

CHAP. 345.—An Act To amend section 51 of chapter 4 of the Judicial Code.

September 19, 1922.
[S. 3918.]
[Public, No. 311.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 51 of chapter 4 of an Act entitled "An Act to codify, revise, and amend the laws relating to the Judiciary," approved March 3, 1911, be amended so as to read as follows:

Judicial Code.
Vol. 36, p. 1101, amend-
ed.

"SEC. 51. Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant: *Provided, however,* That any civil suit, action, or proceeding brought by or on behalf of the United States, or by or on behalf of any officer of the United States authorized by law to sue, may be brought in any district whereof the defendant is an inhabitant, or where there be more than one defendant in any district whereof any one of the defendants, being a necessary party, or being jointly, or jointly and severally, liable, is an inhabitant, or in any district wherein the cause of action or any part thereof arose; and in any such suit, action, or proceeding process, summons, or subpoena against any defendant issued from the district court of the district wherein such suit is brought shall run in any other district, and service thereof upon any defendant may be made in any district within the United States or the territorial or insular possessions thereof in which any such defendant may be found with the same force and effect as if the same had been served within the district in which said suit, action, or proceeding is brought. The word 'district' and the words 'district court' as used herein shall be construed to include the District of Columbia and the Supreme Court of the District of Columbia: *Provided further,* That this Act shall be effective for a period of three years only, after which said section 51, chapter 4, as it exists in the present law shall be and remain in full force and effect."

District courts.
Venue of suits.

Provisos.
Suits by the Govern-
ment.

Service of process in
any district or in any
territorial or insular
possessions.

Courts of District of
Columbia included.

Amendment effective
only for three years.

Approved, September 19, 1922.

CHAP. 346.—An Act To authorize the creation of corporations for the purpose of engaging in business within China.

September 19, 1922.
[H. R. 4810.]
[Public, No. 312.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "China Trade Act, 1922."

China Trade Act,
1922.

DEFINITIONS.

SEC. 2. When used in this Act, unless the context otherwise indicates,—

Terms construed.

(a) The term "person" includes individual, partnership, corporation, and association;

"Person."

(b) The term "China" means (1) China including Manchuria, Thibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hongkong, and (3) the Province of Macao;

"China."

(c) The terms "China Trade Act corporation" and "corporation" mean a corporation chartered under the provisions of this Act;

"China Trade Act
corporation," and "cor-
poration."

(d) The term "federal district court" means any federal district court, the United States Court for China, and the Supreme Court of the District of Columbia;

"Federal district
court."

"Secretary." (e) The term "Secretary" means the Secretary of Commerce; and
 "Registrar." (f) The term "registrar" means the China Trade Act registrar appointed under section 3.

Registrar.

REGISTRAR.

Designation, administrative powers, etc.

Supervision of Secretary of Commerce.

SEC. 3. The Secretary is authorized to designate as China Trade Act registrar an officer of the Department of Commerce. The official station of the registrar shall be in China at a place to be designated by the Secretary. All functions vested in the registrar by this Act shall be administered by him under the supervision of the Secretary; except that upon appeal to the Secretary, in such manner as he shall by regulation prescribe, any action of the registrar may be affirmed, modified, or set aside by the Secretary as he deems advisable.

ARTICLES OF INCORPORATION.

Corporations for business in China may be formed in District of Columbia.

Application and articles of incorporation to be filed with Secretary.

Statement in articles.

Name.

Principal office.

Business proposed.

Capital stock, etc.

Duration.

Temporary directors.

Payments on stocks.

Post, p. 851.

Banking or insurance business forbidden.

SEC. 4. (a) Five or more individuals (hereinafter in this Act referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this Act provided, form a District of Columbia corporation for the purpose of engaging in business within China.

