

SOME PHASES OF CORPORATE REGULATION IN THE STATE OF IOWA

The Constitution under which Iowa was admitted into the Union in 1846 directed the General Assembly to provide by "general laws" for the organization of corporations other than for "political or municipal purposes." By the same article the authority to pass "special laws" was denied and the creation of banking corporations prohibited.¹ The subsequent development of corporation law in Iowa is, therefore, to be sought in acts of a general character and uniform for the entire State.

THE ACT OF 1847

On November 30, 1846, the First General Assembly met at Iowa City, and within four days each branch thereof had appointed a "Standing Committee on Incorporations." In the House of Representatives the committee consisted of Messrs. Sells, Hardy, McManus, Olmstead, and Cochran;² while in the Senate Messrs. Hughes, Benton, Bradley, Springer, and Browning were appointed.³ The bill relating to corporations, which, after discussion and amendment, passed the General Assembly, originated in the House of Representatives and was introduced on January 19, 1847, by Mr. Hardy, a member of the Committee on Incor-

¹ Article 9.

² *Journal of the House of Representatives*, 1846-7, p. 36.

³ *Journal of the Senate*, 1846-7, p. 26.

porations. It was entitled, "A Bill to Authorize General Incorporations,"¹ and is recorded as House File No. 49.

On January 20, this bill was read a second time in the House of Representatives and then referred to the Committee on Incorporations. On January 29, 1847, Mr. Sells of the Committee on Incorporations reported the bill as amended by the Committee. The journal of the House records that the same "was read and remains with the orders of the day." On the day following, however, the bill was "committed to committee of the whole House, for Monday next," where it was discussed and further amended; and on February 3, 1847, it was read a third time and passed.²

On the day following its passage in the House of Representatives it was introduced into the Senate, where it was read a first and second time and referred to the Committee on Incorporations. The Senate Committee reported the bill back to the Senate without amendment on February 4. It was then referred to the Committee of the Whole and made a special order for two o'clock of the same day.³ In reference to the action in the Committee of the Whole, the journal reads: "After some time spent therein, the committee rose, and reported the said bill back, with sundry amendments, which were concurred in, and, on motion of Mr. Harbour, the thirteenth rule was suspended, and said bill was read a third time and passed." The bill as amended

¹ *Journal of the House of Representatives*, 1846-7, p. 165.

² *Ibid*, p. 233.

³ *Journal of the Senate*, 1846-7, p. 222.

having passed the House of Representatives was signed by the Governor and became a law on February 22, 1847.¹

Thus the first general incorporation law of the State of Iowa was placed upon the statute books without much discussion. It does not seem to have been a subject of newspaper comment.² The provisions of this important statute, which is entitled "An Act to authorize General Incorporations," are as follows:—

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That any number of persons may hereafter incorporate themselves for the transaction of any business which may be the lawful subject of a general partnership, including the establishment of ferries, the construction of railroads, and other works of internal improvement.

SEC. 2. They may make such regulations as they please in relation to the management of their business, not incompatible with an honest and legal purpose.

SEC. 3. They may render their individual interest in the corporation transferable.

SEC. 4. The death of any of its members shall not terminate the corporation.

SEC. 5. They may sue and be sued in their corporate name, and have a common seal.

SEC. 6. They may exempt private property from corporate debts, and may hold, buy and sell real estate; *Provided,* The requisitions of this act are substantially complied with.

SEC. 7. Previous to commencing business they shall adopt arti-

¹ *Laws of Iowa, 1846-1847, p. 101.*

² Dr. William Salter, of Burlington, Iowa, in a letter to the writer says: "For the General Incorporation Law of the State, provided for by the Constitution of 1846, we are indebted to the wise and sagacious influence of Judge Charles Mason." The act is concise and shows that the author was thoroughly familiar with the problems of corporate organization and control.

cles of incorporation, which shall be recorded in the office of the recorder of deeds in the county where the principal place of business is; and, further, all corporations for the purpose of constructing railroads, canals and other works of internal improvement, shall file a certified copy of their articles of association in the office of the secretary.

SEC. 8. A notice shall be published four weeks in succession in some newspaper in such county, or, if no newspaper be printed therein, then such publication shall be made in some newspaper as convenient as practicable thereto.

SEC. 9. A failure to comply with either of the requisitions contained in the two preceding sections, shall render their individual property liable on all contracts.

SEC. 10. The notice required by the eighth section shall contain:

First.—The name of the corporation, and the principal places of transacting business.

Second.—The general nature of the business to be transacted.

Third.—The amount of capital stock incorporated.

Fourth.—The amount of capital stock actually paid in, and the times and conditions on which the remainder is to be paid.

Fifth.—The time of the commencement and termination of the association.

Sixth.—The officers of the company and the time of holding elections.

SEC. 11. A like publication and recording shall be made upon renewal, or any essential alteration of the articles of incorporation.

SEC. 12. The corporation shall not be permitted to continue for more than twenty years at once, but may be renewed for a like time by the unanimous consent of the corporators.

SEC. 13. The corporation cannot be voluntarily dissolved previous to the period first fixed upon, without giving the same previous newspaper publication of its dissolution, as is required by section eight in its creation.

SEC. 14. Intentional fraud in the transaction of the affairs of the

company shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who shall receive injury from such fraud, may also recover damages therefor in a civil suit against such corporation.

SEC. 15. The payment of dividends which shall leave insufficient funds to meet the liabilities of the company, shall be deemed fraud.

