Compilation of

The Banking Laws

of Kentucky

(State Banks and Trust Companies)

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PREFACE.

The following pages contain laws in effect at present with relation to the organization of banks and trust companies, and the business of such institutions, except as noted below. The book is not intended as a digest. Since this compilation was commenced the act permitting all State banks to do a fiduciary business has become effective. A resume of the laws applicable to such business would embrace the subjects of "Husband and Wife," "Descent and Distribution," "Heirs and Devisees," "Curators and Committees," "Personal Representatives," "Settlements of Estates," "Administrators and Executors," "Guardian and Ward," "Wills," and other kindred subjects; therefore it was considered impracticable to include all these subjects in this volume; impossible to do so without materially increasing the size and price of the book.

To those who use this book we make the suggestion that in case of doubt as to the enforcement of rights, or redress of wrongs, advice of counsel should be sought and relied upon.

It is hoped that this volume will meet with approval of those engaged in the banking and trust business.

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CHAPTER 1. CONSTITUTION.

(*The following provisions of the Constitution are pertinent to banking corporations. Their provisions have been carried into the laws which follow*:)

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

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

§ 192. No corporation shall engage in business other than that expressly authorized by its charter, or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate, except such as may be proper and necessary for carrying on its legitimate business, for a longer period than five years, under penalty of escheat.

§ 193. No corporation shall issue stocks or bonds, except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stocks or bonds

at a greater value than the market price at the time said labor was done or property delivered, and all fictitious increase of stock or indebtedness shall be void.

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

§ 195. The Commonwealth, in the exercise of the right of eminent domain, shall have and retain the same powers to take the property and franchises of incorporated companies for public use which it has and retains to take the property of individuals, and the exercise of the police power of this Commonwealth shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe upon the equal rights of individuals.

§ 203. No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

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

§ 205. The General Assembly shall, by general laws, provide for the revocation or forfeiture of the charters of

all corporations guilty of abuse or misuse of their corporate powers, privileges or franchises, or whenever said corporations become detrimental to the interests and welfare of the Commonwealth or its citizens.

§ 207. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner.

§ 208. The word corporation as used in this Constitution shall embrace joint stock companies and associations.

CHAPTER 2.

ORGANIZATION AND GENERAL CONDUCT OF BANKS AND TRUST COMPANIES.

§ 1. General corporations—number of incorporators —laws to be observed. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose, including the buying, selling, holding, dealing in, renting and letting of real estate under the provisions of and subject to the requirements of this (Chapter) article; but banking, building and loan, trust, insurance and railroad corporations shall, in addition to the provisions of the (Chaper) article, which are not inconsistent with the laws relating especially to them, be organized in the manner and subject to the provisions of such laws. (*Number required to organize bank, see Sec. 2; Trust Co., see Sec.* 63.)

§ 2. Bank—five necessary to incorporate—capital necessary. Any number of persons, not less than five, may associate to establish a commercial bank, or a savings bank, or a bank having departments for both classes of business, upon the terms and conditions, and subject to the liabilities prescribed in this (Chapter) article; but the capital stock of any bank shall not be less than fifteen thousand dollars, and in cities having a population of fifty thousand or more not less than one hundred thousand dollars. (*What articles shall specify, see Sec.* 6.)

§ 3. Execution and recording of articles. The articles of incorporation shall be signed and acknowledged by the parties thereto before any officer authorized to take acknowledgments to deeds, and recorded in the county clerk's office of the county in which the bank is to be

located, and a certified copy thereof shall be filed in the office of the Secretary of State; and said articles, or a certified copy thereof, may be used as evidence in any action for or against such bank. The corporation shall pay to the Secretary of State a fee of twenty-five cents for one hundred words for recording the articles of incorporation, said fees to be turned into the State Treasury. (*Read following section carefully.*)

§ 4. Banking Commissioner to approve articles before recording. Before filing the articles of incorporation of any proposed bank, trust company or combined bank and trust company, in the office of the County Court Clerk in the county in which the bank is to do business, and with the Secretary of State, as is required by law, the incorporators shall present a copy of said Articles of Incorporation to the Banking Commissioner for his approval, and when same are approved in writing by said Commissioner, the incorporators may proceed to the filing and recording of same. Upon presentation of said Articles of Incorporation to the Banking Commissioner for approval, said Commissioner shall carefully examine same, and shall make such inquiry and investigation as to the financial standing and moral character of each of the incorporators as he may deem necessary, and shall require said incorporators to furnish satisfactory proof that each is worth, over and above all exemptions and liabilities, at least double the amount of the par value of his stock subscription. He shall inform himself that the incorporators are seeking to establish a *bona fide* banking or trust business, and are acting in good faith, and upon his conclusions, he shall approve or refuse to approve said Articles of Incorporation. If such articles be approved, then the County Court Clerk and the Secretary of State, respectively, may receive said articles for filing and recording. Upon the filing and recording of said articles, and doing all other things required by the laws of the State, the said bank or trust

company shall be deemed organized for the purpose named in its Articles of Incorporation, but no corporation seeking to do a banking or trust business shall actually transact any banking or trust business until it receives from the Banking Commissioner a certificate, in which it shall be set out that said corporation has fully complied with all the provisions of this Act, and other pertinent laws, and that the requisite capital has been, in good faith, subscribed and paid in cash.

§ 5. Specifications in articles. Such persons shall execute Articles of Incorporation which shall specify:

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

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

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

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

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

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

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

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

(9) Whether the private property of the stockholders, not subject by the provisions of the law under which it is organized, shall be subject to the payment of corporate debts, and if so, to what extent.. (*The Banking Department has a rule limiting the amount of indebtedness a bank*

may incur—not including amounts due to depositors—to the extent of its capital, reserve and surplus.)

§ 6. **Corporation tax.** Every corporation which may be incorporated by or under the laws of this State, having a capital stock divided into shares, shall pay into the State Treasury one-tenth of one per centum upon the amount of capital stock which such corporation is authorized to have, and a like tax upon any subsequent increase thereof. Such tax shall be due and payable on the incorporation of the company and on increase of the capital stock thereof, and no such corporation shall have or exercise any corporate power until the tax shall have been paid, and upon payment it shall file a statement thereof with the Secretary of State: *Provided,* That every corporation which has not heretofore paid the organization tax upon any or all of its capital stock, and which, by amendment of its charter, changes its name, increases its powers, enlarges its scope, or prolongs its corporate life, shall, upon the filing of such amendment, pay the tax as above provided, upon its entire capital stock, or so much thereof as has not theretofore borne the tax.

§ 7. **Signers to direct affairs until organization completed.** Until the directors are elected the signers of the Articles of Incorporation shall have the direction of the affairs of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock and to perfect the organization of the corporation.

§ 8. **When banks can begin business—business to be engaged in—U. S. deposits—discount.** When the articles are filed and recorded, as above provided, it may commence business, and shall thereupon become a body corporate, and to be known by and carry on its business in its corporate name, and as such shall have power to adopt and use a corporate seal; to make contracts; sue and be sued; to appoint, remove and elect officers, define their duties, and

require from any of them a bond for the faithful discharge of their duties; to prescribe, by its board of directors, by-laws for the government of the bank, not inconsistent with law; to exercise, subject to law, such powers as may be necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt, and purchasing bonds, receiving deposits, and allowing interest thereon, buying and selling exchange, coin and bullion, and lending money on personal or real security, as provided in this article. Any bank or trust company may accept for payment at a future date drafts or bills of exchange drawn upon it by its customers, and issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, not exceeding one year, and may also accept drafts or bills of exchange drawn upon it, having not more than six months' sight to run, growing out of transactions involving the importation and exportation of goods, and any bank or trust company may discount acceptances which are based upon the importation or exportation of goods, and which have a maturity at time of discount of not more than three months, and are indorsed by at least one other bank or trust company, but no bank or trust company shall accept such drafts or bills of exchange to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus, except by authority of the Banking Commissioner under such general regulations as said Commissioner may prescribe, and in no event to an amount exceeding the capital stock and surplus of such bank or trust company; and such regulations shall apply to all banks or trust companies alike, regardless of the amount of capital stock and surplus. In addition to the powers heretofore conferred upon and now possessed by banks, trust companies and combined banks and trust companies doing business under the laws of this State, they are hereby authorized and empowered, subject

to existing statutory or charter limitations, to pledge such portion of their assets as may be required by law as collateral security or Government deposits made with them, or any of them, by or under the authority of the United States. (*See next Section and Section* 53.)

§ 9. **Same as preceding section—collection of subscriptions—reduction of capital by cancellation.** At least fifty per cent of the capital stock shall be paid in money, and be in the custody of the directors, before it shall be authorized to commence business, and the remainder of the capital stock shall be paid in in money within one year after the bank is authorized to commence business, at such times and in such amounts as the directors may require; and when any stockholder fails to pay any installment on the stock when requested by the directors, they may sell a sufficiency of the stock of such delinquent at public sale to pay the amount due with cost and interest, having first given him twenty days' notice in writing, if he reside in the county, or, if not, by letter mailed to his last known address, of the time and place where the stock will be sold; or they may collect the amount due by action. If no bidder can be found to pay the amount due on the stock, and it cannot be collected, the amount previously paid in by the delinquent on the stock shall be forfeited to the bank, by order of the board of directors, and such stock sold by it within twelve months thereafter; and if not so sold, it shall be canceled and deducted from the capital stock of the bank; if sold before cancellation, any surplus, after the payment of the amount due, and interest and costs, shall be paid to the original stockholder or his assigns. If such cancellation shall reduce the amount of the capital stock below the minimum required by law, the capital shall, within thirty days after cancellation, be increased to the required amount by additional subscriptions, in default of which the Secretary of State shall, with the advice and consent of the Attorney General, take steps to wind up the

business of the bank. (*Refer to preceding section; duty imposed on Secretary is now with Banking Commissoner.*)

§ 10. When corporation may purchase its capital stock. No corporation shall take, as security for any debt, a lien upon any part of its capital stock, or be the holder or purchaser of any part thereof, unless such lien or purchase shall be necessary to prevent loss upon a debt previously contracted; and stock so purchased shall in no case be held by the corporation for a longer time than one year. (*See as to banks, Section 52.*)

§ 11. How transfer of stock made—rights and liability of subsequent purchasers. The shares of stock shall be transferred on the books of the corporation in such manner as the by-laws thereof may direct, and every person becoming a stockholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of prior stockholders.

§ 12. Names of original stockholders and transferees to be kept in book—stockholders may inspect. A book shall be kept by every corporation in its principal office, in which shall be entered the name, postoffice address and number of shares of stock held by each stockholder, and the time when each person became a stockholder; also all transfers of stock, stating when, the number of shares transferred and by whom and to whom. This book shall, at all times during business hours, be subject to the inspection of all stockholders and persons doing business with the corporation.

§ 13. Liability of stockholders—suit and time when same shall be brought. The stockholders of each corporation shall be liable to creditors for the full amount of the unpaid part of stock subscribed for by them, and no stockholder shall be liable, because of being a stockholder, for any sum more than to the amount of the unpaid part of stock held by such stockholder of any company, except stockholders in banks, trust companies, guaranty companies,

investment companies and insurance companies shall be liable equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estates in their hands shall be liable, in the same manner and to the same extent as the property of other stockholders, and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer: *Provided,* The action to enforce such liability shall be commenced within two years from the time of transfer.

§ 14. **Liability of directors for corporate debts.** If the directors of any incorporated company shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally individually liable for all debts of the corporation then existing, and for all that shall be thereafter incurred while they, or a majority of them, continue in office.

§ 15. **Liability of officers and directors giving false statement.** If the directors or officers of any corporation shall knowingly cause to be published or given out any statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be joinly and severally individually liable for any loss or damage resulting therefrom.

§ 16. **Penalty for violation of law by officers.** If the directors or officers of any corporation shall fail or refuse to comply with, or shall violate any of the provisions of this chapter, those so failing, refusing or violating shall be jointly and severally individually liable for any loss or damage resulting to any person from such failure, refusal or viola-

tion, and, in addition thereto, the persons so liable shall be each punished with a fine of not less than one hundred nor more than one thousand dollars.

§ 17. Number of directors—elected by ballot—number of shares to be owned by—terms. The affairs of each corporation shall be managed by a board of not less than three directors, each of whom shall own in his own right not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business. All elections for directors shall be by ballot, and shall be held in this State; and, in the first instance, the directors shall be elected at a meeting held before the corporation is authorized to commence business, and thereafter at an annual meeting of the stockholders to be held on the day named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held, and notice of any change shall be given to each stockholder twenty days before the election is held, and if, for any cause, an election is not held on the day named in the by-laws, a special meeting for that purpose shall be called within thirty days thereafter, of which due notice shall be given to each stockholder, in person or by letter mailed to his last known address. A stockholder may vote at any meeting by proxy, in writing, signed by him, and attested in such manner as the by-laws may prescribe; and a vacancy in the board of directors shall be filled by the board, and the directors so appointed shall hold office until the next annual election. The directors of any corporation may, by a vote of the stockholders be divided into one, two or three classes, the term of office of those of the first class to expire at the annual election next ensuing, of the second class one year thereafter, of the third class two years thereafter; and at each annual election held after such classification, directors shall be chosen for two or three years, as the case may be, to suc-

ceed those whose terms expire. But each director of a banking, trust or insurance company, or building and loan association, must own in his own right five shares of capital stock, and a majority of them must be residents of Kentucky during their terms of office: *Provided, however,* That the above-mentioned clause, declaring that all elections for directors shall be by ballot, and shall be held in this State, shall not apply to corporations created and organized for educational purposes only, and having no capital stock, and in which tuition to students is free.

§ 18. Voting of stock—rights of stockholders—fiduciaries may vote. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless the right to vote be expressly given in writing to the pledgee; and in all elections for directors or managers of any corporation each stockholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors shall not be elected in any other manner.

§ 19. Increase or reduction of capital. Any corporation may increase or reduce its capital stock at any time by a vote of, or by the written consent of, stockholders representing two-thirds of its capital stock, and after notice of the proposed increase or decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the increase or reduction shall be signed and acknowledged by the president and a majority of the directors, and filed and recorded in the same manner as articles of incorporation; but no increase of the capital stock of a banking or trust company shall be valid until the amount thereof has

been *bona fide* subscribed, and one-half thereof actually paid in, and the remainder shall be paid in within one year. (*See Section* 45.)

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

§ 21. Two or more corporations may consolidate—method and requirements. Any two or more corporations organized under this chapter, or the laws of this or any other State, may consolidate into a single corporation; the directors or a majority of them, of such corporations as desire to consolidate may enter into an agreement signed by them, prescribing the terms and conditions of consolidation, the mode of carrying same into effect, and stating such other facts as are necessary to be set out in articles of incorporation as herein provided (except the facts required by Section 5 hereof) as well as the manner of converting shares of the old corporation into the new, with such other details and provisions as are deemed necessary: *Provided,* That such consolidated corporations shall become

and be a domestic corporation of this Commonwealth for all purposes, and shall be subject to the jurisdiction of the courts of this State and to all laws of this State regulating corporations organized thereunder; and this law shall not be construed as altering or repealing any law regulating the taxation of bridges over streams forming the boundary line of this State.

