rattling the Belfry of the Nation
3. England's "Industrial Revolution"
4. Relations between the United States and Germany
5. The British Coal Strike
6. Proposed Solutions of the Existing Problem
7. Financing the Federal Government
8. Europe and Bolshevism
9. Present Relations of Capital and Labor in the United States
10. American World Policy and the Disarmament Question
11. The Treaty in Upper Silesia
12. The Government and Railroad Wages
13. The Colombian Treaty
14. The Irish Problem
15. United States-Japan Relations
16. The German Industry
17. The Harding Cabinet and its Problems
18. The British Empire and its Organization
19. The World's Shipping
20. The American Immigration Problem
21. The New Land Law
22. The Future of Poland
23. Business and National Prosperity
24. The Yap Islands and the Pacific Situation
25. Russia's Relations with her Neighbors
26. The Transcaucasian Republics and their Future
27. South Africa and Raceism
28. Prohibition; the Lever Law
29. Mr. Hoover and the Re-organization of the Department of Justice
30. Labor Factors and the Non-Partisan League
31. The Near East; France, Syria and Turkey

REPORTS MUST BE TURNED IN ON OR BEFORE THE LAST DAY OF THE FINAL EXAMINATION PERIOD. Under no circumstances will the time be extended.

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