SEC. 16. A failure to comply with the foregoing requisitions, or a substantial departure from the articles of association, shall render the individual property of the members of the company liable for the corporate debts.

SEC. 17. Either such departure, or the practice of fraud by the company, shall cause a forfeiture of all their privileges under this act, and the courts may proceed to wind up their business, as in cases of special corporations that have violated their charters.

SEC. 18. Legal process may be served upon any officer of the company, and if there be no officers, then upon any member thereof. This shall be deemed sufficient service upon the company.

SEC. 19. Whenever an execution shall be issued against the company, and, after reasonable inquiries, no corporate property can be found sufficient to satisfy the same, it shall be lawful to serve a notice upon the acting manager of the business of the company, or if none such can be found, then upon any member thereof, requiring them to appear before the District Court of the county where the judgment was obtained, and show cause why the individual property of the members of the company should not be made liable, and, if no sufficient cause be shown, then the court shall order the execution to be levied upon such property.

SEC. 20. Property seized by virtue of such execution shall only be released from the effects of the law by either:

First—Pointing out sufficient company property whereon to levy; in which case the costs thus far made shall be added to the amount to be collected from the company by the execution—or,

Second—By making and filing in the clerk's office an affidavit that the funds of the company are exhausted, and by informing the officer

who made the levy of the same. In this case the officer shall forthwith make return of that fact to the court from whence the execution was issued. He shall thereupon suspend all further proceedings under the execution, and the property levied upon shall be treated as though held by virtue of a writ of attachment until the further order of the court.

SEC. 21. The plaintiff may direct a release of the property thus taken in execution, or he may appear before the District Court at the return day of the execution, or as early as practicable afterwards, and, in answer to a rule to show cause why the property should not be released, may allege such matters as will render the private property of the members of the company liable. Issue shall thereupon be joined, to be tried by a jury.

SEC. 22. Upon such trial it shall be necessary for the company to exhibit their books and papers, if required, and explain by those, or by some other means, the fairness and regularity of their business transactions. The judgment of the Court shall be in accordance with the finding of the jury.

SEC. 23. Whenever the private property of one member of the company is thus held, he shall have a claim for indemnity against the company.

SEC. 24. Any of the members may sue the company at law for a private demand against the same.

SEC. 25. All corporations whose charter shall expire by their own limitations, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of—— years¹ after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporation or corporations have been, or may be, incorporated.

¹This section was added by the Committee on Incorporations in the House and therein the number of years is stated as three (see *House Journal*, 1846-7, p. 208). While in the laws passed the number of years is left vacant.

SEC. 26. The private property of each stockholder shall be liable for all the debts of the corporation, to the amount of stock owned by said stockholder at the time when such debts were contracted, and also to the amount of stock owned by said stockholder at any subsequent time.

This act was amended January 15, 1849, to apply to the Navigation and Hydraulic Company of the Mississippi Rapids, allowing said company to acquire the right of way for a canal; but the private property of the directors and stock-holders was made liable where they had authorized the creation of debts or liabilities.¹

THE CODE OF 1851

On January 25, 1848, an act was approved "to provide for the appointing of Commissioners to draft, revise and arrange a Code of Laws." The first section of this act names Charles Mason, William G. Woodard, and Stephen Hempstead as the Commissioners.² The result of their labors is the Code of 1851. In this Code the subject of corporations is treated in title X, chapter 43, which is composed of thirty-five sections, that is, 673 to 707 inclusive.

Section 673 of the Code of 1851 is much the same as the first section of the act of 1847 except that "any lawful business" takes the place of "any business which may be the lawful subject of a general partnership," and bridges are included in the specific purposes of organization.

In the act of 1847 the general powers granted are contained in sections two to six inclusive. In the Code of 1851 there are seven specific powers granted as follows:

¹ *Laws of Iowa*, 1848-49, p. 120.

² *Laws of Iowa*, extra session, 1848, p. 24.

“*First*, to have perpetual succession; *Second*, to sue and be sued by its corporate name; *Third*, to have a common seal which it may alter at pleasure; *Fourth*, to render the interests of the stockholders transferable; *Fifth*, to exempt the private property of its members from liability for corporate debts except as herein otherwise declared; *Sixth*, to make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy; and *Seventh*, to establish by-laws and make all rules and regulations deemed expedient for the management of their affairs, in accordance with law and not incompatible with an honest purpose.”¹

Comparison will show that while the order has been changed the powers granted, with slight modifications, are the same as in the act of 1847. Sections 675 and 676 of the Code of 1851 are the same as section 7 of act of 1847 with the exception that corporations for the construction of internal improvements must fix in their articles of incorporation “the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which must in no case, except in that of the risks of insurance companies, exceed two-thirds of its capital stock.”²

Sections 677 and 678 of the Code of 1851 are about the same as sections 8 and 10 of the act of 1847, with the exception that under the Code provision, corporations were not required to state the amount of capital stock *actually paid in*, as was required in the act of 1847.³ Under the

¹ *Code of 1851*, section 674, p. 109.

² *Ibid*, p. 109.

³ This, however, was required by the provisions of section 685 of the *Code of 1851* relating to the posted statement of assets and liabilities. See below, p. 494.

