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BY

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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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CORPORATE ORGANIZATION IN NEW JERSEY

CHAPTER I

HISTORICAL AND GENERAL DISCUSSION

[1]The history of New Jersey corporations may be said to date from the close of the Revolutionary War, in 1791 when Alexander Hamilton, the greatest business developer of his time, was instrumental in forming a corporation, of gigantic proportions for the period, with the object of promoting many different branches of industry, encouraging the "infant industries" of the time and defending them from being destroyed before they became self supporting. Like all early corporations, it was formed by a special act of the state legislature. Its objects were in a small degree developmental and philanthropic, as well as commercial. It received the name, "Contributors to the Society for the Establishment of Useful Manufactures," and was capitalized at one million dollars, of which part was taken by the state, part distributed through a lottery, as was the custom of the time, and the remainder sold at private sale. Power was given to this corporation to incur debts not to exceed four million dollars. It was also permitted in certain cases to exercise the state's power of eminent domain, and various functions which are now given to public corporations only.

The first general corporation law was enacted in 1846, again with a view of encouraging manufactures, and remains as the foundations of the present system of laws under which many of the

so-called "trusts" of today are doing business. Gradual modifications have been made since 1846, but there have been no radical or sudden changes. Three years after the passage of this act, in 1849, stockholders were relieved from the burden of joint and several liability for the amounts unpaid on their subscriptions and were made liable only for their respective shares of the total. Other slight modifications were made at about this time, including provisions for the protection of creditors and the publication of the affairs of the corporation. In 1846, the use of the corporate form was limited to mining, manufacturing and allied industries, but was not extended to mercantile businesses. More publicity was required then than at present, under penalty of personal liability. A year or two later, the restrictive provisions of the law were in large part repealed, and advanced theories were adopted as to the time and place of holding meetings, necessity of residence of directors in New Jersey, access to books and maximum of corporate indebtedness. The privilege of incorporating was extended to "every lawful business or purpose whatever," as long as the business was conducted in the state of New Jersey. Stock could not be issued for other considerations than cash at this time.

In 1875, another step in advance was taken by discontinuing the granting of special charters to business companies, and a general act was passed for the guidance of all would be incorporators, great or small. In this act the principle features of the act of 1846 and its modifications were retained, except

that so much publicity was not required, and stock could be issued for property. The present schedule of fees was also adopted at this time. Until 1889, corporations had no power to own stock in other corporations, but in that year this was reversed by an amendment, which was passed more especially with a view to the integration of corporations engaged in the successive steps of production of any article. Probably no law affecting modern industrial organization has been of more importance than this one.

There was a general revision of the corporation law in 1896, to adjust it to modern conditions which are very different from those of the previous decade. The most important change at this time was the removal of the definite limit on the term of corporate existence, and the provision for issueing obligations of various classes. Since then there has been no general revision, and only one or two very important changes. These are the statutory provisions exempting the directors and stockholders of New Jersey corporations from personal liability arising in New Jersey courts, under the corporation laws of other states, and permitting the incorporators to define the status of the officers, directors, stockholders and bondholders, in the certificate of incorporation.

[1]Over half of the corporations of the United States whose size or control of industrial operations are sufficient to denominate them, in popular language as "trusts" are organized under the laws of New Jersey. [3] Among these are the United States Steel Corporation, capitalized at $1,100,000,000; the Distiller's Securities Corporation, 32,500,000; the American Ice Securities Company, $20,000,000; the International Harvester Company, 120,000,000;

The American Smelting and Refining Company, $100,000,000; The American Hide and Leather Company, $35,000,000; The Amalmagated Copper Company, $155,000,000 and The Standard Oil Company of New Jersey, $100,000,000. The increase in the number of large corporations during the past decade is due partly to the launching of new industrial enterprises, but more to the combination of existing corporations and partnerships; the exchange of physical plant or stock issues for the stocks and bonds of the new organization, and the abandoning of competition. The result is fewer, and larger, corporation, which in six cases out of ten have incorporated under the laws of the state of New Jersey. Here there is constant definite and progressive policy, long established and not subject to sudden change, power to hold stock of other corporations, protection of the interests of stockholders, bondholders and creditors without burdensome restrictions; harmful publicity is not required, legislation is stable, directors meetings may be held outside of the state, facilities are offered for dissolution when desired without loss or delay, and taxation is uniform and comparatively equitable.

Corporations have never been creatures of the common law, but have always been formed either by a special act of some sovereign power, or under general laws. New Jersey, like most progressive states now has a provision in her constitution which prohibits a special act of incorporation, and requires all to organize under general acts. This is manifestly the best policy, since otherwise there would be unlimited room for legislative corruption. The present law is made up of a large number of

special laws relating to particular corporations or to particular classes of corporations, and of a code for business corporations in general known as "An Act Concerning Corporations (Revision of 1896)." In that year the state legislature gave particular attention to the subject of corporation legislation, and the present law seems likely to endure in substantially its present form for an indefinite period.

[2]The corporations which are not at present organized under the general incorporation law are principally public utilities,and financial, philanthropic, educational and cooperative societies. The reason for special acts is, either that special protection is necessary to the public interests, as in the case of banks and insurance companies, or that the corporation may be protected from manipulation by its more powerful members at the expense of the weak, as is sometimes done in corporations intended to be cooperative.

The advantages of organizing a business under corporation laws is facility in raising large amounts of capital, permanence, centralization of control, transferability of ownership, limited liability and improved credit due to these advantages. There are a few disadvantages also, which must be considered before incorporating. These are increased payments to the state by way of franchise or other assessments, limited power, governmental control, and liability to manipulation by unfavorable inside interests. Far more attention has been paid to the advantages than to the disadvantages, because the corporate area has not nor

will it soon reach its maximum, and no reaction has been felt.

1. Keasbey, New Jersey and the Great Corporations, Buffalo, 1899.
2. New Jersey Department of State, Laws relating to Business Companies, edition of 1910. Camden, 1910.
3. Moody's Manual, New York, 1908.

CHAPTER II

INTERCORPORATE RELATIONS

[1]Intercorporate relations under the statutes of New Jersey usually take one of two forms--control through stock ownership, or merging of physical property under the merger act. The New Jersey statute is peculiarly fitted to accomplish either of these objects, and is therefore, the one most often used by promoters who desire to secure the advantages of the large industrial unit.

