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## For Minnesota State Bar Association

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### Recommended Citation

Caldwell, Chester L., "For Minnesota State Bar Association" (1922). *Minnesota Law Review*. 1035.  
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# Minnesota Law Review

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Published monthly, December to June inclusive, by the Faculty and Students of the Law School, University of Minnesota.

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Subscription Price, \$3.00 per annum. Sixty cents per number.

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RECOVERY IN QUANTUM MERUIT AFTER NEGLIGENT FAILURE TO PERFORM AN ENTIRE CONTRACT—MEASURE OF RECOVERY.—The right of a party who has broken his indivisible contract without legal excuse, but not wilfully, to recover for such benefit as he may have conferred on the other party by part performance is not easy to work out. Two legal principles seem in conflict: the one forbids a plaintiff in material default to recover, and the other allows recovery to prevent an unjust forfeiture.<sup>3</sup> The recovery, where it is allowed, is not on the contract but in quasi

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<sup>3</sup> Williston, Contracts, Chap. XL, especially at sec. 1473. H. W. Ballantine, Forfeiture for Breach of Contract, 5 MINNESOTA LAW REVIEW 329. The discussion in this note is limited to those cases in which the plaintiff's breach of contract is merely negligent.

contract, on the ground that the defendant should not be unjustly enriched.<sup>2</sup>

In their decisions the courts are not in harmony as to the measure of recovery and frequently their statements are inaccurate.<sup>3</sup> On principle it would appear that if a recovery is allowed it should be measured by that which will leave the defendant in the same situation as if he had recovered damages for breach of the contract.<sup>4</sup> As the court points out in *Michigan Yacht & Power Co. v. Busch*,<sup>5</sup> "In justice the defendants have no right to more of the money than will compensate them for loss by reason of the plaintiff's refusal to carry out the contract."

The authorities show that in many cases the plaintiff recovers the *contract price* less the damages resulting to the defendant from the plaintiff's breach,<sup>6</sup> or less the cost to the defendant of completing the work.<sup>7</sup> Such a statement of the recovery fails to distinguish the situation under discussion from recovery on the contract as for substantial performance.<sup>8</sup> Another statement of the measure of recovery is that the plaintiff is entitled to the value of the part performance, not exceeding the contract price, less the damages suffered by the defendant.<sup>9</sup> The value of the part performance must be the value to the defendant and that is said to be "the fair market value of the thing produced," not exceeding the contract price.<sup>10</sup> Where the contract is merely unfinished, but readily capable of completion, the measure of recovery should be limited to the reasonable value of the plaintiff's part performance, not exceeding such portion of the contract price for full performance as the value of the part performance bears to the value of full performance, less the damages resulting to the defendant from the plaintiff's breach.<sup>11</sup>

<sup>2</sup>*McCurry v. Purgason*, (1915) 170 N. C. 463, 87 S. E. 244, Ann. Cas. 1918A 907.

<sup>3</sup>Williston, *Contracts*, sec. 1480; Woodward, *Quasi Contracts*, sec. 178.

<sup>4</sup>*Britton v. Turner*, (1834) 6 N. H. 481, 487, 26 Am. Dec. 713.

<sup>5</sup>(1906) 143 Fed. 929.

<sup>6</sup>*Hayward v. Leonard*, (1828) 7 Pick. (Mass.) 181; Woodward, *Quasi Contracts*, sec. 178, p. 282 and cases cited. See, however, *Gillis v. Cobe*, (1901) 177 Mass. 584, 59 N. E. 455.

<sup>7</sup>*McClay v. Hedge*, (1864) 18 Ia. 66; *Hillyard v. Crabtree's Adm'r.*, (1854) 11 Tex. 264, 62 Am. Dec. 475.

<sup>8</sup>Woodward, *Quasi Contracts*, sec. 178; 3 Williston, *Contracts*, sec. 1475.

<sup>9</sup>*United States v. Molloy*, (1906) 144 Fed. 321, 75 C. C. A. 283, 11 L. R. A. (N.S.) 487.

<sup>10</sup>*Gillis v. Cobe*, (1901) 177 Mass. 584, 59 N. E. 455; 3 Williston, *Contracts*, secs. 1483 and 1485.