Code two additional statements were required, namely, "the highest amount of indebtedness or liability to which the corporation is at any time to subject itself" and "whether private property is to be exempt from the corporate debts."¹

Sections 9 and 16 of the act of 1847 relating to individual liability are summed up in section 689 of the Code of 1851 as follows: "A failure to comply substantially with the foregoing requisitions in relation to organization and publicity renders the individual property of all the stockholders liable for the corporate debts."² Section 17 of the act of 1847 and section 690 of the Code of 1851 relating to forfeitures are alike. The content of section 11 of the act of 1847 and of section 680 of the Code of 1851 are likewise the same.

The duration of corporations under the act of 1847 was limited to twenty years. While under the Code of 1851 corporations organized for the construction of internal improvements might endure for fifty years; while all others were not to exceed twenty years.

The section on dissolution in the act of 1847 (section 13) is embodied in two sections, sections 682 and 683 of the Code of 1851, and with the addition that dissolution prior to the period fixed in the articles of incorporation can not be made "except by unanimous consent, unless a different rule has been adopted in their articles."

Sections 684 and 685 of the Code of 1851 relate to the now popular subject of *publicity* and are as follows:—

A copy of the by-laws of the corporation with the names of all its

¹ *Code of 1851*, p. 110.

² *Ibid*, p. 111.

officers appended thereto must be posted in the principal place of business and be subject to public inspection.

A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company in a general way, must also be kept posted up in like manner, which statement must be corrected as often as any material change takes place in relation to any part of the subject matter of such statement.¹

These sections are still in force appearing as sections 1624 and 1625 of the Code of 1897.

Sections 14, 15, and 17 of the act of 1847 and sections 686, 687, 688, and 690 of the Code of 1851 relate to fraudulent transactions, defining the penalties and liabilities. The sections of the Code, however, are more explicit as to what constitutes fraud within the meaning of the act than are those in the act of 1847.

Section 18 of the act of 1847 relating to how process may be served upon the company is not found at all in the Code of 1851. But sections 19, 20, 21, and 23 of the act of 1847 are contained in more explicit detail in sections 696, 697, and 698 of the Code of 1851.

The twenty-second section, relating to the production of books in court, in the act of 1847 is essentially the same in section 701 of the Code of 1851; while section 25 of the act of 1847 relating to the winding up of companies appears as section 694 of the Code of 1851 as follows: "Corporations whose charters expire by their own limitation or by the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their concerns, but for no other purpose."²

¹ *Code of 1851*, p. 110.

² *Ibid*, p. 112.

Provisions relating to the liability of the private property of members, found in section 26 of the act of 1847, are limited to the unpaid installments of stock in section 695 of the Code of 1851.

The following sections of the Code of 1851 are additions to the act of 1847:—

Any corporation organized or attempted to be organized in accordance with the provisions of this chapter shall cease to exist by the non-user of its franchises for two years at any one time, but such body shall not forfeit its franchises by reason of its omission to elect officers or to hold meetings at any time prescribed by the by-laws, provided such act be done within two years of the time appointed therefor. (Sec. 693.)

For the purpose of repairs, rebuilding, or enlarging, or to meet contingencies, or for the purpose of a sinking-fund, the corporation may establish a fund which they may loan and in relation to which they may take the proper securities. (Sec. 699.)

When the franchise of a corporation has been levied upon under an execution and sold the corporators shall not have power to dissolve the corporation so as to destroy the franchise, and if they neglect to keep up an organization sufficient to enable the business to proceed the purchaser thereupon becomes vested with all the powers of the corporation requisite therefor; and when it becomes impracticable for an individual so to conduct them and in cases where doubts and difficulties not herein provided for arise, the purchaser may apply by petition to the district court which is hereby vested with authority to make any orders requisite for carrying into effect the intent of this chapter in this respect. (Sec. 700.)

A single individual may entitle himself to all the advantages of this chapter provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable. (Sec. 702.)

Persons acting as a corporation under the provisions of this chap-

ter will be presumed to be legally incorporated until the contrary is shown; and no such franchise shall be declared actually null or forfeited except in a regular proceeding brought for that purpose. (Sec. 703.)

No body of men acting as a corporation under the provisions of this chapter shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such a corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up a want of such legal organization in his defense. (Sec. 704.)

Corporations regularly organized under the general law heretofore in force, by adapting their articles of association to the provisions of this chapter and by making the required publication of the change as well as of their intention to act under the foregoing provisions, will be entitled to all the advantages and subjected to all the liabilities above provided for, but the change in their articles of association must be made in accordance with those articles or by the unanimous consent of the stockholders. (Sec. 705.)

Mutual insurance companies organized under the provisions of this chapter may render their premium notes a lien upon the whole or any part of the real estate upon which the property insured is situate, whether such real estate is or is not exempt from other liabilities as a homestead, but such lien will not attach until the premium note stating the property on which it is a lien is filed for record and treated in the same manner as though it were a mortgage from the maker thereof to the company except that it need not be acknowledged. (Sec. 706.)

Nothing herein contained is intended to affect the interests of companies already organized farther than is above expressed. (Sec. 707.)

THE REVISION OF 1860

The corporation law of Iowa as found in the Code of 1851 received but two slight amendments before the Revi-

sion of 1860. In 1858 section 689 was modified so as not to apply to railroad corporations; and in 1860 section 681 was amended to permit agricultural, horticultural, and cemetery associations to incorporate for such time as they might see fit under certain conditions. With these exceptions the corporation law of the Code of 1851 is repeated verbatim in the Revision of 1860.