[2]The natural growth of modern enterprises, whose objects are to decrease administrative and other expenses and to avoid destructive competition, has caused a great deal of alarm among the people of the United States lest the second object will do more harm, that is increase the cost of goods to the consumer, more than the first will benefit him by decreasing the cost of production. This fear, which is further sustained by the economic law of monopolu price, has form in the Sherman Anti-Trust Act, in so far as interstate commerce is affected, and in a number of state acts. These are directed principally against any arrangement which is intended directly or indirectly to avoid competition, reduce production or fix prices. In spite of public and legislative objections, the tendency toward consolidations continues and increases, and new forms of organization are devised as the old ones are declared illegal, or it is found that they do not sufficiently bind their members to act in unison. The holding corporation is the logical successor of the trust, long since declared illegal in most of its forms, and it is but another step from the holding corporation to the one which owns the physical

assets of its constituent companies. Unless a sufficient amount of the stock cannot be purchased, or the subsidiary companies own valuable secondary franchises which cannot well be assigned, it usually becomes advantageous to take over the physical assets sooner or later, dissolving the subsidiary corporations and distributing the shares of the stock of the consolidation in exchange. The result is the same, whether the purchase is of physical assets or of capital stock; the form of thetransaction is immaterial from the economists point of view. The results obtained by the trust, the holding company and the single consolidated corporation are the same, as outlined above; the avoiding of competition and the decrease of expenses through cooperation in the use of patents and trade secrets, in distributing product, in advertising, in administration and in selling. It is not as yet decided if the interests of the public are best served by combination or by competition, but we know definitely that those of the corporation are best served by combination, and if the combination can be effectively controlled by the state, it is for the public interest to permit it to exist under such control. Law must conform sooner or later to economic conditions and these should therefore be studied before forming a law which attempts to regulate any industry.

Adverse court decisions have not suggested to the large corporations to change into partnerships or joint stock companies, because it is so obviously impossible for them to do business as such, with the resulting chaos of rights and interests and liabilities involved. When the trusts were compelled to

re-exchange their trust certificates they sought to become a single corporation in most cases under the laws of New Jersey, thus attempting to clear technically themselves of the charge of adopting the trust form for the purpose of limiting output, fixing prices or destroying competition. The courts have made several attempts to go back of the New Jersey consolidated corporation on the grounds that it is a combination of competing concerns, and are therefore violating the Sherman Anti-Trust Law, and have rendered decisions against the Standard Oil Company and the American Tobacco Company, among others, for making this change in the form but not the fact of their make up. But these decisions were based upon technicalities of the complex law of monopolies, and not upon the principle to which we must look in the future for guidance. Public sentiment has been the force behind both the law and its execution, but in this case it is probably misdirected and misinformed. Itt is the business of the corporation, not the corporation that needs public regulation, if we are to keep the advantages of monopoly production and avoid the disadvantages of the misuse of monopoly power.

An integration, that is a combination of successive steps in production and distribution would not be contrary to the Sherman Anti-Trust Law, nor would a combination of non-competing plants. There is no sound reason why corporations should not be given the same freedom as individuals in uniting their control. Laws covering monopolies should be general and equally appicable to individuals and to corporations. This is the attitude of New Jersey towards her corporations. It is similar in principle to

the laissez faire policy of England which has made her the worlds greatest mercantile nation. It is the function of the state to control corporations only so far as they have been given special priviliges, such as limited liability and permanent existence, or special primary or secondary franchises.

The great number of the large organizations which are constantly in the public eye are consolidations formed under the law for the merger of corporations.[1] When the directors of the various corporations to be combined have agreed upon the amount of the stocks and bonds of various classes which are to be given to their respective stockholders, the proposition must be submitted to their stockholders after twenty days notice of the time, place and object of the meeting, and passed by a two-thirds vote of the stockholders of each corporation. In this way the shares of a consolidated corporation show the ratio of the interests or capitalized net income of the constituent companies, rather than the valuation of the property turned over by them. Two plants may have physical property valued at the same amount, and still receive entirely different shares of the new capitalization, which will quite probably be far in excess of the physical value of either. This would simply be a capitalization of good will, and therefore not an altogether undesirable operation, were it not that the ratio of the property of all of the plants is often raised materially, thus injecting a quantity of "water" into the stock. There is a theory, now taking definite form, that as in practice a share of the capital stock of a corporation simply represents a fraction of the aggregate ownership, it

should have no ficticous face, or par value, but should recite upon its face simply the fractional interest that it represents of the whole corporate property. This is one of the features of the much talked of federal incorporation law which is now pending in Congress, and which is also intended to do away with the present evils of the large corporations engaged in interstate commerce business, by putting them under one effective control.

1. Laws relating to Business Companies, edition of 1910.
2. Dill, Some Aspects of New Jersey's Corporate Policy, Philadelphia, 1903.

CHAPTER III

CERTIFICATE OF INCORPORATION

[1]The written instrument which first brings the corporation out as an entity distinct from the association of men of which it is composed is known in various localities as the deed of settlement, articles of association, articles of incorporation, certificate of incorporation, charter, memorandum of association and incorporation paper. No one of these seems to fit exactly the relation which it is desired to express, but the term "Certificate of Incorporation," adopted by the New Jersey legislature probably comes as near to expressing the contents of the instruments as any other term, since all are open to some criticism. Upon the filing of this paper with the Secretary of State the corporation becomes a legal entity having all of the powers and rights as set forth in the laws of New Jersey relating to business companies, and many additional implied powers, which are not mentioned in the statutes, but are derived from court decisions, common law, and other sources. Although, as before said, there is no possible common law corporation, the analogy between the corporation's rights and liabilities and those of a natural person is recognized by the courts after the corporation is organized. It would of course be impracticable to put a corporation in jail for a tort, since no agent could be given power to commit a tort, and would therefore be personally responsible. But a corporation may be fined or assessed damages for the tort of its agent.

[1]The certificate of incorporation has a double function; it is a private contract, within the meaning of the federal constitution, between the corporation and the state, between the corporation and its stockholders and between the individual stockholders, and it also complies with the provisions of private law required for the formation of business companies in the state of New Jersey. Notice is given, at least constructively, to creditors, stockholders and the public of the existence of this contract when it is filed in the office of the county recorder of deeds in the county in which the registered office is located. The charter of a corporation is a contract, merely in so far as is necessary to fulfill its object, and not to secure for the corporation immunity from the burdens and responsibility of the individual. [2]In the Dartmouth College case, one of the earliest and most important court decisions affecting the status of American corporations, it was held that the state could not alter, amend or repeal the charter of a corporation, unless it had expressly reserved this power to itself in its constitution, statutes, or the charter of the corporation itself. This of course does not prohibit the state from exercising police powers. The state should not of course create an institution which it cannot control effectively, and the constitutions which have been drawn up or revised since this decision was rendered have nearly all profited by it, to insert clauses retaining forever the right to alter, repeal or amend the charters of their corporations.

[1]The construction of the certificate will be made more strongly in favor of the state, because the state, in issuing the

franchise is assumed to be conserving its own interests rather than the interests of the corporation, as between the two. But a third person cannot attack the regularity of the certificate of incorporation, nor can this be attacked collaterally in any New Jersey court.

