

**BUSINESS AND GOVERNMENT  
IN NINETEENTH CENTURY DELAWARE**

by

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## PREFACE

This thesis attempts to trace the development of relations between government, as exemplified in statutes and regulation, and business in nineteenth-century Delaware. Emphasis will be placed on the evolution of incorporation laws up to the enactment of the general incorporation law of 1899. An effort has been made to relate developments in Delaware to those elsewhere, and to the very broad outlines of the economic history of the period. Necessarily, the treatment of these factors is very sketchy; the writer is all too well aware that much which might have been included, and perhaps some that should, has been omitted. Equally necessarily, a very high degree of selectivity has been exercised in choosing examples of legislation, the degree increasing steadily as the nineteenth century progressed and more and more pertinent laws were enacted. Nevertheless, it is hoped that nothing of major significance has been overlooked.

While this study has no specific economic thesis, it is suggested that three main movements may be discerned; that these movements occupied successive portions of the century, and may be conveniently summed up in a few words: money, movement, and manufacturing and diversification. That is, the writer has come to feel that roughly the first third of the century was preoccupied with establishing a reasonably secure financial system; the second third with creating transportation facilities; and the last third with developing the manufactures, industries, and commerce of the state beyond their then



existing level. These concerns, of course, overlapped, but it is suggested that in each period one of the mentioned preoccupations was dominant.

For government-business relationships, it is suggested that the evidence presented shows how these developed from a close relationship, and even at times a partnership, to a friendly neutrality and nominal umpireship. It was not considered necessary to demonstrate once more that business, despite the theoretical separation of counting-house and state, actually influenced government significantly in the later nineteenth century. This has been taken for granted, and has not been discussed.

It is acknowledged that significant federal legislation was enacted during the years covered in this thesis, but in the interests of keeping within manageable limits, this has for the most part been omitted or mentioned only in passing. The same applies to the majority of judicial decisions and interpretations, although examples have been used.

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he owes more than can ever be repaid. The respective staffs of the University of Delaware Library, the Eleutherian Mills Historical Library, and the library of the Historical Society of Delaware proved unfailingly cooperative and helpful, and a debt is owed them beyond calculation. It is due to these, and to others, unfortunately too many to name, that the success of my research was due. All misinterpretations, errors, and omissions are, of course, the writer's; the style, wording, and phraseology owe much to Dr. W.D. Lewis, who patiently and persistently found and corrected flaws therein.

## TABLE OF CONTENTS

|   |     |
|---|-----|
| PREFACE . . . . .                                       | iii |
| SUMMARY . . . . .                                       | vii |
| I. THE EIGHTEENTH CENTURY BACKGROUND . . . . .          | 1   |
| II. THE FINANCIAL FOUNDATIONS, 1791 - 1831 . . . . .    | 22  |
| III. THE STATE'S ECONOMY EXPANDS, 1791 - 1831 . . . . . | 39  |
| IV. FORESHADOWINGS OF THE FUTURE, 1831 - 1853. . . . .  | 56  |
| V. THE OLD ORDER CHANGETH, 1854 - 1875 . . . . .        | 77  |
| VI. THE END OF THE OLD ORDER, 1875 - 1897 . . . . .     | 98  |
| VII. SUMMARY: A CENTURY OF GROWTH . . . . .             | 121 |
| NOTES . . . . .   | 131 |
| BIBLIOGRAPHY . . . . .                                  | 150 |
| APPENDIX . . . . .                                      | 156 |

## SUMMARY

It is suggested in this thesis that the development of law touching business in Delaware was evolutionary, and comprised three major themes: the establishment of a reasonably secure financial system, the development of a transportation system serving the state, and the establishment of a diversified manufacturing and commercial sector of the overall economy. In any given period all three themes were present, but one was the predominant preoccupation of the day.

After a period of slow but steady growth in the eighteenth century, the time between 1791 and 1831 is suggested as having been perhaps the most significant stage in the course of events with which this study is concerned. In this period, the basis for later development was laid and the lines which this development would follow first became visible. Although the preoccupation of the period was with establishing a financial system adequate to the needs of the state, the first industry and manufacturing appeared, and the first attempts at creating a transportation network were made. From the 1830's to the 1850's, transportation was the predominant interest, since the banking system of the state had crystallized by slightly after 1820. From the 1850's onward, manufacturing and industry were of more interest than transportation and banking, and the state moved increasingly into regulation of business and associated practices.

The organization of business developed parallel to these changes. In the eighteenth and early nineteenth centuries, the typical Delaware

business was a small single proprietorship or a small partnership. Increasingly, however, incorporation began to be used, and the first extended remarks upon this subject appear in the 1831 State Constitution. As the practice of incorporation spread and became more and more widely used, this basic law was amended and extended. A very limited general incorporation law was enacted in the 1870's, extended in the 1880's, and replaced at the very end of the century. The State Constitution was revised in 1897, at which time the legislature was empowered to enact a general incorporation law. This it did in the 1899 session, and the resulting statute was the basis of the twentieth-century incorporation law of the state. This is not discussed, as the enactment of the 1899 law formed the last chapter in the century of change examined.

## CHAPTER I

### THE EIGHTEENTH CENTURY BACKGROUND

When, in August of 1776, a convention met at New Castle to draw up a constitution for the "Three Counties on the Delaware," its members were acting as representatives of a basically agricultural colony becoming independent, for the second time, of an unpopular superior government. The first time had been seventy-two years before when, in 1704, the first separate Delaware Assembly was held after breaking away from Pennsylvania.<sup>1</sup> The legislation passed by that first Assembly, as well as by succeeding ones, reflected the economic conditions which existed in the colony and, at a later time, in the state. Likewise, the Constitution of 1776 and later instruments of this type demonstrated the reciprocal relationship of the government and the economy.

The colonial economy of Delaware was, as noted above, basically agricultural, with small local businesses and industries based primarily on the processing or distribution of agricultural products. This was not to change significantly until well into the nineteenth century, when new types of business and industry appeared. The business legislation of the colonial period was basically regulatory in nature, with specific acts passed as specific problems or circumstances demanded. Implicit in these acts was the assumption that Delaware's economy consisted of an

aggregation of individuals, and not of classes or groups of individuals. This was reflected in the business practice of the day, for the organizational form employed in Delaware was either the single proprietorship or the small partnership. The corporation, for which Delaware is now well-known, was mentioned neither in the 1701 charter,<sup>2</sup> under which the colonial assemblies met,<sup>3</sup> nor in the 1776 constitution.

The coming of independence in 1776 made little difference to the citizens of Delaware so far as their general laws were concerned. Nor did the economic foundations change; the state remained agrarian just as the province had been. Toward the end of the eighteenth century, however, the first of three major themes apparent in Delaware's economic history began to become more clearly visible. This was the establishment of a monetary system suitable to the conditions of the state. The problem had existed in the colonial period and was not solved until the early nineteenth century. With its solution, the second major theme -- the establishment of a transportation system -- became prominent, although this had been present in less marked form prior to independence. The last major theme, the breaking away from a too-great reliance on agriculture and the development of diversified business and industry in general, did not become really significant until the first and second problems had been largely resolved.

Since the establishment of a reasonably stable money supply was probably the most important, although not always the most clearly recognized, problem confronting Delaware in the eighteenth and early nineteenth centuries, it is desirable to consider it first. This prob-

lem was not Delaware's alone, for it was general throughout the American colonies of all European powers. The English colonies resorted chiefly to issues of currency based upon land, but it should be noted that the economic theorists of the day were dubious of land banks or the loaning of money on the security of land. Moreover, the concept of specie as the only legitimate medium of exchange was generally unchallenged. As late as the 1770's a banking theorist could write that no soundly run bank would loan money on land but only on such security as was "readily . . . converted into cash."<sup>4</sup> It may also be noted that even in England there were few banks, and there can be little doubt that if credit were scarce there, it must have been even scarcer in the colonies.

In his study of banking, Bray Hammond has argued that the issue of paper money was essential in the colonies to overcome this shortage of credit and the lack of a sufficient circulating medium.<sup>5</sup> There seems little doubt that if paper had not been issued, some other form of exchange would have had to be devised. Even as it was, the use of payment in kind for debts remained legal in Delaware until well after the end of the period considered here.<sup>6</sup> The first issue of paper money in Delaware dated from 1723,<sup>7</sup> and was not particularly large in amount. It was also most conservatively secured, as Richard S. Rodney has noted, by being loaned

on real estate of double the value of the loan . . . secured by first mortgages . . . . These mortgages provided for the payment of interest at 5% and also provided that the principal be paid in eight years by eight annual installments. The interest and principal were payable in paper money and upon this payment the money was retired from circulation and destroyed.<sup>8</sup>



Other issues of paper money were subsequently made, the last colonial emission being in September, 1775, for £30,000.<sup>9</sup> A few issues were made in the early years of the Revolution, but after 1777 no further notes were put into circulation. Delaware issues in the colonial period had been stable, but were sensitive to movements in the value of Pennsylvania currency. Thus, when a decline in the value of Pennsylvania paper began in late 1775, the Delaware currency also suffered. At first the decline in Pennsylvania issues was slight, but from late 1776 it tended to become quite rapid.<sup>10</sup> In 1777, Delaware made the last issue of its own paper, and in the same year the Continental Bills of Credit were made legal tender in the state.<sup>11</sup> This was perhaps a mistake, for locally the decline in the value of state issues had not been as serious as that of the Pennsylvania emissions and there was still some confidence in state paper. Within four years, however, this confidence had largely vanished. By 1780, the Continental paper had depreciated so much that in November of that year the Delaware Assembly repealed the 1777 act and declared that the bills issued under it were no longer legal tender in the state.<sup>12</sup>

Unfortunately, this action came too late to save the Delaware paper, and in February of 1781 the Assembly withdrew legal tender status from the State Bills of Credit as of August 31, 1781.<sup>13</sup> In 1785, further legislation called in all circulating paper for redemption in "Depreciation Certificates" which were to be cashable — presumably in specie — when funds were available. Continental paper was redeemed at 300 to 1 (i.e., £300 Continental brought £1 in Depreciation Certificates), while state paper was redeemed at 75 to 1. Paper

not exchanged under this scheme was declared valueless after August 31, 1785.<sup>14</sup> The difference in rates suggests that some residue of the pre-war confidence in state issues had survived into the post-war period.

This pre-war confidence had been built on the considerable restraint and the generally conservative operation of the Delaware issues. This was in line with the policies of the other Middle Atlantic colonies, and in marked contrast to the often reckless and questionable practices found in New England.<sup>15</sup> The Delaware issues were made through a "Loan Office" in each county, these centers being essentially the same as the land banks of other colonies. Strictly speaking, such land banks were illegal, but the Imperial authorities did not enforce the laws with any continuity, for the measures taken by the provincial governments to provide a money supply stemmed for the most part from economic necessity. Specie was drained out to pay for imports, leaving nothing to serve for local use unless bills of credit were permitted.

The problem of securing an adequate circulating medium remained in Delaware after the demonetization of the various paper issues in 1785, and there were petitions between 1784 and 1788 for an issue of State Bills of Credit on the same general basis as had existed previously. These petitions were refused, probably because the collapse of past issues had made the use of paper money suspect, and, to some degree, unpopular.<sup>16</sup> In 1785, the need for a circulating medium led Eleazer McComb, a Wilmington merchant, to propose the formation of a bank to supply that want.<sup>17</sup> McComb proposed that the necessary capital be

borrowed abroad, the loan being guaranteed by a group of interested local landowners, and be repaid from the proceeds of special taxes imposed for that purpose. The note issue was to be limited to £30,000 "issued on the credit of the Bank, and loaned out to citizens of this state in the same manner and on the same kind of security as Bills of Credit were formerly loaned."<sup>18</sup>

McComb estimated that through this scheme some £1,900 would accrue annually to the state, but despite his arguments nothing came of the project. It is possible that he failed to gain sufficient support because as yet the notes of established out-of-state banks circulated freely enough to enable commerce to be carried on. Moreover, the Delaware legislature may well have doubted the stability of the issues of a private bank when the state could not maintain the value of its own notes. A third reason may have been that although there was an expanding commerce and industry within the state there was not yet sufficient demand for a bank.

It should be noted that in the late eighteenth century there were three uses of the term "bank," rather than the restricted one of the present day. Hammond cites the first of these as referring to any incorporated institution dealing in money. Second, the term could be applied to state issues of bills of credit; in this sense the usage was that "a bank of (so many) pounds" was to be created. Finally, the word sometimes referred to "an association of private persons who issued their own bills of credit" against such security as they found expedient.<sup>19</sup> There were no examples of the first usage in colonial

America, and few anywhere in the world. The second usage was by far the most common in the American colonies, while the third was known, but very rare, before the late 1780's and 1790's.

The problem of establishing an adequate money supply in Delaware during the colonial and early national periods was also reflected in enactments not directly concerned with issues of bills of credit or similar immediately pertinent legislation. An example in this regard was an early act limiting interest rates. Credit was essential to business, and interest rates were controlled by the legislature. Thus, an act reducing the legal interest rate from 8% to 6% was passed early in the eighteenth century under Governor Keith,<sup>20</sup> and this has been associated with the first issue of paper money.<sup>21</sup> The law evidently did not meet the needs of the day, for such limitations of interest rates were periodically reenacted, a fact suggesting that the demand for money regularly exceeded the supply. This was also a factor bearing on the pressure for the issue of paper money throughout the colonial period and, after independence, for the establishment of banks.

Another general enactment, which came some years later and may have reflected a tendency within Delaware toward litigiousness, had an indirect bearing on the money supply. This dealt with evidence in contract disputes, and provided criteria in terms of money by which the type of evidence required to prove a case could be determined.<sup>22</sup> It is not clear, however, whether the amounts set as these criteria were reckoned in sterling or "lawful money," i.e., local bills of credit or other acceptable means of exchange. The latter often consisted of

non-British coins which had had an arbitrary value, commonly exceeding the exchange value in London, assigned to them by the Assembly in an effort to prevent their export.

The same doubt attaches to fines, duties, and similar payments collected under other legislation in early Delaware. Taxation, bounties, and similar enactments having economic overtones may be taken as general, rather than specialized, in intent. Such taxation as existed in Delaware seems to have been broadly similar to that which prevailed in other American colonies or states. It is noticeable, however, that Delaware did not impose import duties, although it has been claimed that some tariffs established by the Pennsylvania government prior to 1704 were continued in force by the Delaware Assembly after that date.<sup>23</sup> Also, in contrast to some other colonies or states, Delaware did not impose export duties. Even if it had, it is unlikely that such levies would have brought worthwhile returns in view of the limited nature of its exports, particularly during the colonial period. Indeed, they might have been self-defeating in view of the fact that a specie-poor area badly needed to encourage exports of goods to check the drain of money to pay for goods from abroad.

Instead, Delaware relied upon a tight inspection of export staples to maintain quality and a reputation for sound products. In view of the reputation that Brandywine flour obtained by the end of the century, such a policy was amply justified. In this respect, Delaware was not alone in imposing inspection of exports. All colonies required the examination of meat prior to shipment; the Middle Atlantic provinces

added flour to the list, while Pennsylvania, Delaware, and the Southern colonies added tobacco as well.<sup>24</sup> For any given colony, the list of products for which inspection was required tended to comprise those which were sufficiently important economically to rank as staple or near-staple exports. This policy was carried over into the early days of independence largely unchanged, and in the case of Delaware, lasted well into the nineteenth century.

In addition to maintaining inspection of flour for exports, Delaware had a long series of acts regulating millers, but also encouraging them. From an examination of the statute books, it appears that the first legislation specifically concerned with any Delaware industry touched on milling. This activity had already become an important aspect of the state's economy in the early eighteenth century, and remained so for long afterward. The statute, passed in 1719 and entitled "An Act to encourage the building of good mills in this government,"<sup>25</sup> stated that mills might be built on any non-navigable stream and provided for the exercise by the authorities of their right of eminent domain on behalf of the miller. These provisions were intended to assure the latter control of both banks of the stream at the point where he proposed to erect his dam. This is not to say, however, that the miller had it all his own way in erecting dams, even though such installations were clearly objects of special consideration. Soon after the passage of the 1719 act, the legislature passed regulatory laws controlling obstructions in rivers and creeks. Mill dams were included where the water was navigable, and they could not be erected

on any stream unless the builder owned the land on both sides of the water.<sup>26</sup>

Some of the other legislation bearing on Delaware millers and milling during the colonial period deserves mention, for much of it, in more or less amended form, lasted until well after independence. There was, for example, an act which required all mill races or other artificial watercourses crossing public highways to be bridged at the expense of the owner of the waterway. Such bridges were to be maintained by the owner in good condition, but it was not specified that he could charge tolls for their use.<sup>27</sup> A supplement to the 1719 act encouraging mills was passed in 1760 and laid down provisions dealing with the control of dams.<sup>28</sup> These stipulations derived from English Common Law, the pertinent parts of which held (and still hold) that while an owner of land may do as he sees fit with it, and with water passing through his lands, he may not act in such a manner as to interfere with adjacent lands or with water flowing through them. This held in Delaware, of course, and the 1760 act required that if a dam were built it must not damage land above or below the limits of the builder's land either by flooding or by changing the natural level of the water passing through those lands. This supplementary act was repealed in 1773, being replaced by a statute which required that in such cases a jury was to be appointed to examine the dam complained of and to determine the damage, if any, which had been done. If damage was found to have occurred, the new dam then had to be re-sited or the situation otherwise corrected.<sup>29</sup> The miller's charges and tolls were also regulated in early Delaware, further demonstrating that discipline went hand in hand

with encouragement. At roughly the same time as the passage of an act requiring the concealment of waterwheels in order not to frighten horses, a law was passed establishing maximum tolls for milling the various grains then grown. These charges were ten per cent for wheat, rye, and a list of other grains in New Castle County, and twelve and one-half per cent in Kent and Sussex counties.<sup>30</sup> Substantial penalties were imposed for exceeding these tolls, and the act, while modified later, remained in force well into the nineteenth century.

Inasmuch as millers were regulated, it is not surprising to find that the commercial users of flour were also subject to certain restrictions. In 1740 or 1741 an act was passed requiring the public bakers in New Castle to "make or affix some mark, letter or name of such baker on every such bread as he or she shall bake for sale."<sup>31</sup> Such bread was to be periodically inspected by the local justices and a penalty for unmarked bread was laid down. The size and weight of the bread was also regulated, and infractions of these provisions carried the same penalty as applied to unmarked bread: a fine of five shillings plus confiscation of the offending loaves. The confiscated bread was to be distributed "for the use of the poor of the town and hundred." Another section of the act gave the justices power to direct the "sorts" of bread to be baked for sale. Later acts provided for similar regulations to be applied in Dover, Lewes, and Newark.<sup>32</sup> It is interesting to note that there were repeated instances of legislation being passed with reference only to New Castle County, which was later extended to the other counties by amendment or re-enactment. This practice was to be continued after independence.



It would appear that the earliest regulation touching on commercial enterprise in Delaware was concerned with the retail side of milling and similar businesses. This was an act passed between 1704 and 1706 requiring that the county authorities supply standard weights and measures to be used to check those of retailers on an annual basis.<sup>33</sup> To what extent this was enforced does not appear, but in one form or another such regulation has been in force ever since.

Much of the main body of regulatory legislation passed by the colonial assemblies of Delaware dates from the years just preceding the Revolution. Although the number of enactments pertaining to business showed an increase during this period, many were largely technical and did not significantly change earlier practices. The actual coming of independence, as previously noted, probably made little difference to the citizens of Delaware in terms of their economic life. For the most part, the colonial legislation continued in effect, and the 1776 State Constitution specifically indicated that no major break in continuity with the immediate past was intended in the laws:

(Art. 24) All Acts of Assembly in force in this State on the fifteenth Day of May last ( and not hereby altered, or contrary to the resolutions of Congress, or of the late House of Assembly of this State) shall so continue until altered or repealed by the Legislature of this State . . . .

(Art. 25) The Common Law of England, as well as so much of the Statute Law as have heretofore been adopted in Practice in this State, shall remain in force, unless they be altered by future Law of the Legislature; such parts only excepted as are repugnant to the Rights and Privileges contained in this Constitution and the Declaration of Rights, &c agreed to by this Convention.<sup>34</sup>

In practice, the changes in the laws prior to the promulga-

tion of a new State Constitution in 1791 were relatively minor; many, prior to 1783, were strictly wartime measures put forward and identified as such. There was, however, some growth in regulatory legislation as the post-war depression lifted in the late 1780's, and from this it can be inferred that the pre-war increase in the number of small industrial or business enterprises in the state had resumed. While some of these, for example the mills on the Brandywine, were of substantial size, none were incorporated in the eighteenth century. Such incorporated bodies as had existed in the colonial period, and in the state until the 1790's, were public corporations such as municipalities. The absence of private corporations in Delaware throughout this era is established by the absence of legislation concerning them. In part this absence reflected the problems of incorporation during the colonial period, and in part the lack, after independence, of concerns large enough to justify the use of this form.

Despite the lack of corporations in early Delaware, it is nevertheless convenient at this point to summarize the development of this form of organization during the colonial period, since its later use became an important aspect of the interaction between business and government in the state during the nineteenth century. The origins of the corporation are commonly dated from classical times,<sup>35</sup> and there are extensive materials available to trace the evolution of the concept through the medieval period and into the Renaissance. For the purposes of this study, however, it is not necessary to consider this development before the early eighteenth century, nor outside England and America.

At this time, the concept of the corporation in England, and therefore in the colonies, was subdivided into several types based on purpose. A basic distinction was drawn between corporations sole and corporations aggregate. The former was a legal device for granting to an individual, as representative of a specific office, certain continuing powers which were desirable or necessary for the performance of duties or actions involved in that office. A standard example of such a corporation would be an ecclesiastical official. The corporation aggregate comprised groups of men incorporated into a body for various purposes which they were incapable of performing separately, or for which special powers and privileges were desirable or necessary. An example would be a municipal council.

Another distinction was made between corporations ecclesiastical and corporations lay, of which the former is not pertinent here because it was primarily concerned with religious matters. The corporation lay was subdivided into two further forms, the corporation eleemosynary and the corporation civil. The first of these subdivisions comprised primarily charitable and similar organizations, while the second was further subdivided into corporations public and corporations private. It should be noted, however, that the distinction between the latter two categories was not as clearly drawn in the early eighteenth century as it later became. The corporation public comprised municipal and administrative bodies, or the like, and was well known in the colonies. In the corporation private may be seen the origin of the business corporation as it later developed in both England and America.