CORPORATIONS AND THE CONSTITUTION OF 1857

Between the adoption of the Code of 1851 and the Revision of 1860 the present Constitution of Iowa was adopted in 1857. The subject of corporations was one of the most vigorously contested topics considered by the Convention of 1857. An attempt was made to insert into the Bill of Rights a provision that "no privileges or immunities shall ever be granted, that may not be altered, revoked or repealed by the General Assembly."¹ This failed to pass as a part of the Bill of Rights but was inserted in the article on incorporations, and appears as section 12 of article 8.

In view of the present interest in and discussion of the corporation problem the debates of the Convention of 1857 are exceedingly interesting. Extracts of some of the speeches delivered in that convention could hardly be improved upon by the most ardent anti-trust advocate of today or the zealous defender of the *rights* of aggregate capital.²

¹ *Debates of the Constitutional Convention of 1857*, Vol. I, pp. 96, 104, 143.

² The following is given in illustration:

"The amendment reported by the committee, or some equivalent for it I am in favor of. The history of our country has proven this fact: that corporate bodies with exclusive privileges have been growing upon us; have been intrenching themselves in the strongholds of our government; that they have been surrounding themselves with privilege after privilege, until they have come in fact

The Constitution as finally adopted by the Convention of 1857 and by the people contained an article of twelve sections on corporations. The first section reiterates the principle of general incorporation contained in the Constitution of 1846, as follows:—

SECTION 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

The second section declares all corporate property subject to taxation the same as that of the individual. The third section prohibits the State from becoming a stockholder in any corporation. All of the other sections except the last refer to banking corporations, which were prohibited by the Constitution of 1846. In fact the prohibition of banking corporations by the Constitution of 1846 was largely responsible for the calling of the Convention of 1857. The last section of the article on corporations in the Constitution reads:—

SECTION 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the

to control the action of the legislatures of the older States of the northern part of our confederacy at least. And I am opposed to the principle that would allow our legislature to grant those privileges and those charters, and to create these corporations without having any power to put any limit upon them. They are represented to be creatures without souls, mercenary, grasping, over-reaching; in short, so many stepping stones to an aristocratic government, and opposed directly to the first principles of a republican government. I am in favor of putting some check upon this system, of having something incorporated into our constitution which would have a tendency to check this growing evil in our country. And I know no better way to do that than by allowing the legislature that creates these corporations the power of repealing, modifying or annulling them as the wishes of the people may require, so that when they are once brought into existence they may not be forever independent of the will of the people." Speech of John T. Clark in the convention, Jan. 30, 1857. See *Debates of the Convention*, Vol. I, p. 106.

organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

THE ACT OF 1870

As already stated the Code of Iowa was revised after the adoption of the new Constitution in 1857; and the Revision of 1860 remained in force except as modified by the acts of the General Assembly until the Code underwent another revision in 1873.

Chapter 172 of the acts of the Thirteenth General Assembly is "AN ACT to Amend Chapters 52 and 53 of the Revision of 1860, in relation to Corporations."¹ This act, which was approved April 16, 1870, is composed of eleven sections, the first of which simply designates the sections of the Code of 1860 which are to be amended. The second section requires the recording of the articles of incorporation in the office of the Secretary of State in addition to the recording in the office of the Recorder of Deeds of the county in which the principal place of business of the corporation is located. The third section simply strikes out the special requirement, imposed upon corporations for the construction of internal improvements, relative to the filing of articles of incorporation in the office of the Secretary of State, the original section of the Code of 1860 having made such filing obligatory upon all such corporations.

The fourth section amends section 1156 of the Code of 1860 to make it harmonize with the two preceding sections. Section five requires a copy of the By-laws and the names

¹ *Laws of Iowa*, 1870, p. 218.

of the officers to be filed with the Secretary of State in addition to the posting required by section 1161 of the Code of 1860. The sixth section makes more explicit the individual liability of the stockholder by adding: "Neither can provisions in the articles of incorporations exempt" the stockholder from individual liability to the amount of his unpaid installments, etc. The other sections of the act, except the last, refer to "corporations other than those for pecuniary profit" and hence will not be considered in this connection.

The eleventh section provides that,

Any corporation organized for the purposes of pecuniary profit, pursuant to the provisions of chapter 52, of the Revision of 1860, or amendments thereto, which shall fail to have its articles of incorporation recorded in the office of the Secretary of State, within three months after the taking effect of this act, shall be prohibited from doing business as a corporation: *Provided*, That nothing in this section shall be construed so as to relieve such corporation from the fulfillment of all contracts made prior to the taking effect of this act, or to relieve individual members thereof from liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors.

Chapter 88 of the laws of the Fourteenth General Assembly is simply an act legalizing "the acts, doings, and contracts" of those corporations which had failed to comply with the provisions of sections 1155 and 1156 of the Code of 1860 and chapter 172 of the laws of the Thirteenth General Assembly relative to publishing a notice of incorporation and filing articles of incorporation with the Secretary of State as required.

THE CODE OF 1873

The corporation law of Iowa as it appears in the Code of 1873 is practically what it was in the Revision of 1860 plus the amendments made by the Thirteenth General Assembly as noted above. But in the Revision of 1873 there is a more logical arrangement of matter.

In some sections there are slight verbal changes, but most of the sections are repeated verbatim. The following exceptions, however, should be noted:—The section on the duration of charters in the Revision of 1860 (Section 1158) is modified so as to permit life insurance companies to endure for fifty years. In the third section of the part treating of the liability of private property for corporate debts in the Code of 1873 (Sec. 1084) a clause, not found in the Revision of 1860, is added, declaring that the stockholder “shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.”