[3]When duly executed and filed with and accepted by the Secretary of State, the Certificate of Incorporation becomes the charter of the corporation and gives to it all of the powers which are permitted to her corporations by New Jersey's constitution, the federal constitution, the statutes of the state, the certificate of incorporation and by implied and derived authority. The specific powers granted by the general business companies law are, in general, to have succession in corporate form forever; to sue and to be sued under its corporate name without reference to the individual members; to make and use a common seal in about the same manner as it is used by a natural person; to hold, buy and sell property for the purposes for which the company was authorized, except real estate, which is somewhat restricted for reasons of public policy; to appoint officers and agents, who are the only means a corporation has of executing any transaction; to make by-laws for the guidance of members, but not for outsiders; and to wind up and dissolve itself when two-thirds of its stock sees fit to do so. Among the additional and implied powers derived from common law, precedent and custom, are to make donations to charities which would assist in building up the character of the business; to make guarantees in furtherance of corporate ends, but not otherwise; to make the best of a situation

even though in so doing it engage in irregular occupations, such as a bank engaging in shipping; and the investment and utilization of surplus funds, (but not surplus profits) outside of the usual business operations.

[1]If other powers are exercised than those given or implied by the state, they are necessarily ultra vires. This means simply that the power is legitimate as exercised by a natural person, and is not unlawful or contrary to public policy, but is beyond the powers conferred or implied to the corporation. Thus an act may be ultra vires if authorized by the board of directors, when a vote of two-thirds of the outstanding stock would make the act perfectly regular. Examples of such acts are over issue of stock, reduction of stock, changes in the status of stockholders and contracts affecting real estate. If properly authorized, however, a New Jersey corporation may grant easements on real estate, issue and accept negotiable instruments in due course of business, and vote through its agents the shares in another corporation held by it for investment or control. Thers is no implied power to carry on business outside the state of New Jersey; if desired this must be expressed in the certificate of incorporation. [2]A provision that the corporation should have power to carry on business in all states except New Jersey would not be sustained by the courts of other states, as this would be exceeding the bounds of amity which causes one state to recognize the corporations of her sister states'creation. [3]New Jersey corporations are also prohibited from pleading usuary, from engaging in banking operations and from entering into partnerships,

except with other creditors with respect to their claims against a common debtor only.

The essential features of the certificate of incorporation are the name of the corporation to be formed by it, which must not be the same or similiar to the name of another corporation; the location of its principal or registered office in New Jersey, which must be in charge of an agent upon whom legal instruments can be served; the names of the incorporators, who must be natural persons and citizens of the United States, but not necessarily citizens of New Jersey; the amounts of the subscriptions of the incorporators, which must not be less than one thousand dollars, and the time for which the corporation is formed, usually forever. The certificate may be so extended as to provide for the classification of directors, cumulative voting, election by ballot or by vive voce, qualifications, powers and duties of directors, manner of calling and conducting meetings, voting rights of stockholders, number of stockholders or directors to form a quorum at their respective meetings, and the classification, status and voting or other rights of all classes of capital obligations issued.

There is no statutory limit upon the amount of debts which a New Jersey corporation may obligate itself to pay. The theory of some legislatures that the aggregate of debts should not exceed the aggregate of capital on the supposition that the capital stock is the trust fund from which the creditors must look for the payment of their claims is not altogether sound because in ordinary mercantile transactions the creating of debts occurs through the acquiring of assets, and the creditors must look to

the realization of these assets for the liquidation of their claims. The capital and surplus profits of a corporation must be looked upon merely as a factor of safety as to the sufficiency of the assets, when realized in the ordinary course of business, to pay the claims against the corporation. The ratio of the factor of safety to the total of claims to be protected is not necessarily as one to one; it is for the creditors to decide the proper ratio and to decline to extend credit, when in their opinion it is exceeded, and a sufficient pledge is not put up by the corporation. It should not be the function of the state to decide this question for the corporation, as it does not do so for the individual, except in the case of financial institutions, whose peculiar position makes it necessary to have them examined by public officials, in order that they may not follow unsound business methods or prey upon people who are not able to distinguish such institutions.

[4]During the last decade there has been a constant competition between the states of New York and New Jersey for the commercial and financial advantages to be derived from incorporating the great modern industrial enterprises. New York has one advantage which she should not have, according to more advanced ideas of jurisprudence. She can, and in several instances has, incorporated companies under special acts of the state legislature, with powers far exceeding those of New Jersey or of any other state supposed to be favorable to large corporations. In most matters of law, education, public administration and business, New York is the leader among all of the states of the union. But

in her relation to her corporations and to those of other states she has shown a singular lack of reasoning, attempting to get the business by retalitory and underhand methods, rather than by an open, equitable and consistent policy, such as New Jersey has followed. The cities of Hoboken and Newark, New Jersey, are so far as business interests are concerned, part of the City of New York, the undisputed financial and industrial center of North America, so that it is easy for New York promoters to cross over to a New Jersey trust company's office to establish their corporate domicile. In her attempt to attract business from New Jersey, New York has reduced her franchise tax from one eighth to one twentieth of one per cent. on the authorized capital, reduced the amount of publicity required, except when demanded by a creditor or stockholder, enlarged borrowing powers, permitted stock to be issued for property other than cash, permitted the issue of special classes of stock and partially paid stock and enlarged the powers of corporations in general. These changes have not been successful in their object; New York Corporations continue to incorporate in New Jersey.

The criticism of New York's attitude, which are conversely praises of that of New Jersey, are that her code is incomplete and chaotic, special charters are granted, often under circumstances of legislative pressure, as in the case of the Western Electric Company, the certificate of incorporation is not so complete and does not take the place of a special act of the state legislature, as in New Jersey, and the New York laws have no provisions as to business outside the state of New York or retalitory taxation on

states not giving suitable privileges to her corporations.

1. Machen, Modern Law of Corporations, Vol. I, Boston,1908
2. Smith's Cases on Private Corporations, Vol. II, Cambridge, 1902.
3. Laws Relating to Business Companies, Secretary of State, Camden, N. J., edition of 1908.
4. Dill, Some Aspects of New Jersey's Corporate Policy, Pen. 1903.