Written notice of the intention to consolidate shall be mailed to the address of each stockholder of each corporation at least twenty days previous to entering into such agreement, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of its principal place of business, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity of such agreement. (*See following section.*)

§ 22. **Stockholders' names and addresses not to be given—curative.** That all charters or articles of incorporation, heretofore taken out by two or more companies organized under the laws of this Commonwealth consolidating, are hereby declared to be valid, regardless of whether the names and addresses of the stockholders in the consolidating companies be inserted in the articles of consolidation or not; and that all articles of consolidation heretofore taken out are hereby declared to be valid without having the names and addresses of the stockholders inserted therein; and said charters shall be as valid and legal as if each and every stockholder in the companies composing the consolidated company was set out in such articles of consolidation. (*Curative.*)

§ 23. (1) **Organization tax—status of companies after consolidation.** When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with

the said agreement, and subject to all the provisions of this chapter and other laws relating to it, and shall be vested with all the rights, privileges, franchises, exemptions, property, business, credits, assets and effects of the constituent corporations without deed or transfer, and shall be bound for all their contracts and liabilities: *Provided,* That no consolidated company formed under this chapter or the laws of this State shall be required to pay any organization tax on the amount of capital stock on which the organization tax has been paid by the constituent companies prior to the consolidation, and when a foreign corporation consolidated with one or more corporations in this State the organization tax as required by the laws of this State shall be paid on the amount of capital stock of such foreign corporation, and the organization tax shall be paid on any increase of the capital stock of the consolidated corporation over the aggregate capital stock of the constituent corporations prior to consolidation.

§ 24. **Consolidation does not affect pending suits.** Any action or proceeding pending by or against either (any) of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

§ 25. **Objecting stockholders may receive market value for stock.** If any stockholder in either corporation (any) consolidating, who objected thereto in writing, shall, within twenty days after the agreement of consolidation has been recorded, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the market value of the stock at the date of consolidation; and stock so purchased shall be disposed of within the time hereinbefore provided.

§ 26. **Articles, how amended.** Any corporation may, by the consent in writing of the owners of at least two-thirds of its capital stock, change or amend any of the

articles of its incorporation, and such alteration or amendment shall be signed and acknowledged by the directors, or a majority of them, and filed and recorded as articles of incorporation are required to be. (*See further, Sections* 40-55.)

§ 27. **Sale, consolidation or amendment does not alter rights or liabilities.** Any liability of corporations, or the stockholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporations, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

§ 28. **How corporation may terminate.** Any corporation organized under this chapter may, by the consent in writing of the owners of the majority of its shares of stock, unless otherwise provided in the articles of incorporation or amendments thereto, close its business and wind up its affairs; and when any corporation expires by the terms of the articles of incorporation, or by the voluntary act of its stockholders, it may thereafter continue to act for the purpose of closing up its business, but for no other purpose; and it shall be the duty of the officers to settle up its affairs and business as speedily as possible; and they shall cause notice to be published, for at least once a week for four consecutive weeks, in some newspaper printed and published in the county, if any, of the fact that it is closing up its business; and all debts and demands against the corporation shall be paid in full before the officers receive anything.

§ 29. **Corporation, how sold—purchaser take rights and assume liabilities—new corporation may be organized.** If the franchise and property of any corporation is sold, the persons who may become the purchasers, at

private sale or under the judgment of the court, may organize a corporation of the construction, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this chapter. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of Section five of this chapter, set forth a description of the property sold, and the decree under which the sale was made, if it was sold under a judgment, or if not, the deed conveying the property, the amount paid or to be paid, and to and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and a copy thereof recorded in the office of the Secretary of State; and if a railroad, in the office of the Railroad Commission; and when a certificate of such fact is delivered to the purchaser, the corporation shall be deemed to be organized and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this chapter. (*See Section* 78.)

§ 30. Sale under order of court—what necessary. Sale of the property and franchises of corporations that may be sold under decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages or deeds of trust, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such deeds of trust or mortgage; or if the property and franchises will produce so much, then for the amount of interest due under said deed or deeds of trust or mortgage, or any of them, subject

to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but where a sale shall be ordered to be made subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from incumbrances. Sales under this section shall be made on such credits as the court may deem proper.

§ 31. Common and preferred stock may be issued—method of issuing and requirements—rights on dissolution. Any corporation organized under this law may divide its shares into classes, such as preferred, common and deferred shares, or as may be otherwise designated, and it may give to each of the several classes such priority of right in the payment of the dividends and in the redemption of the shares as may be prescribed in the rules and regulations adopted by the shareholders; and may provide that the holders of its bonds shall be entitled, upon terms prescribed by it, to convert the same into the stock of the corporation, whether common or preferred, and that holders of its preferred stock shall be entitled, upon terms perscribed by it, to convert the same into the bonds or other obligations of the corporation. No preferred stock shall be issued, except for cash or its equivalent, nor for less than the par value of the shares, which shall be stated in the certificates representing the preferred and common stock respectively. Any such corporation, all of whose outstanding stock is common stock, may, by a resolution adopted by the vote of the holders of not less than two-thirds in amount of its capital stock, cast in person or by proxy, at a special meeting of stockholders called for the purpose and of which notice shall have been given as provided in the by-laws of the company, at least twenty days before the date of the meeting, or at the annual

meeting of the stockholders of the company, or by the written consent of the holders of not less than two-thirds in amount of its capital stock, distribute or conver its outstanding capital stock into preferred and common stock in such proportion as shall be fixed by such resolution or written consent: *Provided,* That all holders of stock of the company at the time of such distribution shall be entitled to the same *pro rata* proportions of such preferred and common stock. And by a resolution adopted by the like vote or by such written consent, the capital stock of any corporation may be increased, and the increased stock may be common or preferred stock, or partly one and partly the other, as may be fixed by such resolution or written consent. Any such preferred stock hereinbefore referred to shall be entitled to receive quarterly, semi-annual or annual dividends thereon at such rate as may be prescribed by the resolution or written consent under which the same was issued, and such dividends shall be payable as provided in the said resolution or written consent, before any dividends shall be declared on the common stock; and on the dissolution of the company, voluntary or otherwise, the holders of preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the company shall be made to the holders of the common stock.

§ 32. Charter forfeited if business not begun in two years—failure to hold meetings does not affect. Any corporation organizing under this chapter shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business or to promote the objects or purposes for which it was organized; but the rights, privileges or franchises shall not be forfeited by the failure to elect officers or hold meetings at the time specified.

§ 33. Corporation can not rely on defect in organization as a defense. No corporation organized under this

chapter shall be permitted to set up or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

§ 34. Restrictions as to business engaged in—how land held—escheat. No corporation shall engage in business other than that expressely authorized by its articles of incorporation or amendments thereto; nor shall any corporation, directly or indirectly, engage in or carry on in any way the business of banking, or insurance of any kind, unless it has become organized under the laws relating to banking and insurance; nor shall any corporation hold or own any real estate, except such as may be necessary and proper for carrying on its legitimate business, for a longer period than five years under penalty of escheat. (*See Section* 8.)

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

§ 36. Charter—how revoked or forfeited. Whenever any corporation has failed, or shall fail, to perform or comply with any requirement or provision of its charter under which it does business in this State, or shall be guilty of an abuse or misuse of its corporate powers, privileges or franchise, or shall become detrimental to the interest and welfare of the Commonwealth or its citizens, it shall be the duty of the Attorney General of the State to institute such proceedings as may be proper and necessary to have for-

feited and revoked the charter, powers, franchises and privileges of such corporation. (*See also Chapter 3 and Section 62.*

§ 37. Must accept terms of Constitution. No law shall be passed for the benefit of, or in the interest of, any corporation heretofore created or organized by or under the laws of this State or any other State, nor shall any corporation avail itself of the provisions of this chapter, unless such corporation shall have previously, by a resolution adopted by its board of directors and filed in the office of the Secretary of this State, accepted the provisions of the Constitution of this State; and such resolution, or a certified copy thereof, shall be evidence for and against such corporation.

§ 38. Agent for service of summons—notices and other court orders. All corporations except foreign insurance companies formed under the laws of this or any other State, and carrying on any business in this State, shall at all times have one or more known places of business in this State, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this State, until it shall have filed (and recorded) in the office of the Secretary of State a statement, signed by its president or secretary, giving the location of its office or offices in this State, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the Secretary of State a statement of such change; and the former agent shall remain agent for the purpose of service until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employe of such corporation, who shall transact, carry on or conduct any business in this State, for it, shall be severally guilty of a

misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense.

§ 39. **Old charters contrary to this chapter—penalties for failure to observe law.** The provisions of all charters and articles of incorporation, whether granted by special act of the General Assembly, or obtained under any general incorporation law, which are inconsistent with the provisions of this chapter concerning similar corporations, to the extent of such conflict, and all powers, privileges or immunities of any corporation which could not be obtained under the provisions of this chapter, shall stand repealed on September 28, 1897; and if the officers, managers or agents of such corporation shall, after said date, exercise any powers, privileges or immunities repealed by this section or inconsistent with the provisions of this chapter, relating to similar corporations, or which could not be obtained under this chapter, the officer, manager or agent so offending, and the corporation for which he acts, shall each be guilty of a misdemeanor, and fined for each offense not less than one hundred nor more than one thousand dollars, and upon the conviction of the corporation, the trial jury may, at their discretion, direct the forfeiture of its charter or articles of incorporation, in which case the court shall so adjudge. After the twenty-eighth day of September, 1897, the provisions of this chapter shall apply to all corporations created or organized under the laws of this State, if said provisions would be applicable to them if organized under this chapter.

§ 40. **Old charters, how amended.** The charter or articles of incorporation of any corporation heretofore created or organized under or by the laws of this State may, after such corporation has accepted, as herein provided, the provisions of the Constitution, be amended in the manner provided for the amendment of the articles of incorporation of corporations organized under this chapter and the laws relating to such corporations. (*See further, Secs.* 26-55.)

§ 41. Definition of director. The word "directors," used in this article, includes managers or trustees.

§ 42. Advertisements and printing to contain word "incorporated." Every corporation organized under the laws of this State, and every corporation doing business in this State, shall, in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "incorporated." Immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, except railroad companies, banks, trust companies, insurance companies and building and loan associations, shall appear in letters sufficiently large to be easily read, the word "incorporated." Any corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars.

§ 43. Employes time for payment of—no special contracts allowable. That every corporation for pecuniary profit engaged in any enterprise or business within the State of Kentucky shall, as often as semi-monthly, pay to every employe engaged in its business all wages or salary earned by such employe to a day not more than eighteen (18) days prior to the date of such payment. And any employe who is absent at the time fixed for payment, or who, for any other reason, is not paid at that time, shall be paid thereafter at any time upon six days' demand, and any employe leaving his or her employment or is discharged therefrom shall be paid in full following his or her dismissal or voluntary leaving his or her employment at any time upon three days' demand. No corporation coming within the meaning of this act, shall, by special contract with its employes or by other means, secure exemption from the pro-

visions of this act. And each and every employe of a corporation coming within the meaning of this act shall have his or her right of action against any such corporation for the full amount of his or her wages due on each regular pay day as herein provided in any court of competent jurisdiction in this State.

§ 44. Penalty for violation of preceding section. Any corporation coming within the meaning of this act violating the provisions of section 43 hereof, shall be deemed guilty of a misdemeanor, and fined in a sum not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) for each separate offense, and each and every failure or refusal to pay each employe the amount of wages due him or her at the time, or under the conditions required in section 43 hereof, shall constitute a separate offense.

§ 45. How to increase or reduce capital stock. No reduction in the capital stock shall be made to a less amount than is required for organization, nor be valid until such reduction has been approved by the Secretary of State upon a finding by him that the interest of creditors of the bank will not be prejudiced thereby. A statement of any increase or reduction of the capital stock shall be signed and acknowledged by the president and a majority of the directors of the bank, and filed and recorded in the same manner as articles of incorporation. (*See section* 19; *Banking Commissioner must approve.*)

§ 46. State Bank may be changed into National Bank. Any State bank desiring to reorganize under the laws of the United States as a national bank may, after its dissolution, and as soon as it obtains authority from the comptroller of the currency to commence business, retain and hold any of the assets, real or personal, which it acquired during its existence under this article, subject, however, to all liabilities existing against the bank at the time of its reorganization.

§ 47. National Bank may change into State Bank. Whenever any national bank is authorized to dissolve, it shall be lawful for a majority of the directors of such bank upon authority in writing of the owners of two-thirds of its capital stock, to execute articles of incorporation as provided herein, which articles shall also set forth the authority derived from the stockholders of such dissolved bank, and upon filing the same in the manner provided when a bank is organized, the same shall become a bank under the laws of this State; and thereupon all assets, real and personal, of such bank shall be vested in and become the property of such State bank, subject to all liabilities existing against the bank at the time of its reorganization.

§ 48. Definition of time and demand deposits—status of banks becoming members of Federal Reserve—amount of deposits to be held. Each bank and trust company organized under the laws of this Commonwealth and authorizezd by law to receive deposits shall keep on hand, at all times, at least twelve per cent. of its total demand deposits and five per cent. of its total time and saving deposits; and, in cities which are reserve or central reserve cities, under the act of Congress of December 23, 1913, known as the Federal Reserve Act, at least fifteen per cent. of its total demand deposits and five per cent. of its total time and savings deposits; one-third of which reserve shall be in money and the remainder may be in balances due from other banks and subject to call.

Any bank or trust company incorporated under the laws of this Commonwealth which shall become a member of a Federal Reserve Bank shall be subject to all the provisions of the Federal Reserve Act and its amendments and to regulations of the Federal Reserve Board applicable to such bank or trust company, and shall have all the powers and assume all the liabilities conferred and imposed by said act in regard to State member banks, and any such bank or trust company shall comply with the reserve requirements of the

Federal Reserve Act and its amendments and the compliance of such bank or trust company therewith shall be in lieu of and shall relieve such bank or trust company from compliance with the provisions of the laws of this Commonwealth relating to the maintenance of reserves.

Demand deposits within the meaning of this section shall comprise all deposits payable within thirty days and time deposits shall comprise all deposits payable after thirty days and all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment. Nothing in this section shall be construed as authorizing to receive deposits or do a banking business any institution not authorized to do so by other provisions of law.

§ 49. **Dividends declared by banks and trust companies—surplus—reserve.** The board of directors of any bank or trust company organized under the laws of this State may declare a dividend of so much of the net profits of the bank or trust company, after deducting therefrom all expenses, losses, bad or suspended debts, interest and taxes accrued or due from the bank, as they may deem expedient. *Provided,* no bank or trust company shall pay a dividend to the stockholders thereof until such bank or trust company has a surplus fund equal to ten per cent of its capital stock, and before any dividend is declared, not less than ten per cent. of the net profits of the bank for the period covered by the dividend shall be carried to its surplus fund until such surplus fund amounts to twenty per cent. of its capital stock. All debts due to a bank or trust company on which interest is due and unpaid for six months, unless the same be well secured or in the process of collection, shall be construed bad or suspended debts within the meaning of this section.

§ 50. **Punishment for disseminating false reports as to banks.** That any person who shall wilfully and maliciously make, circulate, or transmit to another or others any false statement, rumor, or suggestion, written, printed

or by word of mouth, which is directly or by inference derogatory to the financiel condition or affects the solvency or financial standing of any bank, or of any domestic or foreign insurance company, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred or more than one thousand dollars, or confined in the county jail not less than twenty nor more than one hundred days, or both so fined and imprisoned, in the discretion of the court. (*See also criminal laws relating to banks in Chapter* 5.)

§ 51. Limit of indebtedness of borrowers, including stockholder. No bank shall permit any of its stockholders, or any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, directly or indirectly, to become indebted to it in a sum exceeding twenty per cent. of its capital stock actually paid in, and its actual amount of surplus, unless such borrower pledge with it good collateral security, or execute to it a mortgage upon real or personal estate, which at the time is of more than the cash value of such loan or indebtedness above all other incumbrances, and if the borrower is a director or officer of such bank he shall not be permitted to become indebted to it in excess of ten per cent. of its paid-up capital stock, without securing the excess by the mortgage or pledge of real or personal property double in value the amount of such excess; and in no event shall the indebtedness of any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, exceed thirty per cent. of its paid-up capital and actual surplus; *Provided,* that the discount of bills of exchange drawn against actually existing value and the purchase or discounting of commercial or business paper actually owned by the person negotiating the same shall not be considered

as borrowed money within the meaning of this section in fixing the limit of indebtedness of any person, firm or corporation, selling or negotiating said paper to the bank.