Section 1180 of Code 1860, asserting the presumption of legal incorporation until proven otherwise, was omitted from the Code of 1873, as were also sections 1182, 1183, and 1184. A general insurance law had been adopted and matters relating to insurance companies were naturally taken from the general corporation act. The other two sections referring to corporations organized at the time of the adoption of the Code of 1860 were probably deemed inapplicable.¹

The last section of the corporation law as it appears in

¹ Cf., sections 705-7, Code 1851, which are the same as sections 1112-14, 1117 of Revision of 1860, p. 496 above.

the Code of 1873 is, however, new and reinforces by legislation the power asserted in section twelve of article eight of the Constitution relative to corporations.¹ This section reads as follows:—

The articles of incorporation, by-laws, rules, and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall, at all times, be subject to legislative control, and may be, at any time, altered, abridged, or set aside by law, and every franchise obtained, used, or enjoyed by such corporation, may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. (Sec. 1090, Code 1873).

LEGISLATION BETWEEN 1873 AND 1897

Since the Code of 1873 there has been but one authorized Code, namely, the Code of 1897 and the supplement of 1902. All references, therefore, to changes or additions in the corporation law between 1873 and 1897 will be cited as they appear in the session laws. Chapter 32 of the laws of the Sixteenth General Assembly is an almost verbatim copy of chapter 88 of the laws of the Fourteenth General Assembly² being a legalizing act as before.

The Seventeenth General Assembly repealed sections 1060 and 1064 of the Code of 1873 and enacted in their stead sections slightly changed. By the new section, 1060, the articles of incorporation must be signed and acknowledged by the incorporators and then recorded and filed as before.³ The new section, 1064, adds to the prerequisites

¹ See above, p. 498.

² See above, p. 500.

³ See above, pp. 487, 499.

for beginning business that the articles be recorded in the office of the Secretary of State.

Two acts were passed by the Eighteenth General Assembly, namely, chapter 57 which aimed to relieve corporations engaged in manufacturing from double taxation, and chapter 208 which relates entirely to banking and need not concern us in this connection.

The Twentieth General Assembly amended section 1061 of the Code of 1873, relating to the limit of indebtedness, by adding to it the following:—

That section 1061, title IX, chapter 1, of the Code of 1873, be amended by adding thereto the proviso, as follows:

Provided, That the provisions of this section shall not apply to the bonds or other railway securities to be hereafter issued or guaranteed by railway companies of this state, in aid of the location, construction and equipment of railways, to the amount of not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway actually constructed and equipped.

The Twenty-first General Assembly also amended this same section (1061) by adding:

That Section 1061 of the Code of 1873, be further amended by adding thereto the proviso as follows: *Provided*, further, that the provisions of this section shall not apply to the debentures or bonds of any company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unencumbered real estate worth at least twice the amount loaned thereon.

The Twenty-first General Assembly also passed the first act for the regulation of foreign corporations in the State of Iowa. This act is entitled "An Act Requiring Foreign Corporations to File their Articles of Incorporations, with the Secretary of State, and Imposing Certain Conditions upon Such Corporations Transacting Business in the State." It specially exempted mercantile and manufacturing companies organized in other States from its operation and applied particularly to corporations exercising the right of eminent domain.

The text of this act, which was approved April 6, 1886, is as follows:—

SECTION 1. That hereafter any corporation for pecuniary profit other than for carrying on mercantile or manufacturing^e business organized under the laws of any other state or of any territory of the United States or of any foreign country desiring to transact its business, or to continue in the transaction of its business in this state shall be and hereby is required, on and after September [first] A. D. 1886 to file with the secretary of state a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors or stock-holders, authorizing the filing thereof and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the secretary of state shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit such corporation shall be permitted and authorized to conduct and carry on its business in this state. Provided that nothing in this act contained,

shall be construed, to prevent any foreign corporations, from buying, selling, and otherwise dealing, in notes, bonds, mortgages, and other securities, or from enforcing the collection of the same, in the federal courts, in the same manner, and to the same extent, as is now authorized by law.

SEC. 2. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain or exercise any of the rights and privileges conferred upon corporations until they so have complied herewith and taken out such permit.

SEC. 3. Any foreign corporation sued or impleaded in any of the courts of this state upon any contract made or executed in this state or to be performed in this state or for any act or omission, public or private, arising, originating, or happening in the state, who shall remove any such cause from such state court into any of the federal courts held or sitting in this state, for the cause that such corporation is a non-resident of this state or a resident of another state than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this state; such forfeiture to be determined from the record of removal, and to date from the date of filing of the application on which such removal is affected, and whenever any corporation shall thus forfeit its said permit no new permit shall be issued to it for the space of three months, unless the executive council shall for satisfactory reasons cause it to be issued sooner.

SEC. 4. Any foreign corporation that shall carry on its business and transact the same on and after September 1, 1886 in the state of Iowa by its officers, agents, or otherwise, without having complied with this statute and taken out, and having a valid permit shall forfeit and pay to the state for each and every day in which such business is transacted and carried on the sum of one hundred dollars (\$100) to be recovered by suit in any court having jurisdiction.

And any agent, officer or employe who shall knowingly act or transact such business for such corporation when it has no valid permit as provided herein shall be guilty of a misdemeanor and for each offense shall be fined not to exceed one hundred dollars (\$100) or imprisoned in the county jail not to exceed thirty days and pay all costs of prosecution.