CHAPTER IV

THE OWNERSHIP OF THE CORPORATION

[1] A subscription is an offer made by an individual to purchase stocks or bonds of an existing or proposed corporation. A corporation cannot, in its own name, make such an offer for the original issue, although it may later become the vendee. The acceptance of an offer to subscribe by the corporation or by its promotors is an allottment, or promise to issue shares in return for the expressed consideration. If the offer is made first by the promoters, the acceptance by the prospective stockholder makes the contract binding. Mutual subscriptions are sufficient to bind the contract within the meaning of the seventeenth section of the common law statute of frauds. Payment for shares is not necessary in order to give the subscriber a right to vote and otherwise act as a member of the corporation, unless a provision restricting unpaid subscribers rights is inserted in the certificate of incorporation or the by-laws, but if the subscriber does not comply with the exact terms of his subscription, his shares may be sold, or he may be sued as on any action for debt, for he is simply the common law debtor of the corporation for the amount of his unpaid subscription. If the corporation relieves him from the payment of a portion of his subscription, and issues stock which recites upon its face the usual provision that it is fully paid and non-assessible, it cannot collect the balance from the original or transferee holder, although in case of insolvency the receiver may, upon the order of the court go behind the nominal payment and collect the balance due to the creditors.

[2] The New Jersey law prevents a misuse of the director's power to make calls, which was formerly a dangerous power of strong capitalists over the small holders for investment purposes, by requiring thirty days notice that the sums are required to be paid into the corporation's treasury, before any action can be taken to collect unpaid installments. This prevents the directors from causing the stock of the small investor to be thrown on the market at a sacrifice, because he cannot meet the demand of sudden calls.

[2] Uncalled subscriptions cannot be mortgaged or sold under any circumstance by the corporation, but after the thirty days legal notice has expired, the unpaid portion may be disposed of or the subscriptions cancelled if so provided in the original contract. Stock cannot be assessed beyond its par value, as has been done in other states. Subscribers are entitled to a certificate showing their status as such, which the corporation is obliged to transfer, if presented for that purpose properly endorsed, with all called assessments paid in full.

Subscriptions may, with the consent of the corporation, be paid for in money or property, but not in services. The reason for this restriction is that the value of services is hard to determine, and almost any value could be put upon them by the promoter, at the expense of prospective stockholders and creditors. [3] If property is used in making such payments, it must be of such a nature that it is necessary to the business of the corporation. If a loan is made to a stockholder to assist him in paying for his stock, all assenting directors become personally jointly and severally liable for the unapid amount, and the interest thereon.

Goodwill may be made the basis for the issue of stock in the same manner as other property, but it must be a genuine capitalization of past profits and future prospects, and not simply promoter's profits paid by himself to himself. If the promoter buys a piece of property andretransfers it at an advance in price to a corporation of his creation, without explaining the transaction to other stockholders, he may be compelled to account for his profit on the transaction. But if the profit is known beforehand to the other subscribers, he is entitled to it. The usual methods for a promoter to dispose of the capital obligations of a corporation are through inside interests, the stock exchange, financial houses and by direct appeal to the public. In order to dispose of an issue of any magnitude, through any of these channels, it is usually necessary to sell at a price considerably below par. With the bonds of a New Jersey corporation there is no difficulty here, for the state recognizes the fact that the discount on bonds issued is simply additional interest paid in advance, which must be amortized during the period for which the bond continues in force, but cannot be issued at a price less than par without subjecting the subscriber to personal liability in case of insolvency of the corporation. This liability follows the stock also, so that subsequent holders are also liable for the difference between the price paid to the corporation for the stock and its par value, although their is a difference in their liability in that it ceases upon a bona fide transfer for value, while that of the original subscriber cannot be avoided in this way. A common trick of the promoter to avoid this difficulty is for him to cause all of the stock to be issued for property, and

to donate a sufficient amount of this stock back to the corporation as "working capital". Stock so donated and reissued does not carry with it any personal liability, and can therefore be sold at a price below par to advantage. The courts are beginning, however, to show a tendency to go behind such fictions, and to consider the true facts. It must be said to New Jersey's credit that if stock is issued for property or any consideration other than cash, this fact must be reported in such a manner that the public has access to the information.

Meetings of the stockholders of a New Jersey corporation must be held at the principal or registered office of the corporation, the location of which is set forth in the certificate of incorporation, and cannot be changed without legal formality and notice. The usual location for the registered office of a large corporation not having its industrial headquarters in the state is at some trust company. There are many of these trust companies which make a speciality of corporation business, and provide quarters, minute books, supplies and clerical and professional services to their clients for this purpose. The law requires that the name of the corporation shall be displayed prominently at this registered business, so these trust companies sometimes have hundreds of signs at their entrances. An employee of the trust company alsq acts as agent in charge of this office, thus saving the corporation the expense of keeping an employee of its own there. If for any reason a corporation fails to provide itself with a registered office, or fails to have an agent in charge of it upon whom legal processes can be served, such

processes can be served upon the secretary of state, and this service is made by statute equivalent to service upon the corporation. The trust company usually acts as transfer agent and in other capacities also, as required by the corporation. The charges for these services are comparatively small, as the duties involved are not usually heavy.

The first, or organic meeting of the incorporators, which meets here after the certificate of incorporation has been filed, is for the purpose of electing directors and to draw up and adopt a set of by-laws for their guidance and to define and limit their powers and duties. In some cases, where there is no conflict of interest between the directors and the stockholders, the power to make, alter and amend the by-laws is delegates to the directors. When this is done, the stockholders still have the right to alter the by-laws when they see fit to do so.

In order that the stockholders may know who is eligible to vote at their meeting, which might often involve matters of considerable importance, the law requires that an alphabetical list, to be compiled annually or oftener, of all stockholders and their respective holdings, shall be kept at the registered office, where the stockholder's, but not the director's meetings must be held. However, neither the alphabetical list at the registered office nor the stock ledger is the proper evidence to introduce in case of a disputeas to voting rights. They are only a convenient abstract and analysis of the corporate books; original records must be made use of here as elsewhere in legal controversies, and the transfer must be traced back to the stock transfer book and the s tock certificate book. The alphabetical

list would of course be used unless its veracity were challenged.

[2] The statute expressly grants to stockholders the right to vote their stock either in person or by proxy, and makes the voting in proportion to the number of shares held. The certificate of incorporation may further provide that voting shall be cumulative, that is that all of a stockholders shares may be voted on one man or distributed over several, at his pleasure, his total vote being the product of the number of his shares times the number of candidates for the positions vacant on the board of directors. The certificate of incorporation can also provide that voting rights can be restricted as the number of shares held by an individual increases, but this provision is not very successful because of the readiness of the large interests to introduce dummies to hold, nominally, part of their stock, while serving their interests. Both cumulative voting and restricted voting rights for large interests are intended to protect minority stockholders, or at least to give them representation on the board of directors. If votes could not be cumulated, the smaller interests might never even know the transactions at the board meetings or the true financial condition of the company.

