SOME PHASES OF CORPORATE REGULATION IN THE TERRITORY OF IOWA

The growth and influence of corporations and of corporate interests in recent years have stimulated an increased interest in the study of corporation laws. Comparative study has already shown that our corporation law—a common inheritance—has been so modified by statutory enactments in the several States that to-day the lack of uniformity in the legislation of the States is considered one of the chief causes of corporate evils. In this article it is my purpose to trace the development of some phases of the law of corporations in early Iowa as inherited from the Northwest Territory, the Territory of Michigan, and the Territory of Wisconsin, and as modified by subsequent legislation in Iowa during the territorial period from 1838 to 1846.

By the provisions of the Ordinance of the Northwest Territory the Governor and Judges, or a majority of them, were empowered to adopt and publish in the district such laws, criminal and civil, of the original States as might be necessary and best suited to the circumstances of the district. Laws so adopted were to be in force until the organization of a General Assembly within the Territory unless disapproved by Congress. After the organization of the legislative body the Governor, the Legislative Council and the House of Representatives had power "to make laws in all cases" for the good government of the district not repugnant to the principles and articles of the Ordinance itself. Un-

der this authority Winthrop Sargent, Secretary of the Territory and acting as Governor, John Cleves Symes, and George Turner, Judges, adopted in 1792 "An act granting licenses to merchants, traders, and tavern keepers."[1] This appears to have been the first act passed in the Northwest Territory for the regulation of trade. It cannot in any sense be said to be a law authorizing the organization of corporations, but aimed simply to compel persons or firms engaged in handling foreign merchandise to pay a license fee for the privilege of selling the same in the Territory. The act, however, applied to corporations as well as to individuals. It was in the nature of a tariff and was, perhaps, aimed at the British from the north.

Section one of this act provides "that if any person or persons shall presume to set up or open a store for the sale of merchandise consisting of dry goods, or articles in the grocery line, which are not of the growth production or manufacture of some part of the United States or of one of their territories or shall presume to expose directly or indirectly any such articles or things for sale . . . . without first being licensed . . . . he, she, or they shall forfeit and pay," etc. The second section provides for the creation of the office of "commissioner for granting licenses"; and in each community the commissioner was given authority to grant licenses for one year from date "to any and every person, mercantile house or firm applying for the same for the purpose of opening a store or of exposing goods or other articles . . . . to sale." An interesting part of this section is the provision that "each and every person mercantile

[1] *Chase's Statutes of Ohio*, Vol. I, p. 114.

house or firm, suing out license as aforesaid shall cause to be set upon some conspicuous part of the front and outside next the street of his store, shop, or place of sales for the information of the public a board or sign on which shall be written in large fair letters 'by authority a licensed store.'" This provision requiring the display of the business name conspicuously before the office or place of business is found in the laws of several of our States at the present time, notably in those of New Jersey.[1] This provision also appears in the English Companies Act of 1862. It is probable that the origin of such provisions dates back much earlier than 1789. In many States of the American Union corporations are required to add to the corporate name the word corporation, company, incorporated, or limited, to designate the fact of incorporation.

In 1798 the Governor and Judges of the Northwest Territory enacted a law entitled "A law to confer on certain associations of the citizens of this territory the powers and immunities of corporations, or bodies politic in law."[2] This was simply a general law for the incorporation of "religious charitable literary or other civil purposes for the promotion of social happiness and good order." Laudable as the object stated here may seem to be, this act was repealed at the first session of the first General Assembly of the Northwest Territory in 1799.[3] I am unable to find any reason for its repeal, but it is possible that its repeal was dictated by the feeling on the part of the General Assembly that the power

[1] See *General Corporation Act of New Jersey*, 4th Edition, 1902, Sec. 45, p. 71.

[2] *Chase's Statutes of Ohio*, Vol. I, p. 204.

[3] "An act repealing certain laws, and parts of laws."—*Chase's Statutes of Ohio*, Vol. I, p. 216.

to incorporate rested solely with the legislative body. For this was the policy of all the State governments until comparatively recent times.