Just how to compute the defendant's damage is a point upon which the courts are not in harmony. Where the thing produced is incapable of being made to conform to the contract without its entire demolition, and where the acceptance was involuntary or was made only through necessity, as in the case of improvements to real estate, and an action is allowed the plaintiff in quasi contract, the damages to the defendant, according to a Vermont decision,<sup>22</sup> should be such a sum as will fully compensate the defendant for the imperfection in the work, so that he will be placed in as good a position pecuniarily as if the contract had been strictly performed. After deducting this amount, the remainder is payable to the plaintiff for his part performance.

According to Professor Williston, the defendant should be allowed as damages, by recoupment or counterclaim, the difference between the contract price of the building (or other performance) and the cost in the market of making such a building,<sup>23</sup> this rule of damages to apply in every case in which the plaintiff, failing to perform his contract, sues in quantum meruit. It is assumed that the defendant has paid for something totally different from what the contract called for, and that it therefore stands totally unperformed.<sup>24</sup> This theory of the measure of damages may be correct where the assumption is supported by the facts, but has not been followed, nor in justice should it be, where the part performance has been in substantial compliance with the contract and has therefore mitigated the damages that would flow from a breach of the contract.

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JOINT ADVENTURES—PARTNERSHIPS.—A joint adventure has been defined as "an association of two or more persons to carry out a single business enterprise for profit."<sup>25</sup> At common law

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<sup>22</sup>Woodward, *Quasi Contracts*, sec. 178, p. 285; 3 Williston, *Contracts*, sec. 1485, p. 2642; 3 Sutherland on Damages, 3d. Ed., sec. 711, p. 2167.

<sup>23</sup>Kelly v. Bradford, (1860) 33 Vt. 35; 3 Sutherland on Damages, 3d. Ed., sec. 711, p. 2168.

<sup>24</sup>3 Williston, *Contracts*, sec. 1484; Eaton v. Gladwell, (1899) 121 Mich. 444, 80 N. W. 292; City of Sherman v. Connor, (1895) 88 Tex. 35, 29 S. W. 1053.

<sup>25</sup>3 Williston, *Contracts*, sec. 1484.

<sup>26</sup>Rowley, *Modern Law of Partnership*, sec. 975, p. 1339. A joint adventure is also defined as "an enterprise undertaken by several persons jointly," 23 Cyc. 452, and as an enterprise arising "by contract or agreement between the parties to join their efforts in furtherance of a particular transaction or series of transactions," Nat. Surety Co. v. Winslow, (1919) 143 Minn. 66, 71, 173 N. W. 181.

co-adventurers in an enterprise were recognized in the courts only when the element of partnership was disclosed, and upon proof of the essentials of a partnership.<sup>2</sup> Now, however, the courts hold that a joint adventure may exist where parties engage in a common enterprise for their mutual benefit without entering into a strict partnership relation.<sup>3</sup> In its general nature, the "venture" is similar to a partnership and is governed largely by the same rules of law,<sup>4</sup> but the two are not identical,<sup>5</sup> and several points of difference deserve attention.

A joint adventure usually relates to a single transaction, although that transaction may comprehend a business to be continued for several years, while a partnership relates to a general business of some particular kind.<sup>6</sup> However, a partnership may be created for the consummation of a single transaction,<sup>7</sup> and accordingly it has been held in one jurisdiction that a joint adventure is merely a partnership of limited scope and duration.<sup>8</sup> In jurisdictions where the Uniform Partnership Act has not been adopted, a corporation is incapable of becoming a partner,<sup>9</sup> but it may bind itself by a contract for a joint adventure, the purpose of which is within the scope of the corporate business.<sup>10</sup>

One of the essentials or results of the partnership relation is that each partner is the agent for the other partners and the partnership in the partnership business.<sup>11</sup> In a joint adventure, the

<sup>2</sup>Goss v. Lanin, (1915) 170 Ia. 57, 61, 152 N. W. 43.

<sup>3</sup>Jackson v. Hooper, (1909) 76 N. J. Eq. 185, 197, 74 Atl. 130; Sanders v. Newman, (Wis. 1921) 181 N. W. 822.

<sup>4</sup>Butler v. Union Trust Co., (1918) 178 Cal. 195, 172 Pac. 601; Cain v. Hubble, (1919) 184 Ky. 38, 211 S. W. 413, 6 A. L. R. 146; Menefee v. Oxnam, (1919) 42 Cal. App. 81, 183 Pac. 379.