§ 52. Bank may take its stock as security to prevent loss of debt—limitations as to stock ownership. No bank shall take as security for any loan or discount a lien upon any part of its capital stock, and the same surety, both in kind and amount, subject to the provisions of section 51, shall be required from persons, stockholders and those not stockholders; nor shall any bank be the holder or purchaser of any part of its capital stock, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased shall in no case be held by the bank for a longer time than one year; nor shall any person, directly or indirectly, hold or own more than one-half of the capital stock of a bank exclusive of stock held as collateral.

§ 53. How moneys employed—what real estate may be held. No bank shall employ its moneys, directly or indirectly, in any enterprise or business, except as provided in section 8; but it may hold such personal property as has been transferred to it as collateral for the payment of any debt, and may acquire title to and hold such real estate as may be necessary for the transaction of its legitimate business and for a period not longer than five years such other real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. (*May now do trust business. See Section 67.*)

§ 54. Limitations as to making loans and discounting when reserve short. Whenever the reserve of any bank shall fall below the amount required, such bank shall not in any way increase its liabilities by making any new loans or discounts otherwise than by purchasing or discounting bills of exchange payable at sight or on demand.

§ 55. Increase or reduction of capital. No reduction in the capital stock shall be made to a less amount than is

required for organization, nor be valid until such reduction has been approved by the Bank Commissioner upon a finding by him that the interest of creditors of the bank will not be prejudiced thereby. A statement of any increase or reduction of the capital stock shall be signed and acknowledged by the president and a majority of the directors of the bank, and filed and recorded in the same manner as articles of incorporation. (*See sections* 26-40.)

§ 56. Duties of officers of Savings and Commercial banks. Any bank combining the business of a commercial and savings bank shall keep separate books for each kind of business; and it shall be the duty of directors of savings banks, or banks having a savings department, to have posted in a conspicuous place in the business office of the bank the rate of interest allowed depositors, and such other regulations as may be prescribed by the directors. (*Rates of Exchange, Chapter* 5.)

§ 57. Officers may fix hours of closing. That the board of directors of each of the banks and trust companies doing business in this State shall have full power and authority to fix the hours of opening and closing of said banks or trust companies, and may provide that on Saturday of each week such hour of closing be as early as twelve (12) o'clock noon.

§ 58. Deposits by married women or infants. When any deposit is made by a married woman or minor, in her or his name, the bank may pay to her or him the amount deposited. (*Women may now contract under act of* 1894.)

§ 59. Five-year deposits to be published. Every bank organized under this chapter, or doing business under any law of this State, shall annually, in January, publish, in at least two issues of a newspaper published in the county in which the bank is located, a statement, under the oath of its cashier, of all deposits made with it, and of all dividends and interest declared and payable by it, which, at the date of such statement, shall have remained unclaimed by

any person authorized to receive the same for five years, giving the time when, and the name of the person by whom, the deposit was made, and the name of person in whose favor the dividend or interest was declared, and when and from what source derived.

§ 60. **Stockholders subject to double liability—procedure—filing list of stockholders.** The stockholders of each bank organized under this article shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such bank to the extent of the amount of their stock at par value in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders, but the estate in their hands shall be liable in the same manner and to the same extent as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer, provided the action to enforce such liability shall be commenced within two years from the time of the transfer; and the directors of each bank shall, in January of each year, file with the Secretary of State a correct list of the stockholders and officers of such bank. (*Banking Commissioner takes place of Secretary of State.*)

§ 61. **Illegal for insolvent bank to accept deposits.** Any president, director, manager or cashier, or other officer of any bank, or any individual banker, who shall receive, or assent to the receiving, of deposits, after he shall have knowledge of the fact that such bank or individual banker is insolvent, shall be individually responsible for such deposits so received, and shall be guilty of felony, and, upon conviction, punished by confinement in the penitentiary for not less than one nor more than ten years.

§ 62. **General penalties for violation of corporation laws.** If any director or directors of any bank shall knowingly violate or permit any officer or employe of the bank to violate any of the provisions of the laws relating

to banks, the directors so offending shall be jointly and severally individually liable to the creditors and stockholders for any loss or damage resulting from such violation; and if any such loss or damage be not made good within a reasonable time, it shall be the duty of the Secretary of State, with the consent of the Attorney General, to institute such proceedings as may be necessary to forfeit the charter of such bank. (*Duty now devolves on Banking Commissioner; see also sec.* 36.)

TRUST COMPANIES.

§ 63. Trust companies—how many to organize—capital—increase and reduction. Any number of persons not less than seven may associate to establish a corporation for the purpose of conducting a trust business under the provisions of this article, but the capital stock of any such company shall not be less than fifteen thousand dollars in counties having a population of over twenty-five thousand and less than forty thousand, and not less than one hundred thousand dollars in counties having a population of over forty thousand and less than one hundred thousand, and not less than two hundred thousand dollars in counties having a population of over one hundred thousand: *Provided,* that where, in any county having a population of twenty-five thousand or more, there is a city of the fourth, fifth or sixth class, a trust company may be organized in either of such cities in said county, with a capital stock of not less than twenty-five thousand dollars, and a statement of any increase or reduction in the capital stock shall be signed and acknowledged by the president and a majority of the directors, and filed and recorded in the same manner as articles of incorporation.

Any bank now doing business in a county having a population less than one hundred thousand, which has been heretofore organized in a city of the third or fourth class at the time of its organization, and which city since organization of said bank has been incorporated into a city of the second

class, may, with the consent, in writing, of a majority in number and interest of its stockholders, organize by amending its article of incorporation, as a bank and trust company with a capital stock of not less than fifty thousand ($50,000.00) dollars, which shall be fully paid in before doing business as a bank and trust company; and its stock, if unimpaired, may be converted into stock in the new corporation. (*As to dividends, surplus and reserve, see sec.* 49.)

§ 64. Trust companies—how consolidated — duties and powers. Any two or more corporations organized under the laws of this State, for the purpose of conducting the business of trust companies, may consolidate their capital stock, assets and management into one organization. The separate existence of each corporation shall continue and all duties, powers and discretions of the constituent companies as personal representative, trustee, assignee, guardian, agent or otherwise conferred, shall be imposed upon and may be exercised by the consolidated corporation; and such duty, power or discretion, at the time of consolidation or thereafter imposed upon either of the constituent companies, may be performed or exercised by the consolidated corporation in its own name or in the name of the constituent company upon which was imposed or conferred such duty, power or discretion; or by the constituent company upon which was imposed or conferred such duty, power or discretion; but in every case the consolidated corporation shall be liable for the proper performance of such duty and the proper exercise of such power or discretion.

§ 65. Trust companies—effect of consolidation. The method and effect of such consolidation shall be as now provided by sections 21, 22, 23, 24 and 25 of this chapter, except that, as above provided, the separate existence of the constituent corporations shall not cease, and the consolidated corporation and the constituent corporation shall continue to exist, the management of said consolidated corporation and each of said constituent corporations being

in the directors and officers of the consolidated corporation.

§ 66. **How incorporated.** The articles of incorporation shall be signed and asknowledged by the parties thereto before any officer authorized to take acknowledgments to deeds, and recorded in the county clerk's office of the county in which it is to be located; and a certified copy thereof shall be filed in the office of the Secretary of State; and such articles, or a certified copy thereof, may be used as evidence for or against such corporation. (*What articles shall specify, see sec.* 5.) (*Articles should be submitted to Bank Commissioner as provided in sec.* 4.)

§ 67. **Trust companies—business conducted by.** Any trust company organized under this article may be appointed and act as guardian of infants, executors, administrator or curator of estates of decedents, committees of persons of unsound mind, receiver or trustee for persons or estates; and may act as agent or attorney for the transaction of any business or the management of estates, the collection of rents, accounts, interest, dividends, notes, bonds, securities for money and debts, demands of every character; may receive on deposit and for safekeeping, gold, silver, jewelry, money and other personal property of every kind, and shall have a lien upon all personal property deposited with it for its charges. (*See sec.* 76.)

§ 68. **Trust companies—capital, amount necessary to be paid up before operating—forfeiture of charter.** At least fifty per cent. of the capital stock shall be paid in in money, and be in the custody of the directors, before it shall be authorized to commence business, and the remainder of the capital stock shall be paid in in money within one year after the corporation is authorized to commence business, at such times and in such amounts as the directors may require; and when any stockholder fails to pay an installment on the stock, when requested by the directors, they may sell a sufficiency of the stock of such delinquent

at public sale to pay the amount due, with costs and interest, having first given him twenty days' notice in writing, if he resides in the county, or, if not, by letter mailed to his last known address, of the time and place where the stock will be sold, or may collect the amount due by action. If no bidder can be found to pay the amount due on the stock, and it cannot be collected, the amount previously paid in by the delinquent on the stock shall be forfeited to the corporation, by order of the board of directors, and such stock sold by it within six months thereafter; and if not sold, it shall be cancelled and deducted from the capital stock of the corporation; if sold before cancellation any surplus, after payment of amount due, and interest and costs, shall be paid to the original stockholder, his heirs or asigns. If such cancellation shall reduce the amount of the capital stock below the minimum required by law, the capital shall, within thirty days after cancellation, be increased to the required amount by additional subscription, in default of which the Secretary of State shall, with the advice and consent of the Attorney General, take steps to wind up the business of the corporation. (*Duties of Secretary of State now devolve on Banking Commissioner.*)

§ 69. **Trust companies and banks—officers may fix business hours.** (*See Section* 57.)

§ 70. **Trust companies—not to take capital stock as security except when—limit of ownership of stock.** No trust company shall take as security for any loan a lien upon any part of its capital stock, and the same security, both in kind and amount, subject to provisions of section 71, shall be required from persons, stockholders and those not stockholders; nor shall any corporation be the holder or purchaser of any part of its capital stock unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased shall in no case be held by the corporation for a longer time than one year; nor shall any person, directly or in-

directly, hold or own more than one-half of the capital stock of a corporation exclusive of stock held as collateral.

§ 71. Trust companies—amount any person may become indebted to. No trust company shall permit any of its stockholders, or any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, directly or indirectly, to become indebted to it in a sum exceeding ten per cent. of its capital stock actually paid in, and surplus actually on hand, unless such borrower deposits with it good collateral security, or execute to it a mortgage upon real or personal estate, which, at the time, is of more than the cash value of such loan or indebtedness above all other incumbrances; and if the borrower is a director or officer of such company, he shall not be permitted to become indebted to it in excess of ten per cent. of its paid-up capital stock, without securing the excess by the mortgage or pledge of real or personal property, double in value the amount of such excess, and in no event shall the indebtedness of any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, exceed twenty per cent. of its paid-up capital and actual surplus.

§ 72. Trust companies—bond required—requirements of when acting in fiducial capacity. When acting as executor, administrator, guardian, trustee, receiver, assignee, committee or curator, or in any other capacity in which the duties, powers, liabilities, rights and compensation are fixed or regulated by law, or under the control or supervision of the courts, it shall be subject to the same duties and responsibilities, have the same rights and powers, and receive the same compensation as is allowed to individuals holding or exercising similar offices or trusts, except that upon all bonds required to be executed by such corporation in or before any court the capital stock shall be taken and considered as the only security required for the faithful per-

formance of its duties; and no other security shall be required unless the court or officer in or before whom the bond is executed, or some party in interest, demand it.

§ 73. Trust companies—not to engage in banking—real estate, ownership of. No trust company, hereafter organized, shall engage in a banking business, or buy or sell bills of exchange. It may acquire title to and hold such real estate as may be necessary for the transaction of its legitimate business, and for a period not longer than five years such other real estate as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor; but this shall not prevent such corporation from holding, operating or managing real estate for other persons. (*See sec. 76.*)

§ 74. Trust companies—stockholders' double liability—suit on same—list of stockholders. The stockholders of each company organized under this article shall be individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock as fiduciaries shall not be personally liable as stockholders; but the estates in their hands shall be liable in the same manner, and to the same extent, as the property of other stockholders; and no transfer of stock shall operate as a release of any such liability existing at the time of such transfer, provided the action to enforce such liability shall be commenced within two years after the time of the transfer; and the directors of each corporation shall, in January of each year, file with the Secretary of State a correct list of the stockholders and officers of such corporation. (*Now filed with Bank Commissioner.*)

§ 75. Trust companies—what funds shall be invested in. The capital stock of a trust company, and the funds

in its possession, not held in a fiduciary capacity, may be invested in such manner as the directors deem prudent and safe; and the funds held in a fiduciary capacity shall be invested under the order of court, or in such manner as may be provided by law for the investment of other trust funds; and the capital stock shall be primarily liable for the obligations of the corporation in its fiduciary capacity.

§ 76. **Combined banks and trust companies—required capital—funds to be kept separate—old companies how** reorganized. Any number of persons, not less than seven, may associate to establish a corporation for the purpose of conducting, and it may conduct, both a banking business and a trust company business. The capital stock of such corporation shall not be less than thirty thousand dollars in counties having a population of twenty-five thousand or less; nor less than fifty thousand dollars in counties having a population of more than twenty-five thousand. The whole of said capital stock shall be subscribed and paid in money before said corporation shall commence business. One-half of such capital stock shall be securely invested for the trust business of the corporation and shall at all times be kept separate and distinct for its other assets, and shall be primarily liable for its fiduciary obligations. The remainder of the capital stock of the corporation may be used in its business of banking and its books shall be so kept as to show separately at all times the conditions of its banking business and its trust business. Any corporation now doing either a banking or trust business in any county or city in this Commonwealth may, with the consent of a majority, in number and interest, of its stockholders, organize under this section, and the stock, if unimpaired, may be converted into stock in the new corporation. (*See important act of* 1920, *sections* 77-80.)

§ 77. **All State banks empowered to do fiduciary business—powers.** That all banks created, organized and do-

ing business under the laws of the Commonwealth of Kentucky, and all national banks authorized by the Comptroller of the Currency of the United States of America, to engage in the banking business in the Commonwealth of Kentucky, shall be authorized, permitted, and are hereby given the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity when selected, appointed, and authorized so to do by the court, persons, or organizations empowered under the laws of the Commonwealth of Kentucky to appoint trustees, executors, administrators, committees, receivers, assignees, guardians, or other fiduciaries; and to act as agent or attorney in fact for the transaction of any business or the management of estates, the collection of rents, accounts, interest, dividends, notes, bonds and demands of every character; provided, however, that such bank, either state or national, shall have unimpaired capital and surplus aggregating eighty thousand dollars or more.

§ 78. Banks doing fiduciary business to get consent of Banking Commissioner—amount of capital necessary. Before such bank shall engage in the business of or act as fiduciary as herein authorized, it shall first obtain from the banking commissioner of the Commonwealth of Kentucky a permit so to do, which permit will be granted by said commissioner upon application and a showing that said bank has unimpaired capital and surplus aggregating eighty thousand dollars or more.

§ 79. Such banks to keep separate accounts. Each and all banks herein authorized to act in a fiduciary capacity shall keep accounts showing the fiduciary business separate from the banking business and said account shall be kept in a separate book, which shall at all times be open to the inspection of the State Banking Commissioner, his deputies

and assistants; and in addition thereto, said bank shall report and settle their accounts at the time and with the officer to whom and with whom other fiduciaries are required to report to, and settle with.

§ 80. Such banks subject to all legal rules and regulations. When acting as executor, administrator, guardian, trustee, receiver, assignee, committee, or curator, or in any other capacity in which the duties, powers, liabilities, rights and compensation are fixed or regulated by law, or under the control or supervision of the court, such bank shall be subject to the same duties and responsibilities, have the same rights and powers, and receive the same compensation as is allowed the individual holding or exercising similar offices or trusts; except that upon all bonds required to be executed by such corporation in, or before, any court, the capital stock shall be taken and considered as the only security required for the faithful performance of its duties; and no other security shall be required, unless the court or officer in or before whom the bond is executed or some party in interest demands it.