In 1800, before the organization of Ohio into a Commonwealth, the Northwest Territory was divided and the Territory of Indiana was established, and the act making the division provided that the Ordinance of 1787 and the laws of the Northwest Territory should apply to it.[1] In 1805 the Territory of Indiana was divided and the Territory of Michigan was established.[2] The new Territory of Michigan inherited the acts of the Parliament of Great Britain, the laws adopted and made by the Governor and Judges of the Northwest Territory and by its General Assembly, and the laws adopted and made by the Governor and Judges of the Territory of Indiana. In 1810 the Governor and Judges of the Territory of Michigan repealed all of these laws[3] because "said laws do not exist of record or in manuscript in this country and are also out of print, as well as intermingled with a multiplicity of laws which do not concern or apply to this country . . . . and it has been thought advisable by the governor and judges of the territory of Michigan, heretofore specially to re-enact such of the said laws as appear worthy of adoption and, hereafter also re-enact such of the said laws as shall appear worthy of adoption." Thus Michigan proposed to begin her political career unfettered by inherited law, tradition, or custom as far as possible.

Iowa, though forming a part of the Louisiana Purchase

[1] *U. S. Statutes at Large*, Vol. II, p. 58.

[2] *U. S. Statutes at Large*, Vol. II, p. 309.

[3] *Laws of the Territory of Michigan*, Vol. I, p. 900.

and at one time a part of the Territory of Missouri, had not yet been opened for settlement at the time of the admission of Missouri into the Union in 1821. Nor was any provision made for the government of that great tract of territory which lay to the north and west of Missouri. But the territory in which Iowa was included was attached to and made a part of the Territory of Michigan in 1834 for the purposes of temporary government.[1] The act of attachment provided that the inhabitants of this territory should be "entitled to the same privileges and immunities, and be subject to the same laws, rules, and regulations, in all respects, as the other citizens of Michigan Territory." Thus the first authority for the organization of corporations in Iowa, after it had been opened to settlement, was under territorial laws of Michigan. We have plenty of evidence that corporations did operate in Iowa prior to 1834. These, however, were almost exclusively trading companies which did not derive their authority from the government of the Territory.

The Governor and Judges of the Territory of Michigan under the authority of the Ordinance of 1787 and the act creating the Territory enacted laws for the Territory of Michigan until 1823. Among these laws were several charters of incorporation and in 1821 "An Act to confer on certain Associations, the powers and immunities of Corporations or Bodies Politic in law."[2] The purposes of this act, like the one adopted in the Northwest Territory in 1798, were limited to scientific, literary, charitable, or religious societies, and does not, therefore, concern us in this connec-

[1] *U. S. Statutes at Large*, Vol. IV, p. 701.

[2] *Laws of the Territory of Michigan*, Vol. I, p. 870.

tion. In 1824 the Governor and Legislative Council of the Territory of Michigan passed "An Act relative to turnpike companies."[1] This was not a general law for the incorporation of such companies but merely provided for the method of organization and control of such as might "hereafter be incorporated by act of the Legislature."

On the face of it this act seems to be general in its nature for it provides in great detail for the organization and management of turnpike companies. However, another act was passed on the same day entitled "An Act to incorporate the Pontiac and Paint Creek Turnpike Company."[2] This act gave the names of the corporators, designated the line of road to be built, gave a name to the incorporators and created them a body corporate and politic, limited the property of the company to that necessary for its legitimate purposes, divided the stock of the company into 800 shares of $25 each, appointed commissioners to receive subscriptions, provided for the erection of gates and the collection of tolls, etc. The frequent reference made to the "act relative to turnpike companies" shows conclusively that the said act was not looked upon as a general law for the incorporation of such companies but simply as a means of simplifying the legislative work in passing special acts of incorporation.

Numerous other acts of incorporation were passed up to the time of the organization of the Territory of Wisconsin. None of these, however, partake of the nature of general laws.

In April, 1836, the Territory of Wisconsin was established

[1] *Laws of the Territory of Michigan*, Vol. II, p. 202.

[2] *Ibid*, p. 212.

as a separate Territory,[1] and in November of the same year the Legislative Assembly was already busy legislating for the new Territory. Among the laws passed were numerous acts of incorporation, all of which were special acts. With the exception of several mining companies most of the corporations thus created were public service corporations, such as banks, railroads, etc., or they were religious, charitable, and educational institutions.