<sup>5</sup>Hurley v. Walton, (1872) 63 Ill. 260; Williams v. Gillies, (1878) 75 N. Y. 197; 2 Rowley, Modern Law of Partnership, sec. 975, p. 1339. Bush v. Haire, (1917) 197 Mich. 85, 163 N. W. 875, a bill framed on the theory of a partnership was dismissed for want of proof of a partnership, without prejudice to the plaintiff to institute proceedings on the theory of joint adventure.

<sup>6</sup>23 Cyc. 453; 2 Rowley, Modern Law of Partnership, sec. 975, p. 1340.

<sup>7</sup>Bates v. Babcock, (1892) 95 Cal. 479, 30 Pac. 605, 16 L. R. A. 745, 29 A. S. R. 133.

<sup>8</sup>"A joint adventure is a limited partnership; not limited in a statutory sense as to liability, but as to its scope and duration; and under our law joint adventures and partnerships are governed by the same rules." Ross v. Willett, (1894) 76 Hun (N. Y.) 211, 27 N. Y. S. 785.

<sup>9</sup>1 Rowley, Modern Law of Partnership, secs. 193, 194, p. 197. Under the Uniform Partnership Act a corporation may be a partner.

<sup>10</sup>Mestier & Co. v. Chevalier Paving Co., (1901) 108 La. 562, 32 So. 520.

<sup>11</sup>Flarsheim v. Brestrup, (1890) 43 Minn. 298, 45 N. W. 438; Harvey v. Childs, (1876) 28 Ohio St. 319, 22 Am. Rep. 387; Pahlman v. Taylor,

authority of one associate to bind the others contractually as the mere result of the relation is more doubtful.<sup>12</sup> A joint adventurer can bind his associates in a matter respecting which express or apparent authority is given,<sup>13</sup> and it has been stated that each one of the parties has the power to bind the others in matters which are strictly within the scope of the enterprise,<sup>14</sup> but the power is more restricted than that of a partner in a general business.<sup>15</sup> In one case where the parties were held not to be partners because neither had the power to bind the other, the court held them to be joint adventurers on the theory that no mutual agency exists in the latter relation.<sup>16</sup> This case, however, goes farther than most decisions, and has been so criticised by one writer.<sup>17</sup>

The principal distinction between a partnership and a joint adventure is said to be that, in the latter, one party may sue the other at law for a breach of the contract, a share of the profits, or a contribution for advances made in excess of his share,<sup>18</sup> whereas a partner cannot sue his co-partner at law upon matters involving partnership transactions, but must look to equity for relief.<sup>19</sup> It should be noted, however, that the general rule in partnership is held not to apply and an action at law is allowed where the partnership is for a single transaction and no accounting is necessary, i. e., where the partnership is similar in form to a joint adventure.<sup>20</sup> Thus any distinction based on the nature of the remedies between parties seems unjustifiably drawn.

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(1874) 75 Ill. 629; Mechem, Partnership, 2nd Ed., sec. 244, p. 217. The Uniform Partnership Act, sec. 9 (1), is to the same effect.

<sup>12</sup>Donahue v. Haskamp, (1920) 109 Wash. 562, 187 Pac. 346; Mechem, Partnership, 2nd Ed., sec. 245, p. 218.

<sup>13</sup>Jones v. Gould, (1913) 209 N. Y. 419, 103 N. E. 720.

<sup>14</sup>Anderson v. Weber, (1914) 148 N. Y. S. 133.

<sup>15</sup>2 Rowley, Modern Law of Partnership, sec. 980, p. 1349.

<sup>16</sup>Jackson v. Hooper, (1909) 76 N. J. Eq. 185, 74 Atl. 130.

<sup>17</sup>2 Rowley, Modern Law of Partnership, sec. 980, p. 1350.

<sup>18</sup>23 Cyc. 453; Hurley v. Walton, (1872) 63 Ill. 260; see also Saunders v. McDonough, (1914) 191 Ala. 119, 67 So. 591. It should be noted that the remedy at law does not preclude a suit in equity for an accounting. Botsford v. Van Riper, (1910) 33 Nev. 156, 196, 110 Pac. 705; Saunders v. McDonough, (1914) 191 Ala. 119, 67 So. 591; Harvey v. Sellers, (1902) 115 Fed. 757; Reece v. Rhoades, (1917) 25 Wyo. 91, 165 Pac. 449; Keyes v. Nims, (Cal. App. 1919) 184 Pac. 695; Mechem, Partnership, 2nd Ed., sec. 206, p. 187.