The right of stockholders to vote their stock by proxy if it is not convenient for them to be present in person cannot be abbrogated by any provision made by the corporation itself. This is good in that it conserves the interests of those who cannot be present, but in practically every large corporation the conditions are such that very few stockholders live in or near

the city where the registered office is located. Officers and directors of the corporation often solicit the proxies of these persons, which are usually easy to get, and make use of them to further their own private ends and to perpetuate themselves in office. No remedy for this evil has as yet been found except by creating a voting trust which really represents the true interests of the stockholders. [2]Within reasonable limits, where the stock of only one corporation, or of more than one non-competing corporation is tied up, have been held legitimate in the state of New Jersey. [3]Sometimes assignable certificates, having much the nature of stock certificates are issued by the trustees or directors of the voting trust showing that the owner has a right to receive dividends and dispose of his interest if he so desires, but that the voting rights of his shares have been delegated for a certain period. The essential features of a voting trust are an irrevocable proxy for a limited period of time and a separation of beneficial and voting rights. The desirability of this separation is wholly a matter of corporate, and not public policy. Voting trusts may, however, be made an additional means for securing control by undesirable interests, if the trustees are not men who will put the interests of those who have the equitable ownership of the stock before their own.

The usual provisions of a New Jersey voting trust are that all stock certificates shall be turned over to the trustees in exchange for trust certificates, the original stock certificates to be deposited with a trust company or other depositary. The term of the trust is set forth, the status of the stockholder,

the form of the trust certificate, the names of the trustees and the manner of their election and filling vacancies in their number, the manner of making transfers, the payment of dividends, and the time and manner of the termination of the trust.

One of the principal objects of a voting trust is to protect minority interests by placing all or nearly all of the capital stock in the hands of the voting trustees, who are men who can be depended upon to be impartial to the interests of both majority and minority stockholders. Even where no one interest in a large corporation has a majority, it often happens that because the stock is widely scattered a small interest may serve to secure control, so that if only one third of the stock is held in trust, by trustworthy men, investors will have more faith in the enterprise, and will consequently be more ready to back it financially.

[4]Certificates of stock are but convenient quasi-negotiable evidences of the ownership of stock, and are not themselves the stock, as we come to think through handling them. One may be a shareholder without such evidence of the fact, but if he is a shareholder he is entitled to this written evidence. A share of stock represents the right which its owner of record has in the management and profits of the corporation; a stock certificate is a mere voucher, or receipt, ordinarily signed by the president and treasurer of the corporation, and standing as prima facie evidence of the ownership of the s tock. The provision on the face of the standard stock certificate that it is transferable only upon the books of the corporation is for the protection of

the corporation and does not affect outsiders who may have purchased the stock. It is necessary for the corporation to know to whom it should pay dividends and give voting rights at stockholders meetings. The ease with which ownership of shares in a corporation may be transferred is one of the great advantages of the corporate form of organization.

[5]In New Jersey, trust companies act as transfer agents for corporations in a large number of cases. They are probably better equipped than any one else for this work, as they have facilities for the clerical work required, and do a sufficiently varied business in this line to make them competent to meet and properly handle any contingency which may arise in the course of stock issues and transfers. There are a great many technical questions which arise in making transfers, owing to the peculiar legal position of the stock certificate, which is negotiable in that its ownership passes by proper endorsement, but is non-negotiable in that the new owner can acquire by transfer no better title than was possessed by the transferee.

Where a reputable trust company has the function of transferring the stock of a corporation, it practically guarantees to the public that the corporation is regularly formed under the laws of the state, that the particular stock issue is authorized and is not overissued and that the certificate issued is what it purports to be. In order to do this, it requires from the corporation all minutes, by-laws, certificates, forms and signatures which bear upon the matter, properly certified and approved by an attorney. The money spent upon the transfer agent

of this kind for its services is returned by the absence of loss through clerical and legal errors in making transfers, and the advantage to the public in having a well known place in a financial center for such transactions. The position of a registrar of stock is quite similar to that of a transfer agent, but it simply certifies that the stock is not overissued. This certification is required by the New York Stock exchange.

[2]A New Jersey corporation can issue practically what it pleases in the way of common stock, preferred stock, guaranteed stock and convertable stock, if its members so desire and take the proper legal steps necessary to authorize the issue. Preferred stock may not be issued in excess of two-thirds of the total capitalization, nor can bonds be issued which are convertable into stock of any class, since this would impair the right of present stockholders to participate in the issue of an increase of s tock, which they now enjoy.

Common stock is stock which enjoys only the ordinary voting and dividend receiving qualities which have not been transferred to other classes of obligations. All corporations must have common stock, that is stock which has no special privileges or preferrment. In the case of many of the larger consolidations, it represents merely a capitalization of future earnings, which may or may not be realized according to the condition of the industry or of the protection granted by the tariff. This so-called "water" is often retained by the promoters as their profit, which is therefore contingent upon the ultimate results of the venture, as it should be. Very often, also

common stock is given as a bonus with higher ranking obligations, without charge, in order that the preferred stock or bondholder may realize some of the hoped for profits in return for the risk he is taking at the outset, and in order that he may have something to say in the management of the corporation. Some smaller corporations are so promoted that the promoter is able to keep all of the common stock for his profit, and so to control the corporation after realizing all of the value of the property.

[3] Preferred stock is issued in order to secure working capital, or in a reorganization, or consolidation in order to recognize the superior claims of one class of owners over another in the division of earnings up to a certain point. Preference is given either as to voting rights, dividend rights, or first claim on assets upon dissolution. Any one of these or all three may be given, the status of the preferred stockholder usually being shown upon the face of his stock certificate, in order that the owner may know exactly what his advantages are without the trouble of referring to the original instrument conferring them.

The term "guaranteed stock" is sometimes used to denote stock upon which the issuing corporation has promised to pay a certain rate of dividend in the future, but this is an ambiguous use of the term, as such dividends cannot be paid unless earned. The proper use for the term is to denote stock which has been issued by one corporation and the dividends on which have been guaranteed by another for some valid consideration. A New Jersey corporation may so guarantee the stock of another corporation

only if it has been authorized by a two thirds vote of its stockholders, and the guarantee is in furtherence of its own corporate objects, as in the case of plants leased for a long term of years. Such a guarantee, often entered into by railroad corporations, amounts practically to a rental, and is different therefrom only in order to comply with the corporate form of the lessee and to carry through the payment of the rent with the greatest facilities.

The bond issue of a New Jersey corporation is a matter of corporate finance, and is not in any way restricted by the law, except in that the consent of the stockholders should be secured before the issue is floated, as t his is probably outside of the powers of the board of directors. It is not mandatory to get this consent, but rather a matter of custom and of consulting the wishes of the stockholders. There are innumerable classes of bonds, named according to some of their peculiar features, terms of payment, purpose and mode of redemption. The usual consideration in issueing them is the probability or the success of the venture. In one of a speculative nature, it is necessary to create a very small bond issue, as otherwise the public will not buy it for fear the corporation will not be able to meet the payments.