In January, 1838, the legislature of the Territory of Wisconsin passed "An Act relative to limited partnerships."[2] This was the first act to provide for the organization and control of ordinary business enterprises other than simple partnerships or individual enterprises. The act was limited in its purpose to "agricultural, mercantile, mechanical, mining, smelting or manufacturing business. . . . and for no other purpose whatever." Such partnerships were to be organized as follows:—There were to be two classes of partners, general partners and special partners. The general partners only had authority to transact business, sign for and bind the partnership; they were also to be jointly and severally responsible. The special partners were to contribute "in actual cash payment a specific sum as capital to the common stock," and they enjoyed a limited liability, being liable for the debts of the partnership only to the extent of the capital contributed by them.

Such partnerships were formed much as the ordinary business corporation is at the present time. The persons desiring to form such a partnership were to make and severally

[1] *U. S. Statutes at Large*, Vol. V, p. 10.

[2] *Laws of the Territory of Wisconsin*, 1837–38, p. 226.

sign a certificate giving, first, the name or firm under which such partnership was to be conducted; second, the general nature of the business to be transacted; third, the names of all the general and special partners interested therein, distinguishing which were general and which were special partners, and noting their respective places of residence; fourth, the amount of capital which each special partner shall have contributed to the common stock; and fifth, the period at which the partnership is to commence and the period at which it will terminate.

This certificate was to be acknowledged and certified in the same manner in which deeds were then acknowledged and certified, and then recorded and filed in the office of the register of deeds in the county in which the principal place of business of the partnership was to be located. In addition to this the certified and acknowledged certificate was to be copied in a book specially kept for that purpose, which book was open to public inspection. Along with this certificate it was necessary for one or more of the special partners to file an affidavit stating the sums contributed by each of the special partners to the common stock "and to have been actually and in good faith paid in cash."

Failure to comply with the above provisions relative to organization rendered all the interested parties liable as general partners. The terms of the partnership were to be published for at least six weeks immediately after registry in a newspaper published in the county where the principal business of the partnership was to be carried on, etc.

This form of organization while presenting many features similar to the business corporation of to-day differs from it

in several essential characters, the most important of which is the non-transferability of shares. Section twelve of the act provides that "every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership." The members were then to be considered as general partners and individually liable. The business of the partnership was to be conducted under a firm name in which only the names of the general partners appeared and "without the addition of the word 'company' or any other general term." The use of the name of a special partner in the firm name made him liable as a general partner. All suits by and against the firm were to be in the name of the general partners only. The special partners could examine into the affairs of the partnership and even advise as to their management, but were not to transact any business on account of the partnership, nor to be employed for that purpose as agent, attorney, or otherwise. Any other interference on the part of a special partner rendered him liable as a general partner. Other sections aim to protect creditors and to further prescribe duties and liabilities of the partners.

The Territory of Iowa was established as an independent Territory by the act of June 12, 1838,[1] and early in December of the same year the first territorial legislature of Iowa met in Burlington and proceeded to enact as statutes for the new Territory the major part of the laws by which its people had been governed under the Territory of Wisconsin.

[1] *U. S. Statutes at Large*, Vol. V, p. 235.

Among these the act relative to limited partnerships, mentioned above, was adopted *in toto.*[1] In addition to this about twenty-five special acts of incorporation were passed incorporating educational institutions, canal, milling, turnpike, and insurance companies, besides creating several of the territorial towns into municipal corporations. Other special acts of incorporation were passed in 1839–1840; but none of them are of importance in this connection.

An act approved January 28, 1842, entitled "An Act to incorporate the Washington Manufacturing Company"[2] made three individuals named in the act and their associates and successors "a body politic and corporate" with power to erect a dam on the Cedar River. The eighth section of this act, however, deprived the corporators of one chief advantage of incorporation, namely, limited liability. The section referred to reads in part as follows: "Each member of the Washington Manufacturing Company aforesaid, shall be personally liable for the payment of all debts due from the company." Corporation laws at the present time everywhere specially exempt the stockholders from personal liability for the debts of the company. Nor have I been able to find the principle in any of the early acts of incorporation in Iowa, though it appears again in subsequent acts. The principle of the personal liability of the stockholders for the corporate debts was somewhat modified in an act approved February 17, 1842, incorporating the Cedar Rapids Manufacturing Company, by making stockholders personally liable only in case of the insolvency or failure of the company.[3]

[1] *Laws of the Territory of Iowa*, 1838–39, p. 361.