<sup>19</sup>Mechem, Partnership, 2nd Ed., secs. 203, 221; 2 Rowley, Modern Law of Partnership, sec. 743, p. 1029; Burdick, Partnership, 2nd Ed., p. 333; Noyes v. Ostrom, (1910) 113 Minn. 111, 129 N. W. 142, action between firms having a common partner.

<sup>20</sup>Mechem, Partnership, 2nd Ed., secs. 205, 206, p. 187; 2 Rowley, Modern Law of Partnership, sec. 748, p. 1038; Burdick, Partnership, 2nd Ed., p. 336.

A contract of joint adventure need not be express, but may be implied from the conduct of the parties.<sup>21</sup> The mutual promises of the parties to give their aid and assistance in furthering the adventure are sufficient consideration to support the contract.<sup>22</sup> The presumption is that the profits arising from a joint adventure are to be divided equally among the joint adventurers, without regard to any inequality of contribution,<sup>23</sup> although the proportion in which profits are to be shared may of course be fixed by contract.<sup>24</sup> Parties to a joint adventure stand in a fiduciary relation to each other, similar to that existing between partners. It is therefore improper for any one of the parties to acquire a secret advantage, and he will be held strictly to account to his co-adventurers for any secret profits.<sup>25</sup> If title to property purchased with funds contributed for the joint adventure is taken in the name of one party, he holds it as trustee for the other adventurers,<sup>26</sup> and

<sup>21</sup>Hoge v. George, (Wyo. 1921) 200 Pac. 96; 23 Cyc. 453.

<sup>22</sup>See Alderton v. Williams, (1905) 139 Mich. 296, 102 N. W. 753. Thus where plaintiff and defendant mutually agreed to secure an option and defendant furnished the capital and did the work, plaintiff merely giving advice and suggestions, the agreement was held a sufficient consideration to support the contract and plaintiff recovered a share of the profits. Botsford v. Van Riper, (1910) 33 Nev. 156, 191, 110 Pac. 705.

<sup>23</sup>Lind v. Webber, (1913) 36 Nev. 623, 134 Pac. 461, 50 L. R. A. (N.S.) 1046, Ann. Cas. 1916A 1202 and note; Hoge v. George, (Wyo. 1921) 200 Pac. 96. These cases hold, of course, that money advanced by one party to the joint adventure is a loan for which the party is entitled to be reimbursed out of the proceeds of the venture. See also Buckmaster v. Grundy, (1846) 8 Ill. 626. The same rule applies to sharing losses as to sharing profits, i. e., they are to be divided equally between the parties. Claffin v. Godfrey, (1838) 21 Pick. (Mass.) 1, 15; see also Hoge v. George, (Wyo. 1921) 200 Pac. 96, 99. It has been held that where one party furnished the capital and the other the services, the latter was not liable for any part of the losses. Rau & Rieke v. Boyle & Boyle, (1868) 5 Bush (Ky.) 253.

<sup>24</sup>Hammel v. Feigh, (1919) 143 Minn. 115, 173 N. W. 570. Where the parties consisted of a firm of two partners and a third person, the profits of the venture were divided into two parts, one for the firm and one for the other party. Warner v. Smith, (1863) 32 L. J. Ch. (N.S.) 573, 8 L. T. (N.S.) 221, 11 W. R. 392.

<sup>25</sup>Church v. Odell, (1907) 100 Minn. 98, 110 N. W. 346; Gasser v. Wall, (1910) 111 Minn. 6, 126 N. W. 284, aff'd in 115 Minn. 59, 131 N. W. 850; Jones v. Kinney, (1911) 146 Wis. 130, 131 N. W. 339, Ann. Cas. 1912C 200 and note; Menefee v. Oxnam, (1919) 42 Cal. App. 81, 183 Pac. 379; Sanders v. Newman, (Wis. 1921) 181 N. W. 822. See also Nelson v. Lindsey, (1917) 179 Ia. 862, 162 N. W. 3. For a discussion of the liability imposed upon third persons dealing with joint adventurers, see 4 MINNESOTA LAW REVIEW 299; also Selwyn & Co. v. Waller, (1914) 212 N. Y. 507, 106 N. E. 321, L. R. A. 1915B 160.