[6] Beyond the participation in the election of directors, whom he can trust to look after his interests in the ownership of the corporation, and the passing of by-laws to restrict and define the powers and duties of these agents, the rights of a New Jersey stockholder are very limited. The power of making,

altering and repealing is inherent in the stockholders, but is often delegated by them to the board of directors, where it still remains subject to the will of the stockholders. The stockholders are protected by law from an irrevocable power given to the board of directors for this purpose. By-laws may be made to cover almost any phase of the corporations business, but may not alter the status of stockholders without their consent, nor can they enlarge the powers of the corporation as conferred by the state, for this is a function of the state itself.

There is a general principle that by-laws are binding and confer rights and liabilities upon members, but not upon creditors who have no knowledge of them, nor upon outsiders. The usual provisions are in respect to the number of directors, management of the corporate property, regulation and government of the affairs of the company, time and place of holding the annual meeting, classification of directors, election of officers, duties of officers, vacancies in the board of directors, qualifications of stockholder's voting rights, quorums of stockholders and of directors, qualifications of directors and regulations as to dividends.

[4]Stockholders have a right to inspect the books and records of the corporation in order to learn its financial and physical condition, but this right is neither unqualified nor unlimited; the application for permission to do this must be for a proper purpose and must be made by the stockholder with respect to his interests as such which are not adverse to the corporation, and with a view to his status as a stockholder in the particular corporation.

[2] In addition to their rather limited managerial rights, stockholders are also entitled to dividends, but only when sums have been set aside from the profits of the corporation for such distribution. It is a peculiarity of the New Jersey Business Companies Law that all profits earned must be distributed unless the stockholders acquiesce in the reservation of a portion of them. This is usually done, either through a by-law provision or a clause in the certificate of incorporation, because otherwise a corporation might be compelled to make considerable payments when to do so would cause it financial embarrassment, through the profits being accrued but not realized in cash or other cause.

When the capitalization of a New Jersey corporation is to be increased, the directors must submit the matter to the stockholders for their vote, because otherwise their status might be changed without their consent, and this would be contrary to the law. If the stock is to be increased, except for the purpose of exchanging the additional amount for specific property, the stockholders also have a right to participate pro rata in the increase according to their holdings in the former issues. Preferred stockholders would have no superior rights here over common stockholders, in the absence of specific provisions regarding the matter, but they would have a right to object to any shares being created having equal or greater privileges than their own. Failure of the directors to recognize the right of the old stockholders to participation in the new issue which they have authorized does not invalidate the new issue, but is simply grounds for damages from the corporation for the loss to the old stockholder.

[5] The bond issues, like the stock issues, of the larger New Jersey corporations are usually recorded and handled by New Jersey trust companies. The object of having a trust company of repute acting in this fiduciary capacity is to insure to prospective purchasers that the issue is perfectly regular and authorized, that it is not overissued, and that all stipulations as to payments into sinking funds, payments of interest and payments of principal have been carried out, and that the property is protected by proper inspection and insurance. The trust company examines all papers relating to the trust deed, including the certificate of incorporation, by-laws, minutes of stockholders and directors, specimens of signatures to be placed on bonds, opinion of attorney regarding regularity of issue and papers regarding the ownership and value of the property to be mortgaged by the trust deed. A bond is simply a fractional part of a mortgage or trust deed,and as such is entitled to all of the advantages and security there set forth. Each bond, as issued by the corporation is countersigned by the trust company, which acts somewhat in the capacity of a registrar of stock.

[3] In the management of a corporation, the most difficult thing for the stockholders of a corporation to do is to protect themselves from misinformation and manipulation by their directors and other trusted agents. The New Jersey code does not attempt to regulate the internal control of her corporations, except in one or two instances, such as providing for cumulative voting and reserving the right to make by-laws to the s tockholders, nor does she interfere through her courts, except in extreme cases where actual fraud on the part of the management against the

owners can be shown by the latter. The remedy of the dissatisfied stockholder is to elect new directors who will carry on the business according to his wishes, or if he has not the power to do this, to sell his stock. The control of the corporation often is a vital factor in the value of shares of stock to the purchaser, because, if dishonest he can benefit himself greatly at the expense of minority stockholders by making contracts to his own advantage, paying him a large salary for his services as an officer of the corporation or by transfering the profitable side of the business to a subsidiary corporation of his own ownership, which will divert profits to his own pockets, and if honest by protecting himself from such abuses. For such misuses of corporate control, which are not a defect of the law necessarily, but a part of the state's policy, the remedy must be found in a wider knowledge of the rights of stockholders and the means of protecting these rights by an independent audit by a Certified Public Accountant who is not secured by the board of directors, but by the stockholders themselves, by accounting hethods which can be relied upon to give correct results, by carefully drawn provisions of the certificate of incorporation and by-laws limiting and defining the powers of the board of directors, and by aboiding investments in corporations which may be subject to inside manipulation.

1. Machen, Modern Law of Corporation. Volume I.
2. General Corporation Act of New Jersey, edition of 1910.
3. Lough, Corporation Finance.
4. Smith's Cases on Private Corporation. Volume I.
5. Herrick, Trust Companies.
6. Conyngton, Corporate Management.

CHAPTER V

THE MANAGEMENT OF THE CORPORATIONS

[1]Section twelve of the New Jersey Business Companies Law provides that "the business of every corporation shall be managed by its directors," and the courts have held that any attempt at a form of organization which substitutes another form for this one is illegal. A small close corporation recently tried to secure the advantages of both the corporate and the partnership form of organization by forming a partnership among its members for the ownership of the shares of stock in the corporation. In this case the courts went behind the fiction, and decided the question of liability on the primary facts.

If it is desired by the stockholders to limit in any way the power of the directors as conferred by statute and by custom, they must make provisions to that effect in the certificate of incorporation or the by-laws. If the provision were placed in the certificate of incorporation, it would of course have more effect than in the by-laws. In the absence of such restrictive provisions, the ordinary executive acts of the directors are binding unless actual fraud on the part of the board or of some of its members can be shown. The members of the board have no power as individuals, unless they are authorized by the board to act as its agents. In order to have affect, the action of the board must be recorded, and the directors must be present in person. [1]Stockholders have the right by statute to delegate their voting rights to proxies, but the director's

function is altogether personal in him, and cannot be delegated. [2]In the absence of provisions to the contrary, the board may transact business when a majority of its members are present, and a majority of this quorum, can bind the corporation by its action. The meetings need not be held in the State of New Jersey, if the proper provisions for holding them elsewhere are inserted in the certificate of incorporation.