Such corporations were known in the first colonies; the various settlement companies, for example, were corporations private. Strictly speaking, therefore, the various laws passed in New England for many years were corporate by-laws rather than the general laws of a political body. These early corporations private were at first established by the Crown, and later by Parliament, with the right to make by-laws an undoubted part of the grant. But although they had the right to make such by-laws, one major constitutional question of increasing importance in eighteenth century colonial America was whether or not this right included the power to establish other corporations private. Much the same problem arose in the royal and proprietary colonies, of which Delaware was one: did the governors of such provinces possess the right to incorporate where it was not specifically mentioned? It was generally held that where the basis of government was a corporate charter there was no power, in the absence of a specific amending grant, to incorporate, for it was axiomatic that "one corporation cannot make another." In the other colonies, the power of assemblies to incorporate "under the negative of the governor" was generally conceded.<sup>36</sup> Nevertheless, much confusion arose from the absence of agreement on these points and the lack of a consistently applied, generally applicable practice.

To compound the confusion, the applicability of the "Bubble Act," passed by Parliament in 1720,<sup>37</sup> was uncertain at first. The then comparatively new and unregulated practice of forming joint-stock companies had become a serious problem in England, and the "Bubble Act" was intended to resolve the situation. This statute, among other pro-

visions, prohibited the formation of unincorporated joint-stock companies, but explicitly excluded partnerships except in marine insurance. It also provided criteria for application in doubtful cases to determine whether or not a given concern came under the act, but it did not provide a definition of the term "company." Presumably Parliament felt that everyone knew what a company was and that therefore no definition was necessary.

It is conjectural whether or not the act prevented the formation of joint-stock companies in colonial Delaware, but it certainly caused worry to the managers of a nearby Maryland firm. In 1726, John England, manager of the Principio ironworks in Cecil County, Maryland, wrote to the partners in England asking if the act might not apply to their enterprise. The reply stated, in part, "And as for ye Bubble Act it has no more relation to you or any of us . . . it being only made to prevent Frauds in Exchange Alleys and ye Place where ye Government Stocks are transacted . . . ." <sup>38</sup> Certainly no vigorous effort was made to enforce the law, for there seems to have been but one prosecution, and that a minor one, under it during its life. <sup>39</sup> Colonial businessmen were nevertheless uncertain for some years about whether or not it applied to them, and this confusion was not ended until 1741, when the law was extended to the American colonies by specific enactment. <sup>40</sup>

So far as Delaware was concerned, this development was probably relatively unimportant and, in any case, the extension was aimed at the Massachusetts Land Bank schemes of the period rather than at any

enterprise in the Middle Atlantic colonies. These Massachusetts Land Banks have been described as "most unsound,"<sup>41</sup> and in view of the extent to which they granted credit on poor security, the description is probably justified. By 1770, however, conditions were changing. Although there were no business corporations in Delaware at this date, there were a few in some of the other colonies. That this absence, in Delaware, continued after the Revolution suggests that there was still a suspicion of the corporation as a form of business enterprise. Another limiting factor not only in Delaware but throughout the colonies may have been the position of the merchant in society; in colonial and pre-industrial America he was the "significant man" in the life of the day, and he was not used to working within the corporate type of organization. One further circumstance which recurred throughout the eighteenth and early nineteenth centuries was the equating of corporations with monopolies. In at least one instance in the eighteenth century a colonial legislature opposed the grant of a charter of incorporation by the Imperial government on just such grounds.<sup>42</sup>

Charters, therefore, were special instruments, and something of this attitude lingered for a long time in Delaware. This may be seen in the absence of any charter of incorporation issued to a purely private concern until well into the nineteenth century by the Delaware Assembly. Those that were granted, and from the 1790's onward an increasing number were, commonly had some component of public utility in them. Furthermore, the taint of monopoly or special privilege was not always absent. The single charter issued to a business concern before the 1790's illustrates this quite well, namely the one given to the Bank of North

America, incorporated in Delaware in 1786.<sup>43</sup> The value of banks of issue was acknowledged, and this may have had some small part in persuading the Delaware Assembly to pass the charter; nevertheless, the action was primarily a political move despite the public utility aspect of banking. There was at that time some doubt of the legality of the Congressional charter of incorporation under which the bank was organized,<sup>44</sup> and the Pennsylvania charter which it also held was under bitter attack in the legislature of that state. In short, the bank needed a port in a storm and turned to Delaware for security.

This action appeared wise at the time, for the Pennsylvania charter of the bank was revoked in 1786, thus precipitating an important constitutional problem which was not resolved until the nineteenth century. The main point involved in this problem was the relation of the state to the corporation and the significance of the corporate charter. If a state granted a charter, had it the right to revoke it unilaterally? Many of the opponents of the revocation of the charter of the Bank of North America held that a charter was a contract between the state and the incorporators and so could not be changed or revoked unless both parties agreed to the change or revocation.<sup>45</sup>

The grounds for the revocation of the bank's charter in Pennsylvania indicate that its operations probably favored businessmen and merchants. Some of the charges against the bank included usury, refusal to make long term loans, close connection with merchants and commerce, favoritism in making loans, "discrimination against husband-

men and mechanics," "insistence on punctuality in paying debts," and so on.<sup>46</sup> These charges probably reflected opinions which were also held in Delaware at that time, for the whole sorry catalogue was to be heard, with addenda, when proposals to establish banks in the state were later put forward. Some actually appeared while the Bank of North America charter was being discussed in Delaware, but did not prevent the legislature from granting it. Ironically, this first business corporation in the state's history never moved to Delaware anyway, seemingly underscoring the fact that the time was not yet ripe there for this form of enterprise.

In this respect, it is interesting to note again that the Delaware State Constitution of 1776 had made no specific provision for business incorporation, nor, indeed, did it refer to the subject in any way. The British laws concerning corporations must presumably have stayed in force under the previously quoted Article 25, and this implied that incorporation was possible only by special act of the legislature. By 1787 the demands that this system made on the time of that body for the relatively stereotyped and essentially unimportant charters of incorporation for such groups as religious bodies had become sufficiently onerous for a general incorporation law to be passed covering them.<sup>47</sup> In this respect Delaware was one of the earliest states to cope with the problem. The first such law was enacted in New York in 1784, while the Delaware law of 1787 was the second.<sup>48</sup>

To summarize, Delaware grew slowly during the colonial period and toward the end of it began to develop a few relatively small indus-



tries associated with milling and based on water power. The legislature passed comparatively little general legislation, most of the regulatory laws being concerned with specific industries or their problems. The financial and fiscal policies of the Assembly tended to be conservative, resembling those of other Middle Atlantic colonies but differing from those in New England. Business organization in Delaware remained simple throughout the whole period, although corporations were known for public or quasi-public purposes. In broad outline the same situation prevailed in most other colonies, although the first business corporations were appearing in some of the more economically advanced provinces by the time of the Revolution.

The winning of independence brought little lasting change to the economy of Delaware, and between 1776 and 1791 there was relatively little legislative action which had any protracted effect on business. For the most part the regulatory legislation of the colonial period was retained during these fifteen years, and little that was new was added to it. The power of incorporation, now unquestionably within the competence of the Assembly, was used but once. This appears to have reflected a lack of change in the state's economy, which remained basically agricultural, more than any lack of initiative. Brandywine flour was widely known by 1791, and the Wilmington merchants and merchant-millers were no less active and enterprising than others elsewhere. In part, also, the state was still handicapped by not having a well-developed system of credit and money supply, despite its previous efforts in this regard. In short, the fifteen-year period between the two first state

constitutions was a time of readjustment from what had been initially a colonial, and then a wartime, condition. The seeds of a more dynamic economy were present, but their growth and development remained largely for the future.

## CHAPTER II

### THE FINANCIAL FOUNDATIONS, 1791 - 1831

The period covering the last decade of the eighteenth century and first third of the nineteenth was a critical time in Delaware's economic development. In these years, the financial structure of the state's economy was established securely, and the first stages of the development of transportation and diversified manufacturing appeared. The three basic themes of money, movement, and diversification became more clearly the main threads visible in the state's economic evolution. Since much of what happened in this period is of importance with regard to these threads, it is essential that somewhat more detailed attention be paid to their beginnings than would be warranted for other factors in the economy and life of the state during this period. Accordingly, this chapter will consider the financial and general economic development of Delaware between 1791 and 1831, while the next will consider the other themes of movement, manufacturing, and miscellaneous matters during the same years.

The State Constitution of 1791, while a more extensive document than that of 1776, had very little to say which touched on business. The pertinent section of the new constitution did not specify any procedure for incorporation, and one may therefore assume that the then current means of obtaining a charter, namely by special legislation,

was generally acceptable. The section of the constitution that mentioned corporations did so in a casual manner:

(Art. 8, sec. 9) The rights, privileges, immunities and estates of religious societies and corporate bodies, shall remain as if<sup>1</sup> the Constitution of this State had not been altered.

From this wording it is clear that business and other commercial or industrial enterprises were still not seen as likely corporate activities. In view of the experience of other states this is perhaps surprising, particularly insofar as banks were concerned. The violent debates in Pennsylvania over the Bank of North America in the mid-1780's, and the efforts to establish a bank in Delaware, must have been widely known within the state. The need for a bank, which would have had to be incorporated if it were to have the greatest utility, was also widely acknowledged in view of the somewhat confused money situation which still prevailed.

Money, its meaning and regulation, was a problem of major concern to all states at this time. It was held that the federal government could issue only specie, or paper that was 100% backed by specie, as a legal, constitutional money.<sup>2</sup> This was plainly inadequate, but the states were also forbidden to issue paper in the form of bills of credit, so that some form of banks of issue was essential to provide a circulating medium. In Delaware, as in all states, much debate raged over banks and their place in the economy, and also over the best means of controlling them. The money in use in the state was a mixture of bills from Pennsylvania or Maryland banks, together with a few from other nearby states and a small amount of specie from a dozen or

more sources. The same description, with suitable adjustment of state names, could be applied throughout the nation.

It has often been claimed that this financial chaos was one of the major circumstances leading to the Federal Constitutional Convention of 1787, with particular reference in this respect to the confusion of state laws pertaining to money matters. Enactments dealing with paper money and specie and others such as "stay," "installment," and "commodity payment" laws<sup>3</sup> resulted in a considerable hampering of trade. The problem here was the establishment of a reliable circulating medium and reasonably consistent laws concerning it. With the federal government hobbled by the specie requirement, and the state governments forbidden to issue paper money, banks of issue had to be turned to irrespective of opposition to them. One major need of the period was for small and medium denomination money, and bank notes could serve here. It may be noted in passing that the United States was not the only country suffering from this need, for a British Parliamentary report of 1793 advocated the issuance of "exchequer bills" of moderate denomination to businessmen who could offer good security.<sup>4</sup> The proposal strongly resembled the loan office schemes of colonial Delaware in some respects.

One problem with bank issues, however, was to ensure their stability. It was early recognized that 100% reserves were not absolutely essential to a well-run bank, so that issues could exceed specie reserves by a substantial margin. At least one theorist of the early 1790's saw a two- or three-fold issue of paper over specie as safe, but

he also advocated the use of checks as more convenient.<sup>5</sup> The scheme Hamilton placed before Congress in 1791 recognized the adequacy of a one-third specie basis. The Bank of the United States was modelled on the Bank of England,<sup>6</sup> and this resulted in many British practices being carried over into other American banks since they, in turn, tended to be modelled on the Bank of the United States. Although Hamilton recognized that less than 100% specie reserves effectually multiplied the money supply, he nevertheless advocated this high level of reserve. However, since he also argued for the use of government securities as part of these reserves, thus equating securities and specie, the issues of money would not actually be fully backed by specie. Hamilton also objected to loans on land, and the overall impression one receives from his writings is that of a very conservative banking policy.<sup>7</sup>

In Delaware, the expanding commerce of the state had grown since the failure of McComb's proposed bank to gain sufficient support. The State Loan Offices had been renewing mortgages in the 1780's, but they were forbidden in 1792 to grant further extensions along these lines, and this added to the pressure for a new source of money.<sup>8</sup> In response to this need, a bank was proposed in 1793, with McComb again involved, on the grounds that banks had "been found by experience to be of general public utility."<sup>9</sup> As a result, a bank was organized, and on May 20, 1795, the first subscriptions toward it were received.<sup>10</sup> In June, the directors were elected,<sup>11</sup> and premises, banknotes, and other requirements were obtained or arranged for in the next few weeks. Business began in August, when "Public notice was given . . . that the Bank would be in readiness to receive payments and deposits on the 17th instant."<sup>12</sup>

This bank, organized as the Bank of Delaware, was chartered in 1796.<sup>13</sup> It was one of the earliest banks in the United States, the majority of which were located at this period in seaports, where they served mainly as adjuncts to the activities of merchants.<sup>14</sup> In almost all cases, the state governments had some measure of interest in them. Since banks issued money, legislatures may have felt that by having state representation on the boards of directors a measure of control could be exercised over them. Thus, in Delaware, the Bank of Delaware was required in section 11 of its charter to reserve 50 shares "to be subscribed by the State or its nominee . . . ." However, not all these shares were taken up by the state or its agencies.

The expansion of banks in the country as a whole was relatively slow before 1811, for they were objects of suspicion and continual attack by anti-federalist groups. Such opposition became increasingly severe as the date for the expiration of the charter of the Bank of the United States approached. In many parts of the nation, banks which were largely controlled by the state governments were set up in the years just before 1811, although Delaware did not join this movement. The Farmers Bank, incorporated in 1807,<sup>15</sup> does not fall into this category. It was a private bank in which the state initially held a few shares, just as it had in the Bank of Delaware, presumably for the reasons suggested previously. Inasmuch as men of all parties supported the incorporation of the Farmers Bank, there seems to have been a genuine need for it. The first dividend of the new bank, amounting to 42¢ per share, is a further indication of this need.<sup>16</sup>

The two southern counties had no convenient access to either of the Delaware banks at this time. In the surge of new incorporations of banks following the death of the Bank of the United States, Delaware's participation comprised three charters,<sup>17</sup> two of which were given to downstate institutions. The other was in New Castle County and had operated for 18 months without a charter, so bitter had the opposition to it been. These three were, however, the last banks chartered for some time in Delaware, and to some extent can be justified, for the downstate banks at Laurel (Sussex County) and Smyrna (Kent County) were in communities not served by other banks. The third, in Wilmington, provided additional services to a steadily growing community. In passing, it may be noted that with allowance being made for differing names and sums, there is an almost word-for-word similarity between the charters of the Farmers Bank, issued in 1807, and of the two downstate banks incorporated in 1812.

Nationally, however, it is doubtful that similar justifications could be found for many of the new banks created in the period 1811-1818. During these years, over 300 new banks were chartered,<sup>18</sup> and while many of these were in the new territories and states, more were in established centers. The danger of an overissue of paper from these new banks in the absence of the control which the Bank of the United States had exercised through its practice of requiring redemption of notes in specie was recognized even before its charter expired. The actual termination stirred up more discussion of the problem and the need for control,<sup>19</sup> but nothing was done in many states. Delaware, in line with its



generally conservative tradition, did impose a debt limit of twice the paid-in capital, and counted all bills issued as debts, in all charters granted. Redemption in specie was required, and if this requirement were not met the charter was to be revoked. In bad times this stipulation, plus the reserve provision, obviously would have tended to sustain faith in the notes of Delaware banks.

From 1813 to the impact of the depression of the post-war period, banking in Delaware seems to have been relatively undisturbed. The end of the War of 1812 brought a recurrence of the same problems that had plagued the country in 1783-1784: over-importation and over-extension of credit. For a period in 1816 the various Delaware banks refused to accept each other's notes in deposits "due to the great embarrassment of the circulating medium,"<sup>20</sup> but this passed and when the post-war depression finally came, the Delaware banks and currency were reasonably sound. But this refusal was almost certainly one of the factors involved in a movement which developed during this period to incorporate all the banks in the state into one. This one bank would then have been placed under state control if not actually made into a state-run institution.

This proposal was a revival of an earlier one which had been made during the 1811-1812 debates on the bank charter renewals of the latter year;<sup>21</sup> and this in turn may have been a reflection of the persisting influence of the movement in 1791 to merge all of the banks in the country into the Bank of the United States, operating them as branches of that institution.<sup>22</sup> A bill to merge the Delaware banks into

one was introduced into the legislature in the 1818 session and was debated, but was indefinitely postponed.<sup>23</sup> Not until the 1820 session was there any further legislative action of significance in this respect. The charters of all the banks in the state ran out in 1821, and it was clear from the Governor's address at the opening of the 1820 session of the General Assembly that changes in their terms were expected. In the words of Governor Clark:

. . . the period rapidly approaches when the charters of all the banks in the state will expire . . . . That the legislature will not charter any of them cannot be supposed, because the State itself is very largely concerned in one of them . . . ; on the other hand it cannot be presumed that they will all be rechartered, because it is most evident . . . that there are now too many.<sup>24</sup>

A committee was appointed by the House of Representatives to consider the banking aspects of the Governor's speech, and this committee reported, among others, a resolution favoring the merging of all banks into one. In accordance with this and other resolutions, a bill was prepared and introduced into the House, where it was debated and passed, only to be returned from the Senate, which "non-concurred."<sup>25</sup> An omnibus bill continuing the banks in existence was then passed. This seems to have been intended as an interim measure with a life that would depend on which party, for or against merger, gained control of the next legislature. In the event, the anti-merger party was returned, the omnibus bill was repealed, and the individual banks were rechartered in the 1822 session.<sup>26</sup>

These events may be seen as one type of reaction to the depression of the post-war years. Two other reactions, at the time of

little obvious significance in Delaware but later of considerable importance, were an expansion of savings banks and an increase in the use by businessmen of the corporate form of business organization in various parts of the United States. The first of these slightly predated the depression, while the latter followed it. The first savings bank in America, so far as the writer knows, was established in Philadelphia in 1816 and may have been based on the English "Provident Societies" of the period. This institution was intended, according to an advertisement in a Philadelphia newspaper of the day,

To promote economy and the practice of saving amongst the poor and laboring classes of the community . . . . to afford a secure and profitable mode of investment for small sums (returnable at the will of the investor on a short notice) to mechanics, tradesmen, laborers, servants and others . . . .<sup>27</sup>

A similar institution was chartered in Boston in 1816,<sup>28</sup> and the practice rapidly spread into other states. By 1819 a New York newspaper remarked on them as resulting from the depression,<sup>29</sup> while some were offshoots of philanthropic organizations. One example here is the New York Savings Bank, which was sponsored by the Society for the Prevention of Pauperism.<sup>30</sup> Savings banks did not, however, reach Delaware until much later in the century, perhaps because there were not yet sufficient urban industrial workers to support such institutions.

During the years that the banking system was becoming established in Delaware, the overall economy of the state was expanding slowly, and it is desirable to outline this development to this point. In many ways the state economy followed the national economy, although in

detail it was sometimes a little behind. Although banking and money constituted the central theme during the years 1791-1831, manufactures were also a subject of debate. The growth of autarkic sentiment made them seem desirable, and yet those existing prior to the War of 1812 were for the most part local and small. This localism was a function of transportation, for the cost of carrying goods was such that most American manufactures could not economically be distributed more than a few miles from the producing plant unless connections by water were available.

We have, then, for the America of about 1800, a picture of a nation that was a congregation of localities, ill-connected by poor transportation media. On a smaller scale, Delaware may be seen as much the same: essentially a rural, agricultural state, with such manufacturing as there was beyond a strictly village level concentrated mostly in New Castle County. Much of the transportation was by water, for the multitude of creeks and rivers criss-crossing the state offered ready access to the Delaware River and Bay, and thence to whichever other river or creek served the community sought. Some of these waterways provided power for manufacturing plants, but such facilities were small. The legislature was quite willing to condemn land under eminent domain procedures for the benefit of the owners of flour mills, but it is not clear that other users of water power shared this benevolence.

Except for concerns associated with flour milling, there seems to have been little industry in Delaware until Robert Dawson, in the

early 1790's, began to manufacture bolting cloths commercially.<sup>31</sup> The enterprise failed, as did an attempt by Jacob Broom to raise money in 1797 to rebuild his cotton mill after it burned down in that year.<sup>32</sup>

One of the reasons for this lack of success, and the two cases mentioned are representative of many, was a lack of capital. There were greater possibilities of profit in commercial enterprises and these naturally attracted available investment funds. In a few other areas of the country there was some state aid, but this was not the case in Delaware, where the tendency was for help to be given indirectly through tax exemptions, lottery privileges, and so on.<sup>33</sup> In this respect, however, Delaware acted in the same manner as many states. The failure of the grandiose New Jersey scheme, the Society for Useful Manufactures, in which the state was interested, may well have played a part in dissuading other states from investment in similar projects.

There was, moreover, opposition to "manufactories" being located in towns. Efforts were made to locate factories in the countryside, partly for this cause, and partly because it was held that it would be then possible "to control the moral habits of the operatives and to keep up a steady, efficient, and cheap working force."<sup>34</sup>

Although there were by this period many small plants for a variety of manufactures in Delaware, for example the Du Pont powder mills and the Gilpin paper factory, most of these were single proprietorships or small partnerships, and the state still saw itself as basically agricultural. Governor Mitchell's annual message in 1807 perhaps summarizes the way Delawareans looked at themselves and their state in that

year. The Governor wrote:

Our country is agricultural . . . . Few persons can be spared from this most necessary occupation, to other branches of business, which are almost equally necessary. Manufactures claim great regard; and so far as they can be introduced without calling off too much labor from agriculture, they should be cultivated and patronised. In many places, labour saving machines have been employed with great success. They supply the want of hands, and give great facility in bringing raw materials into immediate use. To give encouragement to such of our manufactures, as are the most advantageous and the easiest performed, let me recommend to you, gentlemen, the procuring for each county some of the most serviceable of these machines at the public expense. I would propose the introduction of them, more by way of experiment, than otherwise; for if they should be applicable to the purposes, for which they are designed, no doubt, private enterprise will soon make the most profitable use of them.<sup>35</sup>

Nothing of this nature was tried, however, at least not at state initiative. Such help as was given to manufacturers remained indirect, even during the period of the Embargo and War of 1812, when there was emphasis in many places on encouraging manufactures. There seem to have been no such efforts in Delaware, for in 1811 the Governor-elect remarked in his inaugural address,

It has been judged the interest of several of our sister States, within a few years past, under the auspices of legislative authority, to encourage domestic manufactures, and the internal improvement of the country, as a means by which their dependence on foreign countries may be lessened . . . . I am not apprized that any legislative efforts have been made in this State, to advance these desirable purposes.<sup>36</sup>

By 1813, in part under the emphasis of war, some extension of industry was reported by Governor Haslet in his message to the Assembly: "During the preceding year, this State has enjoyed unexampled prosperity, . . . and the extending of manufactures . . . ."<sup>37</sup>

Unfortunately, when the war ended, much of this enterprise and new industry failed to sustain itself and collapsed in the post-war depression. Recovery seems to have been quite slow, for William Brobson recorded in his diary, in his entry for April 10, 1825, that the years up to that date had been "a period of unusual stagnation in business."<sup>38</sup>

There was, however, one exception to Delaware's general negativism in providing direct aid to manufacturing during this period. The silk mania which came at the end of the 1820's affords perhaps the only instance in the post-war years of a deliberate attempt to introduce a new industry and thus to widen the economic base of the state. Governor Polk, in 1829, advised the General Assembly that "as our climate and soil are favorable to the culture and growth of silk, efforts at this period to introduce among us so important a source of public wealth and prosperity may be entitled to your patronage."<sup>39</sup> The result was a number of acts designed to stimulate the culture of silk, but little came of them.<sup>40</sup> The same may be said of corresponding attempts in Maryland.