<sup>26</sup>Irvine v. Campbell, (1913) 121 Minn. 192, 141 N. W. 108, Ann. Cas. 1914C 689. See also Botsford v. Van Riper, (1910) 33 Nev. 156, 191, 110 Pac. 705.

property bought with the proceeds of a joint adventure belongs to all the adventurers as joint property. If no date is fixed by the contract for the termination of the adventure, the agreement remains in force until the purpose is accomplished, and neither party can end it at will,<sup>27</sup> nor will equity dissolve the joint adventure for any cause other than those which justify the dissolution of partnerships.<sup>28</sup>

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TAXATION—VALUATION OF CAPITAL STOCK AND FRANCHISE OF A CORPORATION—INDEBTEDNESS.—One of the most serious difficulties encountered in working out rules for the taxation of corporations, has been the proper disposal of the corporate indebtedness in evaluating the capital stock of the corporation. Various courts have adopted different rules which can be generally classified as follows: first, those which deduct the indebtedness from the value of the capital stock;<sup>1</sup> second, those which do not consider the indebtedness at all;<sup>2</sup> and third, those which add the indebtedness to the value of the capital stock.<sup>3</sup>

The intention of the law is to tax corporations in the same manner as individuals are taxed, so that taxes shall be uniform and equal.<sup>4</sup> In the absence of statutes there can be no deduction of the indebtedness of either the individual or the corporation,<sup>5</sup> and a statute giving a corporation the right to deduct its indebtedness is unconstitutional when the same right is not given to the individual.<sup>6</sup> Each state has different rules for assessment to apply under varying circumstances. When the market value of

<sup>1</sup>Saunders v. McDonough, (1914) 191 Ala. 119, 130, 67 So. 591, aff'd in 201 Ala. 321, 78 So. 160, 11 A. L. R. 419; Hubbell v. Buhler, (1887) 43 Hun (N. Y.) 82; 2 Rowley, Modern Law of Partnership, sec. 988, p. 1360; Lindley, Partnership, 7th Ed., p. 143.

<sup>2</sup>Hubbell v. Buhler, (1887) 43 Hun (N. Y.) 82; Marston v. Gould, (1877) 69 N. Y. 220, joint adventure terminable at will.

<sup>3</sup>People ex rel. S. A. R. R. Co. v. Barker, (1894) 141 N. Y. 196, 36 N. E. 184.

<sup>4</sup>Commonwealth v. N. Y., etc., R. Co., (1898) 188 Pa. 169, 191, 41 Atl. 594, and cases following. The indebtedness is here held to be a relevant fact tending to reduce the value of the stock, although not to be specifically deducted.

<sup>5</sup>State Board of Equalization v. People, (1901) 191 Ill. 528, 549, 61 N. E. 339, 58 L. R. A. 513, and note, p. 577, 599. For a later note, see L. R. A. 1915C 380.

<sup>6</sup>37 Cyc 1029; Cooley, Taxation, 3d Ed., p. 273.

<sup>7</sup>See Re Oklahoma Nat. L. Ins. Co., (Okla. 1918) 173 Pac. 376, 13 A. L. R. 174, 184.

<sup>8</sup>State v. Duluth Gas & Water Co., (1899) 76 Minn. 96, 104, 78 N. W. 1032, 57 L. R. A. 63; State v. Karr, (1902) 64 Neb. 514, 90 N. W. 298.

the capital stock is not readily ascertainable, the assessment may be made by adding together the value of all the property, real and personal, tangible and intangible, including all assets and the franchise, and in the absence of statute, no deduction of the indebtedness should be allowed under this rule.<sup>7</sup> But when the capital stock of a corporation has a market value, or a cash value, many states adopt this value as the basis of the assessment,<sup>8</sup> and then the question of the disposal of the indebtedness becomes more complex.

As a preliminary matter, it is necessary to determine what is meant by the terms market value, actual value, or cash value of the capital stock. These different expressions, found in various statutes, amount to the same thing, and are indirectly determined by a comparative consideration of the assets and liabilities of the corporation. The "market value" is a composite photograph of all the elements giving value to the capital stock. As surely as the corporate indebtedness increases without a corresponding increase of assets, the market value of the capital stock decreases and vice versa. Therefore, starting with the market value of the stock as a basis, it is apparent that there has already been a deduction of the corporate indebtedness.<sup>9</sup> New York has long sustained the rule that the indebtedness should be specifically deducted from the market value of the capital stock.<sup>10</sup> This deduction is available to the corporation, since by statute individuals are allowed the same deduction.<sup>11</sup> But, as previously indicated, one deduction is made when the market value of the stock is taken as a basis, and by force of the statute a second deduction is effected.