SEC. 5. All acts and parts of acts inconsistent with the provisions hereof are hereby repealed; provided, that nothing contained in this act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them or required of them or either of them by the laws now in force.

The Twenty-second General Assembly added to the purposes of organization mentioned in section 1058 of the Code of 1873 "*ownership, operation, and maintenance of canals, railways, bridges,*" etc., and further added as a purpose of organization, "the purchase, ownership, operation and maintenance of any Railroad sold or transferred under power of sale or foreclosure of any mortgage deed or trust."¹ Section 1065 of the Code of 1873, which declared that no change in the articles of association would be valid unless recorded and published as the original articles were required to be, was repealed in this same session and in its place the following was enacted:

That any of the provisions of the Articles of Incorporation may be changed at any annual meeting of the stockholders or special meeting called for that purpose; but said changes shall not be valid unless recorded and published as the original articles are required to be; and said changes in the Articles need only be signed and acknowledged by the officers of said Corporation.*

¹ *Laws of Iowa*, 1888, p. 127.

* *Ibid*, p. 128.

The Twenty-sixth General Assembly amended section 1078 of the Code of 1873, which treats of the conditions under which the transfer of shares is valid, by adding thereto the following:—

And provided further that when any shares of stock shall be transferred to any corporation as collateral security, such corporation may notify the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice and until notice that said stock shall have ceased to be held as collateral security said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock without any actual transfer on the books of such corporation of such stock. In such case it shall be the duty of the secretary or cashier of the corporation to which such stock shall have been transferred as collateral security at once upon its ceasing to be so held to inform the secretary of the corporation issuing such stock of such fact.

The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection; and *provided*, further, that no holder of stock as collateral security shall be liable for assessments on the same.

An addition was also made to the corporation law of Iowa at this session of the General Assembly by the adoption of "An Act regulating fees for the incorporation and the increase in capital stock of companies and corporations in the State of Iowa" which is as follows:—

SECTION 1. Any corporation for pecuniary profit hereafter organized or doing business in Iowa under the laws of the state, shall pay to the secretary of state, before a certificate of incorporation is issued, an incorporation fee of twenty-five dollars, and for all capital stock in excess of ten thousand dollars an additional fee of one dol-

lar per thousand upon all of its authorized capital stock. *Provided*, that this act shall not apply to building and loan associations, corporations organized for the manufacture of butter, cheese, or other dairy products, and workmen's co-operative associations and farmers' mutual insurance companies; and in no event shall the fees collected under this act exceed the sum of three hundred and fifty dollars for a single incorporation.

SEC. 2. Any corporation now organized and doing business under the laws of this state that shall increase its capital stock shall pay a fee to the secretary of state of one dollar for each thousand dollars of such increase.

SEC. 3. It shall be unlawful for any corporation to do business unless the articles of any such corporation are filed with the secretary of state; and unless such fee or fees are paid within thirty days from the filing of the same with the proper county recorder, its organization shall be deemed incomplete and shall be held to be invalid as a body corporate.¹

THE CODE OF 1897

In the new Code of 1897 the subject of corporations appears as chapter 1 title IX, just as it did in the old Code of 1873. But one section of the Code of 1873 was omitted entirely. This was section 1070, which referred to the duration of agricultural, horticultural, and cemetery associations. It was taken from the chapter on corporations for profit and the substance thereof was incorporated into the chapter on corporations not for profit. Three of the sections are entirely new, the others being repetitions or modifications of the sections in the Code of 1873. The changes or modifications will be noted in the following paragraphs.

Section 1058, was made much shorter, and the amend-

¹ *Laws of Iowa*, 1896, p. 97.

ments made to this section by the Twenty-second General Assembly were not retained. This section now reads that "any number of persons may become incorporated for the transaction of any lawful business, but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided."¹ Section 1608, contains the same provision as was found in the Code of 1851, the Revision of 1860, and the Code of 1873, entitling a single individual to incorporate himself, with the addition that "if he adopts the name of an individual or individuals as that of the corporation, he must add thereto the word 'incorporated.'"²

Section 1609, is, with the exception of a few verbal changes, the same as section 1059 of the Code of 1873 relative to powers. Section 1610 relating to the prerequisites to beginning business, embodies all that was contained in the Code of 1873, together with the amendment of the Seventeenth General Assembly and the act of the Twenty-sixth General Assembly regulating fees for incorporations. However, only farmers' mutual coöperative creamery associations are exempt from the payment of the fees according to the Code of 1897.

Section 1611, relating to the limit of indebtedness, appearing as section 1061 of the Code of 1873, was amended by the Twentieth and Twenty-first General Assemblies. Banks are not required to fix their highest amount of indebtedness at two-thirds of their capital stock; and street railways are included in the exemption given to railways.

¹ *Code of Iowa*, 1897, Sec. 1607, p. 507.

² *Ibid*, Sec. 1608, p. 507.

Section 1612 is new, and reads as follows:

Place of Business—List of Officers. If the corporation transacts business in this state, the articles shall fix its principal place of business, which must be in this state, and in charge of an agent of the corporation, at which place it shall keep its stock and transfer books and hold its meetings. The corporation shall annually in January, file with the secretary of state a list of its officers and directors, and any change in the location of its place of business made by a vote of the stockholders.