(b) The incorporators may adopt articles of incorporation which shall be filed with the Secretary at his office in the District of Columbia and may thereupon make application to the Secretary for a certificate of incorporation in such manner and form as shall be by regulation prescribed. The articles of incorporation shall state—

(1) The name of the proposed China Trade Act corporation, which shall end with the legend, "Federal Inc. U. S. A.," and which shall not, in the opinion of the Secretary, be likely in any manner to mislead the public;

(2) The location of its principal office, which shall be in the District of Columbia;

(3) The particular business in which the corporation is to engage;

(4) The amount of the authorized capital stock, the designation of each class of stock, the terms upon which it is to be issued, and the number and par value of the shares of each class of stock;

(5) The duration of the corporation, which may be for a period of not more than twenty-five years, but which may, upon application of the corporation and payment of the incorporation fee, be successively extended by the Secretary for like periods;

(6) The names and addresses of individuals, a majority of whom are citizens of the United States and at least one of whom is a resident of the District of Columbia, to be designated by the incorporators, who shall serve as temporary directors; and

(7) The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed and paid in cash, or, in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors.

(c) A China Trade Act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business.

CERTIFICATE OF INCORPORATION.

Certification of incorporation to be issued by the Secretary.
Conditions.

SEC. 5. The Secretary shall, upon the filing of such application, issue a certificate of incorporation certifying that the provisions of this Act have been complied with and declaring that the incorporators

are a body corporate, if (a) an incorporation fee of \$100 has been paid him, (b) he finds that the articles of incorporation and statements therein conform to the requirements of, and that the incorporation is authorized by, this Act, and (c) he finds that such corporation will aid in developing markets in China for goods produced in the United States. A copy of the articles of incorporation shall be made a part of the certificate of incorporation and printed in full thereon. Any failure, previous to the issuance of the certificate of incorporation, by the incorporators or in respect to the application for the certificate of incorporation, to conform to any requirement of law which is a condition precedent to such issuance, may not subsequent thereto be held to invalidate the certificate of incorporation or alter the legal status of any act of a China Trade Act corporation, except in proceedings instituted by the registrar for the revocation of the certificate of incorporation.

Status not affected by prior failure to comply with conditions.

Exception.

GENERAL POWERS.

SEC. 6. In addition to the powers granted elsewhere in this Act, a China Trade Act corporation—

General corporate powers.

- (a) Shall have the right of succession during the existence of the corporation;
- (b) May have a corporate seal and alter it at pleasure;
- (c) May sue and be sued;
- (d) Shall have the right to transact the business authorized by its articles of incorporation and such further business as is properly connected therewith or necessary and incidental thereto;
- (e) May make contracts and incur liabilities;
- (f) May acquire and hold real or personal property, necessary to effect the purpose for which it is formed, and dispose of such property when no longer needed for such purposes;
- (g) May borrow money and issue its notes, coupon or registered bonds, or other evidences of debt, and secure their payment by a mortgage of its property; and
- (h) May establish such branch offices at such places in China as it deems advisable.

SHARES OF STOCK.

SEC. 7. Each share of the original or any subsequent issue of stock of a China Trade Act corporation shall be issued at par value only, and shall be paid for in cash or in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

Stock to be issued at par.

Shares to be fully paid before issue.

Holders liable for unpaid amounts.

SEC. 8. No share of stock of a China Trade Act corporation shall, for the purposes of section 7 or of paragraph (7) of subdivision (b) of section 4, be held paid in real or personal property unless (1) a certificate describing the property and stating the value at which it is to be received has been filed by the corporation with the Secretary or the registrar in such manner as shall be by regulation prescribed, and a fee to be fixed by the Secretary or the registrar, respectively, to cover the cost of any necessary investigation has been paid, and (2) the Secretary or the registrar, as the case may be, finds and has certified to the corporation that such value is not more than the fair market value of the property.

Restriction on payments for, in real or personal property.

Certificate of value required.

BY-LAWS.