§ 81. Corporation may sell its property, including franchise. Any corporation now or hereafter organized under the laws of this State or of any other State or Territory of the United States shall have power to sell and convey all of its property, rights, privileges, franchises, easements, rights of way, and all other property and property rights it may use or possess.

§ 82. Corporation may purchase all assets of another corporation. Any such corporation shall be authorized to purchase the corporate assets of any other corporation organized under the laws of this State or of any other States or Territory of the United States and engaged in the same character of business.

§ 83. Method of procedure for purchase or sale of corporation—consent of stockholders. No such sale

shall be valid unless consented to by the holders of not less than three-fourths (¾) of the capital stock of the vendor corporation, which consent shall be given either in writing or by vote at a special meeting of the said stockholders called for that purpose upon the same notice as that required for the annual meetings of the corporation, which notice shall clearly state the purpose for which the meeting is called. Any stockholder of the vendor corporation may notify its secretary in writing on or before the date of such meeting that he objects to the proposed sale. If the proposed sale shall be consummated, the vendor therein, thirty (30) days thereafter, upon the demand of such dissenting stockholder and upon his surrender of his stock therein to the vendor corporation for cancellation, shall pay to such dissenting stockholder the market value of his stock, which shall in no event be less than the book value of said stock, according to the last balance sheet of the selling corporation. Any amount so paid by the vendee to dissenting stockholders shall be deducted from the purchase price of the property in question.

CHAPTER 3.

ORGANIZATION AND OPERATION OF BANKING DEPARTMENT.

§84. **Department of Banking created.** There is hereby established a department to be designated "Department of Banking," which shall be charged with the enforcement of all laws heretofore passed, or which may hereafter be passed, relating to banks, trust companies, saving banks, combined banks, and combined banks and trust companies, organized and doing business under the laws of the Commonwealth of Kentucky. Unless otherwise stated the words "bank" or "banks" herein used shall include all banks, trust companies, savings banks, combined banks, and combined banks and trust companies.

§85. **Banking Commissioner.** The chief officer of this department shall be designated "Banking Commissioner" of the Commonwealth of Kentucky. The Governor of Kentucky shall appoint, during the month of June, 1912, and every four years thereafter, a Banking Commissioner, under this Act, whose term of office shall begin the first day of July succeeding his appointment, and he shall hold office for the term of four years and until a successor is appointed and qualified. The Banking Commissioner shall perform the duties hereinafter described, and shall appoint to, remove from, and fill any vacancies in all offices in the Department of Banking. He may adopt such regulations and forms as may be necessary and proper, under this Act. He shall keep his office, which shall be provided and furnished by the Commonwealth, at the seat of Government, and shall receive for his services the sum of three thousand six hundred dollars ($3,600) per annum, payable monthly, out of the State Treasury. The Banking Commissioner and his deputy shall be allowed their necessary traveling and other

expenses of conducting the office, payable on properly itemized and verified accounts filed with and approved by the Auditor of the State of Kentucky.

§86. Clerks and office help. The Banking Commissioner may employ competent clerks and stenographers at an annual expense of not exceeding two thousand four hundred dollars ($2,400), payable monthly, out of the State Treasury, in the same manner as other officers of this department.

§87. Banking Commissioner to receive reports. All reports now required to be made by banks to the Secretary of State shall be made to the Banking Commissioner, and the powers and duties now imposed by law upon the Secretary of State with reference to all banks shall terminate, and said duties are hereby imposed upon the Banking Commissioner and his department, as provided under this Act.

§88. Deputy Banking Commissioner. The Banking Commissioner shall appoint a Deputy Banking Commissioner, every four years, to assist in the duties of his office. He shall have the power, under the direction of the Banking Commissioner, to perform any duties attached by law to the office of Banking Commissioner, and during a vacancy in the office of Banking Commissioner, or during the absence or inability of the Banking Commissioner to serve, the deputy shall act as Commissioner. The first term of office of the Deputy Banking Commissioner shall begin on the 1st day of July, 1912, and he shall hold office for the term of four years and until a successor is appointed and qualified; he shall receive an annual salary of two thousand five hundred dollars ($2,500), payable monthly, out of the State Treasury.

§89. Bank Examiners. The first Banking Commissioner appointed under this Act shall, during the month after his own appointment and qualification, appoint three competent and suitable persons as State Bank Examiners,

the term of office of two of whom shall be for two years from July 1, 1912, and the term of office of the remaining one shall be for four years from July 1, 1912. Thereafter the Banking Commissioner shall biennially, and during the month of June, appoint one or two State Bank Examiners, as the case may be, as successor or successors to the Examiner or Examiners whose term of office expires July 1st following. The full term of office of every State Bank Examiner so thereafter appointed shall be four years, and shall begin on the first day of July succeeding his appointment. Appointments to fill vacancies shall be for the unexpired term only. Each State Bank Examiner shall receive an annual salary of two thousand dollars ($2,000.00), payable monthly out of the State Treasury, and shall be paid his necessary traveling expenses monthly, on properly itemized and verified accounts rendered to the Banking Commissioner and approved by him and by the Auditor of the State of Kentucky: *Provided,* that as soon as this amendment becomes a law, the Banking Commissioner may appoint one other Bank Examiner, in addition to those provided in the original Act, who shall have the same qualifications, and be paid the same salary and expenses, in the same manner, and whose duties shall be the same as prescribed in the original Act. Said additional Examiner shall be appointed for a term expiring on July 1, 1916; his successor shall be appointed for a term of four years from said date, during the month of June, 1916, and in the same manner as the successors of those Examiners now in office are appointed.

§ 90. Qualifications. No Banking Commissioner, Deputy Banking Commissioner, or State Bank Examiner, shall be or become indebted, directly or indirectly, either as borrower, indorser, surety or guarantor, to any bank under his supervision, or subject to his examination; nor shall he be a director, officer or employe in any such bank,

but no person shall be appointed to examine the affairs of any bank or trust company in any county in which he holds stock in either a State or a National bank.

If any officer become so indebted to, or so interested in, any such bank or shall engage or become interested in the sale of securities as a business, or in the negotiation of loans for others, his office shall, *ipso facto,* become vacant. The Cashier or President of any bank to which any of said officers shall become indebted, shall make immediate report thereof to the Governor, who shall remove the officer so offending.

Every Banking Commissioner, Deputy Banking Commissioner and State Bank Examiner shall be a resident and citizen of the Commonwealth of Kentucky, shall be a practical bookkeeper and accountant and shall have had not less than four years actual experience as officer or clerk in a bank or trust company, and shall take the oath required of officers by the Constitution and laws of this Commonwealth, for the faithful performance of his duties. They shall severally execute bond with good surety, to be approved by the Auditor, for the faithful performance of their duties. The bond of the Banking Commissioner shall be in the penal sum of fifty thousand dollars ($50,000); the bond of the Deputy Banking Commissioner shall be in the penal sum of twenty-five thousand dollars ($25,000); the bond of each State Bank Examiner shall be in the penal sum of ten thousand dollars ($10,000). All bonds so required to be executed shall be filed as part of the public records in the office of the Secretary of State. The cost of all contingency and all bonds required to be given under this section shall be borne and paid by the State in the same manner as other expenses of the Department.

§91. **Examination of banks—oath may be administered —information secret.** Every bank organized and doing

business under the laws of this State shall be subject to the inspection of the Banking Commissioner. Such Commissioner shall personally, or by the Deputy Commissioner or a State Bank Examiner, visit each bank and examine the cash, bills, collateral, securities, other assets, books of accounts, and all other papers and books of such bank. On such examination, inquiry shall be made as to the condition and resources of the corporation, the mode of conducting and managing its affairs, the action of its directors, the investment and disposition of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of the laws of this State have been complied with in the administration of its affairs, and as to such other matters as the Commissioner may deem necessary. Such examination shall be made of every bank at least once every year, but not to exceed twice in any one year, unless it shall appear from examination or from the report or reports of a bank that such bank has failed to comply with the laws relating to banks, or a regulation of the Department of Banking.

The Banking Commissioner, Deputy Banking Commissioner, and every State Bank Examiner, shall have the power to administer an oath to any person whose testimony may be required in the examination of any bank, and to compel the appearance of any such person for the purpose of such examination, which shall be made in the presence of one or more of the officers of the corporation being examined. No notice of the intended examination shall be given to the bank to be examined until the examining officer is prepared to proceed immediately with the examination. No officer or employe of the Banking Department nor the examiner conducting any examination, shall impart any information obtained by him during such examination, except

so far as may be necessary in the performance of his official duty as provided by law. *Provided,* that any bank or trust company or combined bank and trust company which shall become a member of a Federal Reserve Bank created and organized under the Act of Congress known as the Federal Reserve Act, shall be subject to the examination required under the term of the said Federal Reserve Act, and the Banking Commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under the laws of this Commonwealth; and the Banking Commissioner is further authorized and directed to furnish to the Federal Reserve Agent of the district in which such member bank may be situated, copies of reports and examinations made of such member bank.

§92. **Fees for reports and examination.** Every bank shall have each report made to the Commissioner and for the filing thereof without recording pay to the Commissioner a fee of one dollar ($1); and for each examination herein provided for shall pay to the Commissioner forthwith the following fees: For the examination of any bank having a capital and surplus of $20,000, or less, the sum of fifteen dollars; those having a capital and surplus above $20,000, but less than $50,000, the sum of twenty dollars; those having a capital and surplus of $50,000, and up to and including $100,000, the sum of thirty-five dollars; for those having a capital and surplus in excess of $100,000, the sum of ten dollars for each additional $100,000, or fraction thereof. All moneys collected by the Banking Department shall be paid as collected into the State Treasury.

§93. **Report of banks to Commissioner.** Every bank, whenever required by the Banking Commissioner, but not to exceed five times in any year, unless for cause the Commissioner deem additional reports necessary to

gain complete information, shall make a report in writing to him, verified by the oath of its President or Vice President, and its Secretary or Cashier, or two principal officers. Such reports shall show the actual condition of the bank making the report at the close of business on any date designated by the Commissioner and shall specify the following:

(1) The amount of its capital stock and the number of shares into which it is divided.

(2) The names of the directors, and the number of shares of stock held by them.

(3) The total amount of capital actually paid in, and the total amount of surplus and other reserve funds, if any.

(4) The total amount due (a) depositors, (b) all other liabilities.

(5) The total amount and character of (a) overdrafts secured, (b) overdrafts not secured, and (c) all other assets.

(6) The amount at which the lot and building occupied by the bank for the transaction of its business stands debited on its books, together with the market value of all other real estate held, and whether acquired in settlement of loans or otherwise; the amount at which it stands debited on the books, and where situated.

(7) The amount loaned on real estate.

(8) The indebtedness or liability (a) of each officer, and (b) of each director to such bank.

(9) The amount invested in (a) bonds, and (b) stocks.

(10) The amount loaned on (a) stocks and bonds, (b) on other securities, (c) commercial paper, and (d) other notes and bills.

(11) The actual amount of money on hand and on deposit in other banks, with the name of such banks where deposited.

(12) Any other property held, or any amount of money loaned, deposited, invested or placed, not otherwise herein enumerated, and the place where situated and the value of such property, and the amount so loaned, deposited, or placed, and any other information he may require relative to the conduct and affairs of such bank.

§94. **Reports and evidence.** Every official report made by the Commissioner and every report duly verified of an examination made, shall be *prima facie* evidence of the facts therein stated for all purposes in any action or proceedings, wherein such bank is a party; provided that such reports shall not be made public except when required in proper legal proceedings.

§95. **Report to be published.** Every bank shall, within ten days after call made upon said institution by the State Banking Commissioner, publish a condensed statement of its financial condition, at the close of business on the date named in said call by said Banking Commissioner, which call may be made by him at any time he desires, and he shall make at least two calls in each year. Said condensed statement made on a form to be furnished by the Banking Commissioner, shall be published in some newspaper of general circulation, published in the city or town where its principal place of business is located, and, if no paper is published in such town, then in some newspaper of general circulation in the county where its principal place of busines is located. Such published statement shall show the total amount of loans, the total amount of overdrafts, the total amount invested in bonds and other securities, the total amount due from banks, the total amount of checks and other cash items, the total amount of cash on hand, capital paid in, surplus fund; undivided profits, less expense and taxes paid; due to other banks, individual deposits subject to check; demand certificates of deposit, time de-

posits, certified checks, cashier's checks outstanding, and such other items as will show the actual financial condition of the bank making the report, and a copy certified to by the publisher shall be sent to the Banking Commissioner as a part of its next succeeding report.

§96. Penalties. If the Deputy Banking Commissioner, or any State Bank Examiner, shall have knowledge of the insolvency or unsafe condition of any bank subject to examination under this Act, or that it is unsafe, or that it is inexpedient to permit such bank to continue business, and shall neglect to forthwith report such fact in writing over his signature to the Banking Commissioner, or shall disclose contrary to the provisions of this Act, any information obtained by him by virtue of his office, or shall violate any of the provisions of this Act, or fail to perform any duty herein imposed upon him, he shall forfeit his office and shall be fined for each offense not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000,00).

If the Banking Commissioner shall have knowledge of the insolvency or unsafe condition of any bank subject to examination, or that it is unsafe or that it is inexpedient to permit such bank to continue in business, and shall wilfully fail to take action as provided in this Act, or shall disclose contrary to the provisions of this Act any information obtained by him by virtue of his office, or shall violate any of the provisions of this Act, or shall fail to perform any of the duties hereby imposed upon him, he shall forfeit his office, and shall be fined for each offense not less than five hundred dollars ($500) nor more than Five Thousand Dollars ($5,000).

If any bank shall knowingly fail to make a report required by law or by the Banking Commissioner within the time designated for the making thereof, or to include therein any matter required by law or by the Banking

Commissioner, or fail to publish any report within thirty (30) days after the time when it should have been published, or to pay when due the fees for filing reports, or for an examination of the bank, it shall be subject to a penalty of twenty-five dollars ($25) for each day which it shall be delinquent for the periods respectively mentioned, the aggregate penalty, however, for such offense not to exceed two hundred and fifty dollars ($250).

Every person who or bank which wilfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of such bank who refuses to be examined under oath touching the concerns of such bank, severally, shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

Whenever any such officer, person or bank becomes liable to any penalty imposed by this Act and refuses to pay it, or the Banking Commissioner, Deputy Banking Commissioner or any State Bank Examiner becomes liable to any penalty imposed by this Act, the Attorney General shall institute a penal action against such delinquent person, bank or officer, in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or in the Circuit Court of the County in which such offense is committed, for the recovery of such penalty, and all sums collected in such actions shall be paid into the State Treasury.

If any bank or its officers wilfully refuse, after demand by the Banking Commissioner, to comply with any of the provisions of this Act, the Banking Commissioner shall have power to take charge of its property and assets as provided in Section 98 hereof.

§97. **Examination of insolvent banks.** The Banking Commissioner shall examine, or cause to be examined, such banks as may hereafter be placed in the hands of a

receiver, as other banks, until its affairs shall be wound up, and a copy of such examination shall be filed with the Clerk of the Circuit Court in the county where such bank is located. The receiver or person in charge of such insolvent bank shall make reports to the Banking Commissioner in the same manner as required in the case of other banks. Any receiver of any insolvent bank who shall fail to comply with the provisions of this section, or who shall refuse to submit the affairs of such bank to an examination as provided by law, or who shall fail to comply with any of the provisions of this Act, shall be subject to the same penalties provided for solvent banks and officers so offending.

§98. Impairment of capital. Whenever it shall appear that the capital stock of any bank has been impaired, the Banking Commissioner shall notify such bank, and each director thereof to make such impairment good within thirty days, and it shall be the duty of the officers and directors of any bank receiving such notice from the Banking Commissioner immediately to call a special meeting of its stockholders for the purpose of making assessments on its stock sufficient to cover the impairment of its capital, payable in cash; provided, that such bank may with the consent of the Commissioner reduce its capital to the extent of the impairment, if such reduction will not place its capital below the amount required by law.