This failure must have come in part from the relative lack of capital and perhaps also from the rather esoteric nature of silk culture. Private funds, as noted earlier, tended to go into enterprises with a high profit potential combined with a measure of security, and this, at the time, meant commerce for the most part. Such state funds as were invested went mostly into transportation ventures, since these projects were essential and insufficient private funds were flowing into

them. The amounts given to any given project were usually small -- \$500 here, \$1,000 there -- and it is not possible to determine with any confidence the total, but it must have been significant. Attempts had been made earlier in the century to raise funds by lotteries,<sup>41</sup> but had not been successful. For example, the Newport and Gap Turnpike, which was the beneficiary of one of these schemes, was chartered in 1808 but did not complete its road until 1818,<sup>42</sup> despite the money brought in by the lottery.

Transportation projects were usually organized as corporations, and the investment of public moneys in such essentially private ventures may have contributed to the extent of the attention paid to corporations in the 1831 debates on the State Constitution. In the period between 1791 and the 1820's, an increasing number of corporations had been formed,\* most of them in fields of enterprise prominently impinging upon the state's economy. Although there had been opposition to them before about 1815, this had been directed more at individual cases than at the concept of the corporation per se. It is distinctly noticeable, however, that from about 1818 onward there was a markedly more critical spirit toward them, a condition which was widespread throughout the United States. In a study of New Jersey it has been suggested that the investment losses in the 1816-1819 collapse were responsible for much of the anti-corporation feeling of the 1820's in that state.<sup>43</sup> It would seem reasonable that much of the feeling elsewhere came from similar causes, although the reaction in Delaware was

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\* The yearly figures are given in the appendix to this study, but for the individual decades the totals are: 1791-1799, 2; 1800-1809, 23; 1810-1819, 42; 1820-1829, 40.



not particularly strong.

This feeling may have been one factor in the debates on those sections of the 1831 constitution that touched on corporations. The relatively wide investment of public moneys, as noted, may have been another. A third seems to have been the increasing number of incorporations in Delaware and the absence of specific constitutional checks on such bodies. Since the debates will be discussed in the next chapter, the matter will be further considered there, but it is pertinent to note that the corporation was becoming a significant component of the state's economy by the late 1820's. This increase was a response to the need for business and government to find a technique for financing increasingly large projects, and of controlling and regulating the devices employed or developed. While the corporation was the most widely used device, one persistent problem was the understanding of what a corporation was, what its characteristics and limitations were, and, of most importance, what its proper place was in the overall economy of the state.

The most widely accepted economic theory of the late eighteenth century, when Delaware drew up its first constitutions, was a conditioned and modified mercantilism. The conditioner and modifier was the growing influence of a complex concept usually summarized as "Laissez-Faire." It has been argued that there were four components of this overall concept, and that the interaction of these produced the particular variety of "Laissez-Faire" to be found in any given state at any given time.<sup>44</sup> These four components were, first, "Laissez-

Passer," that is, free international trade; second, "Laissez-Faire" or, in this context, free internal markets; third, "Laissez-Travailler," freedom of choice of employment or profession; and finally, "Laissez-Placer," or freedom of speculation and investment.<sup>45</sup> As economic circumstances changed, so did the balance of components in the overall concept, and since the forms of business organization reflected the pressures within an economy, there was need by the late 1820's to reconsider the forms, place, and control of these organizations. Corporations were the most important of these, and as they became more and more significant, the government's control over them increased correspondingly.

This trend had been early recognized in Delaware, but the first steps toward control of corporations, other than by clauses written into their charters, were acts touching specific types of corporations. The most important of these was a law of 1811 entitled "An Act to prevent the increase of banking companies."<sup>46</sup> Later came an act touching all corporations irrespective of type. This was in 1819 when "An Act for expediting suits against corporations" was passed.<sup>47</sup> This statute possibly reflects the economic depression of that year, but certainly may be traced to the increasing involvement of the corporate form of organization in economic life. The act was revised in 1828,<sup>48</sup> further showing that the importance of corporations was increasing.

In summary, it has been suggested that three of the major themes in Delaware's economic development were money, movement, and the development of a diversified manufacture and commerce. Although these

three elements were present to some extent in most periods of the state's history, their relative importance has varied from period to period. In this chapter, emphasis has been placed on the first of these themes, money, considered against the slow development away from agricultural economy, since it is considered that without a reasonably stable money system, other aspects of the economy could not develop efficiently. It has been argued that by about 1820 the banking system of the state was reasonably securely based, and that from about 1820 onward the money theme turned more on the forms of organization using funds than upon the sources which supplied them.

### CHAPTER III

#### FORESHADOWINGS OF THE FUTURE, 1791 - 1831

In the previous chapter, the financial and economic aspects of the development of Delaware have been considered, but the other themes demand equal, if separate, time. Since these developments, movement and manufacturing primarily, grew out of the changing economy of the state, it is only for convenience that they are discussed separately.

Second only in importance to money was the problem of movement within the state. The lack of sufficient funds within Delaware forced the legislature to limit its aid to what was the most important sector of the economy, transportation. Manufacturing was therefore for the most part left to private enterprise. The transportation media were generally considered to be within the public domain, but the important ones were usually joint public-private enterprises. The first of these seems to have been the stillborn Brandywine Canal and Navigation scheme of the 1790's. This project appears never to have progressed beyond the enabling act, for the session laws for 1793 record "An act to enable the Governor of this State to incorporate a company, for opening a canal and lock navigation on the waters of Brandywine Creek. No incorporation under this act having been made or applied for, . . . it is omitted in this impression of the laws."<sup>1</sup> The long story of the Chesapeake and Delaware Canal suggests that even with state aid the

problem of capital was not readily solvable, and in the absence of state aid, the failure of the Brandywine project is understandable.

Yet not all canals in Delaware had such a hard time as these in raising capital. Much state money went into smaller, local projects, as is suggested by the long series of acts establishing drainage, navigation, or marsh companies. The success of the Erie Canal in New York stimulated the completion of the Chesapeake and Delaware Canal, with much Philadelphia money, and yet only with substantial state investment and even the allocation of some federal funds was it sufficiently financed.<sup>2</sup> The relative lack of success of major canal schemes in Delaware, and the contrasting success of small, local projects suggests that the problem was not so much one of capital per se as of obtaining adequate quantities of money from local sources. Possibly the reason so many of the drainage and marsh companies succeeded was that the investors could see the use of the completed work as immediately of value to them.

Just after the turn of the century, a competitor to the canal appeared in Delaware. This was the turnpike. Pennsylvania's Lancaster Turnpike had proved a marked success, and a multitude of imitators sprang up seeking to link communities together by something more than common roads. Nine turnpikes were chartered in Delaware, but not all proved successful. The New Castle and Frenchtown Turnpike proved to be of value; others, such as the Newport and Gap, were less successful; and a few were complete failures. But throughout the period before the appearance of the railroad, canals and turnpikes were incorporated

in varying numbers at each session of the legislature, until there can have been few communities lacking access to one or the other.

Many of these corporations were chartered simultaneously by two states. This practice dates back to before 1800<sup>3</sup> and was necessary whenever such a company crossed an interstate boundary. The Chesapeake and Delaware Canal was the earliest important example, having been chartered by both Delaware and Maryland. The New Castle and Frenchtown Turnpike provided another example of this type of procedure, which is of further significance in that the successor concern, the New Castle and Frenchtown Turnpike and Railroad Company, was the first railroad company in Delaware to be organized in this way. The Maryland legislature granted a charter to this venture in 1828, conditional upon Delaware's following suit, a step which was taken in 1829.<sup>4</sup> This seeking of additional powers by a turnpike company, however, was evidence of the decline of the turnpike. Only nine such companies were chartered in Delaware between 1808, when the first was incorporated, and 1816, when the last was chartered. After 1816 such legislation as applied to turnpikes alone pertained either to the renewal or revocation of charters or was regulatory in intent.

Indeed, it might be said that most of the legislation touching business prior to the 1820's was regulatory. At first, in the 1790's, the greater part of such legislation applied to milling as it had done in colonial days. Inasmuch as Brandywine flour had a high reputation for quality, it is not surprising to find rigorous regulations being enacted for the maintenance of that quality. Thus, in 1796, an act was

passed providing for the inspection of flour prior to shipment, specifying the sizes, construction, and marking of barrels to be used, and stipulating the quantities and grades to be packed in each type of container.<sup>5</sup>

This act was of an interesting variety in that it applied only to New Castle County, as passed, and was only later extended to Sussex County in 1837.<sup>6</sup> This practice of passing regulatory measures which were initially applicable to only one county, and then extending them to the others by amendment probably reflected the slow growth of business in those counties. For another example, in late colonial times an act was passed requiring the concealment of waterwheels from roads, to avoid the frightening of horses passing, which was applicable only to New Castle County. This act was extended to the other counties in 1796 in the form of two separate amendments to the original act.<sup>7</sup>

It was between 1791 and 1831 that the first extensive regulatory legislation was passed in Delaware for other forms of business than milling. Many restrictive provisions were included at this time in the actual charters of incorporation, but even more were separately enacted, since corporations were only a minority of the businesses needing regulation. These regulatory enactments may be broadly classified into two groups, the first consisting of supplementary acts to charters of incorporation or similar legislation, and the second comprising general legislation concerning itself with wider categories of business activity. This was typical of the period, for during the early nineteenth century many states were acting similarly. Connecticut, for

example, passed a general turnpike law in 1803 which regulated the issuance of securities for the financing of such roads,<sup>8</sup> while New York in 1804 forbade unincorporated banks either to issue notes or lend money.<sup>9</sup> Georgia taxed banks in 1805, and New Jersey in 1810,<sup>10</sup> while in the same year Pennsylvania passed legislation forbidding unincorporated banks entirely.<sup>11</sup>

Thus Delaware's slow tendency toward the same types of general legislation, rather than specific company-by-company enactments, was part of a national trend. It is not clear, however, to what extent the results or existence of such legislation elsewhere was known in Delaware. The legislative library received by exchange many volumes of laws from other states, but this does not prove that they were read. In one case, however, that of the Pennsylvania law against unincorporated banks, there is evidence that it was widely known in Delaware. The American Watchman of April 11, 1810, published the text of the Pennsylvania statute mentioned above, and there is a considerable degree of similarity in wording and provisions between this law and the corresponding Delaware act which was passed in 1811. Other evidences of such copying could probably be found in an extended comparison of Delaware laws with those of nearby states.

This 1811 act prohibiting unincorporated banks in Delaware provides an example of regulatory legislation concerning a specific type of business. A law of more general applicability, the 1819 "Act for expediting suits against corporations," has already been mentioned, but one clause deserves more specific description here. This provided that



in the event of a corporation having a judgment given against it, its shares might be attached and sold at public auction until the amount of the judgment was met. Such shares, when sold, were transferred to the purchaser whether the company liked it or not by virtue of the court order responsible for the attachment and sale. There were, of course, precautions specified to ensure that the sales and purchases were bona fide.<sup>12</sup> In a day when politics and incorporation were often mixed, this was probably an effective measure.

So far as retail trade was concerned, the approach taken in regulation seems to have been divided between taxation and specific trade restrictions. Examples of the latter have been mentioned, but as an example of the former category an act of 1821 may be cited.<sup>13</sup> This law laid a tax on "retailers of foreign goods, wares and merchandise" on the basis of a valuation of the stock carried. The act was later amended to provide for a flat rate, rather than a progressive one, and apothecaries were exempted.<sup>14</sup> A similar tax was later laid, under guise of a license fee, on clock sellers,<sup>15</sup> and there were also taxes and licenses required of peddlers and similar small traders. There had been similar taxes in early eighteenth century Delaware, so that these were within a traditional form of regulatory taxation.<sup>16</sup>

The absence of general legislation regulating corporations per se in Delaware in this period is attributable to the practice of including regulatory clauses in their charters. Specific types of businesses were regulated by general enactments, as has been noted, and such legislation applied, of course, to all businesses in the field concerned irre-

spective of whether they were incorporated or not. The comparative absence of regulation concerning manufactures may be partially explained by the wish to encourage them, and partially by the smallness of the direct role they played in the overall economy of the state.

As we have seen, the state did not directly subsidize manufacturers, nor did it invest public moneys in their enterprises as it did in transportation projects. Nevertheless, the legislature did pass a number of bills to aid industry indirectly. One such act was passed in 1809 to encourage sheep breeding and so to provide a domestic source of wool for the various textile mills in the state.<sup>17</sup> A second instance was provided by an act of 1811 exempting certain classes of workmen from compulsory militia duty, and also setting penalties for industrial espionage.<sup>18</sup> A third means of encouraging industry was typified by an act of 1820, passed "by a slim margin, and after a sharp battle,"<sup>19</sup> to exempt textile manufacturers from certain taxes. This action had been presaged at the opening of the session in Governor Clark's message, in which he pointed out the "great importance of . . . efficient protection of the agricultural and manufacturing interests of the State, both of which are at present in a very depressed condition, and require the fostering care of the people and government . . . ." <sup>20</sup>

Whatever the precise effect of such special legislation, it is noticeable that the 1820's saw an increase in the number of textile mills incorporated in Delaware. There were five such firms chartered between 1821 and 1825,<sup>21</sup> and a few others after 1825, at least one being associated with the silk fad of that period.<sup>22</sup> There seems also to

have been a lack of success, however, for none of these concerns were rechartered in their original form, if at all. There is likewise a note of desperation in some of the later charters issued, for they commonly list an extremely wide range of materials to be used. An 1829 charter, for example, was granted to a company proposing "the manufacture of cotton, woollen, paper, flax, iron, or any other material which they may from time to time adopt or substitute."<sup>23</sup>

It has been argued earlier that this rise in the number of incorporations in the 1820's, exemplified by the increase in textile company incorporations just mentioned, could have arisen from the effects of the depression. These may have led entrepreneurs to see the value of the possibility of including a limited liability clause in a charter of incorporation, a feature not available to partnerships. Another circumstance which may have contributed to the increase may possibly have come from the increasing clarity of corporation law. This had developed slowly from 1791 onward, and its progress centered on a few major cases which it is desirable to consider here. Following this we may proceed to a discussion of the 1831 Constitutional Convention which, for the first time in Delaware, debated the problems and established definite provisions regarding this form of business organization.

Baldwin, in his study of corporate law, has suggested that in the post-revolutionary period there was a marked suspicion of corporations.<sup>24</sup> This may have derived from the absence of a clear understanding of the nature of private corporations. The corresponding tendency

of the courts to treat all corporations alike, irrespective of their field of operations, must have stemmed from the relatively scanty treatment accorded such organizations in the contemporary legal texts, such as those of Blackstone or Kyd. The major trouble was that while the cases and opinions cited were often based on that law which touched on "corporations lay," these bodies were all too often of municipal or other non-business types.

There was, moreover, a further problem. Dodd, in his study of early American business corporations, has remarked that English law was of relatively little use to American courts in these years.<sup>25</sup> This was because while Parliament was omnipotent and could amend, repeal, or otherwise deal with corporate charters, the American legislatures, both state and federal, could not act so freely. A corporate charter was often seen as a contract; and the contract clause of the federal Constitution made such instruments inviolable by state legislatures. This contract clause came before the courts for the first time, it seems, in Rhode Island during the 1790's, in the case of Champion and Dickason vs. Casey. While this did not concern corporations, it is said to have been one of the precursors of Marshall's Dartmouth College decision, which specifically brought corporate charters under the contract clause.<sup>26</sup>

It is difficult to determine the first American case touching on business corporations. The first significant one in the federal courts seems to have been Turner vs. Bank of America in 1799,<sup>27</sup> and the earliest in Delaware appears to have been Nivin's Lessee vs. Diehl in 1803.<sup>28</sup> In the latter case it was held that the management of a company

could exercise only those powers stated in its charter. This narrow interpretation of managerial and directorial powers is in line with the general trend of judicial thought of the time.<sup>29</sup> Yet there was an even more significant problem pending during this period, namely the extent of legislative powers over corporations.

The revocation of the charter of the Bank of North America by the Pennsylvania legislature in the mid-1780's had brought the issue up, but had not solved it. The matter was still unsettled when Trustees of the University vs. Foy was heard in 1805.<sup>30</sup> Here, the North Carolina Supreme Court held that the legislature was exceeding its powers in repealing a grant made to the State University, which had constitutional sanction for its holding of the granted lands. In this case, as in others at the time, a tendency was developing to see a corporate charter as a contract between state and company. To a large degree this interpretation was not yet established, nor was it explicitly derived from the Common Law. Insofar as Delaware was concerned, in fact, the role of the Common Law was specifically stated to apply only to practice and not to theory: in Starr & Company vs. Fisher & Shockley in 1818, the Common Law was stated to be in force in the state "only so far as it had been adopted in practice."<sup>31</sup> Thus, as a body of precedent and decision built up in America, the basis of appeal to Common Law narrowed.

Perhaps the most significant decisions of the period before 1831 came in 1819. In this year, Chief Justice Marshall handed down two major decisions which had important bearings on business. In

McCullough vs. Maryland, the constitutionality of Congressional charters was established after a long period of doubt. But far more importantly, the decision established the implied powers interpretation, under the necessary and proper argument, of Congressional powers.<sup>32</sup> This was of even greater importance in constitutional law than in business law, but the other 1819 decision, the one reached in Dartmouth College vs. Woodward, had more immediate significance.

This case established the contract theory of incorporation which had been argued since the 1780's. This held that a charter of incorporation was a contract, and could not be annulled or changed without the consent of both parties, in the absence of failure to fulfill the conditions stated in the charter.<sup>33</sup> But it had another equally important component: for the first time there was an explicit legal distinction drawn between private and public corporations.<sup>34</sup> Like the contract interpretation, this had long been developing. The distinction had been put forward in 1801, somewhat tentatively, and again on other occasions prior to the Dartmouth College case; but seemingly it had not been overtly stated prior to that case as a factor in the making of a court decision.<sup>35</sup>

A suggestion in Judge Story's concurring opinion in the Dartmouth College decision attracted much attention at the time. This was the remark that the inclusion in a corporate charter, at the time of its first granting, of a clause reserving the power of amendment or revocation to the state would be a legal means of permitting later amendment or other change. Certainly this suggestion was reflected in the 1831

Delaware Constitutional Convention debates. It should, however, be noted that such clauses could be found in scattered instances prior to 1819, and -- or so Wright claims in his study of the contract clause -- even before 1810.<sup>36</sup> Nevertheless, this was not done as a general rule prior to the Dartmouth College decision, and so far as this writer could determine, not at all in Delaware prior to this time.

As we have seen, the state constitutions of 1776 and 1791 had for all practical purposes ignored corporations. By the late 1820's, however, it was clear that this practice could not continue, and that some attention had to be given sooner or later to incorporation and similar matters. Although the main purposes of the Constitutional Convention of 1831 were political, and thus beyond the purview of this study, the occasion did provide the opportunity for reconsidering the state's position vis-à-vis business corporations.

The Convention assembled in November, 1831, and began a fairly thorough consideration and revision of the state constitution. Inasmuch as the 1791 document had little to say on incorporation, the debates and proposals touching on them in 1831 represented the first attempt by the state to control corporations. The first mention of corporate law came when a number of resolutions were reported to the convention for consideration. Of these, one (the ninth on the list submitted to the convention) is the most pertinent here:

Resolved, That the Legislative power so far as relates to the chartering of incorporated companies, ought to be restricted; and that no act of incorporation which may be futurely be enacted, ought to continue in

force for a longer period than twenty years, without renewed action of the legislature in its favor, except in incorporation for public improvements, where two-thirds of the legislature may concur in passing the same.<sup>37</sup>

The resolution was debated and amended in the course of the convention, one proposed amendment requiring all charters then in effect to be reviewed within two years of the adoption of the revised constitution, if such corporate charters were "without limit as to time."<sup>38</sup> There was marked disagreement with this amendment, and at least one opponent doubted its constitutionality since "acts of incorporation had been treated by the courts as matters of contract."<sup>39</sup> It is clear that the speaker had the Dartmouth College case in mind here.

A further amendment proposed to insert a clause reserving the right and power of amendment or revocation to the legislature. This amendment was better received by the delegates than the earlier one, for it was an established doctrine that such powers were constitutional. The first instance in which they were cited dated back about a quarter of a century to 1806, when Chief Justice Parsons of Massachusetts wrote in a decision that powers granted in a charter could not be "controuled [sic] or destroyed by a subsequent statute, unless a power be reserved to the legislature in the act of incorporation."<sup>40</sup> The doctrine had been reaffirmed after that date, most notably by Justice Story in his concurrence in the Dartmouth College case.

Additional amendments were introduced and debated, of which none are important here. The two-thirds clause in the resolution may have come from the practice of other states; Cadman remarks that Ala-



bama had first introduced this rule in 1819, but only for bank charters.<sup>41</sup>  
 It thereafter spread, New York introducing it in 1821 for all charters,  
 and had been upheld by the courts when this requirement was challenged.<sup>42</sup>

After much debate, the original resolution was stricken out,  
 and a substitute introduced, which read:

Resolved, That the legislative power, so far as relates  
 to the chartering of incorporated companies  
 ought to be restricted; and that no acts of incorporation  
 (except in cases of the renewal of existing corporations)  
 shall be futrely enacted without the concurrence of two-  
 thirds of each branch of the Legislature, and with a re-  
 served power of revocation by the Legislature: and that  
 no act of incorporation, which may be futrely enacted,  
 ought to continue in force for a longer period than  
 twenty years, without the renewed action of the Legisla-  
 ture, except it be incorporation for public improvements.<sup>43</sup>

This version was unanimously accepted,<sup>44</sup> and is clearly the  
 basis of Article 2, section 17, of the state constitution, where the  
 ground rules under which Delaware continued to incorporate companies  
 until the end of the century are found. Such amendments as were pass-  
 ed from time to time thereafter were relatively less important than  
 this statement of the limitations to be applied to all charters.  
 There was, however, no hint in the debates that there was any other  
 way of incorporation than by special act. This is somewhat surprising,  
 for general incorporation acts were appearing in other parts of the  
 Union at this time, and the practice had advocates in Delaware.