Provisions of by-laws.	SEC. 9. The by-laws may provide—
Meetings.	(a) The time, place, manner of calling, giving notice, and conduct of, and determination of a quorum for, the meetings, annual or special, of the stockholders or directors;
Directors.	(b) The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors and a majority of the officers holding the office of president, treasurer, or secretary, or a corresponding office, shall be citizens of the United States resident in China; and
Issuing shares of stock, etc.	(c) The manner of calling for and collecting payments upon shares of stock, the penalties and forfeitures for nonpayment, the preparation of certificates of the shares, the manner of recording their sale or transfer, and the manner of their representation at stockholders' meetings.
Meetings of stockholders.	STOCKHOLDERS' MEETINGS.
Notice, quorum, etc. for the first.	SEC. 10. (a) Within six months after the issuance of the certificate of incorporation of a China Trade Act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares shall constitute a quorum at such meeting authorized to transact business. At this meeting or an adjourned meeting thereof a code of by-laws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.
Adoption of by-laws.	(b) The following questions shall be determined only by the stockholders at a stockholders' meeting:
Questions to be determined only by stockholders' meetings.	(1) Adoption of the by-laws;
By-laws.	(2) Amendments to the articles of incorporation or by-laws;
Amendments.	(3) Authorization of the sale of the entire business of the corporation or of an independent branch of such business;
Sale of business.	(4) Authorization of the voluntary dissolution of the corporation; and
Dissolution.	(5) Authorization of application for the extension of the period of duration of the corporation.
Extending duration.	(c) The adoption of any such amendment or authorization shall require the approval of at least two-thirds of the voting shares. No amendment to the articles of incorporation or authorization for dissolution or extension shall take effect until (1) the corporation files a certificate with the Secretary stating the action taken, in such manner and form as shall be by regulation prescribed, and (2) such amendment or authorization is found and certified by the Secretary to conform to the requirements of this Act.
Adoption of amendments, etc.	
Certificate of Secretary required.	
Copies to registrar.	(d) A certified copy of the by-laws and amendments thereof and of the minutes of all stockholders' meetings of the corporation shall be filed with the registrar.

DIRECTORS.

Directors to exercise powers of corporation.	SEC. 11. The directors designated in the articles of incorporation shall, until their successors take office, direct the exercise of all powers of a China Trade Act corporation except such as are conferred upon the stockholders by law or by the articles of incorporation or by-laws of the corporation. Thereafter the directors elected in accordance with the by-laws of the corporation shall direct the exercise of all powers of the corporation except such as are so con-
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ferred upon the stockholders. In the exercise of such powers the directors may appoint and remove and fix the compensation of such officers and employees of the corporation as they deem advisable.

REPORTS AND INSPECTION OF RECORDS.

SEC. 12. (a) For the purposes of this Act the fiscal year of a China Trade Act corporation shall correspond to the calendar year. The corporation shall make and file with the registrar, in such manner and form and at such time as shall be by regulation prescribed, a report of its business for each such fiscal year and of its financial condition at the close of the year. The corporation shall furnish a true copy of the report to each of its stockholders.

(b) The registrar shall file with the Secretary copies of all reports, certificates, and certified copies received or issued by the registrar under the provisions of this Act. The Secretary shall file with the registrar copies of all applications for a certificate of incorporation, and certificates received or issued by the Secretary under the provisions of this Act. All such papers shall be kept on record in the offices of the registrar and the Secretary, and shall be available for public inspection under such regulations as may be prescribed.

Fiscal year.
Annual reports to registrar.
Copies to stockholders.
Registrar to file with Secretary copies of all reports, etc.
Secretary to file with registrar copies of applications, etc.
Inspection, etc.

DIVIDENDS.

SEC. 13. Dividends declared by a China Trade Act corporation shall be derived wholly from the surplus profits of its business.

Dividends to be declared only from profits.

REVOCATION OF CERTIFICATE OF INCORPORATION.

SEC. 14. The registrar may, in order to ascertain if the affairs of a China Trade Act corporation are conducted contrary to any provision of this Act, or any other law, or any treaty of the United States, or the articles of incorporation or by-laws of the corporation, investigate the affairs of the corporation. The registrar, whenever he is satisfied that the affairs of any China Trade Act corporation are or have been so conducted, may institute in the United States Court for China proceedings for the revocation of the certificate of incorporation of the corporation. The court may revoke such certificate if it finds the affairs of such corporation have been so conducted. Pending final decision in the revocation proceedings the court may, at any time, upon application of the registrar or upon its own motion, make such orders in respect to the conduct of the affairs of the corporation as it deems advisable.