Section 1613, relative to what the published notice should contain is identical with sections 1062 and 1063 of the Code of 1873 except that to the seventh clause of this section there is added, "Proof of such publication by affidavit of the publisher of the newspaper in which it is made, shall be filed with the Secretary of State, and shall be evidence of the fact."

Section 1614 permits the corporation to begin business as soon as the certificate is issued by the Secretary of State, whereas under section 1064 of the Code of 1873 the corporation might begin business as soon as its articles had been filed with the County Recorder. Section 1615, with verbal changes, embodies the same provisions of the new section 1065 of the Code of 1873 adopted by the Twenty-second General Assembly.¹ Section 1616 contains the same provisions as section 1068 of the Code of 1873, relating to the liability of individual property. Section 1617 contains the same provisions relating to dissolution and notice thereof as is found in sections 1066 and 1067 of the Code of 1873.

Section 1618 fixing the duration of corporations is the

¹ See above, p. 506.

same as the provision in the Code of 1873; but the provisions relative to the renewal of charters has been changed by making the time for renewal "within three months before or after the time for the termination thereof," and by permitting a majority of votes to decide the question of renewal, whereas the Code of 1873 required a three-fourths vote.

Section 1619 is a verbatim repetition of section 1090 of the Code of 1873.¹ Section 1620 is, with slight verbal changes in the first sentence, the same as section 1071 of the Code of 1873. Section 1621 relating to the diversion of funds as fraudulent is in substance the same as section 1072 of the Code of 1873, with the addition that:

If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section.

Section 1622 declares that the corporate privilege shall be forfeited for the *intentional* violation of the two preceding sections, whereas the Code of 1873 made no such exception. Section 1623 defines the intentional keeping of false books or accounts as a misdemeanor, whereas section 1075 of the Code of 1873 made the false keeping of books a misdemeanor if some one were injured thereby. Sections

¹ See above, p. 502.

1624 and 1625 relative to the posting of the by-laws, names of officers and the general statement of stock and indebtedness are in content just the same as sections 1076 and 1077 of the Code of 1873.

Section 1626 relative to the transfer of shares is essentially the same as section 1078 of the Code of 1873 as amended by chapter 81 of the laws of the Twenty-sixth General Assembly. The Code of 1897, however, permits stock to be transferred as collateral security to *persons*, *firms*, or corporations, whereas such transfers could only be made to corporations by the amendment of the Twenty-sixth General Assembly.¹

Section 1627, which is new, contains the following:—

No certificate or share of stock shall be issued, delivered or transferred by any corporation, officer, or agent thereof, or by the owner of such certificate or shares, without having indorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. Any person violating the provisions of this section, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid.

Sections 1628 on non-user, 1629 on expiration of charters, and 1630 on the creation of a sinking fund are in content the same as sections 1079, 1080, and 1081 of the Code of 1873. Sections 1082 and 1083 of the Code of 1873, relative to the liability of the private property of stockholders for corporate debts are combined in one sec-

¹ See above, p. 507, for text of amendment.

tion, section 1631, in the Code of 1897,¹ with this addition that "in suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof."

Section 1632 of the Code of 1897 is a verbatim repetition of section 1084 of the Code of 1873, treating of how the individual liability of the stockholder is to be enforced. In this connection the Code compilers refer to sections 1083-4 of the Code of 1873. This, however, is a mistake, probably being confused with the preceding section which embodies two sections of the Code of 1873.

Sections 1633 and 1634, relative to suits by a stockholder against the corporation and to franchises sold on execution are verbatim repetitions of sections 1085 and 1086 of the Code of 1873. Sections 1635 and 1636, relating to the production of books in court, and estoppel are, with only a few changes in the wording, the same as sections 1087 and 1089 of the Code of 1873.

Sections 1637, 1638, and 1639 are taken from chapter 76 of the laws of the Twenty-first General Assembly of Iowa.² Some changes and omissions, however, are made. In the first section after the clause providing that the application of foreign corporations to do business should "contain a stipulation that said permit shall be subject to each and every of the provisions of this act" (chapter), there is added:—

¹ The editors of the Code of 1897 cite only section 1082 of the Code of 1873.

² See above, p. 504, for text of act.

Before such permit is issued, the said corporation shall pay to the secretary of state the same fee required for the organization of corporations in this state, and if the capital of such corporation is increased, it shall pay the same fee as is in such event required of corporations organized under the law of this state. Any corporation transacting business in this state prior to the first day of September, 1886, shall be exempt from the payment of the fees required under the provisions of this section.

The original statute makes no mention of fees for foreign corporations. The remainder of the section remains as in the original act.

Section 1638 is the same as the second section of the original act. The third section of the original statute containing a provision that any foreign corporation should forfeit its permit to do business within the State on the removal of a suit by the corporation to a federal court, is omitted from the Code of 1897, the same having been declared unconstitutional on the ground that it made the stipulation not to remove cases to the federal courts a condition for obtaining the permit to do business.¹ The content of the fourth and fifth sections of the original act is embodied in section 1639 of the Code of 1897 which provides for the penalties for the violation of the act with an additional clause intended to place all corporations upon the same footing as follows:—"All foreign corporations, and the officers and agents thereof doing business in this State shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this

¹ Baron v. Burnside, 121 U. S., 186.

State, and shall have no other or greater powers." Sections 1640 and 1641 of the Code of 1897 are new and are as follows:—

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney-general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

Corporations organized in any foreign country, or corporations organized in this country the stock of which is owned in whole or in part by aliens or non-residents, shall have the same rights, powers and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section twenty-eight hundred and ninety, chapter one, title fourteen, of this code.