§99. When banks in unsafe condition Commissioner to take charge. If from any examination made, as provided in this Act, it shall appear that any bank is insolvent, or that its capital has become impaired, and is permitted to remain impaired beyond the period allowed by law, it shall be the duty of the Banking Commissioner, in person, or by his Deputy or by a State Bank Examiner, immediately to take charge of such bank and all property and effects thereof.

If an Examiner shall find that any bank is pursuing a dangerous and unsafe policy, the Examiner shall call the directors and officers of such institution together and advise them fully of the nature of such objectionable practices, and warn them against a repetition thereof, and shall make a full report to the Banking Commissioner of the practices warned against, and the advice given by him, and thereupon the Banking Commissioner, if he deem it proper, shall, in person or by written notice to each director, require an abandonment or cessation of such objectionable practices or policy, and if his directions are not complied with, he may place a State Bank Examiner in charge of such bank, or he may adopt such other policy as may, in his judgment, seem wise and best calculated to bring the institution back to a safe condition. The officers, directors, or stockholders of any bank shall have the right forthwith, upon his declaring his intention of doing so, to execute to such Commissioner a bond with surety or security approved by him, conditioned to secure the creditors of such bank, and upon the execution of such bond the Banking Commissioner shall leave with, or restore the custody and management of such bank to, the officers and directors thereof. The Commissioner may, if he deem necessary, cause a petition to be filed in the Circuit Court of the county where such bank is located, and apply to such court or to the Judge thereof, when the court is not in session, for the appointment of a receiver of such bank, and thereupon such court, or the Judge thereof, shall set a date for the hearing of the application for the appointment of a receiver, not later than twenty days from the date such motion is made and of which notice shall be served upon the bank. Upon such hearing the parties may be heard by affidavits or upon oral examination in court or before the Judge, and thereupon the Judge shall hear and determine the question of the ap-

pointment of such receiver, and if the court shall determine that such action or proposed action of the Commissioner was justified, the court shall appoint a receiver, and shall fix the amount of the bond to be given by him.

§100. Special deputy—counsel—notice. The Banking Commissioner may, under his hand and official seal, appoint one or more special Deputy Banking Commissioners, as agent or agents, to assist him in the duty of liquidating and distributing the assets of any insolvent bank, the certificates of appointment to be filed in the office of the Banking Commissioner, and a certified copy in the office of the Clerk of the Circuit Court in the county in which the office of such insolvent bank is located.

The Banking Commissioner may, from time to time, authorize a special Deputy Commissioner to perform such duties connected with the liquidation and distribution, as the Banking Commissioner may deem proper. The Banking Commissioner may employ such counsel, and procure such expert assistants and advice as may be necessary in the liquidation and distribution of the assets of such bank, and may retain such officers or employes of such bank as he may deem necessary. He shall require from a special Deputy Commissioner such surety for the faithful discharge of his duties as he may deem proper; provided, however, it shall not be for a less sum than onehalf the assets of the bank.

Whenever, under the provisions of this Act, the Banking Commissioner, in person or by a deputy or by a State Bank Examiner, shall take charge of any bank, or the court shall appoint a receiver as in this Act is provided, such person shall be allowed for his service not exceeding the sum of two dollars per hour for not exceeding ten hours per day for the time actually engaged by him in labor in the liquidation of a bank. If such person be a special

deputy, appointed by the Commissioner, or a receiver, appointed by the court, such allowance shall be paid to him as his compensation, and if such person shall be the Banking Commissioner or his deputy or a State Bank Examiner, the amount so allowed as compensation shall be paid into the State Treasury; and the Commissioner shall fix the compensation of the counsel and any special assistants subject to review by the court, and all such expenses shall be paid out of the bank so liquidated.

Whenever the Banking Commissioner, in person, or by deputy or by State Bank Examiner, shall take charge of any bank under the provisions of this Act, he shall, within thirty days thereafter, file in the office of the clerk of the Circuit Court of the county in which the bank is located, a detailed statement in the form prescribed in Sec. 93 of this chapter, of the assets and liabilities of such bank, and thereafter upon the first day of the term of each succeeding session of the Circuit Court of such county, and every sixty days in counties having circuit courts of continuous sessions, he shall file a report of his acts and doings in the administration of such bank since his last report; and any person, firm or corporation may, by petition addressed to the Circuit Court, have any act of such Commissioner reviewed by the court, in the same manner and with the same rights and powers as would have attached had such Commissioner been a receiver appointed by the court.

The Banking Commissioner shall cause notice to be given, by advertisement in such newspapers as such bank's semi-annual reports are published, weekly for three consecutive months, calling on all persons who may have claims against such insolvent bank to present the same to the Banking Commissioner, and make legal proof thereof, at a place and within a time not more than six months after the last date of publication, to be therein specified. He shall mail a copy of such notice to all persons whose names ap-

pear as creditors upon the books of such bank. If the Commissioner doubts the justice and validity of any claim, he may reject the same and serve written notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice shall be *prima facie* evidence thereof, and shall be filed with the Banking Commissioner. An action upon a claim so rejected must be brought within six months after such notice. Claims presented after the notification of the time fixed in the notice to creditors shall be entitled to share ratably in the distribution to the extent of the assets in the hands of the Banking Commissioner, equitably applicable thereto.

The assets of any bank in liquidation under this Act shall be applied (a) to the payment of costs and charges of liquidation, and preferred claims; (b) to satisfaction of secured claims to the extent of such security; (c) to the satisfaction of all other debts, including unsatisfied balances of secured claims, ratably and without preference to the amount allowed at the time of distribution, and (d) the residue, after all liabilities are paid, shall be distributed for the benefit of the stockholders ratably, or may, on their request, be turned over to them or their agent for settlement.

§101. Notice to be posted. Any bank organized under the laws of this State and subject to the provisions of this Act, may place its affairs and assets under the control of the Banking Commissioner, by posting a notice on the front door, as follows: "This Bank is in the hands of the Banking Commissioner." The notice must be signed by a majority of the directors in their own handwriting, and they shall forthwith notify the Banking Commissioner, by telegraph, of such act. The posting of such notice, or the taking charge of any such Bank by the Banking Commissioner, shall be sufficient to place all its assets and property,

of whatever nature, in the possession of the Banking Commissioner.

§102. **Information in Commissioner's office for public.** The Banking Commissioner shall keep in his office, in a place accessible to the general public, a bulletin board upon which he shall cause to be posted at noon on Friday of each week a detailed statement, signed by him, or in case of his absence from Frankfort or inability to act, by the Deputy Banking Commissioner in charge, giving the following informatiion with regard to the work of the Department since the preceding statement.

(1) The name of every bank that has filed in the Banking Department an application for authorization to commence business, its location, the proposed amount of capital stock and names of incorporators, and the date of filing each application.

(2) Name and location of every bank authorized by the Banking Commissioner to commence business, its capital, surplus, and the date of authorization.

(3) The name of every bank to which a certificate of authorization has been refused by the Banking Commissioner, and the date of notice of refusal.

(4) The date on which a call for reports by banks was issued by the Banking Commissioner, and the date designated as the date with reference to which such reports should be made.

(5) The name and location of every liquidated bank whose creditors or depositors have been paid in full by the Banking Commissioner, and a meeting of whose stockholders shall have been called together with the date of notice of the meeting and the date of the meeting.

(6) The name and location of every bank subject to the banking law whose affairs and business shall have been fully liquidated or are in course of liquidation.

(7) The name and location of every bank which has applied for approval of a change of name, and the name proposed.

Every such bulletin, having been posted as aforesaid for one week, shall be placed on the file for such statements, to be kept in the office of the Banking Commissioner. Such statements shall be public documents, and at all reasonable times shall be open to public inspection during the usual office hours.

§103. Report of the Banking Commissioner to Governor. The Banking Commissioner shall report during the month of June of each year to the Governor, and such report shall be published. It shall set forth the following:

(1) A summary of the condition of every bank organized and doing business under the laws of this State, subject to examination and inspection under this Act, and such other information relating to such banks as, in his judgment, may be useful.

(2) A statement of every bank whose business has been closed during the year that has failed or voluntarily retired during the year.

(3) The name of banks placed in his hands in process of liquidation, and the amount of dividends paid thereon.

(4) Any proposed amendment of the laws relating to banks, by which the system in his judgment may be improved, and the security [of] creditors, depositors, and stockholders may be increased.

(5) The names and compensation of his assistants and clerks employed in his office, and a classified statement of the amount of the receipts and expenses of the Banking Department during the year.

§104. Seal of office. The Commissioner shall devise a seal, with suitable inscription, for the Department, a description of which, with a certificate of approval by the

Governor, together with an impression thereof, shall be filed in the office of the Secretary of State, and which seal shall thereupon be and become the seal of the Banking Department, and same may be renewed whenever necessary.

(NOTE: Section 20, of the original "Banking Department Law," relating to approval of articles of incorporation of banks by Commissioner, has heretofore been included in Chapter 1. See Section 4.)

CHAPTER 4.

NEGOTIABLE INSTRUMENTS IN GENERAL. FORM AND INTERPRETATION.

§ 105. Requirements of a negotiable instrument. An instrument to be negotiated must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer.

(2) Must contain an unconditional promise or order to pay a sum certain in money.

(3) Must be payable on demand or at a fixed or determinable future time.

(4) Must be payable to the order of a specified person or to bearer; and,

(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

§ 106. Sum payable. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

(1) With interest; or

(2) By stated installments; or

(3) By stated installments, with a provision that upon default in payment of any installment, the whole shall become due; or

(4) With exchange, whether at a fixed rate or at the current rate; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

§ 107. Unconditional. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with it:

(1) An indication of a particular fund, out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

§ 108. When payable. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

(1) At a fixed period after date or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

§109. Non-negotiable. An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable; but the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

§ 110. Negotiable character not affected by. The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

§ 111. When payable on demand. An instrument is payable on demand:

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting, or endorsing it, payable on demand.

§ 112. When payable to order. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

§ 113. When payable to bearer. The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last endorsement is an endorsement in blank.

§ 114. When negotiable. The negotiable instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

§ 115. Date. When the instrument or an acceptance or any endorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or endorsement, as the case may be.

§ 116. Antedated or postdated—effect of. The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered, acquires the title thereto as of the date of delivery.

§ 117. When holder may insert true date. When an instrument expressed to be payable at a fixed period after date is issued undated or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

§ 118. How blanks filled. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein, and a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instru-

ment operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within reasonable time. But if any such instrument, after completion, is negotiable to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

§ 119. Incomplete instruments. Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

§ 120. Delivery necessary. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or endorsing as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 121. Ambiguous instruments — how construed. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

(4) Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed as endorser.

(7) Where an instrument containing the words, "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

§ 122. Trade or assumed name binds party. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

§ 123. Agency to sign. The signature of any party may be made by an agent duly authorized in writing.

§ 124. When person signing as agent is liable as principal. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of the principal, or in a representative capacity, he is

not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability.

§ 125. **Signature by "procuration."** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

§ 126. **Assignment or endorsement by corporation or infant.** The endorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 127. **When signature is forged.** Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

CONSIDERATION.

§ 128. **Consideration presumed.** Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

§ 129. **Consideration.** Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes a value, and is deemed such, whether the instrument is payable on demand or at a future time.

§ 130. Holder deemed a holder for value. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

§ 131. Holder with lien a holder for value. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

§ 132. Consideration—matter of defense. Absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense *pro tanto,* whether the failure is an ascertained and liquidated amount or otherwise.

§ 133. Accommodation party—who? An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

NEGOTIATION.

§ 134. What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof; if payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the endorsement of the holder, completed by delivery.

§ 135. Endorsement must be written. The endorsement must be written on the instrument or upon a paper attached thereto. The signature of the endorser, without additional words, is a sufficient endorsement.

§ 136. Endorsement must be of entire instrument. The endorsement must be an endorsement of the entire

instrument. An endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the instrument to two or more endorsees severally, does not operate as a negotiation of the instrument; but where the instrument has been paid in part, it may be endorsed as to the residue.

§ 137. Endorsement blank, special, restrictive or qualified. An endorsement may be either in blank or special, and it may also be either restrictive or qualified, or conditional.

§ 138. Special and blank endorsements. A special endorsement specifies the person to whom or to whose order the instrument is to be payable; and the endorsement of such endorsee is necessary to the further negotiation of the instrument. An endorsement in blank specifies no endorsee, and an instrument so endorsed is payable to bearer, and may be negotiated by delivery.

§ 139. How blank converted to special. The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.

§ 140. Restrictive endorsement. An endorsement is restrictive which either:

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the endorsee the agent of the endorser; or

(3) Vests the title in the endorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an endorsement restrictive.

§ 141. What restrictive endorsement confers upon the endorsee. A restrictive endorsement confers upon the endorsee the right:

(1) To receive payment of the instrument.

(2) To bring any action thereon that the endorser could bring.

(3) To transfer his rights as such endorsee, where the form of the endorsement authorizes him to do so.

But all subsequent endorsees acquire only the title of the first endorsee under the restrictive endorsement.

§ 142. Qualified endorsement. A qualified endorsement constitutes the endorser a mere assignor of the title to the instrument. It may be made by adding to the endorser's signature the words "without recourse" or any words of similar import. Such an endorsement does not impair the negotiable character of the instrument.

§ 143. Instrument conditionally endorsed confers only the rights of the endorser. Where an endorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the endorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so endorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person endorsing conditionally.

§ 144. Special endorsement may be further negotiated. Where an instrument, payable to bearer, is endorsed specially, it may nevertheless be further negotiated by delivery; but the person endorsing specially is liable as endorser to only such holders as to make title through his endorsement.

§ 145. Each joint holder required to endorse. Where an instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others.

§ 146. Effect of endorsement to cashier or other fiscal officer of bank. Where an instrument is drawn or endorsed to a person as "cashier" or other fiscal officer of

a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the endorsement of the bank or corporation, or the endorsement of the officer.

§ 147. **How endorsed when name misspelled.** Where the name of a payee or endorsee is wrongly designated or mispelled, he may endorse the instrument as therein described, adding, if he thinks fit, his proper signature.

§ 148. **A representative may endorse without personal liability.** Where any person is under obligation to endorse in a representative capacity, he may endorse in such terms as to negative personal liability.

§ 149. **When endorsements presumed to have been made before maturity.** Except where an endorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

§ 150. **When endorsement presumed to be made.** Except where the contrary appears every endorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

§ 151. **Instrument continues negotiable.** An instrument negotiable in its origin continues to be negotiable until it has been restrictively endorsed or discharged by payment or otherwise.

§ 152. **Effect of endorsement being struck out.** The owner may at any time strike out any endorsement which is not necessary to his title. The endorser whose endorsement is struck out, and all endorsers subsequent to him, are thereby relieved from liability on the instrument.

§ 153. **Transfer without endorsement — effect of.** Where the holder of an instrument payable to his order transfers it for value without endorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the endorsement of the transferrer. But for

the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the endorsement is actually made.

§ 154. When instrument is endorsed back to a prior party—effect of. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, re-issue and further negotiate the same; but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

RIGHTS OF THE HOLDER.

§ 155. Holder may sue in own name. The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

§ 156. A holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That the instrument is complete and regular upon its face.

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

(3) That he took it in good faith and for value.

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

§ 157. A holder not in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

§158. Transferee, when a holder in due course, and when not. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a

holder in due course only to the extent of the amount theretofore paid by him.

§ 159. **When title defective.** The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 160. **What constitutes notice.** To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

§ 161. **Holder in due course takes free from defects.** A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

§ 162. **Holder not in due course takes subject to defects.** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

§ 163. **Holder presumed to hold in due course, but title may be shown to be defective.** Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned

rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

LIABILITIES OF PARTIES.