The board is the primary possessors of all powers conferred on the corporation by the state, and is therefore, by the fiction of law, the corporation itself, and can act as such, but the directors are not trustees for the stockholders in that the corporate property rights are vested in the corporate entity, and not in the directors as individuals. [1]The law provides no qualifications for membership on the board of directors beyond the candidate being a stockholder of record on the books of the corporation. When a director ceases to be a stockholder, he thereupon ceases to be a director, without further action. It is, customary however, for the board of directors to pass a resolution declaring the office vacant, in electing a new member to it. The board of directors has the power to fill vacancies in its membership caused in this way or by resignation, but not those caused by the ordinary lapse of the term of office of a member, or by an increase in the number of directors.

Since the election of directors by the stockholders is for the representation of their interests on the board, it follows that they may be classified so as to be elected by the various classes of stockholders, or, in extreme cases, their election

may even fall upon bond holders, in case of default of payments due them. The liberal policy of the state in allowing corporations to create various classes of capital obligations also extends to the control through the board of directors of the property exchanged for them.

[1]Three officers are essential to the organization of every New Jersey corporation; a president, a secretary and a treasurer. These may act either for the board or the stockholders, or for both. It is optional with the stockholders to elect separate officers for themselves from their own number, or to adopt those elected by the board of directors as their own, which is the custum more often followed. The statute provides very few regulations as to these officers; it leaves the provisions limiting and defining their powers and duties largely to the by-laws of the corporation, ot in other words to the stockholders primarily and to the directors directly.

The power is also given to chose such other officers, agents and employees as may be necessary for carrying on the company's business. Their powers are those of agents, that is conferred powers, and the usual laws of agency apply to them in all respects as though they were acting for a natural person, but the corporation cannot of course confer upon its agent powers in excess of those which it has itself received from the state. Powers which are inherent in an officers or agent's office may sometimes be assumed to be conferred upon an officer or agent, when this has not been done, and may bind the corporation.

The president of a corporation is its chief executive officer, and may bind it in the usual course of business, where a

contract under seal entered into by the corporation itself, i.e. by the board of directors, is not altered by his action. For any extraordinary act, such as the conveyance of real estate, express authority from the board of directors is necessary in order to bind the corporation.

The duties of the secretary are to keep a record of all corporate action on the part of the directors and stockholders, to affix and attest the corporate seal and to take charge of stock transfers, when no transfer agent is provided for this purpose.

The treasurer has charge of corporate funds, and signs various instruments jointly with the president. Other duties may also be assigned to these or other agents at the will of the board of directors.

1. Laws relating to Business Companies, edition of 1910, Camden, 1910.
2. Machen, Modern Law of Corporations, Boston 1908.

CHAPTER VI

DISSOLUTION

[1]The power to wind up and dissolve itself is one of the specific powers conferred by law upon New Jersey corporations. There are seven ways by which this dissolution may be brought about; by the expiration of the time named in the certificate of incorporation; by surrender of the corporate franchise; voluntary dissolution by the stockholders and directors; legislation; decree of a court for insolvency; forfeiture of charter for failure to bring books into state; and by proclamation of the governor for failure to pay tazes.

When the formal dissolution has taken place, it is necessary to realize the property of the corporation and to liquidate its liabilities. Any balance remaining must be distributed to the stockholders of record according to their claims. Preference stockholders have no superior claims upon winding up, unless this is part of their contract with the corporation. If the property were disposed of and the debts paid without going through one of the seven forms of dissolution as enumerated above, the corporation would continue to exist in the eyes of the law, the members of the corporation would be personally liable for any liquidating dividends paid to themselves and the corporation could be held to continue to exist by any one who desired to do so. [2]Even where the forms of the law for dissolution are complied with, the corporation remains in existence as a legal entity for the purpose of settling its affairs, but not for carrying on the business permitted by its

charter, unless this is incidentally necessary to the adjustment of its business. For the purpose of dissolving the corporation, the directors of the corporation become elective trustees, and may act at their option either in their own name, as such, or in the name of the corporation. They are trustees both for the members of the corporation and for those who have claims to be liquidated. They are given sufficient latitude in their duties to enable them to make the best possible bargain for those whose interests they represent, and do not become personally liable for their acts if they follow the direction of the statute and the courts, and act in good faith, without undue advantage to themselves. The election of directors or trustees may take place after the corporation has been formally dissolved, and even after becoming insolvent, the stockholders may hold such an election, if the court so orders. It is however, optional for the court to appoint a receiver to supersede the ordinary machinery of the corporation, if this is necessary to conserve the interests of the creditors, or if the trustees action does not seem to bring about the complete dissolution quick enough. The receiver must realize the property, and distribute it pro rata first to the preferred creditors, then to the ordinary claims, and lastly to the equitable owners of the balance.

When a corporation becomes insolvent, or it becomes desirable to dissolve it, a resolution is passed by the board of directors, who must thereupon call a meeting of the stockholders, unless the dissolution is by expiration of the time limit in the certificate of incorporation, in which case they may proceed

without such action.[1] At this meeting, the full facts as to the assets and liabilities of the corporation must be stated to the stockholders, and the reasons for desiring the dissolution of the corporation.[3] A corporation may not become a voluntary bankrupt under the National Bankruptcy Law, but when it is found that the appointment of a court receiver is the only method of escaping financial difficulties, a friendly receiver can usually be secured by a petition brought by creditors whose interests are those of the corporation. A corporation is not necessarily insolvent because its capital stock is considerably impaired by losses; the proof of insolvency accepted by the court is the inability of the corporation to meet the demands of creditors.[4] An attempt to mortgage or convey the property of a corporation in process of dissolution to the preferrment of one creditor over another is not valid, but receiver's certificates may be issued if it is necessary to raise funds to protect the property, or to render it saleable and these constitute preferred claims over all others.

It is optional with the court, when the debts of the corporation are satisfied, to cause the dissolution of an insolvent corporation, or to turn the affairs over to the stockholders for reorganization.

1. General Corporation Act of New Jersey, edition of 1910.
2. Machen, Modern Law of Corporation.
3. National Bankruptcy Law of the United States, Washington, 1898.
4. Lough, Corporation Finance.

CHAPTER VII

TAXATION AND PUBLICITY

[1]Besides the recent federal corporation income tax and such excise and import duties as its line of business may entail, a New Jersey corporation pays in the state of its domicile three classes of taxes; the ordinary real and personal property tax, such as is paid by all property owners inthe state, the fees to the secretary of state and the county recorder of deeds for filing certain papers ~~and~~ for making their organization complete or altering it; and the franchise tax for the privilege of continueing as a corporation, payable annually.