It has been both claimed and denied that the principle of gen-  
 eral incorporation, applicable to other types of concerns than those  
 typically covered by the general incorporation laws of the late eighteenth  
 century, was extended to canal companies in 1795 by North Carolina.<sup>45</sup>

If so, the next use of the principle was in 1811, when New York passed a general incorporation law for small manufacturing concerns. The principal features of this law were that the concern to be incorporated must be a manufacturing firm; its capital was not to exceed \$50,000; the life of the charter was limited to five years; and limited liability was available to incorporators under the law.<sup>46</sup> New Jersey passed an act similar to the New York law in 1816, but repealed it in 1819.<sup>47</sup>

The value of general incorporation laws was recognized in Delaware, but nothing came of this recognition. Thus, in 1825, Governor Paynter had written in his message to the Assembly:

There are now existing in this State, created by acts of the General Assembly more than eighty corporations or bodies politic. When it is recollected that these bodies claim by their incorporation exemption from all legislative control, however improvidently they may have been created, it requires the utmost degree of watchfulness before such a grant be made. All applications for such grants are made under the plausible guise of public good . . . and are bottomed solely on private interest. This is often the character of private laws. If some general law were enacted prescribing the mode in which corporations should be created, annexing certain conditions, by which they should be vacated if improperly obtained, or if the conditions were not complied with, the public would be secured.<sup>48</sup>

But in the event, nothing came of this plea, and by the time of the convention it had probably been forgotten. Until the 1870's reliance continued to be placed exclusively on special acts of incorporation.

In summary, there was relatively less development in Delaware in the fields of transportation and manufacturing than in money and banking during the period 1791-1831, insofar as government-business re-

relationships were concerned. Nevertheless, it was during this period that the foundations were laid on which later development could be based. Without a sound money system, the development of transportation systems, manufactures, and other forms of business could not have taken place. It is perhaps not altogether a coincidence that the real development of railroads, which will be considered in the next chapter, did not begin until after the financial system was reasonably stable.

Technically, a railroad was possible by 1815, as Trevethick had demonstrated in England, but financially it was not, either in England or the United States, until after approximately 1825.

Accompanying this slow development of the state's economy was a slow expansion of the range of regulatory enactments passed by the legislature. Many of these can be paralleled in other states, and may be considered as reflecting the general attitudes and conditions of the time. At the start of the period in Delaware, there were few industries, almost no corporations, and little general regulatory legislation. The majority of regulations applied to specific fields of business or industry, particularly flour milling. By the end of the period, however, a number of general regulations applicable to all businesses had made their appearance, and these showed the beginnings of a trend. The growth of judicial decisions and interpretations was also becoming a factor worthy of consideration, and the increasing variety which these brought to the subject of incorporation may have been partly responsible for the growing use of this form of organization.

The impact of the depression of 1819 and the early 1820's has

not been discussed in general, but it undoubtedly had some effect on regulation and legislation, and was probably one of the causes of the increasing numbers of incorporations after about 1822. This increase, in turn, was probably associated with the somewhat more extensive treatment of corporations in the 1831 Constitution. The pertinent sections of this document provided the ground rules for incorporation for the balance of the century.

## CHAPTER IV

### THE STATE'S ECONOMY EXPANDS, 1831 - 1853

In the period between the State Constitution of 1831 and the convention for revising that instrument in 1854, Delaware saw a slow economic growth. Much of this growth centered around transportation, although this was not the only sector of the economy which expanded. With a reasonably stable money system and generally satisfactory credit, the main preoccupation of the state became the best way of taking advantage of this situation. However, before manufactures could markedly expand, there had to be an improvement in the internal transportation network of the state. This had always been something of a problem, and piecemeal attempts had been made to cope with the difficulties. These efforts, however, were not sufficient, and in the period being considered the turnpikes and the canal and navigation companies gave way to the railroad.

Transportation was not the only interest of the state, for the overall economy was widening, and there was some growth of manufacturing in the larger centers, principally in New Castle County. This growth was by no means as large as it later became, but the new manufacturing companies were generally more solidly grounded than had been the case earlier in the century. Two points may be made in this respect. First, many more of these companies were incorporated, and

second, fewer and fewer of them found it desirable to seek very wide powers, as in the case of the mills mentioned in the last chapter. Yet the growth of these companies was slow, probably because the credit and monetary system of the state was not yet sufficient to provide the money both they and the transportation companies needed. Thus, since manufacturing without transportation was limited, and since the improvement of transportation also aided the marketing of agricultural products (here it must be remembered that Delaware remained fundamentally an agricultural state until much later in the century), it was reasonable that the bulk of investment funds available should go into transportation.

Economically, the depression of 1837 onward was perhaps the most important single factor in Delaware between the two constitutional conventions. The period between these conventions had, however deceptively, started well. There was a marked expansion of business nationally, in part deriving from the railroad boom of the early 1830's and perhaps in part also from the influx of foreign capital into the United States. It is not clear, however, that Delaware benefited particularly from this flow, for the General Assembly repeatedly found it necessary to aid the various railroad companies in the state. Nationally, manufacturers had their operations disrupted by the depression, and it is reasonable to suppose that the same disruption was suffered by Delaware industries. Business improved nationally, and therefore probably in Delaware, as the depression lifted in the mid-1840's. It was not perhaps merely coincidental that the late 1840's saw an upswing in the

number of incorporations in Delaware.

These incorporations were not always voluntary ones; transportation companies found it essential to have a charter, and transportation occupied the place in this period that banking had occupied in the previous one. The turnpike was of decreasing significance, and the railroad was replacing it, although the canal still maintained an important place in the overall network. Particularly was this true of the small canals, which were as much drainage units as parts of a more-than-local transport system. Such turnpikes as survived sooner or later lost their charters, usually, as in the case of the Gap and Newport Turnpike Company in 1843,<sup>1</sup> for failure to fulfill the terms of their incorporation. A few surrendered their charters when the county Levy Courts were authorized to buy out turnpikes and turn the roads into public ones. An example of this procedure was an act permitting the purchase in 1852 of the Wilmington and Christiana Turnpike by the New Castle County Levy Court.<sup>2</sup>

The greatest number of acts touching on business, and particularly on corporations, during this period dealt with transportation companies. So far as Delaware was concerned, the most important of these enterprises were the railroads, the first of which began as the offshoot of a successful turnpike. The New Castle Turnpike Company obtained authorization in 1829 to build a railroad from Clark's Corner to the Maryland line, where it was to connect with a Maryland company, which was in turn to build from the border to Frenchtown.<sup>3</sup> Later, the Delaware firm, which had changed its name to "The New Castle Turnpike

and Railroad Company," received powers in 1830 to merge with the New Castle & Frenchtown Turnpike and Railroad Company,<sup>4</sup> which it did. The Maryland charter had been conditional upon Delaware's issuing a charter for the part of the line which was to lie within its boundaries, such arrangements being much used for interstate transportation companies in the early days. A number of supplemental acts followed the initial one quite rapidly, dealing with rates, stock, purchases, the increasing of capital, and similar matters concerning corporate operation.<sup>5</sup>

Other railroads were soon incorporated, most of which were intended to link with other lines. It should be noted in passing that a few got no further than incorporation, and that almost all found it necessary either to seek state aid or to increase their capital over the initial sums, or both. The complex problems produced by the chartering in several states of linking companies intended to operate as a single service or system soon became obvious. The solution, to permit companies to merge with linking lines, was equally soon recognized and acted upon. An early instance in Delaware was the Wilmington and Downingtown Rail Road Company. This firm was chartered in 1831, and in 1832 a supplementary act was passed permitting it to merge with a company building in Pennsylvania to the Delaware-Pennsylvania line.<sup>6</sup>

A more complex example of corporate mergings began with the chartering in 1832 of the Wilmington and Susquehanna Rail Road Company.<sup>7</sup> In 1833, this corporation received permission to merge with companies chartered in Maryland or Pennsylvania to build linking lines. Construction, however, did not immediately begin, for a further supplement



in 1835 extended the date for opening the subscription books. Meanwhile, another act in 1835 dealt with the linking of the Wilmington and Susquehanna and the Delaware and Maryland Rail Road Company (a Maryland corporation), while yet another authorized an increase in capital for the W. & S. In 1837, a further act authorized the W. & S. to cooperate with the Pennsylvania-owned Philadelphia, Wilmington and Baltimore Rail Road Company, which had started as the Philadelphia and Delaware County in 1831. Finally, in 1838, the P.W. & B. bought out the W. & S. and the Delaware and Maryland to create a through route from Philadelphia to Baltimore under one management.<sup>8</sup>

Some of the financial arrangements which accompanied this process of amalgamation were equally complicated. State funds loaned to the W. & S. were supposed to be repaid in two years after the loan was made in 1837.<sup>9</sup> In 1839, however, the loan was extended to 4 years at six per cent to the P.W. & B., although the W. & S., still having corporate existence, was legally responsible for its payment.<sup>10</sup>

A few companies sought and obtained power to build more than one form of transportation system. Thus, the Lewes and Millsboro' Rail Road Company, chartered in 1833, had powers to build a canal, a road, or a railroad at the discretion of the directors.<sup>11</sup> In actual practice, however, the company built nothing and collapsed some time after 1835. It was not the only company to receive such wide powers, but it is interesting to note that those which did were mostly downstate firms. Companies operating in or from New Castle County were far less favored with construction powers.

Perhaps the most important of the various companies chartered in Delaware for railroad construction, at least from the point of view of the state's interest in it, was the Delaware Railroad. The first mention of this venture came in Governor Polk's message to a special session of the legislature in 1836. He urged the incorporation:

. . . on the most favorable terms, for the purpose of connecting the city of Wilmington with the town of Lewes by a railroad, reserving for the State the right of subscription to a reasonable amount; and an appropriation should be made to defray the expenses of the agents of the State, for the purpose of obtaining the requisite subscriptions to the stock.<sup>12</sup>

The company was incorporated in that session,<sup>13</sup> with state moneys subscribed, and with quite extensive borrowing powers. The onset of the depression of 1837 led to the company's becoming inactive in 1838,<sup>14</sup> and it was not until the late 1840's that the enterprise revived, a new charter being granted to it in 1849.<sup>15</sup>

However, not all transportation companies chartered by the state were railroad concerns. The sessions laws for the early 1830's, for example, contain charters for steamboat companies, while plank road constructors appear in the 1850's. The Chesapeake and Delaware Canal benefited from supplementary acts from time to time, as did most of the small "navigation" companies. These were nearly all located downstate and primarily, it would seem, creek improvement or canalization schemes. Since the use of small sailing vessels was still economically important for the carriage of produce and occasional passengers, these schemes were significant parts of the overall transportation network of the state. As a result, state moneys were regularly invested in them, although not in

substantial amounts.

The only form of transportation not being incorporated at this time was the turnpike; such legislation as did touch on this type of enterprise was either regulatory (as, for example, an 1841 supplement to the Wilmington and Christiana Turnpike charter regarding repairs and road surface), or revocatory, making it clear that the day of the turnpike was past.

The depression of 1837 must have hit transportation projects in Delaware quite badly, for much of the legislation of the 1840's supplemented old charters rather than granted new ones. Much of this supplementary legislation, particularly that which concerned railroads, was financial in character, embodying either the granting of state moneys, often by the purchase of stock, or, rather more commonly, measures to secure the funds already advanced.<sup>16</sup> In a very few cases, charters were revived, or, after several years of inactivity, granted anew. The re-chartering of the Delaware Railroad in 1849 was an example of the revival of a moribund charter.

In the later 1840's there was a marked expansion of legislation and of incorporations in the field of transportation, specific instances being too numerous to be listed. It should, however, be remarked that in many of these enactments some form of state assistance was either mentioned or implied. This assistance was not at this time unusual, for as Meyer has remarked, the period from 1840 to about 1850 was "peculiarly the era of local, especially municipal, aid to railways

built by private corporations. The custom of granting state loans was more characteristic of the previous decade.<sup>17</sup> So far as Delaware was concerned, however, the state loaned far more than the municipalities throughout the nineteenth century, almost certainly because there were no towns large enough to offer significant amounts of aid. By the time Wilmington was large enough to have offered such help, late in the century, the practice had ceased on any significant scale.

It is noticeable throughout this period that money was much less of a source of controversy in the state, despite the depression, than it had been in the previous one. The banks of the state were conservatively run, the currency was basically sound, and except for a brief period when the suspension of specie payment by the Philadelphia banks forced the Delaware banks also to suspend in self-defense, its stability was unquestioned. That the banking system was basically satisfactory may be seen from the absence of regulatory legislation of any significance except for an 1841 act protecting the banks from the officially specified consequences of their suspension of specie redemption. According to their charters, such suspension automatically invalidated the charter, and it was therefore necessary for the General Assembly to take some action if any bank in the state was to remain legally in operation.

The only other financial legislation of importance provided for the chartering of three new banks during the period. With one exception, there was no trace at this time of the uproar and opposition associated with the 1821 renewal of the charters of the then-existing banks. The

single exception involved the Brandywine Banking and Manufacturing Company, and this enterprise, in any event, came to nothing. Its charter, however, was a remarkably unusual document for Delaware. As passed in 1836, it appeared as the supplement to a previous charter, extending the powers of the company. The firm had originally been incorporated in the 1820's as the Brandywine & Christiana Manufacturing Company. The enterprise had become moribund, but with new backers it had its charter revived in 1835.<sup>18</sup> In 1836, the supplementary act described above gave the company unprecedentedly wide powers. It could operate manufacturing plants, and was also given banking, insurance, and even some railroad-construction powers, as it could build a branch line to the nearest main line to its plants.<sup>19</sup>

This combination of powers was much criticized, although the legislature had not acted outside contemporary practice. New York, for example, had granted a corporate charter with both banking and manufacturing powers as early as 1812,<sup>20</sup> and some states, mostly southern, had tied together banking and transportation companies. There is no evidence, so far as the writer knows, that the Brandywine Banking and Manufacturing Company ever used its powers. In fact, it apparently soon surrendered them, for in 1845 the original charter which had been granted to the Brandywine and Christiana Manufacturing Company was renewed and extended.<sup>21</sup>

This attempt of a company to diversify into banking was perhaps only an extreme example of a tendency already present among manufacturing firms. During this period, the Delaware manufacturers, still for the

most part relatively small, were diversifying their operations in an effort to tap the widest possible markets. Usually this diversification was into branches of industry closely related to the original one. The silk mania is possibly a case in point. While many people were involved in this, the textile firms were the most interested; but as the fad died out, so did their interest. This coincided roughly with the improvement of business conditions after the depression, which had ended by about the middle 1840's. The first signs of the silk mania had appeared in the 1820's, but no companies primarily concerned with silk were chartered in Delaware until 1837. In this year one of the three Delaware silk companies was incorporated, the other two coming in 1839.<sup>22</sup> The peak production of silk reportedly came in 1845,<sup>23</sup> but the mania died away soon afterward as new and more enticing speculations appeared.

Such speculations, or as they were more probably termed, investment opportunities, were increasingly found in corporations. This period shows a marked increase in the number of corporations created, as is clear from an examination of the numbers chartered at each session of the General Assembly.\* It is noticeable that the number increased after the ending of the 1837 depression, as it had after the previous one of 1819 and was to do again after depressions later in the century. This suggests that the value of the corporate form of organization was brought home to more and more businessmen in each depression. Another

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\* See the appendix to this study for the numbers chartered in each session from 1788 to 1897.

factor here may have been the widening knowledge of corporations among businessmen, and the growing necessity of some such form as the scale of their financial needs increased.

A popular guide of 1832 may stand for the general knowledge of this organizational form among businessmen and other interested parties at the beginning of the period considered here. This guide begins:

Question: What is a corporation?

Answer: A corporation is a franchise possessed by one or more individuals, who subsist as a body politic, and are vested with the capacity of perpetual succession and of acting in several respects as a single individual.<sup>24</sup>

The questions go on to ask the objects of corporations, their duration, reasons for "the numerous corporations in this country," distinctions as to forms of corporations, their creation, powers, and capacities, and so on for several pages. Since this manual was intended for popular use, it can be inferred that there was a fairly general and widespread knowledge of corporations, but not of their details. Another, and perhaps more widely known, publication of the same period explicitly stated why the corporation was becoming more popular:

It is frequently the principal object, in this and other countries, in procuring an act of incorporation, to limit the risk of the partners to their shares in the stock of the association; and prudent men are always backward in taking stock when they become mere co-partners<sup>25</sup> as regards their personal liability for the company debts.

It has been noted that few early incorporations had limited liability, and that in these few cases it appeared as a special privilege.<sup>26</sup> In part this was a natural consequence of the development of business corporations from partnerships in which unlimited liability was the rule,

but in part it may also have stemmed from a conscious effort to restrict the formation of corporations. Yet the limited liability concept developed steadily in the early nineteenth century, most probably because it was recognized as inequitable in large corporations, and particularly in those involving public works of unprecedented magnitude, that small shareholders should be held responsible for actions of directors or influential stockholders which they could not prevent.

In Delaware, the concept of limited liability was fairly widespread from an early date; it was mentioned, for example, in the charter of the Farmers Bank in 1807, although not in that of the Bank of Delaware in 1796. Limited liability was added to the Bank of Delaware charter in the reenactment of 1812, but in a slightly modified form. It applied to all stockholders, including directors, while the debts of the bank were less than twice the total of its capital; but if these debts rose above that limit the directors were then severally and personally liable for such excess, irrespective of the limited liability clause, which still protected the other stockholders who were not directors.<sup>27</sup>

This seemed to be satisfactory, and it remained in the statutes for some years. It would seem, too, that the basic corporate law of the state was found to be generally satisfactory, for the first new enactment in Delaware under the 1831 constitution only came in 1837. Under the act in question, if a judgment were given against any incorporated concern, the franchise, property, and other evaluable items of the company might be seized and sold at a public auction.<sup>28</sup> This was a marked



extension of the 1819 act, even with the 1829 amendments, dealing with the same problem. Perhaps this act was also a reflection of the onset of the depression of 1837, just as the 1819 act was apparently a similar reaction to the depression of that period. The 1837 law, however, may also have been merely a reflection of the general anti-corporation feeling which spread along with the use of the corporate form of organization.

Cadman has suggested that anti-corporation feeling developed as a general theme of politics only from the mid-1830's, and that previous to that date, the opposition had been confined to specific types of enterprise or even to specific projects.<sup>29</sup> He also suggests that the opposition was mainly associated with the more extreme wing of the Democratic party.<sup>30</sup> These remarks refer specifically to New Jersey conditions, but judging from the literature available, they have a much wider applicability. This anti-corporation feeling was paralleled by the rise of a nation-wide movement for general incorporation acts, in large measure motivated by the surge of egalitarianism associated with Jacksonianism. Since it was evident that the corporate form of business organization was by this time firmly established, and could not be eliminated, the advocates of general incorporation laws argued on the basis of making incorporation available to all.<sup>31</sup>

From the mid-1830's to the mid-1840's there was no important piece of legislation dealing with business concerns passed by the Delaware legislature. In 1845, however, an act extending recognition to limited partnerships and establishing them as legal entities was passed.<sup>32</sup> This act divided partners into two groups: general and limited. The

first group continued to bear the same liabilities as previously: i.e., they were unlimitedly liable individually and severally for the debts of the partnership. The second group, who merely put up money and who took no part in the management of the company, were limited in their liability to their investment and no more. There were provisions defining participation in management, to protect minors, and so on, but these were of lesser importance. The concept behind the act is important, however. It strongly resembles a well-established European practice of the day, which acknowledged the differing responsibilities of backers and management. The similar acknowledgement in Delaware reflected the increasing scale of business enterprise and organization, much as the acceptance of limited liability in chartered bodies earlier in the century had done for these enterprises. There is no clear evidence, however, that the European practice was influential in initiating the Delaware development.

This development may also have been connected with a marked increase in the use of the corporate form after about 1843. This trend took place in many states besides Delaware in this decade; for example, the increase was sufficient in New Jersey to make the state pass its first general incorporation law, albeit a limited one, in 1846.<sup>33</sup> This act covered manufacturing concerns only, and had a number of precedents: a similar New York act of 1811, for example, or a Connecticut statute of 1837, which was perhaps the widest of all the early general incorporation acts.<sup>34</sup> The 1846 New Jersey law was revised in 1849, but without major changes; the amendments seem to have been clarificatory rather than substantive.<sup>35</sup>

But there was no need for such a general incorporation law in Delaware as yet. Reference to the sessions laws will show that the number of incorporations was a relatively small proportion of the total body of legislation, and even a fairly small proportion of the legislation touching on business. Such an examination also shows that there was a definite trend toward charters being so similarly worded in many cases that it was almost as if a standard form, with blanks for names, amounts, etc., had been used. The probable truth is that each charter was modelled for convenience upon some earlier one for a similar concern, and that the appearance of standardization did not indicate more than a convenient short-cut for the legislative committees responsible for the drafting of the bills.

Much of the legislation of this period was regulatory, and while some laws tended toward a generalized approach, there was still a substantial body of enactments regulating one type or another of business only. As an instance of the more permissive and general approach, an 1832 act dealing with the appointment and qualifications of inspectors of flour may be cited. This official, charged with the enforcement of the quality control acts regarding flour, had previously been disqualified if he were or later became a dealer in that commodity. Under the 1832 act, this was now permitted.<sup>36</sup> A supplement to this and other applicable acts was passed in 1843, exempting from inspection flour shipped to those places within the United States where there was inspection of imported flour.<sup>37</sup> This perhaps reflected the shift away from flour as the mainstay of the regional economy, a change which

meant that shipments of uninspected or poorer-quality flour were no longer so serious to the trade and reputation of the district.

At this point, it is convenient to note the regulations passed in this period which were concerned with food and beverages. The earlier legislation touching bakers has already been noted, and this seems to have been still in force, although slightly modified. Such changes as had been made touched on the standard weights and measures to be used rather than on the substance of the act. The general act concerning weights and measures was slightly modified in the 1840's to give the commissioners charged with enforcement discretion in their choice of materials from which the secondary standards could be made.<sup>38</sup> The primary standards were held at Dover and had been supplied from Washington. The appointment of commissioners was further regulated by an act of 1849, which specified their duties as well as other provisions.<sup>39</sup> All of these acts remained in force thereafter until beyond the end of the period covered in this study.