§ 164. Maker's liabilities. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse.

§ 165. Drawer's liabilities. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

§ 166. Acceptor's liabilities. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to endorse.

§ 167. When other person bound. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an endorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

§ 168. Liability of person who signs in blank. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as endorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

§ 169. Person negotiating by delivery — warrants. Every person negotiating an instrument by delivery or by a qualified endorsement warrants:

(1) That the instrument is genuine and in all respects what it purports to be.

(2) That he has a good title to it.

(3) That all prior parties had capacity to contract.

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

§ 170. Endorser without qualification — warrants. Every endorser who endorses without qualification warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivisions one, two and three of the next preceding section; and

(2) That the instrument is at the time of his endorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it.

§ 171. Endorsement on instrument negotiable by delivery. Where a person places his endorsement on an instrument negotiable by delivery he incurs all the liabilities of an endorser.

§ 172. Liability between endorsers. As respects one another, endorsers are liable *prima facie* in the order in which they endorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint endorsees who endorse are deemed to endorse jointly and severally.

§ 173. Liability of agent or broker. Where a broker or other agent negotiates an instrument without endorsement, he incurs all the liabilities prescribed by Section 65 of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

PRESENTMENT FOR PAYMENT.

§ 174. Presentment. Presentment for payment is not necessary in order to charge the person primarily on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and endorsers.

§ 175. Presentment on maturity. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

§ 176. Presentment—when sufficient, etc. Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf.

(2) At a reasonable hour on a business day.

(3) At a proper place as herein defined.

(4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

§ 177. Proper place for presentment. Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented.

(2) Where no place of payment is specified and the address of the person to make payment is given in the instrument, and it is there presented.

(3) Where no place of payment is specified and no address is given, and the instrument is presented at the usual place of business or residence of the person to make payment.

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

§ 178. To whom instrument must be presented. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

§ 179. Presentment at bank. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

§ 180. Presentment when person liable is dead. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

§ 181. Presentment to one member of partnership sufficient. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

§ 182. Presentment when several are jointly liable. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

§ 183. Presentment not required to hold drawer. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

§ 184. Presentment not required to hold endorser—when. Presentment for payment is not required in order to charge an endorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

§ 185. Presentment—when excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

§ 186. Presentment—when dispensed with. Presentment for payment is dispensed with:

(1) Where, after the exercise of reasonable diligence, presentment as required by this Act can not be made.

(2) Where the drawee is a fictitious person.

(3) By waiver of presentment, express or implied.

§ 187. When dishonored. The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or can not be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

§ 188. **Holder's rights when dishonored.** Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

§ 189. **When payable.** Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day.

§ 190. **How determined when payable.** Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 191. **When payable at bank.** Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

§ 192. **Payment made in due course.** Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith, and without notice that his title is defective. In order to hold the maker, endorser, guarantor, or surety of any check or draft deposited with or forwarded to any individual or bank for collection, or owned by any individual or bank, it shall be sufficient for said individual or bank to forward the same in the usual commercial way now in use, according to the regular course of business, and the same shall be considered due diligence in the collection of such check or draft.

NOTICE OF DISHONOR.

§ 193. **Notice of dishonor.** Except as herein otherwise provided, when a negotiable instrument has been dis-

honored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each endorser, and any drawer or endorser to whom such notice is not given is discharged.

§ 194. **How notice given.** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

§ 195. **Notice by agent.** Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

§ 196. **Notice for or on behalf of holder.** Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right or recourse against the party to whom it is given.

§ 197. **Notice generally.** Where notice is given by or on behalf of a party entitled to given notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 198. **How and when given.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

§ 199. **Notice written and signed.** A written notice need be signed, and an insufficient written notice may be supplemented and validated by a written communication. A misdescription of the instrument does not vitiate,

unless the party to whom the notice is given is, in fact, misled thereby.

§ 200. **Notice personally or by mail.** The notice may be in writing, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

§ 201. **Notice given to party or agent.** Notice of dishonor may be given either to the party himself or to his agent in that behalf.

§ 202. **Notice to personal representative.** Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the lase residence or last place of business of the deceased.

§ 203. **Notice to one partner sufficient.** Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

§ 204. **Notice required to each jointly liable.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

§ 205. **Notice to bankrupt or insolvent.** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

§ 206. **When given.** Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

§ 207. Notice where party giving and receiving reside at same place. Where the person giving and the person to receive notice reside in same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

(2) If given at his residence, it must be given before the usual hours of rest on the day following.

(3) If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

§ 208. Notice when they live at different places. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

§ 209. Notice may be sent through mail. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

§ 210. Notice when mailed. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the Postoffice Department.

§ 211. Notice of dishonor to antecedent parties. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

§ 212. Notice sent to address given. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

(2) If he lives in one place and has his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

§ 213. Notice may be waived. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

§ 214. Notice waived in instrument. Where the waiver is embodied in the instrument itself, it is binding upon all parties, but where it is written above the signature of an endorser, it binds him only.

§ 215. Notice of protest; waived. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

§ 216. When notice of dishonor dispensed with. Notice of dishonor is dispended with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

§ 217. Notice, when delay of excused. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When

the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 218. When notice not required to be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and the drawee are the same person.

(2) Where the drawee is a fictitious person or a person not having capacity to contract.

(3) Where the drawer is the person to whom the instrument is presented for payment.

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

(5) Where the drawer has countermanded payment.

§ 219. When notice to endorser not required. Notice of dishonor is not required to be given to an endorser in either of the following cases:

(1) Where the drawee is a fictitious person, or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the instrument.

(2) Where the endorser is the person to whom the instrument is presented for payment.

(3) Where the instrument was made or accepted for his accommodation.

§ 220. When notice of non-payment not necessary. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

§ 221. Omission to give notice. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 222. Protest required—when. Where any negotiable instrument has been dishonored it may be protested

for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 223. How discharged. A negotiable instrument is discharged:

(1) By payment in due course by or on behalf of the principal debtor.

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

(3) By the intentional cancellation thereof by the holder.

(4) By any other act which will discharge a simple contract for the payment of money.

(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

§ 224. Party secondarily liable discharged. A person secondarily liable on the instrument is discharged:

(1) By an act which discharges the instrument.

(2) By the intentional cancellation of his signature by the holder.

(3) By the discharge of a prior party.

(4) By a valid tender of payment made by a prior party.

(5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

(6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved in the original instrument.

§ 225. Party who pays may negotiate again—when. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent endorsements, and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

§ 226. Renunciation of rights of holder. The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 227. Unintentional cancellation. A cancellation made unintentionaly, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

§ 228. Effect of material alteration. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent endorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof, according to its original tenor.

§ 229. Material alterations. Any alteration which changes:

(1) The date.

(2) The sum payable, either for principal or interest.

(3) The time or place of payment.

(4) The number of the relations of the parties.

(5) The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

BILLS OF EXCHANGE—FORM AND INTERPRETATION.

§ 230. Bill of Exchange. A bill of exchange is an unconditional order in writing addressed by one person to another, singed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer.

§ 231. Drawee—when liable. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill, unless and until he accept the same.

§ 232. Joint drawees. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 233. Inland bill of exchange. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

§ 234. Drawee and drawer one person. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note.

§ 235. Referee defined. The drawer of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

ACCEPTANCE.

§ 236. Acceptance. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

§ 237. How acceptance made. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored.

§ 238. Acceptance may be on different paper. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

§ 239. Effect of unconditional promise in writing to accept. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

§ 240. Time to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

§ 241. When drawee deemed to have accepted. Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

§ 242. May accept after dishonor, etc. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

§ 243. Acceptance, general or qualified. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

§ 244. General. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

§ 245. Qualified. An acceptance is qualified which is:

(1) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

(2) Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

(3) Local; that is to say, an acceptance to pay only at a particular place.

(4) Qualified as to time.

(5) The acceptance of some one or more of the drawees, but not of all.

§ 246. Holder may refuse qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and endorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an endorser receives notices of a qualified acceptance, he must within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

PRESENTMENT FOR ACCEPTANCE.

§ 247. Presentment for acceptance. Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

§ 248. Bill must be presented for acceptance, etc. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance, must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all endorsers are discharged.

§ 249. Presentment—when, by whom and to whom. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and

before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

(2) Where the drawee is dead, presentment may be made to his personal representative.

(3) Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

§ 250. See Sections 176 and 189. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Sections 176 and 189 of this Chapter.

§ 251. Rule, when payable elsewhere than at place of business. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and endorsers.

§252. When presentment for acceptance excused and bill treated as dishonored. Presentment for acceptance is excused, and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(1) Where the drawee is dead or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

(2) Where, after the exercise of reasonable diligence, presentment can not be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some ground.

§ 253. When dishonored by non-acceptance. A bill is dishonored by non-acceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or can not be obtained; or

(2) When a presentment for acceptance is excused and the bill is not accepted.

§ 254. When bill treated as dishonored by non-acceptance. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and endorsers.

§ 255. Right of recourse. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and endorsers accrues to the holder, and no presentment for payment is necessary.

PROTEST.

§ 256. When protest required. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and endorser are discharged. Where a bill does not appear on its face to be a foreign bill, protest, thereof, in case of dishonor is unnecessary.

§ 257. What protest must show. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

(1) The time and place of presentment.

(2) The fact that presentment was made and the manner thereof.

(3) The cause or reason for protesting the bill.

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

§ 258. By whom protest made. Protest may be made by:

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

§ 259. Protest made on day of dishonor. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

§ 260. Protested, when dishonored. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary.

§ 261. Bill protested for non-acceptance; protested for non-payment. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

§ 262. When acceptor becomes bankrupt or insolvent. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and endorser.

§ 263. When protest dispensed with. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 264. Protest of copy of bill, when original lost. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ACCEPTANCE FOR HONOR.

§ 265. Acceptance for honor. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

§ 266. Acceptance must be in writing. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 267. For honor of drawer. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 268. **Liability of acceptor for honor.** The acceptor for honor is liable to the holder, and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 269. **Extent of acceptor's liability.** The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

§ 270. **Maturity is date of non-acceptance.** When a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honor.

§ 271. **Must be protested before presented for payment.** Where a dishonored bill has been accepted or honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 272. **Presentment to acceptor for honor.** Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in Section 208.

§ 273. **When Section 185 applies.** The provisions of Section 185 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 274. **When acceptor for honor dishonors.** When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

PAYMENT FOR HONOR.

§ 275. Payment for honor. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

§ 276. How payment for honor attested. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

§ 277. What notarial act must show. The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

§ 278. Two or more parties paying bill for honor. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 279. Who are discharged by the payment of bill for honor. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays, and all parties liable to the latter.

§ 280. Holder refusing payment before protest. Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment.

§ 281. Payer for honor entitled to bill and protest. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

BILLS IN A SET.

§ 282. Bills in sets must be numbered and refer to each other. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

§ 283. Holder whose title first accrues owner of the bill. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

§ 284. Liability of holder and subsequent endorsers. Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed, as if such parts were separate bills.

§ 285. Acceptance written on one part only. The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

§ 286. How a bill drawn in a set should be paid. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

§ 287. When a payment of one part of such bill discharges the whole. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

PROMISSORY NOTES AND CHECKS.

§ 288. Negotiable promissory note. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until endorsed by him.

§ 289. A check. A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this Chapter applicable to a bill of exchange payable on demand apply to a check.

§ 290. When drawer discharged from payment. A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

§ 291. Certified check equivalent to acceptance. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

§ 292. Check certified discharges drawer, etc. Where the holder of a check procures it to be accepted or certified, the drawer and all endorsers are discharged from liability thereon.

§ 293. Bank not liable until it accepts or certifies a check. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

GENERAL PROVISIONS.

§ 294. Words used in this Act defined. In this Chapter unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Endorsement" means an endorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

§ 295. Persons primarily liable and secondarily liable. The person "primarily" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

§ 296. "Reasonable time" and "unreasonable time." In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the fact of the particular case.

§ 297. Last day on which act can be done. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

(*The foregoing law is contained in Section 3720-B, Kentucky Statutes, Carroll,* 1915.)

CHAPTER 5.

MISCELLANEOUS; INTEREST AND USURY; CURRENCY; TAXATION; CRIMINAL LAWS; NOTARY, ETC.

INTEREST AND USURY—CURRENCY.

§ 298. Rate of interest: $1.00 minimum. Legal interest shall be at rate of six dollars upon one hundred dollars for one year, and at the same rate for a greater or less sum, for a larger or shorter time: Provided, however, that any regular banking institution, State or national, may charge a minimum sum of one dollar for every loan negotiated at such bank in this Commonwealth.

§299. Higher than legal rate, void as to excess; excess, how recovered. All contracts and assurances made directly or indirectly, for the loan or forbearance of money, or other thing of value, at a greater rate than legal interest, shall be void for the excess over the legal interest. The amount loaned, with legal interest, may be recovered on any such contract or assurance; but if the lender refuse, before suit brought, a tender of the principal, with legal interest, he shall pay the costs of any suit brought on such contract assurance.

1. A court of equity may grant relief for any such excess of interest, and to that end compel the necessary discovery from the lender or forbearer.

2. Such excess of interest may be recovered from the lender or forbearer, although the payment thereof was made to the assignee.

3. Partial payment on a debt bearing interest shall be first applied to the extinguishment of the interest then due.

§ 300. Rate allowed on judgments. A judgment shall bear legal interest from its date. A judgment may be for the principal and accrued interest; but if rendered for

accruing interest, it shall bear interest only, according to its terms.

Any indebtedness incurred or evidenced by judgment rendered out of the State shall be presumed, unless the contrary be shown, to bear like interest as if it had been incurred or the judgment rendered in this Commonwealth.

§ 301. Rate of exchange to be fixed and transmitted to Governor. Once in each month, and oftener, if thought proper, the rates of exchange at which all bills shall be purchased shall be fixed by all incorporated banks and institutions authorized to deal in such paper, and the same entered upon the proceedings of the board designating the difference, if any be made, on account of the time the bill has to run, a copy whereof shall be posted in some conspicuous place in the public room of the bank. Any alteration made in the rates of exchange shall, before acted upon, be noted on the copy posted in the public room. All bank officers shall, in all respects, conform to the rate of exchange so fixed.

Each banking institution shall transmit monthly to the Governor copies of its rates of exchange for his information, and for the information of the General Assembly.

§ 302. Time in which action to recover usury may be brought. And no action shall be prosecuted in any of the courts of this Commonwealth for the recovery of usury theretofore paid, for the loan or forbearance of money, or other thing against the loanor or forbearer, or assignee, or either, unless the same shall have been instituted within one year next after the payment thereof; and this limitation shall apply to all payments made on all demands, whether evidenced by writing or existing in parol.

§ 303. Interest allowed fiduciaries. That guardians, curators and committees, appointed and qualifying under the passage provisions of this Act, shall be charged with the following rates of interest, to-wit:

Where the amount received and held in trust does not exceed five thousand dollars, five (5) per cent; where the amount received and held in trust exceed five thousand dollars, four (4) per cent: Provided, that nothing in this Act shall prohibit or prevent such fiduciaries from accounting for, or being chargeable with, such sum, or sums, in excess of the rates therein fixed, as may be realized upon any investment of any such funds made by such fiduciary.

§ 304. Claim to be verified to collect interest after death of obligor. No interest accruing after his death shall be allowed or paid on any claim against the decedent's estate, unless the claim be verified and authenticated as required by law, and demanded of the executor, administrator or curator within one year after his appointment.

§ 305. State warrants. State warrants, provided they be properly stamped by the Treasurer, bear five per cent interest. For details see Section 4688a, Ky. Statutes.

§ 306. Meaning of words; computation of time—Sunday. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, and the word "year" alone shall be equivalent to the expression, "year of our Lord."

If a statute requires a notice to be given, or any other act to be done a certain time before any motion or proceeding, there must be that time, exclusive of the day for such motion or proceeding; but the day on which such notice is given, or such act is done, may be counted as one day and part of the time.