The rule that the indebtedness shall be neither added nor deducted is well established in Minnesota, Kentucky, Pennsylvania,

<sup>7</sup>*Commonwealth v. Henderson Bridge Co.*, (1896) 99 Ky. 623, 641, 642, 31 S. W. 486, 29 L. R. A. 73, aff'd in 166 U. S. 150, 17 S. C. R. 532, 41 L. Ed. 953.

<sup>8</sup>*State Board of Equalization v. People*, (1901) 191 Ill. 528, 61 N. E. 339, 58 L. R. A. 513.

<sup>9</sup>*State v. Duluth Gas & Water Co.*, (1899) 76 Minn. 96, 104, 78 N. W. 1032, 57 L. R. A. 63.

<sup>10</sup>*People ex rel. S. A. R. R. Co. v. Barker*, (1894) 141 N. Y. 196, 36 N. E. 184; *People ex rel. Cornell S. Co. v. Dederick*, (1900) 161 N. Y. 195, 209, 55 N. E. 927. Apparently a statutory deduction of the corporate indebtedness is provided in North Dakota. See *Grand Forks County v. Cream of Wheat Co.*, (1918) 41 N. D. 330, 343, 170 N. W. 863.

<sup>11</sup>*Revised Statutes and General Laws of N. Y.*, vol. 3, c. 24, Art. 1, sec. 6a, p. 3530.

Iowa, Oklahoma, and Missouri.<sup>12</sup> As stated before, the use of the market value of the stock as a basis has the effect of a deduction of the corporate indebtedness. Why should corporations in these states be taxed upon the "market value," i. e., the net value of the stock, instead of on the gross value thereof? The landowner cannot thus deduct his indebtedness, nor can a merchant, but a corporation obtains a deduction indirectly by the fact that the market value of its stock is below par. For instance, a corporation free from debt has capital stock, including its franchise, to the value of \$10,000. If the same corporation, still retaining the same property, is, however, indebted \$5,000, this reduces the aggregate value of the stock on the market to \$5,000. Clearly a rule of assessment taxing this amount is incorrect in that it exempts the corporation to the extent of its indebtedness and gives the corporation an unfair advantage over the individual.

The rule that the indebtedness should be added to the market value appears to be, after careful analysis, the most logical and reasonable basis of assessment. It has been ably expounded by the Illinois court, on the theory that the indebtedness has, in fact, been deducted in fixing the market value of the shares of capital stock, and that since the corporation is not entitled to this deduction, it is necessary to add the value of the debt to counterbalance the prior deduction.<sup>13</sup> The Minnesota court in the *Duluth Gas & Water Co.* case recognized the double deduction resulting from a statutory provision for a deduction of indebtedness from the market value of the stock.<sup>14</sup> Accordingly this provision was omitted in the later statute.<sup>15</sup> Since by the better opinion a corporation is not entitled to even one deduction, it might be well to amend the present statute so as to conform to the rule applied in Illinois.

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<sup>12</sup>State v. Duluth Gas & Water Co., (1899) 76 Minn. 96, 104, 78 N. W. 1032, 57 L. R. A. 63; Commonwealth v. Henderson Bridge Co., (1896) 99 Ky. 623, 31 S. W. 486, 29 L. R. A. 73; Commonwealth v. N. Y., etc., R. Co., (1898) 188 Pa. 169, 191, 41 Atl. 594; Marshalltown, etc., Co. v. Welker, (1919) 185 Ia. 165, 169, 170 N. W. 384; Oklahoma Furniture Mfg. Co. v. Bd. of Com'rs, (Okla. 1918) 175 Pac. 227; State ex rel. Marquette Hotel Inv. Co. v. State Tax Commission, (1920) 282 Mo. 213, 221 S. W. 721.

<sup>13</sup>Oak Ridge Cemetery Corp. v. Tax Commission, (Ill. 1921) 132 N. E. 553. This rule of assessment was approved by the United States Supreme Court in State R. Tax Cases, (1875) 92 U. S. 575, 605, 23 L. Ed. 663.

<sup>14</sup>State v. Duluth Gas & Water Co., (1899) 76 Minn. 96, 104, 78 N. W. 1032, 57 L. R. A. 63, by Mitchell, J., "The practical effect of this provision is to allow a double deduction of the amount of the corporate indebtedness."

<sup>15</sup>Minn. G. S. 1913, sec. 2015.