Of the various regulatory enactments following the depression of the late 1830's and the early 1840's, few can be specifically assigned as deriving from it. The more common use of clauses limiting corporate debt after 1840 was perhaps an effect, but this is not clear. Bank debt, for example, had always been limited, so that the use of limiting clauses in all charters may simply have been a further indication of the previously mentioned trend toward standardizing them. Roughly a decade later, however, the problem of corporate debt, and specifically the indebtedness of the various railroads of the state, caused much de-

bate at the 1853 Constitutional Convention. The policy of the various state legislatures had been to aid the railroads, and particularly the Delaware Railroad, during the 1830's and 1840's; but during the 1852 session of the legislature, which foreshadowed the 1853 convention, there seems to have been a real upsurge of pressure against this policy. Governor Ross might say in his 1853 message to the General Assembly that he had "no hesitation" in recommending that the state's "means and credit . . . should be applied" to railroads,<sup>40</sup> but the Assembly disagreed. The session was very stormy; indeed, it has been claimed that the 1852 act which had granted the Delaware Railroad an annual subsidy "caused bitter debate and almost split political alignments . . . in the House."<sup>41</sup> The division seems to have been along county lines, with New Castle County in favor of the act and Kent opposed.<sup>42</sup> Even though the act passed, there may have been a hidden compromise, for in the same session the legislature provided for the purchase of stock in a number of other enterprises, all of which were more strictly local than the Delaware Railroad. The latter enterprise did, however, get the bulk of the funds to be invested.<sup>43</sup>

The same cleavage between New Castle and Kent counties which has been mentioned above was also present in the vote on the calling of a constitutional convention when a special election was held in November 1851 dealing in part with this question.\* The closeness of the Kent

\*The respective figures are:<sup>44</sup>

| County     | For<br>a convention | Against   | For no<br>convention | Blank<br>ballots |
|------------|---------------------|-----------|----------------------|------------------|
| New Castle | 1463                | 331       | 8                    | 2                |
| Kent       | 803                 | 560       | 51                   | 1                |
| Sussex     | <u>1069</u>         | <u>60</u> | <u>221</u>           | <u>1</u>         |
| TOTALS     | 3335                | 951       | 280                  | 4                |

Eligible electorate: 12,500

Votes cast: 4,554

Majority: 2,124

County vote may partly explain the heated controversy which occupied the opening sessions of the convention over the constitutionality of the gathering and its right to propose amendments to the existing state constitution.<sup>45</sup> This doubt persisted throughout most of the proceedings. Thus, well toward the end of the convention a delegate could trigger a rehash of the arguments on constitutionality, which had already caused at least one delegate to withdraw, by saying:

At the time we assembled . . . it was considered by a majority [sic] of the members that we were not constitutionally authorized to alter and amend the present Constitution.<sup>46</sup>

Despite this doubt, however, amendments were proposed, debated, and passed for legislative action, although the proposed constitution was not ratified. So far as business was concerned, the major interest lay in the suggested amendments to Article 2, Section 17 of the earlier constitution, and in a proposed new Section 18 which was enacted by a subsequent General Assembly.

The new Section 18 was proposed early in the convention proceedings, debated briefly, and adopted quickly. Section 17 was more fully debated, and amended before acceptance, and the two sections were incorporated in the proposed constitution. As accepted, they read:

Sec. 17. No act of incorporation, except for the renewal of existing corporations, shall be hereafter enacted or altered without the concurrence of two-thirds of each branch of the General Assembly, and with a reserved power of revocation by the General Assembly; and no act of incorporation which may be hereafter enacted, shall continue in force for a longer period than twenty years, without the reenactment of the General Assembly,

unless it be an incorporation for public improvement.

No corporate body shall be hereafter created, renewed, or extended, with banking or discount privileges, unless three months previous notice of the intended application for the same shall have been given by publication in not less than three newspapers in the State, one of which shall be in each of the counties wherein a newspaper may be published.

Sec. 18. No debt shall hereafter be contracted by the Legislature, except for money borrowed to defray the expense of government, nor shall the credit of the State, in any manner, be given or loaned to or in aid of any individual, association, or corporation; nor shall the General Assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, or in any enterprise which shall involve the faith or credit of the State, or make any appropriation therefor.<sup>47</sup>

It may be noted that in suggesting these measures the delegates were acting within the then current national trend. There seems to have been a widespread tendency at about this time to restrict the powers of state legislatures to handle incorporations as they saw fit. States which had already included restrictions on the extending of state credit included Florida in 1838, New Jersey in 1844, Maryland in 1851, and others. In all, by 1852, some 14 states had acted in this manner.<sup>48</sup>

The constitution proposed was not ratified, but some of the provisions and proposed amendments were the subject of legislation in the 1855 and later sessions of the General Assembly. The passage of the amended sections quoted above suggested that there would be a new era in government-business relationships, but as will be seen in the following chapters, this was not to be. The legislature went on, year by year, extending aid to the internal improvements of the state until well into

the latter half of the century.

This period may best be summarized by noting that it was something of a transitional era. The earlier periods had seen suspicion of the corporate form of organization, but by the early 1850's there seemed to be a general acceptance of it. The constitution of 1831 had seen Delaware contribute one of the few "firsts" in corporate law for which the state was responsible when it required a reservation clause in all charters. This had been included in a few charters earlier, but the specific requirement of one did not become generally used in state constitutions until the 1850's.<sup>49</sup> However, by retaining the special act procedure for incorporations Delaware slipped steadily behind other states until almost the end of the century.

While most of the interest in the state was centered on railroads, there was also a steady growth of industry, albeit in small units. Much of this growth was a clear example of technological interdependence. Each new technological innovation produced a series of other developments, producing the industrial equivalent of the financial theorist's "multiplier factor." This theory, which is a twentieth century concept, holds that each dollar spent on production produces additional expenditures of several dollars in associated fields. In industry, analogously, a new technique demands new processes, equipment, or supplies, or all of these, which may be usable in other fields as well, and which result in yet further demands. The transportation industries of the nineteenth century offer a convenient example: steamboats, for instance, required boiler-plate of consistent thickness.



Machinery to make this was devised, and the product, uniform metal plates, could be used in other branches of industry. As a result, more demand developed, and more productive capacity had to be installed. A second, and more directly pertinent, example may be drawn from the development of Delaware railroads in this period. Without these, it is unlikely that such Wilmington enterprises as the Pusey and Betts or Lobdell plants for making railroad car wheels would have been started. There are, of course, many other examples.

It may be noted, too, that many of these plants were in or near towns, thus marking an end to the earlier tendency to locate away from population centers. Nonetheless, Delaware remained essentially an agricultural state in the period which has been discussed in this chapter. There was an expanding state economy, backed by a reasonably stable money supply, but it is unlikely that a Delawarean of 1830 would have found much that was new and strange in 1850.

## CHAPTER V

### THE OLD ORDER CHANGETH, 1854 - 1875

The third quarter of the nineteenth century saw more and greater changes than Delaware had seen in the previous fifty years, and was itself to lead to a period of even greater transformation. At the start of the period the state was still basically agricultural despite its expanding industry; by the end of the quarter-century, the outlines of twentieth-century Delaware were more clearly visible. Transportation was no longer the preoccupation in 1875 that it had been in 1854, chiefly because the main outlines of the network within the state had been established. Moreover, while this had lessened the demand for capital, the pool of available funds for capital investment was probably larger in 1875, even with allowance for the effects of wartime inflation, than it had been at the start of the period. These circumstances, plus the national trend toward industrialization, are probably sufficient to explain the growth of diversified manufacturing in Delaware from this period onward.

Economically, as in most other aspects of life, the years between 1854 and 1875 may be divided into pre-war, wartime, and post-war periods. Taken as a whole, the wartime experience modified only slightly the trends established before 1860 in the state. The war may have accelerated some tendencies, particularly those toward industriali-

zation and incorporation, but it does not seem to have markedly changed the pattern of the state's economy immediately. One of the main topics of the period was money; but while this may seem to have been a reversion to an older preoccupation, it was not so in reality. In the years just after the Revolution the problem had largely involved money supply, but now it was the kind of money that was at issue. This question arose initially in regard to the depression of the late 1850's, and then, under the impact of war, the creation of a national paper currency and the establishment of national banks continued it. This interference in banking, which had seemed to be a state matter, was unpopular, but the passage of the punitive tax of 1865 on state bank note issues by the federal government forced the state to accede to the "nationalizing" of most of the banks in Delaware. It will be shown later that new forms of state-chartered financial institutions emerged to supply services the state banks were forbidden to provide under the National Bank Act.

Businessmen and others may have damned or praised, as occasion served, the new forms of money which resulted from these developments, but more and more of it was invested in corporate enterprises. These became more and more common in the late 1860's and early 1870's, and this increase was at least partially responsible for the enactment of a limited general incorporation law. Fundamentally, however, the old special incorporation procedure remained the law of the state, for there were no significant changes in the law touching corporations, other than regulatory ones, until the enactment of the limited general incorporation

law of 1875. In view of the depression of the late 1850's, and then the Civil War, it is likely that the Delaware businessman was more concerned with monetary stability than with incorporation or regulation.

This 1857 depression, Kirkland has remarked,<sup>1</sup> resulted from a financial panic which in turn had developed from the over-expansion of railroads. This has been questioned by another commentator on the period, who suggests that the panic and ensuing depression had been brewing for some time as a general state of financial instability.<sup>2</sup> Nationally speaking, the banks were much blamed, and in some cases with justice, for many had been utterly reckless in their issues of notes. Massachusetts, for example, passed a law in the late 1850's requiring 15% specie reserves for the total liabilities of the banks in the state, but this came only after the crash.<sup>3</sup> This very low figure is in considerable contrast to the 50% requirement found in Delaware bank charters, although this level of reserve applied only to note issues and not to total liabilities. But since the real property a Delaware bank could hold, except as security on debts, was clearly limited in its charter, the reserve requirements of the two states were still quite disparate.

That over-issues of paper money were in some way connected with the onset of the instability and depression of the late 1850's was widely recognized by contemporaries, but little was done to halt such practices. Moreover, other forms of paper were coming into use in business in this period, and this tended also to increase inflation. Par-

ticularly did the system whereby country banks put their reserves into city banks as "call loans" tend to aggravate the situation. This meant that the city bank had to return the reserves on demand, which in turn forced it to call in its own loans. The result was the worsening of an already weakening stability in bad times, for a country bank would not need to call its reserves unless its customers were demanding redemption beyond normal amounts. To what extent this applied in Delaware is not clear. The state banking system was considerably sounder than many, but the Wilmington banks which were the heart of the system were always sensitive to events in Philadelphia, and to a lesser extent in New York or Baltimore. Philadelphia and Baltimore suspended payment in September of 1857,<sup>5</sup> and this in turn forced the Wilmington banks to do the same for a short time. Resumption of payment in 1858 probably eased the situation somewhat, but in his message to the Assembly in 1859, Governor Causey could say:

By some, our commercial and financial embarrassments [sic] have been attributed solely 'to an extravagant and vicious system of paper currency and bank credits . . . ' and a 'uniform bankrupt law . . . ' has been prescribed as the most salutary remedy of this disease . . . .

With utmost deference . . . I think it merely idle speculation to suppose that the banks . . . are the origin of the terrible commercial revulsion by which we have suffered, . . . .<sup>6</sup>

This statement reflected a widespread opinion that there was more to the causes of the depression than paper money and credit alone, and that a national remedy was needed. Locally, however, something could be done to put money back into circulation, and Governor Causey went on to advocate encouragement and help for internal improvements, par-

ticularly railroads. These were probably overt moves to fight the depression, although Causey did not say so.<sup>7</sup>

To give this help, the legislature took two steps. First, it exchanged a loan to the Philadelphia, Wilmington, and Baltimore Railroad, which was to mature in July, 1860, for a new one which in essence merely postponed the due date, cost nothing, and in the interim brought in some revenue from interest payments.<sup>8</sup> Second, it authorized a lottery to raise funds for a number of internal improvements.<sup>9</sup> This lottery was to be run by a professional lottery organizer who had successfully operated similar schemes elsewhere, but in this case he failed, primarily due to the outbreak of the war, and the legislature subsequently passed a number of acts for his relief.<sup>10</sup>

Inevitably, the federal legislation during the war had more effect on the financial side of business than state legislation did. While the issue of federal paper money ("greenbacks") was financially important, the most significant of the series of wartime federal financial laws was the 1864 revision of the 1863 National Bank Act. This revision provided that state banks could obtain national charters if they possessed a specified capital based upon the size of community served. Substantial checks were placed on the issues of these banks and, additionally, upon their total liabilities. Non-compliance with these requirements after a warning resulted not merely in the loss of the bank's charter but in compulsory winding-up. There were other provisions regulating the operation of state banks designed to secure their stability and

to keep their issues at par with specie.<sup>11</sup>

At first comparatively few national banks were formed under this act, but when an 1865 statute imposed a 10% tax on the issues of all non-national banks,<sup>12</sup> the number increased. This was not accepted without protest in Delaware, but the banks of issue in the state were now obliged to obtain national charters simply to stay in business. In addition, the 1864 revision of the National Bank Act had required member institutions to specify redemption banks where their issues could be redeemed, and the dependence of Delaware business on Philadelphia is clearly shown in the locations of these centers: of the ten listed for Delaware banks in 1870, nine were in Philadelphia and one in New York.<sup>13</sup>

Also touching on money and monetary stability during this period were three cases in the national Supreme Court. The first of these cases, Veazie Bank vs. Fenne,<sup>14</sup> was decided in 1869 and turned on the constitutionality of the taxation of notes issued by state banks. It was held by the court that such taxation was constitutional. In view of the reluctance many Delaware banks had shown in taking out national charters it is probable that this decision was unpopular and may indeed have prevented a number of local banks from surrendering a status which they did not particularly want anyway. The second and third cases were heard in 1870, and both involved contractual obligations as well as paper money. In the second case, Hepburn vs. Griswold,<sup>15</sup> it was held that the issuing of "greenbacks" was a constitutional measure for wartime, but that these notes were not constitutionally legal tender

now that the war was over. Thus debts or other contracts must be payable in specie, or in its equivalent (allowance being made for depreciation) if the creditor were willing to accept this. This decision was overturned in the third suit, the Legal Tender Case,<sup>16</sup> where it was found that the issue of "greenbacks" was an act of sovereignty and therefore constitutional, from which it followed that payment of a debt or other obligation in such currency did not impair a contract.

These decisions may be considered as part of the overall movement toward a national financial system, and in a sense as supporting measures to the 1864 and 1865 banking acts. It has been claimed that the panic of 1873 was initiated by disturbances of the banking system resulting from nation-wide speculation and over-expansion of railroads.<sup>17</sup> In the light of the hearings conducted in 1878 (discussed in the next chapter) by a House Committee in various major and minor centers, this seems to be an over-simplification. Instead, it seems more likely that a general upsurge of business and speculation associated with all branches of commerce and industry, rather than railroads alone, was really responsible. In either case, however, it seems that the aims of the 1864 and 1865 banking acts had not been achieved, for these appear to have been intended, inter alia, to reduce credit available for speculation while not reducing that available for legitimate business needs.

Yet these financial problems, and particularly the monetary ones of the 1860's, did not hamper the spread of incorporations either nationally or in Delaware. In that state there was a marked increase



in the number of charters granted (over 500 between 1855 and 1873, compared to less than 200 between 1831 and 1853), an increasing proportion of which were given to financial institutions of various kinds. While many of these could not issue notes, they could extend credit and so contribute to the speculative activities that culminated in the 1873 depression. In Delaware the first "Savings and Loan" and "Building and Loan" associations appeared as chartered enterprises after 1865. Although personal loan companies had appeared in New England in the 1850's,<sup>18</sup> there is no direct evidence of them in Delaware until somewhat later. An act taxing "private bankers" was passed in the state in 1871, and is perhaps a bit of indirect evidence for their existence by that year. It is also possible that the surge of incorporations of "S. & L." and "B. & L." associations in the early 1870's was connected with the passage of this act, although a further statute, also passed in 1871, may be more pertinent here. This act declared all corporations except "banks, savings institutions and loan associations" subject to the state attachment laws,<sup>20</sup> which had long applied to unincorporated businesses.

The earliest incorporation in Delaware of a money-lending institution other than a bank appears to have been the establishment of the "Delaware Loan Association," which was chartered in 1863.<sup>21</sup> This company had no banking powers and was limited to making loans and investments. In 1865 appeared the "New Castle County Mutual Association for the Promotion of Agriculture and the Mechanic Arts," which despite its title had powers to "lend money on security for permanent investment,"<sup>22</sup> This would seem to imply, given the concepts of the day, loans for build-

ing or for the purchase of buildings. The first company with building explicitly included seems to have been the Nanticoke Building Association, also chartered in 1865. Its purposes were stated in almost the same words: "lending money on security for the purpose of permanent investment."<sup>23</sup>

The beginnings of Building and Loan Associations nationally date back to the 1830's, and the basic operational principle was that members should make a weekly or monthly deposit on "shares." These payments received interest, and the accumulated funds were loaned to members "to purchase or erect homes."<sup>24</sup> Such organizations were primarily urban (which explains, perhaps, their delay in arriving in Delaware), and were of various types, depending on the procedures used.<sup>25</sup> It may also be noted that their appearance was an international phenomenon: similar societies were to be found in England and Canada in the nineteenth century as well.

The first organizations explicitly to use the words "Building and Loan" in their titles appeared in Delaware in 1867, when some nine were chartered, as well as five "loan associations."<sup>26</sup> In 1869, some twenty-two such institutions under various titles were incorporated,<sup>27</sup> but this was the peak year, for in 1871 only six were chartered.<sup>28</sup> Twelve were authorized in 1873,<sup>29</sup> by which date a few were in trouble, and at least two were recipients of acts "for the relief of" their associations.<sup>30</sup> This seems to indicate the existence of financial uncertainty immediately before the 1873 economic collapse, since the pe-

titions for such acts were probably prepared in 1872.

Banks, as befitted more staid and established institutions, did not proliferate as luxuriantly as these loan associations. There were some twelve banks in Delaware in 1860, with a combined capital of \$1,640,775,<sup>31</sup> while in 1874 twenty-two (not all of them active) were listed in the section on banks in the Revised Statutes issued that year. Most of these additional banks were new organizations, but one was the result of a division of an older institution. This was the "Farmers Bank at Wilmington," which resulted from the sale by the Farmers Bank of the State of Delaware of its Wilmington branch. This sale was authorized in 1871 by an act of the legislature,<sup>32</sup> and resulted from heavy capital losses of the Wilmington branch, which had been a source of problems to the parent bank in view of its corporate structure.<sup>33</sup>

By this time most of the leading banks in Delaware were nationally chartered, but the smaller, newer banks do not seem to have taken this step. It has been suggested that since the increase in the number of banks in the 1860's and 1870's was nation-wide, with many of them not obtaining national charters, the reason is to be sought in the terms of the National Bank Act itself. It is noted that national banks were required to have a substantial capital, which would have prevented small banks from gaining national charters. Furthermore, national banks were also forbidden to loan money on the security of land or for agricultural purposes. Thus the smaller state-chartered banks which could serve these needs would tend to become more numerous, since they could serve

rural areas better than national banks. It is also possible that the spread of Building & Loan and similar institutions was also connected with this in some way; certainly many of the associations chartered in Delaware were not in large centers.

Transportation companies comprised another group of incorporated enterprises which showed an increase in Delaware during this period. Of these, the railroads were the most numerous: three received charters in 1855 and six in 1857, but only one appeared in 1859, plus a horse-drawn street railway. The pace picked up in the 1860's and early 1870's: four lines were chartered in 1861, one in 1863, another street railway in 1864, and two additional railroads in 1865. The trend continued with one railroad in 1866, three in 1867, three more in 1869, five in 1871 (one of which was specified to be narrow gauge), and five more in 1873. Of the ventures which received charters in 1873, one was specifically to be a narrow-gauge line, and another seems to have been intended to be a street railway.<sup>34</sup> Steamboat companies seem to have been less popular than in the preceding period, for only sixteen charters for these companies were found in the sessions laws between 1853 and 1873. There were apparently even fewer canal, navigation, or marsh companies, which suggests that much of the economically usable land had been taken up, and that those creeks used for shallops and other craft in shipping out produce were either for the most part cleared or of decreasing importance. The latter is probably the case, since the railroad network had covered most of the state by the end of this period.

Many of the new railroads were short, linking lines with specific termini and were authorized to join together at one or another of these points with the longer through lines. One instance of many will suffice as an example. In 1869, the River Front Railroad Company was incorporated to build "from a point on the Delaware River, not more than three miles north from the Christiana River, to a point on the Philadelphia, Wilmington and Baltimore Railroad . . . not more than three miles distant from the said initial point . . . with the assent of the said Philadelphia, Wilmington and Baltimore Railroad."<sup>35</sup> In some cases, a connection was specified at the state line with a railroad company building in one of the adjoining states. Thus, in 1859 a supplement to the charter of the Mispillion and Choptank Rail Road Company authorized it to link with any railroad in Maryland which met it at the state line.<sup>36</sup> Similarly, an out-of-state railroad might be given powers to build in Delaware to link with a Delaware line. One example of this was the incorporation of the Maryland & Delaware Rail Road Company in 1857.<sup>37</sup> This concern had been granted a Maryland charter in 1854, and the Delaware charter was issued in order that it might build from the state line to link with the Delaware Rail Road near Smyrna.

One of the clearest developments in incorporations in the period being considered here was a marked increase in the number of manufacturing and utility companies, particularly after 1865. There were also a few commercial concerns as well, presaging the increase to come in the later 1870's, and from then on to the end of the century. No simple categorization according to type of manufacturing is possible, for no single

type of industry predominated in this period. Most appear, however, to have been mechanical or engineering companies. It is impracticable to list the whole range of manufacturing and similar companies incorporated in this period, but as examples, charters were issued for the "Delaware Iron Company" in 1865, the "Electrical Brake Company of America" in 1867, and a number of other concerns with similarly explicit titles. There were a few somewhat more exotic names, the "Nautilus Pearl Fishing Company" being an example. Its fishing activities, however, were to be "in the waters on the Pacific Coast or elsewhere," and the company was also empowered to gather "sunken treasure or other property or valuables."<sup>38</sup> The "New England Wrecking Company of Lewes, Delaware," chartered in the 1873 session of the General Assembly, brings visions of dark nights and storm-swept shorelines, of lanterns on cliffs and offshore reefs, and of vessels lured onto the rocks. Unfortunately, only the title is given in the sessions laws, and the precise nature of the enterprise does not appear there.