If any proceeding is directed by law to take place, or any Act is directed to be done, on a particular day of the month, if that day happen to be a Sunday, the proceeding shall take place, or the Act shall be done on the next day. (See as to maturity of notes, Section 189.)

§ 307. What may be circulated. It shall not be lawful to make, offer to pay, or pass, or offer to pass, any note, bill, order, or other things passing by delivery, as a cir-

culating medium, in lieu of or as the representative of money, unless it be the note or bill, of not less than five dollars, of some banking institution legally incorporated in the United States, or currency of the United States. If a note, bill, order, or other such thing be of the denomination of less than five dollars, it shall be presumed to have been made, paid or passed, or offered in violation of this section, unless the contrary be shown.

§ 308. **Penalty for illegal circulation.** Every party to any such note, bill, order, or other thing, and every person passing the same, and every person who shall make, pass, circulate, or in any way aid in making, passing, or circulating any such note, bill, or order, or other thing, shall be imprisoned not more than six months, or fined not less than ten or more than five hundred dollars, or both so fined and imprisoned.

§ 309. **Duty of prosecuting officers.** The attorney for the Commonwealth may, by petition in equity supported by affidavit, without surety, obtain an injunction or restraining order against any person or corporation, for an apprehended violation of Sections 307, 308, 310, 311, 312, 313, who may be violating or preparing to violate them, and the court shall enforce obedience to its order by fine or imprisonment, or both.

§ 310. **Foreign corporations; application of law to.** He may obtain a like order against any person or corporation in this State, acting as the agent of any foreign company or corporation, for the redemption of its bill or notes within this State; and every person or corporation, so acting as such agent, shall be fined for each offense from one hundred to one thousand dollars.

§ 311. **Certificate of deposit.** Certificates of deposit, or of stock, issued in such form or manner as to pass by delivery, or to circulate from one to another like money or bank notes, shall be deemed to be within the prohibition of Sections 307-309.

§ 312. Authorization to loan limited to corporations. No corporation, not expressly authorized by law of this State, shall loan money, discount any evidence of debt, or deal in the buying and selling of exchange. Every person acting as an officer, servant or agent of a corporation who shall aid such corporation in a violation of this section shall, for every such offense, be fined from fifty to five hundred dollars. All contracts made in violation of this section shall be void, and all money paid by way of interest, discount, or for difference of exchange, in violation thereof, may be recovered back by the party paying, or his creditor.

§ 313. Collateral—notes and bills may be accepted as. Nothing in the last section shall preclude any corporation from receiving notes, bonds or bills in payment of pre-existing liabilities, or as collateral security for any debt, or preclude any corporation, chartered by this State, from purchasing exchange for remittance in the regular course of its proper business or from selling it when so received.

(Note—Private banks were abolished by Act of March 17, 1906, and in the case of Bruner v. Citizens Bank of Shelbyville, 134 Ky. 283, it was held illegal to maintain or operate branch banks.)

PROTEST BY NOTARIES.

§ 314. Protest to be recorded; notice of dishonor; fees, etc. It shall be the duty of the notaries public of this Commonwealth to record in a well-bound and properly indexed book, kept by them for that purpose, all protests by them made for the non-acceptance or non-payment of all bills of exchange, checks or promissory notes, placed on the footings of the bills of exchange, and on which a protest is now required by law, or of the dishonor of which such protest is now evidence by law, and a copy of such protest, certified by the said notary public under his notarial seal, shall be *prima facie* evidence in all the courts of this Commonwealth.

Upon the resignation of such notary public or the expiration of his term of office, and he is not reappointed, it shall be his duty to place such book in the office of the clerk of the county court in and for the county in which said notary was appointed; and when the notary shall die, his representative shall deposit the said book with the clerk aforesaid, and thereafter a copy of such record, certified by the clerk, shall be evidence in all the courts of this Commonwealth.

It shall hereafter be the duty of notaries public, upon protesting any of the instruments mentioned above, to give or send notice of the dishonor of such paper to such of the parties thereto as are required by law to be notified, to fix their liability on such paper; and when the residence of the parties is unknown to the notaries public, and he shall send the notices to the holders of such paper, and he shall state in his protest the names of the parties to whom he sent or gave such notices, and the time and manner of giving the same, and such statement in such protest shall be *prima facie* evidence that such notices were sent or given as therein stated by such notary.

When any bill of exchange or commercial paper has heretofore or shall hereafter be protested in any other State of these United States, a notary public or other officer legally authorized to protest the same is required to give or send notice of the dishonor thereof to the parties, or when his certificate or a copy thereof that such notice or notices were sent is evidence thereof in the courts of such State, the same shall be received as evidence in all the courts of this Commonwealth, in all actions of such bills of exchange and have the same effect as evidence as is given to such evidence in the courts of such State.

For recording each protest the notary public shall be allowed the sum of seventy-five cents, as now allowed by law, but shall forfeit all his fees by failing to record his protest, and also be fined for each failure the sum of five dollars, to be recovered by warrant in the name of the Common-

wealth before any justice of the peace of the county where such failure occurs.

(Note—See title "Notice of Dishonor" under Negotiable Instruments, Chapter 4 for details.)

TAXATION OF BANK PROPERTY AND DEPOSITS.

§ 315. Property subject to local taxation. All property subject to taxation for State purposes, as provided in Section 4020, Kentucky Statutes, shall be subject also to taxation in the county, city, school, or other taxing district, in which same has a taxable situs, except the following classes of property, which shall be subject to taxation for State purposes only:

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operations.

(2) Machinery and products in course of manufacture of persons, firms, or corporations, actually engaged in manufacturing, and their raw material actually on hand at their plants for the purpose of manufacture.

(3) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured. Shares of stock not relieved from assessment; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations, or of the shares of banks, trust companies, or combined banks and trust companies doing business in Kentucky, or domestic life insurance companies.

And provided, further, every State bank and trust company incorporated under the laws of this Commonwealth, and every National bank doing business therein and located in any county, city, town or taxing district in this Commonwealth shall make to the assessing officer of the county, city, town or taxing district a report showing the following facts, to-wit: The name and postoffice address of the bank or trust company; the names of the president, cashier and board of directors thereof; the number of shares of stock,

and the par and market value of each share; the amount of surplus fund and undivided profits; the amount of its deposits; the amount of cash on hand; the amount of bonds and other securities held by it; the amount loaned on mortgages and the amount of its loans and discounts; the amount of value of all real estate situated in this Commonwealth, held and owned by the bank or trust company on the first day of July of each year; and such other information as may be required. The assessing officer of the county, city, town or taxing district wherein any trust company, State and National bank is situated, shall assess the shares of such trust company, State and National bank for taxation for State, county, city, town and taxing district purposes. Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares by said board the assessed value of its real estate in this State. It shall be the duty of the trust company and banks to list with the county assessor of each county, and with the assessing officer in each city, town and taxing district, its real estate and pay the taxes thereon to the sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district, at the same time and manner as prescribed by law for the return of the assessment of personal property therein.

The equalization, collection, penalties and laws relating thereto, now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of the taxes herein provided for: Any county, city, town or taxing district, not now having the right to collect such taxes by suit, is hereby authorized and empowered so to do.

§ 316. **Report of mortgage assignments required—penalty.** Every bank, trust company or combined bank and trust company doing business in Kentucky shall on or before November 1st of each year file with the Tax Com-

mission a report verified by the oath of its president, vice-president or cashier showing as of July 1st:

(a) A list of the notes, bonds or other evidences of indebtedness secured by mortgage or other recorded instrument standing in its name of record, which it has assigned during the preceding year without transferring same of record, the amount of each, and the name and address of the person to whom each was assigned; provided, that where the name and address is given of the transferee holding same on July 1st of any year, any previous transfers of said securities during that year need not be furnished.

(b) A list of the mortgages assigned of record to it during the preceding year with its knowledge or consent, where it has not become the absolute owner of the debt secured thereby, standing in its name on July 1st, the amount of each of such mortgages and the name and address of each of such assignors; provided, any mortgages assigned to it as aforesaid during any year, and paid and released of record prior to July 1st need not be included in such report.

Provided, however, that the reports required under clause (a) or clause (b) need not include either sales or pledges from one bank, trust company, or combined bank and trust company, to another bank, trust company, or combined bank and trust company, or notes or obligations secured by any recorded instrument executed to a bank, trust company or a combined bank and trust company, in which the obligations secured by said instrument or divided among estates or accounts in charge of said bank, trust company, or combined bank and trust company, and regularly and properly entered on the records of said trust company, bank or combined bank and trust company.

Provided, further, the provisions of this section shall not apply to mortgages made by corporations to trustees to secure bond issues made by them in the regular course of business.

The information thus obtained shall be communicated by the Tax Commission to the Assessor and Board of Supervisors of the respective counties in which the true owners of such debts reside. Failure to file such reports shall be punishable by a fine of not less than fifty nor more than one hundred dollars, and each day's delay or failure to file such report shall constitute a separate offense. Willful false statement in such reports shall be punishable as false swearing.

Any person, firm or corporation which shall transfer or assign of record any mortgage note, or bond or other evidence of indebtedness, secured by any recorded instrument, for the sole purpose of evading the taxes thereon, shall be guilty of a misdemeanor and punishable by fine of not less than one hundred ($100.00) nor more than one thousand ($1,000.00) dollars.

§ 317. Omitted property—penalty—limitation. When any money in hand, notes, bonds, accounts, or other credits, secured or unsecured, or shares of stock liable to assessment shall in any one year be omitted from assessment, under the provisions of this Act, it may at any time, not later than ten (10) years thereafter, be assessed retrospectively in the manner provided by Sections 4258 to 4267, Kentucky Statutes, except that, in addition to the penalty prescribed by those sections, a penalty of one hundred per cent of the amount of the taxes and interest at six per cent per annum from the time the taxes should have been paid, shall be recovered. Said additional penalty and interest shall be paid into the State Treasury.

Provided, further, that after September 1, 1917, no action shall be commenced nor proceeding taken on behalf of the State or any county, city, town, or taxing district to assess for taxation for any period prior to September 1, 1917, any personal property described in this section required to be listed for taxation which had theretofore been omitted or which may be claimed to have been omitted, if

such property has been so listed for taxation as of September 1, 1917; nor shall any pending action, prosecution, or proceeding be amended so as to include any such personal property listed as of said date.

§ 318. Failure to list choses in action a bar to collect. In addition to the penalties provided in the preceding section, failure to list any note or bond shall be a bar to any action upon the same in any court and may be pleaded as a complete defense. But the holder thereof may at any time pay all taxes, penalties and accrued interest, and thereupon be relieved from the defense above provided.

§ 319. Fiduciaries—their reports and examination of their records. Every executor, administrator, guardian, trustee, trustees in bankruptcy, receiver, or other person acting in a fiduciary capacity, shall, when required, file with the Tax Commission a sworn inventory showing in detail the amount and character of personal property which has come to his hands. Such inventory need not be filed with the Tax Commission if it has been filed as a public record in the court in which the fiduciary qualifies.

Said Tax Commission is hereby given express authority to examine the books and accounts of administrators, executors, curators, trustees and others acting in a fiduciary capacity. No such fiduciary shall receive a final discharge until he has satisfied the court settling his accounts that all taxes against the estate have been paid.

§ 320. Property pledged lien for tax. Every person or company engaged in the business of receiving property in pledge or security for money or other things advanced to pawners or pledgers shall return, under oath, the fair cash value of all property so pledged and held on first of September (July) annually, and taxes shall be charged on the value of such property to the person holding the same as other property owned by him; and such person shall have a lien on the property to secure the amount of tax paid

BANK DEPOSIT TAX.

§ 321. Tax on bank deposits. Every person, firm or corporation of this State having, on the first day of September, a deposit in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank in this State, shall pay a tax to the State, which is hereby assessed at the rate of one-tenth of one (1%) per cent annually, upon the amount of such deposit so held by such bank on the first day of September, and no deduction therefrom shall be made on account of any indebtedness. The taxes imposed by this section shall be paid by such bank, trust company and combined bank and trust company, or national bank, for and on behalf, and as agent, of the depositor therein to the Auditor on or before the first day of December next following the date whereon the report provided for in Section 323 is required to be made.

§ 322. No other tax assessed. No other tax shall be assessed on such deposits in bank or against the depositor of said deposits by the State or any county, city, town or other district.

§ 323. Bank to report and pay tax on deposits. Each bank, trust company, and combined bank and trust company and national bank doing business in this State, shall file, on or before the 21st day of September in each year, with the Tax Commission a report setting forth the total amount of its deposits as of September first of each year, which would be taxable in the name of the depositor, but excluding therefrom such deposits as are not taxable against the depositor under the laws of this State, and shall, on or before the first day of December of each year, pay to the Auditor one-tenth of one per cent of the amount of such deposits, and may charge to and deduct from the deposit of each depositor the amount of the tax so paid for and on his behalf, and a lien as of September first of each year is hereby given to the banks and trust companies so pay-

ing the tax on the funds belonging to each depositor, respectively, on September first of each year, and on which the tax shall be so paid by them.

Any claim for taxes against the depositor charged to or otherwise asserted against him by the bank paying the taxes shall be so charged or asserted within six months after payment of the taxes to the Auditor, and all claims, demands or lien therefor shall be thereafter barred.

§ 324. Penalty for failure to report. Each bank and trust company that willfully fails to made the returns, or to pay the taxes for and on behalf of its depositors provided for and in this Act shall forfeit an amount equal to one-tenth of one per cent of such deposits to the use of the State for each month's delay in filing such return, or in paying such tax. Such tax and forfeitures may be recovered in any action on this statute commenced by any county attorney in the county court of the county in which such bank or trust company may be located, but if the Tax Commission, or the court wherein such action is heard for the recovery of such Act, or forfeiture, becomes satisfied that such failure was not willful, said Tax Commission, or said court may, in its discretion, waive any part or all of such penalty.

CRIMINAL LAW.

§ 325. Status of forged instrument—evidence. Persons convicted for felony, for taking, injuring or destroying property, shall restore the property or make reparation in damages. The court in which such conviction may be had, if applied to at the same term in which the sentence was pronounced, by petition verified by affidavit, may order restitution or give judgment against the convict for reparation in damages, and enforce the collection of the same by execution or other process.

§ 326. Punishment for safe blowing; robbery of bank. That any person or persons who shall by force or violence,

steal, take or carry away or attempt by such means, to steal, take or carry a way from any bank, money, notes, securities or any other thing of value, or who shall, by means of explosives or any other force, unlawfully open or attempt to open, any safe belonging to or used by any person, firm, bank, or corporation, or company in which is kept money, notes, securities, books or any other thing of value, shall be guilty of a felony; and upon conviction thereof be confined in the penitentiary, not less than two nor more than twenty years.

§ 327. Punishment for stealing, obligations, books, notes, etc. Robbery or larceny of obligations, bonds, deeds, wills, bills obligatory, or bills of exchange, promissory notes for the payment of money, paper bills of credit, certificates of deposit of money with any bank or other person, or certificates or obligations granted by the authority of this Commonwealth, that of the United States, or of any of them, or of account books or receipts, shall be felony; and any person guilty of such felony shall be punished by confinement in the penitentiary for not less than two nor more than ten years.

§ 328. Punishment for counterfeiting. If any person shall forge or counterfeit any gold, silver or other coin which is, or hereafter shall be, passing as current in this State, or shall knowingly and falsely utter, pay or tender in payment any such counterfeit and forged coin, he shall be confined in the penitentiary not less than five nor more than fifteen years.

§ 329. Penalty for forgery of note or bill of exchange. If any person shall forge or counterfeit any deed, will, testament, bond, writing obligatory, bill of exchange, order, promissory note for the payment of money or other thing, or any indorsement or assignment of a bond, writing obligatory, bill of exchange, order or promissory note for the payment of money or other thing, or any acquittance or receipt for money or property or other thing, with inten-

tion to defraud another; or shall knowingly utter or publish as true any such instrument as above described; or shall fraudulently forge, counterfeit or utter any commission, patent, pardon or public record, or an attested copy thereof, of any judical, executive or legislative officer, or utter as true any of the before-described papers, knowing them to be forged, counterfeited or altered, shall be confined in the penitentiary not less than two or more than ten years.