Revocation of certificate of incorporation.
Investigation of affairs by registrar.
Institution of proceedings in Court for China.
Jurisdiction of court.

SEC. 15. (a) For the efficient administration of the functions vested in the registrar by this Act, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken, under this section, shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

Registrar may issue subpoenas for attendance, production of evidence, etc., in China.
Depositions.
Examinations.
Witness fees.

Assistance of district courts.

(b) In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar, or any individual so authorized by him, the registrar or such individual may invoke the aid of any federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.

Attending, testifying, etc., compulsory.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Personal immunity.

Perjury excepted.

Corporations to afford access to books, etc.

(d) For the efficient administration of the functions vested in the registrar by this Act, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China Trade Act corporation. Any person who upon demand refuses the registrar or any duly authorized officer, employee, or agent such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than \$5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.

Penalty for refusal.

Recovery.

Voluntary dissolution.

Directors to be trustees for creditors.

Appointment of others by Court for China.

SEC. 16. In case of the voluntary dissolution of a China Trade Act corporation or revocation of its certificate of incorporation, the directors of the corporation shall be trustees for the creditors and stockholders of the corporation; except that upon application to the United States Court for China by any interested party, or upon the motion of any court of competent jurisdiction in any proceeding pending before it, the court may in its discretion appoint as the trustees such persons, other than the directors, as it may determine. The trustees are invested with the powers, and shall do all acts, necessary to wind up the affairs of the corporation and divide among the stockholders according to their respective interests the property of the corporation remaining after all obligations against it have been settled. For the purposes of this section the trustees may sue and be sued in the name of the corporation and shall be jointly and severally liable to the stockholders and creditors of the corporation to the extent of the property coming into their hands as trustees.

Powers, etc., of trustees.

REGULATIONS.

Regulations to be made.

SEC. 17. (a) The Secretary is authorized to make such regulations as may be necessary to carry into effect the functions vested in him or in the registrar by this Act.

Fees to be prescribed.

(b) That the Secretary is authorized to prescribe and fix the amount of such fees (other than the incorporation fee) to be paid him or the registrar for services rendered by the Secretary or the registrar to any person in the administration of the provisions of this Act. All fees and penalties paid under this Act shall be covered into the Treasury of the United States as miscellaneous receipts.

PENALTIES.

SEC. 18. No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall make, issue, or publish any statement, written or oral, or advertisement in any form, as to the value or as to the facts affecting the value of stocks, bonds, or other evidences of debt, or as to the financial condition or transactions, or facts affecting such condition or transactions, of such corporation if it has issued or is to issue stocks, bonds, or other evidences of debt, whenever he knows or has reason to believe that any material representation in such statement or advertisement is false. No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall, if all the authorized capital stock thereof has not been paid in, make, issue, or publish any written statement or advertisement, in any form, stating the amount of the authorized capital stock without also stating as the amount actually paid in, a sum not greater than the amount paid in. Any person violating any provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than ten years, or both.

False statements of value of stocks, financial transactions, etc., by a stockholder, officer, etc., prohibited.

As to amount of stock paid in.

Punishment for.

SEC. 19. No individual, partnership, or association, or corporation not incorporated under this Act or under a law of the United States, shall engage in business within China under a name in connection with which the legend "Federal Inc. U. S. A." is used. Any person violating this section shall upon conviction thereof be fined not more than \$1,000 for each violation.

Penalty for unauthorized use of "Federal Inc. U. S. A."

JURISDICTION OF SUITS AGAINST CORPORATION.