The expansion of incorporations of manufacturing and industrial companies was in part supported by wartime demands for production, but these do not seem to have brought new forms of industry into the state. The only relatively new industry of the post-war period had begun in a very small way just before the outbreak of the war, and remained modest in size until somewhat after its end. This was the canning industry, which began at Dover in 1856 with one small plant.<sup>39</sup> The latter was listed in the 1860 census as having a \$2,000 capital, 10 employees, and a product value of \$3,000 annually. It is interesting to note that

the "Delaware Institute for the Promotion of Mechanics, Manufactures, and the Arts" had been chartered in 1847, and an agricultural society in Kent County in 1855.<sup>40</sup> There may have been a connection between improving agriculture and marketing and the formation of the Dover cannery, but there is no evidence and the matter is conjectural.

It may be noted, however, that the canning industry was made practicable by improvements in transportation and technology. The principle of packing foods into containers made of thin metal is relatively old, but without efficient transportation and the ready availability of cheap, thin sheet metal, it remained too expensive except for special circumstances. Such available alternatives as glass or stone-ware were too fragile to be used without careful packaging, and in order for these to be economical the packaging materials had to be cheap also. In the 1850's and 1860's this does not appear to have been the case. Thus the Dover cannery remained the only one incorporated for some years, and was, to judge from the product value relative to capital, probably a marginal operation at first. In 1868, it is recorded that there were about six canneries in the state, but these were "adjuncts to other ventures such as tin and hardware businesses or farming."<sup>41</sup> The 1870 census does not list any canneries for Delaware in the short compendium, where the criterion for inclusion was a product value of \$250,000 annually; here again the evidence indicates a small industry with small units. The industry was to expand in the 1870's and 1880's, and will be discussed briefly in the next chapter.

There were foods other than agricultural products being packed by the late 1860's, and of these oysters gave rise to the most interesting and significant branch of the packing business. The significance of oyster processing lies in two features found associated with it. Not only was it the first branch of the industry to have a company incorporated to pack only a single item, but also the company chartered was a state-established monopoly with some powers of policing the industry. This latter feature was included because the company represented a major effort by the state to regulate the industry in the interest of a reasonably rational exploitation of a natural product. The offshore oyster fisheries had long been exploited, but by the 1860's it appears that the yields were declining and the situation within the industry deteriorating steadily. One student of the industry reports that a point had been reached at which murder, piracy, "hi-jacking," and general violence were the usual concomitants and occupational hazards of oystering.<sup>42</sup>

The Delaware legislature had attempted previously to regulate the industry and so to reduce the violence and the general decline of yields which was probably due to over-fishing. It had also attempted to establish licensing regulations and a closed season,<sup>43</sup> but seemingly with little success. Finally, the Kent County Oyster Canning Company was chartered in 1867 with the purpose of stabilizing the situation. The preamble to the charter noted that the legislature had made various attempts "to protect the several oyster beds immediately on our shore," and the main body of the instrument went on to give the company certain



broad powers. These included the exclusive right to "take, catch and use" oysters from specified beds, and also the power to use "all such ways and means" as the company found expedient to enforce its corporate rights.<sup>44</sup>

Incorporations of utility and commercial enterprises during this period were somewhat fewer than those of manufacturing companies. In the case of commercial concerns, this may have been because capital requirements had not risen to the same levels as those in industry. In the case of utilities, the small number of charterings may indicate that few Delaware towns were large enough to support them. It must be noted here, however, that the 1860's and 1870's constituted the period when street illumination and domestic lighting by gas were just becoming widely used in America. Charters were issued in Delaware to a couple of water supply companies, but these were not the first such concerns, for the first to be incorporated reached back to the early years of the century. This pioneer firm, the "Wilmington Spring Water Company," was chartered just after the turn of the century,<sup>45</sup> but was bought soon afterward by the Wilmington Borough Council "for a valuable consideration."<sup>46</sup>

The commercial enterprises which were incorporated in this period included a printing firm and several hotel companies, one of which had power to build "a plank road, other road, or railroad" to link its property with the beach nearby. It may also be noted that there had previously been transportation companies with power to operate hotels: the "Cape Henlopen Sea Bathing and Steamboat Company," chartered

in 1851,<sup>47</sup> is an example. The other hotels were chartered in the late 1860's and 1870's, and appear to have been located in commercial centers. Possibly the seaside concerns reflected the beginnings of middle-class vacationing by the sea, or "to take the air" during the summer months.

From the mid-1850's, when the period considered here began, there appeared a trend toward regulatory legislation of a general nature replacing reliance on regulation incorporated into charters. The previously mentioned legislation concerning the foodstuffs industry was perhaps the archetype, for this industry did not have corporate bodies within it at first, and did have a tradition of regulation. The various weights and measures acts remained substantially unchanged in this respect, although new items appeared which reflected the changing society of the day, such as an act of 1873 regarding illuminating oils.<sup>48</sup>

This statute required that all "petroleum, coal oils, and burning fluids" meet certain technical criteria of safety. Thus, a "fire test" was imposed, which may be taken here as being the temperature at which, under the standardized conditions of the test, vapors from a sample will ignite. Further, each barrel of such product was required to bear a certificate of compliance with the fire test before it could be legally sold. It may be noted here that many communities and states were establishing regulations imposing such requirements at about this time.

In the longer-established fields of business, such as foodstuffs, there were also increasing numbers of regulations. For "breadstuffs" the final edition of the "Revised Statutes" pertinent to this

thesis is still essentially the same as that of the first edition. The miller, however, found new legislation passed which applied to him in this period. As an example, in 1855, it was enacted that all flour, meal, or other products of grain milling sold in Wilmington had to be inspected by a municipally appointed inspector, whether for export or not;<sup>49</sup> while in the late 1860's, the standard bushel was extended to Indian meal, which seems to have previously been exempt from this requirement. The whole scattered mass of regulatory legislation applicable to millers was brought together in 1859 when the pertinent chapter of the Revised Statutes was reenacted, with amendments.<sup>50</sup>

Curiously, the same was not done for other industries and businesses where there was much scattered legislation. For example, the legislation which was passed concerning trademarks and similar identifications during this period can be found only by searching through several volumes of the sessions laws. The enforcement of acts such as these, as well as of statutes pertaining to the purity of foodstuffs, was in the hands of the courts, which would presumably be guided by expert testimony. The naming of this expert was at first left to the discretion of the interested parties, presumably because the products involved were relatively simple and no specialized skill or equipment was needed to determine whether or not there had been an infraction. But as products became more complex, the State Chemist was increasingly required to be used as the expert witness. This official was first appointed under an act of 1871,<sup>51</sup> and was initially responsible only for the analysis of fertilizers, the manufacturers of which were to submit annual

samples of their products (including pre-sale samples of new products) and to display the certificates of analysis in their plants. This enactment clearly shows that agriculture was still a very important sector of the state's economy.

The increase in the number of regulations and incorporations in this period made it obvious that some way of reducing the legislative load had to be found. Action was taken on incorporations first, with the passage in 1871 of a very limited general incorporation law. This act applied only to canneries and similar businesses, and permitted incorporation of a company in this field provided the capital was between \$10,000 and \$100,000. The incorporation procedure was accomplished by filing a certificate of the corporate name, capital, and place of business of a given enterprise with the Recorder of Deeds for the county in which the firm was located.<sup>52</sup> There were a few other steps to be taken as well, but the ones mentioned are perhaps the most important, in that they markedly simplified the overall proceedings. The act may have stirred discussion of the possible benefits of a similar act of wider scope, but it has been claimed that many businessmen of this period were against general incorporation acts.<sup>53</sup> One suggested reason was that the special incorporation procedure permitted businessmen to obtain special or unusual clauses and powers through pressure on legislators. One blatant case of this in Delaware occurred in the 1880's and will be discussed later, involving J. Edward Addicks and his Peninsula Investment Company.

That this opposition was not to be found to any extent in Wilmington is suggested by the reaction of the Wilmington Board of Trade to a proposed amendment to the state constitution in 1873. This proposal would have permitted a general incorporation law covering charters for "religious, charitable, literary and manufacturing purposes, for the preservation of animal and vegetable food, building and loan associations, and for draining low lands. . . ."<sup>54</sup> The Board petitioned for it, but without immediate success. In their annual report for 1873 they said:

It was thought to be unconstitutional to pass a general incorporation act, and so the passage of the measure, so desirable, is for the present postponed. After the law was decided to be unconstitutional, this board petitioned the legislature to amend the constitution so that such a law might be passed, and there is [sic] good grounds for the hope that it may, in due time be done.<sup>55</sup>

To summarize this period, it may be seen as a time of marked change, showing an accelerated trend toward an economy dominated by industry rather than commerce. The previous periods in the century had seen a steady evolution, but the third quarter of the century saw revolutionary, albeit non-violent, changes. In 1850, substantial state aid to transportation and a local banking system were the norm, whereas by 1875 the banking system was dominated by "national" banks (still local, yet with federal supervision of a sort), and the state government was no longer granting aid on any important scale to transportation. This suggests that business and industry were coming of age and were temporarily releasing their hold on mother government's apron strings; a man born in this period would, given a reasonably long life,

see these strings clutched again in the early 1930's.

Industry had been steadily expanding in the preceding period, and the effects of the war seem to have included the establishment of additional plants beyond the number which natural growth might have added, but only in existing industries. There do not appear to have been any significant new industries established during or immediately after the conflict, which is logical, for money would tend to go into expansion of pre-existing plants for whose products there was a known demand rather than into new or unestablished enterprises for which a need had not yet been conclusively demonstrated. The expansion that did take place was for the most part financed from private resources; the 1850's represent the last period when Delaware gave any substantial aid to any form of business. It was also the last period when the state government had for the most part more assured, and probably greater, resources at any given time than those available within business and industry. By the 1870's, the resources of the various business and financial enterprises exceeded those of the state government, and the old order of importance of government and business had changed.

## CHAPTER VI

### THE END OF THE OLD ORDER, 1875 - 1897

In the late nineteenth century, the old system of special incorporation which had served Delaware for generations was weakened sporadically and then replaced by a general incorporation law which covered most forms of business except banking. Parallel with this weakening of a traditional approach to corporations was the steady growth of industrialism and of general business incorporations within the state. Overall, the two tendencies were in line with the actions of other states during this period, although they came somewhat later in time than the corresponding actions elsewhere. Thus, as one example, Louisiana had made special acts of incorporation unconstitutional as early as 1845, and some eighteen other states had acted similarly by 1873.<sup>1</sup> Yet Delaware's 1875 law touching business incorporations was only a slight extension of the 1871 limited general incorporation act, and there was no true general incorporation law in the state until the end of the period being considered here.

Economically, the period between 1875 and 1897 began and ended with major depressions, and business activity between the two dates was, for the most part, rather dull and without marked peaks. The number of business incorporations declined from a peak in 1873 to a low point in 1877, but from then on until the 1890's there was a fairly substantial

number of incorporations at each session. The state government made persistent efforts throughout the period to increase income and reduce expenses, particularly with respect to aiding the railroads of the state. Examination of the session laws of the 1870's and 1880's suggests that many of the acts passed that touched on railroads were in some way concerned with moneys loaned, granted, or otherwise made available to the various companies.

The tone of the period in this respect was set by Governor Ponder, who remarked in his message to the legislature in 1875 (in marked contrast, incidentally, to some of his predecessors in office), that since "more than five hundred thousand dollars of the present debt of the state has been incurred in aid of the construction" of two railroads,

I respectfully suggest that no further increase of the public debt, for similar purposes, ought to be authorized by the General Assembly. . . . from a firm conviction that any policy which would further connect the State with railroad improvements would be hazardous to its credit, I deem it an imperative duty to urge the necessity of guarding carefully against any augmentation of the State debt. . . .

Whatever local advantages might be anticipated from the construction of additional railroads, it is certain that they could not . . . compensate for . . . additional taxation rendered necessary thereby.<sup>2</sup>

However, the state had gained as well as lost from its involvement in transportation, for Ponder went on to remark that "A large part of the revenue is derived from taxes paid by railroads and other corporations, and from fees for licenses granted by the state."



Deapite such concerns as these, it is probable that in Delaware as elsewhere the depression of 1873 was the major focus of interest during the decade in which it occurred, and it is clear from the congressional investigation of 1878 into its causes that opinion on this subject was very mixed. It was generally recognized that the causes were multitudinous, but almost all of the witnesses seemed to think that there was one major cause with which the rest were more or less associated. Thus, a Mr. Kemp saw the high tariff, the Civil War, and paper money as important causes,<sup>3</sup> while Charles Francis Adams, Jr. considered the collapse of railroad construction as having "contributed immensely" to the depression.<sup>4</sup> A Mr. Thurber noted that the depression was international in scope and suggested that a substantial cause was the increasing use of labor-saving machinery:

The general depression . . . is not confined to this country alone, . . . . It is therefore, I think, fair to assume that there are some general causes beyond the purely local ones to which many are disposed to attribute our misfortunes, . . . . In a general way I believe, however, that the primary causes . . . are the development of steam and electricity, which, in connection with labor saving machinery, have . . . revolutionized production and commerce. . . .<sup>5</sup>

Perhaps the nearest to the truth, however, was a sweepingly vague witness who described himself as "an inventor and practical mechanic — one of the hard-fisted sons of toil." This was a Mr. Silas R. Kenyon, who attributed the depression to "want of confidence."<sup>6</sup>

Whether confidence was lacking in Delaware or not is unclear. Certainly the depression hit the state, but the number of business incorporations had begun to climb after 1877 and rose erratically through

the 1880's and early 1890's. So also did the formation of unincorporated enterprises. The total number of manufacturing establishments was lower in 1880 than in 1870, reflecting the depression, but nevertheless these fewer firms had a 50% greater capital. In round figures, 800 establishments in 1870 had a capital of \$10,800,000, while in 1880, 750 establishments had a capital of \$15,650,000. Similarly rounded, the 1890 figures show 1,000 firms with \$33,700,000 capital.<sup>7</sup> Similar figures could no doubt be cited for other branches of business enterprise.

So far as incorporations were concerned, it appears that more firms were chartered which may be generically termed financial than of any other group. While there was only one new bank, there were several Building and Loan or Savings and Loan associations, and a number of insurance companies. There were fewer "B. & L." or "S. & L." associations chartered than in the first surge of this type of business in the late 1860's and early 1870's, but a number of these early enterprises had their charters renewed. Not all of the pioneering associations reappear in the sessions laws, but this does not necessarily mean that they had failed. According to Foulke in his remarks upon early institutions of this type, one form of organization for them was termed the "closed" principle: that is, the association had only a limited number of members and did not admit new ones. Once all the members had completed their subscriptions and repaid their loans, the association was dissolved.<sup>8</sup> Such associations would not need a charter renewal. Some, of course, did fail and found it necessary to petition for an act of relief. Others, which were not failing, also petitioned for acts of relief for various

reasons, but the total number of all petitions for all reasons is comparatively low when compared to the number of incorporations. Furthermore, such acts of relief as are found during this period appear for the most part in the worst depression years.

Much of the legislation in this period touching banks may be termed technical; for example, it concerned the rechartering of the institutions as their charters expired, or pertained to taxes and similar matters. An example of another type of such legislation was an act of 1881 directing the Farmers Bank to sell as much of the real estate it held through defaulted loans "at as early a time as the same can be effected without too great a sacrifice."<sup>9</sup> An example of a law having general applicability to all banks was a 1891 Joint Resolution of both houses authorizing the state attorneys to compound for a lump-sum settlement of all outstanding taxes from the National Banks located in the state.<sup>10</sup>

Perhaps the greatest number of incorporations of financial institutions in the last quarter of the century were those of insurance companies. It seems that the first Delaware firm to be authorized to write insurance was the Farmers Bank, which had received a supplement to its charter for this purpose in 1810.<sup>11</sup> The bank, however, had written little insurance and abandoned the business in 1811.<sup>12</sup> For the next fifteen years it would seem that the business was in the hands of out-of-state companies, for the earliest charter to a Delaware corporation specializing in insurance this writer has found was granted

in 1826 to the Delaware Fire Insurance Company.<sup>12</sup> Following this first company there seem to have been relatively few other incorporations until after the Civil War, when there came a marked surge of such firms. Between 1867, when three companies were incorporated, and 1897, when eight were authorized, each session of the legislature saw two or three, and sometimes more, insurance companies granted charters or renewals of pre-existing charters.

So far as transportation was concerned, railroads, as had become usual, occupied most of the time of the legislature devoted to this subject. Nevertheless, other forms of transportation were considered as well. The turnpike, for example, reappeared, at first as a spectre of earlier days and later almost as a premonition of the future. The first aspect may be exemplified by an act of 1877 which repealed the charter of the Wilmington Turnpike Company because it had, as the preamble to the act says, "become . . . of little public utility" due to "the number of adjacent public roads, railroads and other causes beyond the control of the corporation."<sup>14</sup> The second aspect may be seen in an act of 1897 which established tolls on one of the few surviving turnpikes for steam or electric-powered vehicles, at the same rate as had previously been charged for a coach and four.<sup>15</sup> It may be noted that the first gasoline-powered automobile had been commercially built in the United States only three years before; the first auto company had been organized but two years previously; and the first sale of a gasoline auto had taken place only one year prior to the act's passage.

Canals seem to have had a little life left in them also, for despite railroad competition two companies were incorporated in Delaware in 1881. Both had capital in the multi-million dollar range, and, perhaps significantly, both had power to own and operate their own ships.<sup>16</sup> There were also a considerable number of steamship company incorporations during this period. Some of these firms were local, as in the case of the Philadelphia and Smyrna Transportation Company, chartered in 1883.<sup>17</sup> Others were more ambitious, such as the Atlantic and Caribbean Steam Navigation Company, chartered in 1881.<sup>18</sup> That this act had later to be re-enacted and amended suggests that the company had not been successful in getting floated. The general impression left, however, by an inspection of the titles of the incorporating acts for such companies is that the majority of them were involved in the coasting trade. This was the period in which steam was taking over from sail in this industry, and the number of incorporations may have reflected the increased cost of a ship suitable for the trade as well as the importance of coasting as a means of carrying bulk goods in particular.

A stillborn, but interesting, venture reflected the success of a new technique in another industry. This was the Delaware Pneumatic Tube and Delivery Company, incorporated in 1893.<sup>19</sup> This company proposed to "construct, maintain, and operate a pipeline for the delivery of parcels, liquids, chattels, and packages, by means of pneumatic tubes, or other appliances, however operated, for compensation, within the State of Delaware." In view of the clause regarding "other appliances" it is possible that this concealed some delivery scheme other than pipelines, but

it is not possible to determine this. Whether the company was involved in the construction of systems of pneumatic tubes used in stores for centralizing and receipting operations is also unclear.

As previously remarked, the railroads dominated the legislative activities concerned with transportation in this period. At least one hundred and ten acts were passed, although a breakdown into categories shows that the majority were amendatory or supplementary in character. Fifty-two of the acts mentioned above were of this character; twenty-two were financial in nature; twenty-nine chartered railroads, interurbans, or streetcar lines; and the balance were basically regulatory. While many of the amending or supplementary acts were concerned with such minor details as changing the date of the annual general meeting, others were substantive, dealing with routing or the establishment of branch lines and similar matters. A few authorized the sale of one company to another, the merger of two companies, or the like.

The financial acts considered such matters as taxes, mortgage payments (for although the state was no longer helping railroads directly, not all mortgages received in the earlier days as securities for loans had matured or been repaid and cancelled), interest rates on loans or mortgages, and similar matters. The incorporation of new railroads was mostly of shorter lines, which, to judge from the names of the termini, seem to have been proposed mostly as linking lines as in the previous quarter century. It is noticeable that most of the streetcar companies were incorporated in the 1880's, and almost all such acts for-

bade the use of steam-powered vehicles. This was a widely enacted requirement in many states at this time, and together with the frequent specification of a gauge differing from the standard, was intended as a means of preventing railroad companies from obtaining control of streetcar lines and operating their equipment on city streets.

The electric street railways and interurbans all appeared after 1893, at about which date the electric motor was first proven practicable under a wide range of conditions, and in the charters of such companies it was often specified that they could sell power from their generating stations for domestic or commercial use. In one case, a company was permitted to sell heat as well, presumably as exhaust steam from the generating plant.<sup>20</sup> It is also noticeable that many of the companies incorporated in 1893 received supplementary acts in 1895 extending the completion dates specified in the original charters, thus reflecting the impact of the depression.

Manufacturing showed the impact of both the depression of the late 1870's and that of the early 1890's in the number of such companies chartered. Starting with six in 1875, the low point was reached with four in 1877, and thereafter began to climb, the maximum number being twenty-two in 1883 before declining slowly until 1889, after which the numbers increased slightly in the early 1890's. The depression of this decade caused them to decline again. It is probable that the numbers incorporated would have shown an increase in the late 1890's and early 1900's had the special incorporation procedure not been replaced

by the general incorporation law of the late 1890's, which makes it impossible to determine from the sessions laws how many were incorporated in any given year. In all some eighty-nine concerns were chartered in this field of enterprise, and thirty-eight received amending or supplementing and renewing acts between 1875 and 1897 inclusive. Some, at least, were probably sales outlets for manufacturers located elsewhere; but it is not possible to determine this with any accuracy, since manufacturing powers were often included in charters, even when a company had no real intention of carrying on manufacturing operations.

It is also noticeable that the charters granted did not include the far-ranging powers characteristically found in those issued in the early part of the century and even occasionally up to the late 1840's and early 1850's. This may have been a reflection of the increasing complexity and specialization of equipment and technological processes which made the cruder general-purpose machinery of an earlier period uneconomic and impractical. The marked rise in capitalization would also seem to reflect this; the 615 "establishments" found in the 1860 census are recorded there as having had a capitalization of \$5,500,000 or an average of approximately \$8,900 each. In 1880, the census gives 746 "establishments" a total capital of \$15,656,000 or an average of approximately \$21,000 each, and by 1900 the figures, from the corresponding source, yield an average of \$40,000 per plant. The same general order of figures may be seen nationally in the respective censuses.

Food processing, which had started to expand in the late 1860's,



remained for the most part a fairly small-scale business. Each session of the legislature from the 1870's to the early 1890's saw a few such enterprises chartered, almost all of them downstate. On the whole, their average size was below that of manufacturing generally: the 1880 census showed thirty-three canneries in Delaware, and from other figures the average size of establishment for each county may be computed. For Kent County, this figure is \$4,800, and for Sussex, \$3,700; since it seems unlikely that the county average would differ significantly from the average for packing concerns, it is suggested that the size of such firms was relatively small. The seasonal nature of their operations would have been another factor tending to keep them relatively low in capitalization, if only to keep the interest charges and similar expenses down.