§ 330. **Penalty for alteration of bank books.** If any officer or employe of any joint stock company, bank or corporation shall, with the intention of cheating or defrauding the joint stock company, bank or corporation, or any person doing business with it, erase, mutilate or alter any book or paper or evidence of debt, or any part thereof, owned by or in custody or under the control of the joint stock company, bank or corporation, or shall destroy the same, or shall make any false entry, or omit to make an entry in any such book or paper, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 331. **General forgery—penalty.** If any person shall forge or counterfeit any writing whatever, whereby fraudulently to obtain the possession of or to deprive another of any money or property, or cause him to be injured in his estate or lawful rights, or if he shall utter and publish such instrument, knowing it to be forged and counterfeited, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 332. **Penalty for forgery of bank bill, note or certificate of deposit.** If any person shall forge or counterfeit a bank bill, or note or check or draft upon a bank, or the certificate of deposit of money therein of any bank or company authorized by law of the United States, or any State of the United States, or any foreign government, or any endorsement thereon; or shall erase or alter the same, or any endorsement thereon; or shall tender in payment, utter,

vend, exchange, barter or demand to have exchanged for money, any such forged, erased, altered or counterfeited bill, note, draft, check or certificate of deposit, or the endorsement thereof, knowing the same to be forged, counterfeited, erased or altered, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 333. Punishment for possession of counterfeit money. If any person shall have or keep in his possession any counterfeit bank note, or counterfeit gold, silver or other coin, knowing the same to be forged and counterfeited, with the intention of circulating the same, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 334. Punishment for possession of notes of fictitious bank. If any person shall pass, or offer to pass, or have or keep in his possession promissory notes, purporting to be bank notes on any bank not in existence, or of a broken bank, or of any unauthorized association of persons for banking, knowing the notes to be such, with the intention of fraudulently circulating the same, or to pass, or offer to pass or circulate the same, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 335. Possession of instrument for counterfeiting. Whoever shall knowingly make or mend, or proceed to make or mend, or buy or sell, or have in his possession or control, any machine, press, die, tool, plate or stamp, or other instrument or thing used or intended to be used in counterfeiting, shall be confined in the penitentiary not less than one nor more than five years. And all such machinery, plates, stamps, die, tools or other instrument shall be seized, and may be used on the trial as evidence, and then defaced and destroyed by order of the circuit court.

§ 336. U. S. Treasury notes—penalty for counterfeiting, etc. If any person shall forge, counterfeit or simulate any United States Treasury or legal tender note, or any United States fractional or postal currency, or national bank

currency, or shall erase or alter the same, or shall tender in payment, pass, utter, vend, exchange, barter or demand to have exchanged or bartered for money or anything of value, any such erased, altered, counterfeited or simulated treasury note, fractional or postal currency, or have the same in his possession or under his control, with intent so to pass or use the same, knowing the same to be forged, counterfeited, erased, altered or simulated, he shall be confined in the penitentiary not less than two nor more than ten years.

§ 337. Embezzlement of bank officer. If any officer, agent, clerk or servant of any bank or corporation shall embezzle, or fraudulently convert to his own use or the use of another, bullion, money, bank notes, or any effects or property belonging to such bank or corporation, or other corporation or any person, which shall have come to his possession or been placed in his care or under his management as such officer, agent, clerk or servant, he and the person to whose use the same was fraudulently converted, if he assented thereto, shall be confined in the penitentiary not less than one nor more than ten years.

§ 338. Penalty for wrongful taking property in distinct possession. If any person having the custody, control or distinct possession of any money, bank notes, county, city or town bonds, or Kentucky State bonds, or United States bonds, or Treasury notes, legal tender notes, promissory notes, property, effects, or other movable thing of value belonging to or for the use of the State, or of any county or district of a county, or of any municipal corporation, and under any trust or duty to keep, return, deliver, cancel, destroy or specifically apply the same, or any part thereof, shall, in violation of such trust or duty, willfully misapply, misappropriate, conceal, use, loan or otherwise wrongfully and fraudulently dispose of such money, bank notes, county, city or town bonds, State bonds, United States bonds or Treasury notes, legal tender notes, promissory notes, property, effects or other movable thing of

value, or of any part thereof, for his own purposes or use of another, with intent to deprive the owner or authority of the same, or of any part thereof, for the benefit of the wrong-doer or of any other person, such person so offending shall be confined in the penitentiary not less than one nor more than ten years.

§ 339. False pretenses—penalty. If any person by any false pretense, statement or token, with intention to commit a fraud, obtain from another money, property or other thing which may be the subject of larceny, or if he obtain by any false pretense, statement or token, with like intention, the signature of another to a writing, the false making whereof would be forgery, he shall be confined in the penitentiary nor less than one nor more than five years.

§ 340. False impersonation—penalty. Every person who shall falsely and fraudulently represent or personate another, and in such assumed character shall deceitfully receive any money or valuable property of any description intended to be delivered to the individual so personated, with purpose to appropriate the same to his own use, shall be confined in the penitentiary not less than one nor more than five years.

§ 341. "Cold check" law. That any person who, with intent to defraud shall make, or draw or utter or deliver any check, draft or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has not sufficient funds in such bank or other depository for the payment of such check, draft or order in full upon its presentation; or

Who after having made, uttered or delivered any check, draft or other order for the payment of money upon any bank or other depository shall withdraw or cause to be withdrawn the money, or any part thereof to the credit of the maker of such draft, check or other order for the payment of money without leaving with such bank or other

depository a sufficient sum to cover such check, draft or other order for the payment of money, shall be guilty of a misdemeanor, if the amount of such check or draft be under twenty dollars, and upon conviction thereof be fined not exceeding one hundred dollars, or confined in the county jail not less than one day nor more than thirty days, either so fined or imprisoned, or both in the discretion of the court or the jury trying the case, and if the amount of such check or draft be twenty dollars or over, he shall be guilty of a felony and confined in the penitentiary for not less than one nor more than two years, and the drawer of such check or draft shall be prosecuted in the county in which he delivers same.

Provided, however, that if the person who makes, issues, utters or delivers any such check, draft or order, shall pay the same within twenty days from the time he receives actual notice, verbal or written, of the dishonor of such check, draft or order, he shall not be prosecuted under this section, and any prosecution that may have been instituted within the time above-mentioned, shall, if payment of said check be made as aforesaid, be dismissed at the cost of defendant.

The making, drawing uttering or delivering of such check, draft or order as aforesaid, shall be *prima facie* evidence of intent to defraud.

§ 342. Penalty for making of false statements of financial condition of bank. (1) Any person who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the

discount of an account receivable or the making, acceptance, discount, sale or endorsement of a bill of exchange, or promissory note, for the benefit of either him or of such person, firm or corporation; or

(2) Who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such persons, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in the first paragraph of this section; or

(3) Who, knowing that a statement in writing has been made, respecting the financial conditions or means or ability to pay, of himself, or such person, firm or corporation tion, in which he is interested, or for whom he is acting, represents on a later day, in writing, that such statement theretofore made, if then again made on said day, would be then true, when, in fact, said statement if then made would be false, and procures upon the faith thereof for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned in the first paragraph of this section, shall be guilty of a felony, and upon conviction thereof shall be confined in the penitentiary for not less than one nor more than five years.

Be it further enacted that any person, an officer or agent of any corporation, or the agent of any person or firm who shall commit any one or all of the acts prohibited by the above sub-sections, shall be personally liable to any person, firm or corporation who shall suffer loss or damage thereby, for the full amount of such loss or damage, and this shall not operate to release or relieve such corporation, or the principal or such agent from liability for the act or acts of such officer or agent, but such officer or agent and the corporation, person or firm for whom he has acted

in the premises shall both be jointly and severally liable therefor.

§ 343. Penalty for concealing will. If any person fraudulently destroy or conceal a will or codicil, with intent to prevent the probate thereof, he shall be confined in the penitentiary not less than one nor more than five years.

§ 344. Corporations not to contribute for campaign purposes—penalties. It shall be unlawful for any public service corporation engaged in business in this State to contribute, either directly or indirectly, any money, service or other thing of value, towards the nomination or election of any State, county, city, town, municipal or district officer.

It shall be unlawfuul for any corporation, person, company or association to contribute, either directly or indirectly, money, service or other thing of value, towards the nomination or election or any State, county, city, town, district or munipical officer, if any such officer, in his official capacity, is required by law to perform any duties peculiar to such corporation, person, company or association not common to the general public, or if it is the duty of such officer to supervise, regulate or control in any way or manner the affairs of such corporation, company, person or association, or if such officer has any duty to perform in assessing the property of any such corporation, person, company or association for taxation. No officer or agent of any public service corporation, or any other corporation in the class above-mentioned, and no officer or agent of any company or association, and no agent for any person in the class above-mentioned, shall contribute, either directly or indirectly, for or on behalf of any such corporation, company, association or person in money, service or other thing of value towards the nomination or election of any State, county, city, town, district or municipal officer. No attorney shall accept employment and compensation from

any corporation mentioned above, or from any person, company, or association mentioned above, with the understanding or agreement, either verbal, written or implied, that he will contribute all or any part of such compensation so received, either directly or indirectly, towards the nomination or election of any State, county, city, town, district or municipal officer. No corporation, company, association or person mentioned above shall pay, promise, loan or become pecuniarily liable in any way for any money, or other valuable thing in behalf of any candidate for office at any election, primary or nominating convention held in this State, and no officer or agent of any such corporation, association or company, shall, on behalf of such corporation, company, or association, pay, promise, loan or become pecuniarily liable in any way for any money, or other valuable thing, in behalf of any candidate for office at any election, primary or nominating convention held in this State. Any corporation, company, association or person, or any officer or agent of any such corporation, company or association, or any agent for any person, who shall be guilty of any violation of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding ten thousand dollars and imprisoned in the county jail not less than thirty days and not exceeding one year, and any attorney violating the provisions of this section shall be subject to a like penalty, and in addition he shall be debarred from the practice of law in this State, and the judgment of conviction shall so declare.

It shall be unlawful for any corporation not falling within the above-mentioned classes to contribute, either directly or indirectly, any money, service or other thing of value towards the nomination or election of any State, county, city, town, municipality or district officer; or to expend, pay, promise, loan or become pecuniarily liable in any way for any money or other valuable thing in behalf of any can-

didate for office at any election, primary or nominating convention held in this State; and no officer of any such corporation shall, for and in behalf of such corporation contribute, either directly or indirectly, any money, service or other thing of value towards the nomination or election of any State, county, city, town, municipal or district officer, and no attorney or other person shall accept employment and compensation for such corporation with the understanding or agreement, either direct or implied, that he will contribute to any such candidate, or in his behalf, all, or any part, of such compensation. Any such corporation or any officer or agent of such corporation violating the provisions of this paragraph shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one thousand dollars, and any such officer or agent of any such corporation shall be imprisoned not exceeding one year, and any attorney violating the provisions of this paragraph shall be subject to the same penalties, and in addition shall be debarred from the practice of law, and the judgment of conviction shall so declare.

§ 345. Corporation not to coerce employes to vote. It shall be unlawful for any corporation, person, company or individual to coerce, or direct, any employe to vote for any party, or person who may be a candidate for any office in this State, or for any person who may be a candidate for a nomination for any office, or to threaten to discharge such employe if he votes for any candidate; or if such employe is discharged on account of his exercise of suffrage, or to give out or circulate any statement or report that such employes are expected, or have been requested or directed by such corporation, person, individual or company, or by any one acting for such, or any such, to vote for any person, group of persons, or measure, and any person, corporation or company violating this section shall be deemed guilty of a misdemeanor, and upon conviction shall be

fined in any sum not to exceed and not less than one thousand nor more than five thousand dollars, or imprisonment in the county jail not to exceed six months, or both.

CODE PROVISIONS AND MISCELLANY.

§ 346. Defense against assignment. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any discount, set-off or defense now allowed; and if the assignment be not authorized by statute the assignor must be a party, as plaintiff or defendant. This section does not apply to bills of exchange, nor to promissory notes placed upon the footing of bills of exchange, nor to common orders or checks.

§ 347. Action by fiduciary. A personal representative, guardian, curator, committee of a person of unsound mind, trustee of an express (ed) trust, a person with whom or in whose name a contract is made for the benefit of another, a county, municipal corporation or taxing district with which or in the name of which a contract is made for the benefit of its inhabitants, residents or taxpayers, a receiver appointed by the court, the assignee (or trustee) of a bankrupt (an assignee for the benefit of creditors, an administrator *de bonis non*), or a person expressly authorized by statute to do so, may bring an action without joining with him or it the person or persons for whose benefit it is prosecuted. Provided, however, that nothing herein contained shall abrogate or take away the individual's right to sue.

§ 348. Service of summons on bank. In an action against a private corporation the summons may be served in any county, upon the defendant's chief officer or agent, who may be found in this State; or it may be served in the county where the action is brought, upon the defendant's chief officer or agent who may be found therein.

§ 349. How money deposited in court may be handled by bank. A court sitting in a county in which, or in any

county adjoining which, there is a bank, or branch of a bank, created by the laws of this State, or of the United States, transacting regular banking business, may order money paid into court to be deposited in such bank or branch, to the credit of the court in the action or proceeding in which the money was paid. Money so deposited shall be paid only upon the check of the clerk of the court, annexed to its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.

§ 350. Banker may give depositions in court action. A deposition may be read upon the trial of an issue in any action, if, at the time of the trial, the witness reside twenty miles or more from the place where the court sits in which the action is pending; or be absent from this State; or be its Governor, secretary, register, auditor or treasurer; or a judge or clerk of a court; or a postmaster, or a president, cashier, teller or clerk of a bank; or a practicing physician, surgeon or lawyer; or a keeper, officer or guard of the penitentiary; or be dead; or be of unsound mind, having been of sound mind when his deposition was taken; or be prevented from attending the trial by infirmity or imprisonment; or be in the military service of the United States or of this State.

§ 351. When such witnesses bound to attend court. A witness whose deposition might be used shall not be compelled to attend in court for oral examination, unless he failed, when duly summoned, to give his deposition.

§ 352. Other cases of compulsory attendance. Upon the affidavit of a party, and the written statement of his attorney, that the testimony of a witness is important, and that the just and proper effect of his testimony can not in a reasonable degree be obtained without an oral examination in court, the court may, at its discretion, order the personal attendance of the witness to be coerced, although

such witness may otherwise be exempt from personal attendance by the provisions of the Code.

§ 353. Suits on bills and notes. Persons severally liable upon the same contract, and parties to bills of exchange, to promissory notes placed upon the footing of bills of exchange, or to common orders and checks, and sureties on the same or separate instruments, may all or any of them, or the representatives of such as may have died, be included in the same action at the plaintiff's option.

§ 354. Actions against bank. An action against an incorporated bank may be brought in the county in which its principal office or place of business is situated; or if it arises out of a transaction with an agent of such corporation, it may be brought in the county in which such transaction took place. However, excepted from the provisions of this section, actions may be brought against a bank in other jurisdictions in suits for the recovery, sale or partition of real property; for injury to real property; for the recovery of a fine, penalty or forfeiture imposed by a statute; upon the official bond of a public officer, an action to establish or set aside a will; to settle the estate of a deceased person or against a person, company or corporation assigned for the benefit of creditors; to distribute the estate of deceased persons, or for payment or debts; upon a return of "no property found;" in which cases such actions may be brought in the county in which the subject of the action, or some part thereof, is situated.

(Note—We have not undertaken to give all laws with relation to jurisdiction, summons, etc., as they are lengthy and complicated.

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