SEC. 20. That the Federal district courts shall have exclusive original jurisdiction of all suits (except as provided by the Act entitled "An Act creating a United States Court for China and prescribing the jurisdiction thereof," approved June 30, 1906, as amended) to which a China Trade Act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States Court for China, or in the Supreme Court of the District of Columbia, or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business.

Exclusive jurisdiction of Federal courts. Vol. 34, p. 814.

Venue of suits.

FEDERAL TAXATION.

SEC. 21. Title II of the Revenue Act of 1921 is amended by adding at the end thereof a new section to read as follows:

Revenue Act, 1921, amendments.

Income tax. Ante, p. 271, amended.

"CHINA TRADE ACT CORPORATIONS.

"SEC. 264. (a) That for the purpose only of the tax imposed by section 230 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, a credit of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 217) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by individual citizens of the United States or China, resident in China, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the amount by which the tax imposed by section 230 is diminished by reason of such credit exceed the amount of the special dividend certified under subdivision (b) of this section.

China Trade Act corporations.

Credit allowed, for proportion its income from China sources bears to shares of residents in China. Ante, pp. 252, 244.

Proviso. Limitation.

Credit subject to special dividends to residents in China.

Additional to all other payments.

Dividends in proportion to stock owned, etc.

Ownership of stock.

Meaning of "China."

Corporation income tax.
Ante, p. 252, amended.

Rate.

Tax credits.
Ante, p. 259, amended.

China trade corporations not deemed as affiliated.
Ante, p. 260, amended.

New paragraph.
Ante, p. 227, amended.

China Trade Act corporation considered a domestic one.

New paragraph.
Ante, p. 239, amended.
Items excepted from gross income.

Special dividends to China residents from China Trade Act corporations.

Credit exceptions allowed China trade corporations.
Ante, pp. 242, 255, 261.

Amendment.

"(b) Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner (1) the amount which, during the year ending on the date of filing the return, the corporation has distributed as a special dividend to or for the benefit of such individuals as on the last day of the taxable year were citizens of the United States or China, resident in China, and owned shares of stock of the corporation, (2) that such special dividend was in addition to all other amounts, payable or to be payable to such individuals or for their benefit, by reason of their interest in the corporation, and (3) that such distribution has been made to or for the benefit of such individuals in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificate shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such individuals, and that the amount certified has been distributed in accordance with the method so provided.

"(c) For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

"(d) As used in this section the term 'China' shall have the same meaning as when used in the China Trade Act, 1922."

SEC. 22. Subdivision (b) of section 230 of the Revenue Act of 1921 is amended to read as follows:

"(b) For each calendar year thereafter, 12½ per centum of the amount of the net income in excess of the credits provided in sections 236 and 264."

SEC. 23. Subdivision (f) of section 238 of the Revenue Act of 1921 is amended by adding after the figures "262" the word and figures "or 264".

SEC. 24. Subdivision (c) of section 240 of the Revenue Act of 1921 is amended by adding at the end thereof a new sentence to read as follows: "A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of this section."

SEC. 25. That section 2 of the Revenue Act of 1921 is amended by adding at the end thereof a new paragraph to read as follows:

"(12) A corporation organized under the China Trade Act, 1922, shall, for the purposes of this Act, be considered a domestic corporation."

SEC. 26. Subdivision (b) of section 213 of the Revenue Act of 1921 is amended by striking out the period at the end of paragraph (12) thereof and inserting in lieu thereof a semicolon, and by adding after paragraph (12) a new paragraph to read as follows:

"(13) In the case of an individual, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, if, at the time of such distribution, he is a citizen of China resident therein and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him."

SEC. 27. Subdivision (a) of section 216, paragraph (6) of subdivision (a) of section 234, and paragraph (3) of subdivision (a) of section 245, of the Revenue Act of 1921, are amended by inserting in each after the word and figures "section 262" a comma and the words "and other than a corporation organized under the China Trade Act, 1922".

RESERVATION OF RIGHT TO AMEND.

SEC. 28. The Congress of the United States reserves the right to alter, amend, or repeal any provision of this Act.

Approved, September 19, 1922.