Public utility incorporations tended to follow much the same pattern as food processors: rarely more than two or three per session, but cumulatively showing a record of the steady improvement made by towns in these respects. Gas companies dominated until the 1890's, although attention is drawn to the clauses in the charters of the electric traction companies mentioned earlier, permitting them to sell power, when the limited number of incorporations in the 1890's for electric power companies is considered. There appear to have been no electric power companies chartered as such before the 1890's; the first two, at Clayton and Wilmington respectively, were incorporated in 1891.<sup>21</sup> Communications utilities operating with electricity, however, reach back into the 1870's with the appearance of telegraph companies, and to the 1880's for telephones.

A sizable number of miscellaneous companies were also incorporated, whose titles give little indication of the operations which they carried on. It is also noticeable that, as the period passed, more and more commercial concerns were incorporated. Thus, more publishing companies appeared in the 1880's and 1890's than before; in 1885 a sand, lime, and freighting company was incorporated; a patent medicine concern was chartered in 1893, and a storage company in 1895, to give only a few examples. In all these fields, it is noticeable that more and more family concerns or partnerships were appearing as corporations.

The regulation of these increasing numbers of corporate enterprises necessarily led to changes in the approach taken by the legislature. The older practice of regulation of a corporation by the insertion of specific requirements into the charter had begun to decline before the 1870's, but the last quarter of the century saw an almost complete abandonment of the practice for other than organizational matters (i.e., the election of directors and similar intra-company procedures). Replacing this there developed a practice of passing general enactments applicable to an entire industry or business field. The instance of all the legislation touching milling being brought together in one act has already been mentioned, as has the rather surprising omission of similar actions for other industries. While this might not have been too serious in some of the newer fields, there were some established industries where the pertinent regulatory legislation was scattered through several volumes of the sessions laws.

The milling legislation comprised in the act mentioned above remained in force throughout the period being considered here, whereas dairy products, equally a basic foodstuff, did not come under regulation until 1887. In that year it became illegal to adulterate them, but it would appear that the act was not well enforced, for in 1891 the "Dairy Protective Association of Delaware"<sup>21</sup> was incorporated. This organization was established "to provide effective means for the enforcement of all laws of the United States or the State of Delaware heretofore or hereafter to be enacted for the protection of the dairy interests" with powers to arrest offenders on warrants issued by the courts on the complaint of the Association.

Like the oyster-canning company mentioned earlier, this is one of the few instances in Delaware of an essentially private group being given quasi-official status to police an industry or some aspect of it. It would appear, therefore, that at this time it had still not been decided whether regulation of an industry, in those cases where the public interest required it, was best done by outright state intervention or by use of intra-industry groups. As mentioned earlier, the enforcement of the various acts regarding the quality of foodstuffs was in the hands of the courts, and the State Chemist was increasingly specified as the expert required to testify in such cases. The legislature had steadily widened his responsibilities as expert witness, but did not add the examination of dairy products until 1895.<sup>23</sup> Even then, however, he could act only on complaint and not on a regular quality-control, or even spot-check, basis.

In the more traditional fields of business regulation there also appeared steadily more regulatory enactments. Banks, already regulated by their charters and, if "national," by federal legislation, suffered less in this respect than insurance companies. It was noted earlier that the latter were somewhat suspect even at the time of the 1854 Constitutional Convention, and this attitude seems to have changed little by 1875. Regulations became increasingly stringent throughout the balance of the century, although it is noticeable that the local companies were somewhat less restricted than "foreign" ones. In view of the increasing amounts of money which insurance companies handled, this increase in regulation was only to be expected. This seems to have been true of many states, for many of the Delaware regulations were contingent ones: that is, if some other state placed restrictions on a company chartered in Delaware, then Delaware placed equal restrictions on companies chartered by the other state. The net result must have been a businessman's nightmare, in which any company in the field could find itself taxed and treated differently from any of its competitors.

The first general enactment in Delaware which was applicable to all "foreign" insurance companies and which differentiated between "domestic" and "foreign" concerns was an act of 1871.<sup>24</sup> This law required the deposit of securities with Delaware state authorities whenever Delaware companies were required to deposit securities in the state chartering the "foreign" company. Thus, the law was premised on reciprocity of inconvenience and regulation. "Foreign" companies were

brought within the attachment laws of Delaware in 1875 by the enactment of a regulation that provided that attachments or processes could be served on any officer or agent of a given out-of-state insurance firm. To add teeth, an agent was defined as anyone receiving premiums for transmission to the company. The same session saw an enactment requiring insurance companies to publish annual reports for at least three weeks in at least two newspapers of the state. This law also applied to banks.<sup>25</sup>

The formation of the State Insurance Department in 1879, and the appointment of an Insurance Commissioner to handle all matters pertaining to regulations and other questions touching the insurance business must to some extent have simplified matters, although it did not lessen the increase in regulatory legislation. However, it should be noted that not all regulation was merely restrictively regulatory. Some, and probably quite as importantly in the eyes of businessmen, clarified and delimited matters which could give rise to disputes. As an example, a company was subject to the attachment laws of the state, but how far did its liability run before these laws should be brought into play? In the case of fire insurance companies, an act of 1889 clarified one such problem by requiring the policy to have an endorsement on its face setting a value on the property covered.<sup>26</sup> Similar instances could be cited for other fields.

The transportation and utility companies were still in large measure regulated through their charters, but this did not obviate

the need for general legislation. It would have been ridiculous, for example, to pass for each separate company as an amendment to each separate charter a regulation applicable to all firms in a given field. One example of such a general regulation was an act of 1885 requiring trains to sound a whistle as they approached highway crossings.<sup>27</sup> In passing, one interesting enactment may also be noted, which could perhaps be termed Delaware's "Red Flag" law. In 1887, it was enacted that no steam engine might be operated on Delaware highways without men walking ahead to warn approaching vehicles.<sup>28</sup> This act was presumably aimed at traction engines, or possibly at the use of steam-powered locomotives for interurbans and similar railways which might disobey restrictions already in their charter provisions; but with the steam automobile already under experimental development it might have hampered automobile owners in the next decade had it remained in force.

Much of this regulatory legislation, with its increasing trend toward generalized statutes in place of a multitude of specific acts in the form of amendments to charters, may be seen as a regulatory parallel to the trend toward a general incorporation law. The act of 1871 mentioned in the last chapter had a short life, and was, in any case, of limited applicability. The constitutional amendment power provided in 1875 was little used, and the enactments under it in 1875 and 1883 were of equally limited, although expanding, applicability.

The 1875 act was basically a revision and extension of the 1871 act discussed earlier. Instead of applying only to food-packing com-

panies, the new law provided a simple means of incorporation for "religious, charitable, literary and manufacturing purposes, for the preservation of animal and vegetable food, for building and loan associations, and for draining low lands."<sup>29</sup> The act was revised in 1883,<sup>30</sup> but more for clarification than to make substantive changes in terms of the earlier act. Another statute, however, was passed in this same session which might have become an enabling act permitting the legislature to enact general incorporation laws of much wider scope. This resolution proposed a constitutional amendment that would have given the General Assembly "power, by concurrent vote of two-thirds of each branch thereof, to enact general laws providing for the creation of municipal or private corporations, excepting railroad and canal companies. . . ."<sup>31</sup> In any event, nothing came of the proposal, and Delaware had to wait until 1897 for a Constitutional Convention to produce a widely applicable general incorporation law, although throughout the period from 1883 to 1897 such a law had been "in the air" in the state.

The business provisions of the 1897 Constitutional Convention, and the general incorporation law of 1899 which reflected these, were not revolutionary for Delaware, but represented the culmination, to that date, of evolutionary forces. These forces reached far back into the nineteenth century, and came partly from within and partly from without the state. They were, perhaps, inherent in a society premised on egalitarian principles and an economic theory based upon open competition. In almost all states, the same general route was followed from incorporation by special act only, through more or less limited general incorpora-

tion laws, to an extensive and widely inclusive general incorporation law. So far as Delaware was concerned, the first industries on other than a comparatively small-scale basis began to appear in the 1850's, and by the late 1860's had become a fairly important sector of the state's economy. Simultaneously, the use of incorporation as a form of business organization was becoming more common, and it may not have been merely coincidental that these two factors expanded together with the pressure for a general incorporation law.

Cadman has suggested that the aftermath of the Civil War, in the form of the financial burdens and the depression of the 1870's, was responsible for New Jersey's general incorporation law of 1875, which was enacted in the hope of attracting out-of-state businesses.<sup>32</sup> It was perhaps a similar situation in Delaware which led to the limited law of the same year and to the increase in taxation of business and industry in the decades following. It is also noticeable that the 1875 Delaware law had been preceded by much discussion. The remarks of the Wilmington Board of Trade have been noticed, and the newspapers of the state tended to take a similar attitude. An editorial from the Wilmington Every Evening in 1875 may be used to exemplify the tone of much of this comment. Focusing on the lobbying and corruption inherent in special incorporation procedures, the writer described lobbies as "a curse to free government, performing no honest labor, not only selling their corrupt influences to all who will buy, but even hovering around the legislative halls. . . ." The passage went on later to state that "the amount of lobbying . . . is an appalling threat to the public interest



. . . [lobbyists]. . . are the 'buzzing flies', the 'croaking ravens', the 'greedy pike' with which Macauley's genius peopled degenerate Rome."<sup>33</sup> The writer had been referring to the Pacific Mail scandal in Congress of that time, but much of the content could be, and probably was intended to be, considered applicable by his readers to happenings taking place in Dover.

To cope with a similar situation New Jersey had passed its general incorporation law of 1875, which was based on more limited laws of 1846 and 1849. The 1875 law permitted non-residents to incorporate in New Jersey, but all books except the stock and transfer books could be kept anywhere.<sup>34</sup> An amendment of 1888 permitting a New Jersey corporation to hold stock in other companies, and another of 1893 enabling companies to buy and sell stock on the same basis as an individual<sup>35</sup> were most important for later developments, for they caused a flow of concerns into New Jersey to incorporate under these provisions. The franchise and other taxes imposed in 1883 helped the state's treasury appreciably, and this factor did not go unnoticed across the river in Delaware. But possibly there was still insufficient pressure to force action at Dover, or the existing balance of forces in the state discouraged tinkering with the incorporation laws, now some fifty years old in their essentials. To start a well-embedded boulder rolling demands either explosives or a potent lever, and this may also apply to changes of established law.

The lever had evidently been found by 1887, for in the session

of the General Assembly of that year an act was passed "to provide an unexceptionable mode of ascertaining the sense of the people upon the question of calling a Constitutional Convention,"<sup>36</sup> and in 1889 a Joint Committee of the two houses was required to be set up to "confer" upon matters relating to such a convention.<sup>37</sup> In that same year the edge of the lever may have been inserted with the Peninsula Investment Company incident. J. Edward Addicks, a controversial and ambitious political figure in Delaware, persuaded the legislature to incorporate the "Peninsula Investment Company,"<sup>38</sup> in which he was interested. To do this, he allegedly used a lobby of supporters unscrupulously, and gave the impression that the peninsula referred to in the corporate title was the Delmarva Peninsula. It is alleged that in August of 1889 the name of the company was changed to "The Bay State Gas Company,"<sup>39</sup> but this writer could find no firm of that name listed, nor any amendment to the 1889 charter changing the corporate name, in the pertinent volume of the session laws.

The most extraordinary power in the charter, so far as Delaware was concerned, and the one which caused most of the controversy over the act, was that which permitted the company to buy or sell "stocks, bonds and securities of other companies engaged in any like business."<sup>40</sup> In the climate of thought of the day such powers were suspect, for they seemed characteristic of the devices used by trusts which were under attack during this period. Despite this opposition nothing was done at the time, and the matter seemed to die down. It seems unquestionable, however, that the episode had stirred up enough controversy and distaste

to be a major factor, albeit an indeterminable one, in the pressures for reform. It may even have been one of the pivotal points in the reform movement, for in 1891 an act was passed providing for a special election that year on the question of a Constitutional Convention.<sup>41</sup>

The results of this election seem to have been indecisive, for in the next session of the legislature a further act was passed which prescribed "the next general election as the proper occasion for ascertaining the sense of the people in respect to calling a convention to revise, alter and amend the Constitution."<sup>42</sup> The election was held, and in the 1895 legislative session a joint resolution of both houses called for the convening of the General Assembly "to ascertain the result of the election respecting a Constitutional Convention."<sup>43</sup> An act passed a little later in the session called the convention for December, 1896, with the delegates to be chosen at the general election of November, 1896.<sup>44</sup> Although there seem to have been considerable delays, it is highly probable that the confusion and acrimony associated with the 1854 convention were remembered, and that the Assembly moved very carefully in order to avoid the recurrence of a similar situation.

Whatever the reasons for the long period between the first suggestions and the actual convening of the convention at Dover in 1896, it must be remembered that there was more before that gathering than the question of corporate law, which was only one of the aspects of the state constitution to be revised. Reference to the index of the various volumes of the proceedings of the convention gives a picture of the sub-

jects of petitions and communications to the delegates. It must be emphasized here that this list is not complete, for the index does not list all such documents received. Nevertheless, it would seem unlikely that any number significant enough to change the pattern were omitted. It appears that there was one organized group of petitioners, interested solely in temperance and associated matters, and a larger number of unorganized or individual petitioners or writers. The breakdown of petitions and communications is: prohibition, local option, and other temperance-related interests, twenty-six; female suffrage, six; education, four; penology and electoral reform, two each; marriage and divorce, corporations, appropriations for sectarian purposes, and ratification by plebiscite, one each.<sup>45</sup> This suggests that corporate law was not among the most stirring of issues.

After the initial organizational meeting, the convention began its work with the appointment of committees for the various aspects of the law and the existing state constitution. The committee on corporations was appointed on December 7, 1896, and comprised two delegates from each county.<sup>46</sup> It reported for the first time in late January, 1897, proposing among other things to "strike out all of section 17 of article 2<sup>nd</sup> (of the 1831 Constitution) and replace it with a section explicitly requiring a general corporation law."<sup>47</sup> The report was debated, but was recommitted to the committee on February 18, 1897.<sup>48</sup> The committee again reported in March, but its recommendations were once more returned to it, and it reported yet again in April. This report was then debated and, after amendment, appeared in the proposed constitu-

tion reported to the Convention in May, where it was further debated and amended before being accepted on May 19.<sup>49</sup>

The new constitutional article on corporations comprised six sections, but the opening line of the first section sets the tone of the whole. This line reads:

(Art. IX.) Section 1. No corporation shall hereafter  
be created, amended, renewed or  
revived by special act, but only by or under  
general law, nor shall any existing corpor-  
ate charter be amended, renewed, or revived  
by special act. . . .<sup>50</sup>

Under this authorization the General Assembly of 1899 passed "An Act providing for a general incorporation law,"<sup>51</sup> which forms the basis of the present Delaware corporation law. There is much evidence that the act was influenced by the New Jersey act of 1896, and it is indubitable that the Delaware act was modelled upon this statute. The aim of the drafters of the Delaware law was to attract business and other incorporations to the state, and they tried to do this by simply setting lower fees and expenses than New Jersey. Their success is well known, but is beyond the purview of this thesis.

## CHAPTER VII

### SUMMARY: A CENTURY OF GROWTH

It has been argued in the course of the preceding chapters that the Delaware corporation law evolved slowly over a long span of time rather than being sporadically rewritten de novo. This evolution may be seen as starting from a generalized suspicion of private corporations as representing privilege and undemocratic inequality, and ending in a justified suspicion of special acts as conducive to corruption and even greater inequalities. This transition was slow, but came about in accordance with general trends observable throughout the nation, and in response to the changing needs and economic circumstances of a changing society.

It has been suggested, and much of the discussion of events and trends has been organized around, the concept that three broad movements took place in Delaware within this century of growth between the 1791 Constitution and the 1897 Constitutional Convention. The first was dominated by money and its supply; that is, by the problem of establishing a reasonably secure and adequate financial system. The second was concerned with movement; that is, with the problem of establishing transportation and communication networks both within the state and in conjunction with similar networks in adjacent states. The third constituted the reaction to the first two, involving the prob-

lem of using money and movement in an industrializing society by creating a viable and diversified manufacturing and commercial economy. It must be noted that these movements were not exclusive. There was at all times some measure of overlapping, but at any given time one of the three main themes was the predominant interest. Reference to the session laws is claimed to support this concept, by citing regulatory as well as incorporating acts.

The volume of regulation increased steadily throughout the nineteenth century, and its composition shows the transition in the economy from a basically agrarian one to a fairly complex mixture of industry, finance, commerce, and agriculture. The transformation was partly a natural process, paralleling that which took place in the rest of the United States, and partly an encouraged process, also paralleling events elsewhere in the nation. While attention has been drawn to only a few of the acts pertinent to this pattern of change, many others could have been noted. Attention has also been centered on Delaware; federal legislation has been largely ignored except where it had a direct and immediate influence, but that such federal legislation did exist should be remembered.

Regulation per se tended at first to be included in charters of incorporation, although a few generally applicable laws were enacted from time to time. This reflected a basically non-industrial society in which each citizen could be assumed capable of evaluating his purchases or the products available to him. This attitude necessarily

changed as products became more complex and processes less comprehensible to the technologically untrained. The result was the trend toward fewer specific laws and more general and widely applicable ones, which became particularly noticeable in the later nineteenth century. In the case of those incorporated bodies which were public or quasi-public in purpose, for example "internal improvement" companies, the state was commonly directly involved through investment at first. This involvement was initially taken for granted, later defended as a means of exercising some control "in the public interest," and still later slowly abandoned. This abandonment paralleled the rise of the generalized concept of separation of business and government, with such regulation as was needed exercised by regulatory agencies, either state or federal.

Another reason for the decline of regulation by amendment to charters derived from the growing complexity of industry and industrial processes. More and more, as the products and processes used in industry increased in complexity, the operations of the equipment became the province of the expert. To regulate these operations, and to pass judgment on whether or not the resulting quality was the best attainable, for example, a knowledge of the industry and of its equipment was essential; and this expertise was not available in the legislature. Perhaps it should not be, for as industry and manufacturing became, and continue to become, more and more complex, the expertise involved in dealing with them involves a balancing of probabilities and relationships. These are the province of professionals, and where professionals differ, legislators should leave room for doubt. A legislator who is an expert might



very well so influence a bill that no room would be left for maneuvering to meet changing circumstances. It was perhaps an intuitive recognition of this, plus the problem of time involved in making detailed regulatory legislation workable, that was behind the growth of regulatory agencies, established by the state, and given their powers on the assumption that they would be used by an expert staff.

In Delaware, the regulatory laws passed by the legislature tended initially to be applicable only in those areas of the state where there was a concentration of industry subject to them, mainly New Castle County. As industry spread, the laws were amended to extend their applicability to other areas. Parallel to this was a tendency to regulate those companies and businesses which touched the public most closely, and only later to move on to more general regulation of those fields of enterprise with less overt and immediate public contacts. It should be noted that such general regulation applied also to unincorporated businesses where the technique of regulation by special enactment amending a charter could not be used. But as the number of incorporated businesses rose this became more difficult, and the advantages of general regulation more persuasive. With the parallel growth of the concept of general incorporation as an equalizer in business, the two tendencies came together. Their juncture crystallized as the concept of general incorporation laws permitting all businesses which so desired to obtain charters, under general regulation, with detailed and specific regulation in the hands of agencies staffed by experts.

There seems also to have been an evolution similar to the overall state development in the case of individual fields of enterprise. At first, when there were few enterprises, and these small and pioneering in their respective fields, the tendency was for few regulations and fewer incorporations. Such regulation as there was tended to be either in the form of specific enactments applied to a specific corporation, or of simple public safety statutes applicable to every concern in the field. As the type of enterprise matured, there came to be a mixture of unincorporated and incorporated businesses of varying sizes, and the trend toward general regulatory laws continued. In the final stages, most of the larger concerns were incorporated, and much of the regulation was by general enactment.

The question of regulation through judicial decision and interpretation has not been touched on in this study to any significant extent, although it is acknowledged to have been important. It may well have been a further factor tending toward the undermining of special regulation and the extension of the use of general regulation and of regulatory agencies. It is suggested, however, that only when there is an established industry or business field, with a body of regulation applicable to the concerns in it, can judicial decision and interpretation become a major factor. Once this occurs, however, the courts tend to exert pressure toward uniformity of treatment for all companies. The impression left with this writer is that judicial decisions were not a really significant factor in Delaware business until the latter part of the nineteenth century. The absence of any references to

Delaware in the Digest of Corporation Law, published by the Government Printing Office in 1900 for the Industrial Commission, suggests that there had been little business litigation of major importance in Delaware up to that date.

To summarize, there seems to have been a steady trend toward general incorporation laws as business of all types increased in Delaware in the nineteenth century. This tendency was a natural continuation of trends started much earlier, although sometimes heavily influenced by ephemeral events or by immediate preoccupations. Regulation of business also tended to move toward generalities in legislation backed up by specificities evolved by regulatory agencies with delegated powers. Much of this regulation, at all times, reflected the problems and preoccupations of the period in which it was passed. As one example, consider banking, a field in which many of the earliest incorporations were found and which was a subject of scrutiny by both the government and the public. There was a mass of regulation in the early part of the century, but from about 1825 onward interest switched to other fields, and banking was relatively free of major or detailed regulation by the state thereafter. Federal legislation began with the various laws of the Civil War period, and continued from then on. One consequence of this seems to have been an increase in such state-chartered organizations as Savings and Loan and Building and Loan associations. There were also a number of state banks which did not seek "national" charters, such as the Artisan's Savings Bank.

The forms of regulation varied, and included specific enactments for specific companies or groups of associated companies; the use of regulatory bodies, the establishment of licenses; and in a very few cases, the creation of state monopolies or quasi-monopolies. To some extent the form of regulation reflected the attitudes of the period toward business. As an instance, much of the colonial regulation tended to be rather paternalistic in tone and was aimed at public protection. In the nineteenth century, and particularly after about 1865, it seemed to have more a tone of delimiting fields of activity within which the public was to protect itself as best it could, with the state acting as umpire in too flagrant cases of abuse. The growth of agencies for regulation, for example the Dairy Association mentioned in Chapter VI, may be seen as an instance in which the state delegated this umpiring power to a semi-private group, only partly in the interests of the consumer, but largely because the business needed experts to regulate it, and these experts were to be found within it.

The use of incorporation as a method of business organization also developed in response to changing pressures. Most of the early corporations were considered as being in some way public or quasi-public institutions, not because their stock was sold to the public but because they fulfilled some function which private companies could not perform without some degree of public danger. As more and more corporations were formed, this attitude shifted, and the questions asked of a corporation changed from "how can the public be protected?" to "how can the public participate safely?" A further stage was reached

when the chartering of companies by special act became too onerous and time-consuming, and to reduce the very real load on the legislature (consider for example 1873, with 115 public acts of incorporation passed, in addition to private acts and other public business) limited general incorporation acts were introduced. This experiment was generally well received, as was shown by the quotations given, and was extended cautiously to a slightly wider field. Finally, when the state constitution was revised to meet changing circumstances, the concept was extended to result in the passage, in the last year of the century, of a general incorporation law.