LEGISLATION SINCE 1897

The corporation law as found in the Code of 1897 was not destined to remain long unchanged. The Twenty-seventh General Assembly amended section 1610 by two different acts. The first, Chapter 40, strikes out the word "thereafter" in the thirteenth line, so as to make it read "should any corporation increase its capital stock, it shall pay a fee to the Secretary of State," etc. Section two of this same act raises the maximum incorporation fee from three hundred and fifty to two thousand dollars. The second act of the Twenty-seventh General Assembly, Chapter 41, exempts corporations organized for the manufacture of sugar from beets grown in the State of Iowa from the incorporation fees required by section 1610.

The Twenty-eighth General Assembly amended section

1618 of the Code of 1897 relating to the duration and renewal of corporate charters by adding the following provisions:—

Within five days after the said action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in such renewal, sworn to by the president and secretary of the corporation, or by such other officers as may be designated by the stockholders, together with the articles of incorporation, shall be filed for record in the office of the recorder of the county in which the principal place of business of said corporation is situated, and the same shall be recorded. Upon filing with the secretary of state the said certificate and articles of incorporation, within ten days after they are filed with the recorder, and upon the payment to the secretary of state a fee of twenty-five (\$25) dollars, and an additional fee of one (\$1) dollar per thousand for all authorized stock in excess of ten thousand (\$10,000) dollars, but in no event to exceed two thousand (\$2,000) dollars, the secretary of state shall record the said certificate and the said articles of incorporation in a book to be kept by him for that purpose, and shall issue a proper certificate for the renewal of the corporation. Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and shall contain the matters and things required to be published by section sixteen hundred and thirteen (1613) of the Code, relating to original incorporations.

SEC. 2. *Fees—since when due.* The fees herein provided shall be due from all corporations applying for a renewal since the first day of January, 1898.

Section 1627 was also amended so as not to apply to railways or quasi-public corporations. The Twenty-ninth General Assembly again amended sections 1610 and 1618 of

the Code. This time striking out the maximum incorporation fees established by the Twenty-seventh and Twenty-eighth General Assemblies. Section 1613 was also amended by requiring that the notice of incorporation must be published "once each week" for four weeks, etc.

A legalizing act was also passed at this time to make those corporations legal which had not published the notice of incorporation as required by the original section 1613. This act with a preamble explanatory of its purpose is as follows:—

WHEREAS, A large number of corporations incorporated under the laws of the state of Iowa have heretofore caused notice of such incorporation to be published once each week for four consecutive weeks in some daily, semi-weekly or tri-weekly newspaper, instead of causing the same to be published in each issue of such paper for four consecutive weeks; and

WHEREAS, Doubts have arisen as to the legality of the incorporation of the said corporation so publishing notice of incorporation as above mentioned, therefore,

Be it Enacted by the General Assembly of the State of Iowa, etc.,
That each corporation heretofore incorporated under the laws of the state of Iowa which have caused notice of their incorporation to be published once each week for four consecutive weeks in some daily, semi-weekly or tri-weekly newspaper, instead of causing the same to be published in each issue of said newspaper for four consecutive weeks are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice.

CONCLUSION

This article represents an attempt to treat, in the order of historical development, the corporation law of Iowa

simply as reflected in the various codes and statutes of the State. The judicial interpretation of that law would, on the other hand, make an interesting subject in itself. By way of recapitulation and conclusion the following points deserve mention:

First, the first legislation on corporations by the State was the act of 1847. That act has formed the basis of all subsequent legislation relative to corporations.

Second, the Code of 1851 added nine new sections to the act of 1847; whereas but one new section was added during the period from 1851 to 1873.

Third, the section on organization (which is section 1610 of the Code of 1897) is the one which has been most frequently the subject of amendment.

Fourth, Iowa is the only State in the Union which permits a single individual to incorporate himself. This provision was first inserted in the Code of 1851, probably to encourage the establishment of industries in the new State. It reduces the idea of a corporation or an association to an absurdity; and the courts of several of the States have declared that a statute permitting "any number of persons" to incorporate does not authorize the incorporation of a single individual.¹

Fifth, the number of legalizing acts passed for the benefit of corporations which had not complied with provisions of the law relative to publicity would seem to suggest that

¹ Mr. Clark in his work on *Corporations* says that no provisions are to be construed as authorizing a single individual to form a corporation unless the intention on the part of the legislature is clear, it being against public policy and intent of law to permit a single individual to conduct his business in the name of and as a corporation.—*Clark on Corporations*, p. 67.

corporations in the State of Iowa have not taken those provisions very seriously.¹

Sixth, the Foreign Corporation Act was passed two years before the first popular agitation against Trusts was begun (1886), and has not been enlarged upon since. The popular agitation against the large corporations has not ceased and statutes are multiplying in many States in attempts to bring those organized in other States (foreign corporations) under a proper control.

In other respects the law of Iowa regulating corporations has few features that are not found in the laws of the other States of the Union; nor can corporations claim to have been harrassed by hostile legislation in this State.

FRANK EDWARD HORACK

THE STATE UNIVERSITY OF IOWA
IOWA CITY

¹ Sections 1613, 1624, and 1625 of the Code of 1897. See also legalizing acts passed by the 14th G. A., chapter 88, by the 16th G. A., chapter 32, and by the 29th G. A., chapter 226.