[2] *Laws of the Territory of Iowa*, 1841–42, p. 22.

[3] *Laws of the Territory of Iowa*, 1841-42, p. 82.

In the next session of the General Assembly of the Territory of Iowa, two new principles of corporation law appear in the acts of special incorporation, though not regularly or consistently, namely the *doctrine of the law of shares* and the *doctrine of limited liability*. On January 21, 1843, an act was approved incorporating the Scott County Hydraulic Company. This act puts large discretionary power into the hands of those "owning a majority of the stock," thus sanctioning the doctrine of the law of shares, but the act says absolutely nothing as to the personal liability of the stockholders.[1]

Another act of special incorporation was approved February 13, 1843, incorporating the Farmers' Half Breed Land Company. Here the doctrine of limited liability was recognized and adopted as follows: "The stockholders shall be individually liable for all the contracts and debts of the company in proportion to the amount of stock owned by each."[2] The sixteenth section of this act contained a statement commonly found in charters of incorporation, namely, that the act was subject to alteration, amendment, or repeal by any future legislature. This section, however, was repealed January 29, 1844,[3] but the legislature continued to assert its right to alter, amend, or repeal charters in the subsequent acts of incorporation. The relinquishment of the right to alter, amend, or repeal the charter of the Farmers' Half Breed Land Company is not to be taken as a mere self limitation, which would not be binding on a future legislature; for the decision in the Dartmouth College case is that a charter is a

[1] *Laws of the Territory of Iowa*, 1842–43, p. 16.

[2] *Laws of the Territory of Iowa*, 1842–43, p. 51.

[3] *Laws of the Territory of Iowa*, 1843–44, p. 80.

contract, and unless the right to alter or amend has been expressly reserved the charter cannot be altered, amended, or repealed without the consent of the corporation. This principle has been severely criticised as vicious, and it is said to exist only as an obsolete principle of Jurisprudence at the present time, since every State in the American Union has incorporated into its fundamental law a provision reserving the right to alter, amend, or repeal corporate charters.

During the session of the Legislative Assembly in 1844 several acts of incorporation were passed, but no new principle of corporation law was introduced other than the tendency to limit the charters in time—the time, however, varied from twenty to forty years. The act incorporating the Dubuque Mining Company very clearly departs from the doctrines of the law of shares and limited liability, already referred to, by putting the management of the affairs of the company in the hands of the directors "subject to the regulations and instructions of a majority of the stockholders,"[1] and making the stockholders personally liable for the debts of the company in case of insolvency.[2]

The varying policy of the Legislative Assembly of the Territory of Iowa in granting charters of incorporation shows the evils of special incorporation. Sometimes the charters provided in great detail for the organization and management of the company, again only a brief statement that the incorporators were capable of exercising the usual and necessary powers of a corporate body for the purposes specified was deemed sufficient. In fact such powers and privileges

[1] *Laws of the Territory of Iowa*, 1843–44, p. 117.

[2] *Laws of the Territory of Iowa*, 1843–44, p.118.

were granted and such restrictions imposed as public policy or the caprice of the legislature suggested. With such conditions prevailing it is no wonder that the convention which met and framed the Constitution of 1846 inserted a provision that "Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide, by general laws, for the organization of all other corporations."[1]

The development toward general law for the incorporation of companies in Iowa has undoubtedly been normal. General law is the rule in the United States, and an examination of the constitutions of the several States shows that all but six contain clauses either guaranteeing that the formation of corporations shall be under general law, or that they shall not be created by special acts.[2]

Thus, with the adoption of the Constitution of 1846 Iowa was to have a general law of free association by which any number of individuals might form a corporation for almost any lawful purpose without special authorization of the legislature. The nature of the general law enacted after the adoption of the Constitution of 1846 and the subsequent development of corporation law in Iowa will be reviewed in a future paper.

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[1] Constitution of 1846, Art. 9, Sec. 2.

[2] These States are Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, and Virginia. All of these States provide for incorporation under general law, but special acts are not prohibited and are often passed.