The property tax need not be considered here because it is not directed especially towards corporations, and need not be paid by them except on property in the state of New Jersey. The same exemptions are given to corporations as to the taxation of both physical property and the obligations issued against it. Shares of stock in the hands of stockholders are not taxable if outside the state of New Jersey.

Special fees for the filing of the various formal documents required by the state are specified by the corporation law, or if not specified amount to five dollars. The fee for recording in duplicate in the office of the secretary of state all certificates of incorporation of domestic corporations is ten cents per hundred words, the minimum amount of any fee to be one dollar. The other fees range from one dollar to twenty-five dollars, in some cases varying with the capitalization, butthe amount is such that in a corporation of any considerable size they are not

material disadvantages to New Jersey corporation organization. The fees payable to the Secretary of State and to the County Recorder of deeds are mainly to cover the cost of the service rendered by them, and are not at all excessive for the trouble and detail involved.

The competing trust and other companies of the various states favorable to incorporation have published from time to time comparative statements of the cost of franchise taxes in their states, each trying to show that its own was the most favorable, in order to get the profitable business of acting as organizer and agent in the state. The figures published by these promoters do not apparently agree, and also vary widely according to the capitalization. [2]Those published by the Delaware Charter Guarantee and Trust Company can probably be relied upon as accurate, and are as follows, for the three "incorporating states" which they cover.

Authorized Capital	New Jersey	Delaware	Maine
$ 25,000.00	25.00	5.00	5.00
50,000.00	50.00	10.00	5.00
75,000.00	75.00	10.00	10.00
100,000.00	100.00	10.00	10.00
500,000.00	500.00	25.00	50.00
1,000,000.00	1,000.00	50.00	75.00
5,000,000.00	4,000.00	150.00	275.00
10,000,000.00	4,250.00	275.00	525.00

This shows some advantage to Delaware, especially for large corporations, which is doubtless the point it is intended to bring out, but as a rule, a corporation with a capital of say five million dollars will be much more interested in the advantages of the other phases of corporate formation than in this fee, if it has large objects in view.

[1]The degree of publicity which should be required of a corporation is still an open question. To place all of the corporate records at the will of every comer makes it possible for competitors, who perhaps are not subject to such inspection, to learn just what the sales of the corporation have been, what its costs of production are and the chances of throwing it into bankruptcy by cutting prices and buying the claims against it. Even if the corporate books are open to stockholders of record only, there is no protection from this evil, since no large corporation is so close that there are no stray shares to be purchased by outsiders, if they are willing to make a sufficiently high bid for them. The certificate of incorporation should of course be filed upon the public records, as well as any amendments or instruments changing the status of the corporation or its relations to its members or to outsiders, because these are the only means the outsider ordinarily has for knowing that he is dealing with a body whose liability is limited and some acts of which may be ultra vires, and put him in a bad position when he tries to make use of the courts to enforce his contracts.

New Jersey tries here, as elsewhere in her policy towards corporations, to secure a sufficient protection of all interests involved without injuring the interests of the corporation. One way of protecting stockholders or prospective stockholders is by the publication of the manner in which the capital stock of the corporation was paid up. [1]If paid in property, as is usual in combinations, this must be stated in the report. In this report must be stated also the name of the corporation, the

location of its principal office, the character of its business, the amount of its capital stock and the amount issued, the names and addresses of its directors and officers and the expirations of their terms of office, the time of the next annual meeting of stockholders, and a statement as to whether the corporation has at all times displayed its name at its registered office, and kept its stock and transfer books within the state of New Jersey. Suitable, but not impossible penalties are provided for failure to make this report, including a forfeit of two hundred dollars to the state, and ineligibility of the directors who are delinquent for office for a period of one year. The statute gives detailed instructions for making up this report, specifying that it must be in the English language and that the secretary of state must file it and record it by making a typewritten copy with a record ribbon of permanent color.

1. General Corporation Act of New Jersey, edition of 1910.
2. Delaware Charter Guarantee and Trust Company, advertising pamphlet for 1909.

CHAPTER VIII

THE RELATION OF NEW JERSEY CORPORATIONS TO ECONOMIC PROGRESS

The keystone of the relation of corporations to economic progress lies in the condition that the corporation can bring together larger aggregations of capital for the promotion of an industry than can the single trader or the co-partnership and it can also distribute the risk of failure over a number of individuals and provide safeguards for the investing and speculating public which are impossible for the unincorporated. The history of the industrial development of America is the history of large corporations. When commerce was first opened, it was the custom to grant legislative monopolies of the trade with a new colony to companies of merchant adventures, with very large powers over the commerce and government of the territory assigned to them. Public opinion would not tolerate such grants at present, but we have a close analogy to the position of these corporations in our capitalistic monopolies of today.

Most modern industrial corporations are organized under New Jersey laws, and have secured their present position by purchasing with their gigantic resources the original sources of raw product in their respective businesses.

Such large corporations usually start by the merger of a number of the important factors in production of the industry to be merged. The combination then either buys up or forces into liquidation its competitors and is in position to control the industry practically as it pleased, so long as the government does not interfere. Competition would not prove profitable, and would

entail a long and bitter fight, and the public would not care to invest millions in a series of competing plants, where the ultimate outcome is doubtful and no monopoly profits can be reasonably expected.

The typical large New Jersey corporation is interested especially in two phases of corporation law. These are the provisions permitting one corporation to hold the stocks and bonds of another, and the merger act. Probably no other laws have had such a great influence on the economic progress of the United States as these. Altough passed by the New Jersey legislature, they are national in their scope. This point is especially brought out when we find that over half of all of the securities dealt in on the New York Stock Exchange are issued by corporations which are operating under New Jersey charters.

The federation of sovereign powers which forms our Union, when first formed knew nothing of the corporate development which was to spring up, and made no provision for its control, but we are gradually beginning to see that national laws or uniform state laws are necessary if we are to cope properly with the changed condition of today. No one can doubt that the uniform negotiable instruments laws adopted by nearly all states has been a great benefit to those who must handle business in this manner. If we could agree on some similar policy towards domestic and foreign corporation which would be uniform throughout the United States, the greatest benefit would accrue both to the corporations and to the state. Such a plan is not altogether impossible of operation. The fundamental principles of corporate

legislation have been worked out in the last century, and we also have the experience of England and Germany to help us formulate our national or uniform state law. The interests of the various states are not greatly in conflict on this point; the relation of corporations to economic progress depends upon their relation to the State. But the relation to the state varies with the knowledge and the whim of legislators.

New Jersey is not a vandal as the uninformed often suppose, fostering fraudulant bodies for the gain in franchise taxes; she has studied the corporate problem from a legal and economic standpoint by the aid of eminent lawyres and economists and her policy is probably the fairest to the public and to the members of the corporation. Her sister states would do better to copy the best points in her law than to find fault with the worst ones.