This action was the culmination of an evolutionary process which had, in other sectors of the economy, seen a transition from an agrarian society to an industrial-commercial one. It is traditional to see Delaware as a largely conservative society, and there is little doubt that this view is correct. Thus evolution might have been expected rather than revolution in the attitudes of the state toward the enterprises of its citizens in a changing and evolving society, although the pace of change sometimes must have seemed revolutionary to certain members of it. The general incorporation law marked the end of one chapter in Delaware's history, and the opening of a new one. It may not be purely coincidental that it occurred at a time when the national outlook toward the rest of the world, and the place of the United States within it, was changing under stress of international events. In some ways the end of the nineteenth century marks the end of a chapter in the national history. Whether or not there is any connection, Delaware

moved into the twentieth century with a twentieth-century law so far as business organization was concerned. But it was a law that had grown and which had its roots far back in the state's history as much as it was a foreshadowing of the future.

**NOTES TO CHAPTERS**

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15. Theodore Thayer, "The Land Bank System in the American Colonies," Journal of Economic History, XIII (Spring, 1953), 146.
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18. Ibid.

19. Hammond, Banks and Politics, pp. 9-10.

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25. 1 Laws, Ch. 23a, Appendix, p. 53, 1719.

26. 1 Laws, Ch. 42a, p. 101, undated, but between 1726 and 1736 since it was signed by Lt. Governor Gordon.

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28. 1 Laws, Ch. 172a, Appendix, p. 72, 1760.

29. 1 Laws, Ch. 221a, p. 535, 1773.

30. 1 Laws, Ch. 134a, p. 326, undated but cited as 25 Geo. II.

31. 1 Laws, Ch. 71, p. 184, undated but cited as 13 Geo. II.

32. 1 Laws, Ch. 99a, p. 250, undated but cited as 15 Geo. II. See also Ch. 213a, p. 521, 1772.

33. 1 Laws, Ch. 14a, p. 57, undated but probably between 1704 when Ch. 12 was passed and 1706 when Ch. 15a was passed.

34. State Constitution of 1776, in Proceedings of the Convention of the Delaware State . . . 1776. In the edition used, sections 24 and 25 appear on p. 33.

35. The remarks at this point are not based on any one source, but are a synthesis of material from several. Largely used was W. Blackstone, Commentaries on the Laws of England (Philadelphia, 1859), and somewhat less were J.S. Davis, Essays in the Earlier History of American Corporations (Cambridge, Mass., 1917), and A.B. DuBois, The English Business Company after the Bubble Act, 1720-1800 (New York, 1938).

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41. For examples, see 4 Laws, Ch. 10, p. 9, 1806; Ch. 134, p. 349, 1811; Ch. 186, p. 511, 1812; or Ch. 190, p. 517, 1812.
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12. 5 Laws, Ch. 231, p. 421, 1819.
13. 6 Laws, Ch. 47, p. 57, 1821.
14. 6 Laws, Ch. 132, p. 222, 1822.
15. 8 Laws, Ch. 210, p. 212, 1833.
16. M.M. Daugherty, Early Colonial Taxation in Delaware (Delaware Tercentennial Commission, Wilmington, Del., 1938), passim.
17. 4 Laws, Ch. 90, p. 267, 1809.
18. 4 Laws, Ch. 145, p. 397, 1811.

19. Rothbard, Panic, p. 167.
20. Senate Journal, 1820, p. 12.
21. 6 Laws, Ch. 103, p. 151. Chs. 111 and 112, pp. 163 and 170 are other examples. All acts dated 1822.
22. 6 Laws, Ch. 353, p. 698, 1826.
23. 7 Laws, Ch. 129, p. 254, 1829.
24. Baldwin, "History of Law of Private Corporations . . . ," p. 254.
25. Edwin M. Dodd, American Business Corporations until 1860 (Cambridge, Mass., 1954), p. 16.
26. Wright, Contract Clause, p. 19.
27. Dodd, Business Corporations, p. 12.
28. Daniel J. Boorstin, Delaware Cases, 1792-1830 (St. Paul, 1943), Vol. 2, p. 183.
29. Baldwin, "History of Law of Private Corporations . . . ," p. 254. See also Dubois, English Business Company, p. 463.
30. Dodd, Business Corporations, p. 19.
31. Boorstin, Cases, Vol. 1, p. 611.
32. Charles C. Rohlfsing, et al., Business and Government (4th ed., Chicago, 1941), p. 13 and passim.
33. James Kent, Commentaries on American Law (14th ed., Boston, 1896). This work has a double system of pagination, one marginal, one superior. The page cited is Vol. 2, superior 306, marginal 487. See also Wright, Contract Clause, pp. 42-43.
34. Dodd, Business Corporations, p. 27.
35. Ibid., p. 24.
36. Wright, Contract Clause, p. 58. See also Dodd, Business Corporations, p. 141, footnote 99.
37. William M. Gouge, Debates of the Delaware Convention for Revising the Constitution of the State . . . (Wilmington, 1831), p. 13.
38. Ibid., p. 123.

39. Ibid., p. 124.
40. Wright, Contract Clause, p. 20.
41. Cadman, New Jersey, p. 88, footnote 17.
42. Kent, Commentaries, p. 272 superior, 414 marginal.
43. Journal of the Convention of the People of . . . Delaware, . . . One Thousand, eight hundred and thirty one . . . (Wilmington, n.d.), pp. 35-37.
44. Gouge, Debates, p. 161.
45. S.E. Baldwin, "American Business Corporations before 1789," American Historical Review, VIII, 3 (April, 1903), p. 465. See also Baldwin, "History of Law of Private Corporations . . .," p. 250, and Oscar and Mary F. Handlin, "Origins of the American Business Corporation," Journal of Economic History, V, 1 (May, 1945), pp. 4-5.
46. Curtis P. Nettels, The Emergence of a National Economy (New York, 1963), p. 294.
47. Cadman, New Jersey, p. 23. See also p. 25.
48. Senate Journal, 1825, p. 19.



#### NOTES TO CHAPTER IV

1. 9 Laws, Ch. 417, p. 461, 1843.
2. 10 Laws, Ch. 659, p. 672, 1852.
3. 7 Laws, Ch. 157, p. 313, 1829.
4. 8 Laws, Ch. 7, p. 9, 1830.
5. Some of the pertinent acts (all in 8 Laws) are: Ch. 6, p. 7, 1830; Ch. 82, p. 57, 1831; Ch. 173, p. 175, 1832; and Ch. 203, p. 207, 1833.
6. 8 Laws, Ch. 83, p. 62, 1831, and Ch. 165, p. 167, 1832.
7. 8 Laws, Ch. 110, p. 107, 1832.
8. Some of the pertinent acts are: 8 Laws, Ch. 241, p. 239, 1833, and Ch. 312, p. 311, 1835; 9 Laws, Ch. 9, p. 9, 1835; Ch. 17, p. 36, 1836; Ch. 42, p. 59, 1837; and Ch. 206, p. 243, 1839. See also Clayton, "Railroad Building," pp. 21 and 25.
9. 9 Laws, Ch. 127, p. 175, 1837.
10. 9 Laws, Ch. 200, p. 241, 1839.
11. Hugh R. Gibb, "The Delaware Railroad to 1837" (Unpublished Thesis for B.A. with Distinction in History, University of Delaware, 1961), p. 51.
12. Clayton, "Railroad Building," p. 42.
13. 9 Laws, Ch. 11, p. 17, 1836.
14. Gibb, "Delaware Railroad," p. 78. See also p. 75.
15. 10 Laws, Ch. 357, p. 341, 1849. See Clayton, "Railroad Building," p. 54 and passim for a discussion of the 1849 revived charter.
16. 9 Laws, Ch. 464, p. 521, 1843; 10 Laws, Ch. 45, p. 42, 1845; and Ch. 148, p. 137, 1847.
17. Balthasar H. Meyer, et al., History of Transportation in the United States Before 1860 (Reprinted, New York, 1958), pp. 553-554.
18. 8 Laws, Ch. 349, p. 348, 1835.
19. 9 Laws, Ch. 24, p. 39, 1836.

20. Hammond, Banks and Politics, p. 161.
21. 10 Laws, Ch. 11, p. 8, 1845.
22. 9 Laws, Ch. 56, p. 70, 1837; Ch. 169, p. 214, 1839; and Ch. 181, p. 225, 1839.
23. Gibb, "Delaware Railroad," p. 40.
24. Anonymous, A Catechism of American Law, Adapted to Popular Use (Philadelphia, 1832), pp. 49-50 and passim.
25. Cadman, New Jersey, p. 40.
26. Handlin and Handlin, "Origins," pp. 9-10, 12.
27. 4 Laws, Ch. 196, p. 524, 1812.
28. 9 Laws, Ch. 129, p. 177, 1837.
29. Cadman, New Jersey, p. 74.
30. Ibid., p. 75. See also p. 78.
31. Ibid., p. 25.
32. 10 Laws, Ch. 26, p. 24, 1845.
33. E.Q. Keasbey, "New Jersey and the Great Corporations," Harvard Law Review, Vol. 13 (1899-1900), p. 203.
34. Cadman, New Jersey, pp. 118-119.
35. Keasbey, "Great Corporations," p. 204.
36. 8 Laws, Ch. 175, p. 180, 1832.
37. 9 Laws, Ch. 494, p. 548, 1843.
38. 10 Laws, Ch. 53, p. 50, 1845.
39. 10 Laws, Ch. 406, p. 404, 1849. Compare with 9 Laws, Ch. 116, p. 155, 1837.
40. Senate Journal, 1852, entry of January 4, 1853, p. 10.
41. L.R. Hopkins, "Incorporation in Delaware, 1851-1865" (Unpublished B.A. Thesis, University of Delaware, 1951), pp. 12-13. See also 10 Laws, Ch. 695, p. 701, 1852.
42. Clayton, "Railroad Building," pp. 55ff.

43. 10 Laws, Ch. 692, p. 698, 1852.
44. Senate Journal, 1852, p. 4. See also p. 44.
45. R. Sutton, Debates and Proceedings of the Constitutional Convention . . . 1853 (Dover, Delaware, 1853), pp. 2-69, passim.
46. Ibid., p. 278.
47. Ibid., pp. 144 and 304.
48. Cadman, New Jersey, p. 196.
49. Wright, Contract Clause, p. 59, footnote 129. See also p. 84.

NOTES TO CHAPTER V

1. Kirkland, Economic Life, p. 336.
2. Samuel Rezneck, "The Influence of Depression on American Opinion, 1857-1859," Journal of Economic History, II, 1 (May, 1942), p. 1.
3. Rezneck, "Depression . . . 1857-1859," p. 13.
4. Ibid., pp. 11-12.
5. Ibid., p. 2. See also the footnote on this page.
6. Senate Journal, 1859, pp. 7-8.
7. Ibid., passim, in report of Governor Causey's message.
8. 11 Laws, Ch. 683, p. 791, 1859.
9. 11 Laws, Chs. 507, p. 594; 550, p. 633; and 662, p. 756, all passed in 1859.
10. Two of these several acts are 12 Laws, Chs. 235, p. 259, 1862, and 380, p. 404, 1893.
11. U.S. Statutes, 13, Ch. 99, 1864. For discussion in some detail, see A.T. Huntington and R.J. Mawhinney, Laws of the United States Concerning Money, Banking, and Loans, 1778-1909, National Monetary Commission, Senate Document No. 580, 61st Congress, 2nd Session (Washington, 1910), pp. 330ff.
12. U.S. Statutes, 13, Ch. 469, 1865. For discussion, see Huntington and Mawhinney, Money, Banking, and Loans, p. 362, and Kirkland, Economic Life, p. 429.
13. Anon., "The National Bank Act . . . with the Amendments of 1865-70," Bankers' Magazine and Statistical Register (New York, 1870), Appendix, unpaginated.
14. Hammond, Banks and Politics, p. 107.
15. Ibid., pp. 108-109.
16. Ibid., p. 109.
17. Rendigs Fels, "American Business Cycles, 1865-79," American Economic Review, XLI, 3 (June, 1951), p. 325 and passim, provides the data from which this general statement was derived.

18. Foulke, Sinews, p. 199.
19. 14 Laws, Ch. 16, p. 26, 1871.
20. 14 Laws, Ch. 90, p. 100, 1871.
21. 12 Laws, Ch. 300, p. 325, 1863.
22. 12 Laws, Ch. 540, p. 612, 1865.
23. 12 Laws, Ch. 564, p. 646, 1865.
24. Foulke, Sinews, pp. 146-148.
25. Ibid., pp. 182-183.
26. 13 Laws, Chs. 200, 201, 280, 281, 283, 293, 295, 296, 307, 318, 319, 320, 329, and 337, pages 235, 236, 317ff., respectively, all passed in 1867. In this volume the practice was begun of collecting all corporate charters in a few places and printing only the title, not the content, of a charter unless it was of special importance. These corporate titles are often listed alphabetically; hence the usage in this reference, and in the following ones, of citing chapters and pages separately.
27. 13 Laws, Ch. 517, p. 623, 1869. There are also some 21 other pertinent charter titles as various chapter headings between pages 666 and 678 of this volume.
28. 14 Laws, Ch. 244, p. 292, 1871 and 7 other acts as various chapter headings between pages 292 and 303 of this volume.
29. 14 Laws, Ch. 620, p. 693, 1873 and 12 other acts as various chapter headings between pages 693 and 709 of this volume.
30. 14 Laws, Ch. 730, p. 715, 1873. See also Ch. 731, p. 716, 1873. The chapter headings only are published.
31. Unsigned table, Hunt's Merchant's Magazine, vol. 47 (1862), p. 384.
32. 14 Laws, Ch. 133, p. 168, 1871.
33. Lunt, Farmers Bank, p. 127. See also p. 128.
34. See 11, 12, 13, and 14 Laws, passim, for individual acts.
35. 13 Laws, Ch. 488, p. 546, 1869.
36. 11 Laws, Ch. 588, p. 670, 1859. See also Ch. 361, p. 379, 1857.

37. 11 Laws, Ch. 356, p. 373, 1857.
38. 11 Laws, Ch. 170, p. 167, 1855.
39. Hancock, "Delaware Manufactures," p. 426.
40. 10 Laws, Ch. 209, p. 202, 1847, and 11 Laws, Ch. 211, p. 220, 1855.
41. W.H. McCauley, "The History of the Canning Industry in Delaware" (Unpublished M.A. Thesis, University of Delaware, 1961), p. 1.
42. James G. Horn, "The History of the Commercial Fishing Industry in Delaware" (Unpublished Senior Thesis, University of Delaware, 1957), pp. 32-33 and passim.
43. 12 Laws, Ch. 329, p. 369, 1863.
44. 13 Laws, Ch. 205, p. 243, 1867.
45. 3 Laws, Ch. 150, p. 331, 1804.
46. American Watchman, April 7, 1810, published "An Ordinance: to lay and collect a Water Tax within this Borough," in which reference is made to the purchase of the Water Company by the Borough Council, as a result of which purchase the water tax was being levied.
47. 10 Laws, Ch. 533, p. 531, 1851.
48. 14 Laws, Ch. 411, p. 384, 1873.
49. 11 Laws, Ch. 288, p. 318, 1855.
50. 11 Laws, Ch. 538, p. 619, 1859.
51. 14 Laws, Ch. 35, p. 48, 1871.
52. 14 Laws, Ch. 152, p. 229, 1871.
53. Cadman, New Jersey, p. 170.
54. 14 Laws, Ch. 352, p. 319, 1873.
55. Annual Report of the Wilmington Board of Trade, 1873, p. 7.

## NOTES TO CHAPTER VI

1. Cadman, New Jersey, p. 186, footnote 12.
2. House Journal, 1875, pp. 13-16.
3. Investigation by a Select Committee of the House of Representatives Relative to the Causes of the General Depression . . . . (Washington, 1879), pp. 126-127.
4. Ibid., p. 209.
5. Ibid., pp. 220-221.
6. Ibid., p. 232.
7. These figures have been computed from a scattering of material taken from the federal censuses for 1870, 1880, and 1890, using the sections relevant to Delaware in the respective volumes on manufacturing and industry, passim.
8. Foulke, Sinews, p. 182.
9. 16 Laws, Ch. 584, p. 737, 1881.
10. 19 Laws, Ch. 343, p. 556, 1891.
11. 4 Laws, Ch. 121, p. 325, 1810.
12. Lunt, Farmers Bank, p. 45. See also p. 44.
13. 6 Laws, Ch. 321, p. 587, 1826.
14. 15 Laws, Ch. 442, p. 539, 1877.
15. 20 Laws, Ch. 482, p. 503, 1897.
16. 16 Laws, Ch. 452, p. 503, 1881. See also Ch. 453, p. 519.
17. 17 Laws, Ch. 326, p. 575, 1883.
18. 16 Laws, Ch. 640, p. 763, 1881.
19. 19 Laws, Ch. 723, p. 975, 1893.
20. 19 Laws, Ch. 711, p. 924, 1893.
21. 19 Laws, Ch. 461, p. 592, 1891.

22. 19 Laws, Ch. 176, p. 350, 1891.
23. 20 Laws, Ch. 209, p. 274, 1895.
24. 14 Laws, Ch. 179, p. 256, 1871.
25. 15 Laws, Ch. 179, p. 303, 1875. See also Ch. 118, p. 180, 1875.
26. 18 Laws, Ch. 695, p. 961, 1889.
27. 17 Laws, Ch. 627, p. 929, 1885.
28. 18 Laws, Ch. 235, p. 452, 1887.
29. 15 Laws, Ch. 119, p. 181, 1875.
30. 17 Laws, Ch. 147, p. 212, 1883.
31. 17 Laws, Ch. 1, p. 3, 1883.
32. Cadman, New Jersey, p. 441.
33. Every Evening, January 11, 1875, editorial entitled "The Legislature and the Lobby," n.p.
34. Keasbey, "Great Corporations," p. 206.
35. Ibid., p. 207.
36. 18 Laws, Ch. 1, p. 3, 1887.
37. 18 Laws, Ch. 759, p. 1010, 1889.
38. 18 Laws, Ch. 866, p. 1042, 1889.
39. James L. Wolcott, "The Development of Delaware Corporation Law" (Unpublished thesis, Harvard Graduate School of Business, n.d.), pp. 23-26 and passim.
40. R.C. Larcom, The Delaware Corporation (Baltimore, 1937), p. 5.
41. 19 Laws, Ch. 3, p. 6, 1891.
42. 19 Laws, Ch. 543, p. 618, 1893.
43. 20 Laws, Ch. 141, p. 200, 1895.
44. 20 Laws, Ch. 183, p. 231, 1895.



45. The figures given are personal computations from spot-check-checking the volumes, and examination of the indices to the Journal of the Constitutional Convention of the State of Delaware . . . 1896 (Georgetown, Del., 1897), and the Journal of the Committee of the Whole of the Constitutional Convention, . . . 1896 (Dover, 1897).

46. Journal of the Constitutional Convention . . . 1896, p. 22.

47. Ibid., p. 97ff.

48. Ibid., p. 142.

49. Ibid., pp. 219-465, passim.

50. Ibid., pp. 351-352.

51. 21 Laws, Ch. 273, p. 445, 1899.

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## **APPENDIX**

# APPENDIX

## Number of Incorporations by Session.

Note: This list was compiled by a search of the indices to the sessions laws. It excludes municipal incorporations, but includes all others found. It is possible that some of the earlier figures are inaccurate, for the indices to some of the earlier volumes were found to be defective.

| <u>Session</u> | <u>Public Acts</u> | <u>Private Acts</u>      |
|----------------|--------------------|--------------------------|
| 1788           |                    | 1                        |
| 1788/9         | 1                  |                          |
| 1789           |                    | 1                        |
| 1796           | 2                  |                          |
| 1801           | 2                  |                          |
| 1802           | 2                  |                          |
| 1803           | 2                  |                          |
| 1804           | 4                  |                          |
| 1805           | 1                  | 2                        |
| 1806           | 1                  |                          |
| 1807           | 2                  |                          |
| 1808           | 4                  | 1                        |
| 1809           | 1                  |                          |
| 1810           | 1                  | 1                        |
| 1811           | 4                  |                          |
| 1812           | 7                  |                          |
| 1813           | 4                  |                          |
| 1814           | None               |                          |
| 1815           | 4                  |                          |
| 1816           | 2                  |                          |
| 1817           | 6                  |                          |
| 1818           | 7                  |                          |
| 1819           | 6                  |                          |
| 1820           | 1                  |                          |
| 1821           | 5                  |                          |
| 1822           | 5                  |                          |
| 1823           | 1                  |                          |
| 1824           | 3                  |                          |
| 1825           | 3                  |                          |
| 1826           | 6                  |                          |
| 1827           | 4                  |                          |
| 1828           | No session (?)     | No index of private acts |
| 1829           | 12                 | in 1828 and 1829         |
| 1830           | 1                  |                          |

| <u>Session</u>      | <u>Public Acts</u> | <u>Private Acts</u>                                  |
|---------------------|--------------------|--|
| 1831                | 2                  |  |
| 1832                | 8                  |  |
| 1833                | 12                 | 2  |
| 1835 (two sessions) | 8                  | 2  |
| 1836                | 3                  |  |
| 1837                | 12                 |  |
| 1839                | 10                 | 4  |
| 1841                | 11                 | 8  |
| 1843                | 3                  |  |
| 1845                | 9                  |  |
| 1847                | 12                 |  |
| 1849                | 30                 |  |
| 1851                | 28                 |  |
| 1852                | 15                 | 5  |
| 1853                | 12                 | 1  |
| 1855                | 20                 | 2  |
| 1857                | 25                 | 5  |
| 1859                | 26                 | 2  |
| 1861                | 19 <sup>c</sup>    | 12   |
| 1863                | 8                  |  |
| 1864                | 1                  | 1  |
| 1865                | 27                 | 1  |
| 1866                | 14                 | No private acts were<br>indexed from 1866<br>onward. |
| 1867                | 64                 |  |
| 1869                | 97                 |  |
| 1871                | 90                 |  |
| 1873                | 115                |  |
| 1875                | 58                 |  |
| 1877                | 35                 |  |
| 1879                | 43                 |  |
| 1881                | 69                 |  |
| 1883                | 89                 |  |
| 1885                | 71                 |  |
| 1887                | 72                 |  |
| 1889                | 95                 |  |
| 1891                | 107                |  |
| 1893                | 116                |  |
| 1895                | 80                 |  |
| 1897                | 80                 |  |

In many sessions there were also re-enactments of lapsed incorporations, or the renewal of such charters. These have not been included.