The New Amendments of the Philippine Corporation Law (Act No. 3518)

By JOSE PALARCA *

INTRODUCTION

No other piece of legislation has received such a wide discussion than the new amendments to our Corporation Law. Every resource of timidity and reaction was arrayed against the bill, and the debates over it filled not only the halls of the Legislature but public meetings outside, as well as the columns of the daily press. There is no doubt that the present Corporation Law as amended grants a wider and freer sphere of activity to domestic corporations as it has removed certain former handicaps and restrictions placed by the old law on their operations. In the words of Speaker Roxas "the amendments are intended to remove the handicaps placed on Philippine Corporations when competing with American corporations doing business in the Philippines. These amendments are primarily designed to benefit Philippine corporations and Philippine business. The additional powers and privileges conferred on Philippine corporations under the new amendments are available to American corporations under American laws. So that, while American corporations doing business in the Philippine Islands may issue stocks without par value and may declare stock dividends, Philippine corporations also doing business here were not allowed under the old law to do the same thing, or, at least in the case of stock dividends, it is doubtful whether Philippine corporations might legally declare them." Senate President Quezon who stood strongly in favor of the amendments declared that "these amendments will undoubtedly have beneficial effects for the country especially the Filipinos. The main aim is to induce Filipino capital to adopt modern ways of doing business and thus bring about a sure and productive investment." How far these prophecies can be realized, only the future will show. There is, however, one important change which seems to mar these prophetic utterances. In the opinion of the writer, that provision referring to ownership of public lands is fraught with dangerous possibilities. It may have been designed to please but it is doomed to disappoint.

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CORPORATE PURPOSES

General.—An individual or firm may do anything or engage in any form of business not prohibited by the laws. A corporation on the contrary, may do only those things and engage in those businesses permitted it by law and set forth in its articles of incorporation. This renders it important that the articles of incorporation should clearly and fully empower the corporation to do all those permissible things that may be necessary in its operations.

Nature and Scope.—By corporate purposes is meant the specific declaration in the articles of incorporation of the nature of the business which the corporation is authorized to carry on. Such a statement is a matter which primarily concerns the stockholders, and to a less degree the State under whose authority the corporation is created.

In the granting of corporate privileges it is important to specify the purposes and objects because the courts should have some guide in keping them within the powers granted and conveyed. Unless they be specified with particularity in the petition or in the granting thereof, they might do as they please and the law be powerless to restrain them.[1] The purposes enumerated in the articles of incorporation, read in connection with the general laws under which the charter is procured, is the measure of the powers of the corporation.[2]

Classes.—In many states of the American Union and only recently in the Philippines, the rule was to organize corporations for a single purpose, as to mine for coal, to manufacture shoes, or to conduct a trading business in some specified line. The authorization for this one purpose would, as a matter of course, carry the right with it to do all things necessary or proper to effect that purpose, but nothing further.[3] If another line of business were to be taken up, a new corporation must be organized, as the powers of the old corporation could not be extended to cover the new pursuit. That is, if the members of the coal mining company wished to mine for the precious metals also, or if the members of the company manufacturing shoes wished to manufacture hats also, they could not secure specific authorization thereto for the old company but must organize a new company for the purpose. In some few cases,

[1] In re John H. Deveaux et al. 54 Ga. 673.

[2] G. B. & M. R. Co. vs. Union Steamboat Co. 107 U. S. 98; Salt Co. vs. Saginaw 13 Wall (U.S.) 378.

[3] Uy Siulong vs. Director, 40 Phil. 541.

it is still advantageous to confine the corporate activities to one specific purpose. For instance, if a partnership is incorporated, it may be advisable to restrict it to the purposes of the business already under way. This would prevent any subsequent diversion of the corporate activity and resources into other possibly dangerous channels. The corporation could conduct the one business and that alone. It would have no power to venture into new and untried fields.

At the present time the tendency in corporate organization is towards comprehensive purposes—purposes that will permit the corporation to undertake and operate any line of business, in any part of the world, and under any conditions. It is the natural desire to secure all powers and privileges that may be had—not that they are all needed or are to be exercised, but unforseen opportunities may occur when these powers will be required. Incorporators are pleased with these extensive arrays of possible activities, investors and interested parties generally expect them, and as their inclusion is a matter of little difficulty, nearly all modern articles of incorporation enumerate every conceivable branch of business and every kind of enterprise allowable under the statutes.

Our Corporation Law authorizes the organization of a private corporation "for any lawful purpose or purposes." [4] Thus, a corporation engaged in the manufacture of shoes may also engage in the manufacture of sugar and establish a sugar central for the purpose. There is no need of organizing a new company for the latter activity, provided, the articles of incorporation include the manufacture of sugar among the objects of its creation. A corporation may now engage also in the business of buying and selling private lands but not public lands.[5]

Public Service Corporation.—The law, however, provides that no corporation formed for the purpose of engaging in the business of transportation, by land or by water, or of maintaining a telephone, telegraph or wireless communication system, shall, except as otherwise provided by law, exercise any powers other than those necessary or incidental to the accomplishment of its said purpose. This restriction also apply to foreign corporations.[6] Thus, we see that a private corporation

[4] Section 3 Act No. 3518.
[5] Section 7 Act No. 3518.
[6] Section 3 Act No. 3518.

may be organized for any number of purposes subject only to this restriction as to public service corporations.

Illegal Purposes.—It is of course fundamental that no state allows the organization of a corporation for illegal or immoral purposes. Thus a corporation cannot be organized for the purpose of conducting lotteries or gambling or for the formation of a combination in restraint of trade.[7] Neither can a corporation be organized for the practice of law, since the practice of the law is not a lawful business except for members of the bar, who have complied with all the conditions required by statute and the rules of the courts; and a corporation cannot perform these conditions.[8]

Apart from these manifestly illegal or immoral undertakings, any business purposes not allowed to corporations under the laws of the Philippine Islands are illegal, such, for instance, as the organization of a corporation for the purpose of engaging in the business of buying and selling public lands. A charter for such purpose, even if allowed by the state officials, would be ineffective and the stockholders would be held liable as partners in case of the insolvency of the enterprise.[9]

Also it must be noted that if some of the purposes are legitimate and proper and some unauthorized, the charter is good as to the legitimate portions but is held non-effective and non-existent in those portions unauthorized or in conflict with the laws. The laws cannot be added to or overriden by a charter provision.[10] The word "unlawful" as applied to the purposes and acts of corporations, is not used exclusively in the sense of *malum in se* or *malum prohibitum*. It is also used to designate powers which corporations are not authorized to exercise, or contracts which they are not authorized to make, or acts which they are not authorized to do,—or, in other words, such acts, powers, and contracts as are *ultra vires*.[11] What constitutes a "lawful purpose" for which to form a corporation, within the meaning of that term, is a judicial question, to be determined by the courts in each case as it shall arise.[12]

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[7] Peabody vs. Gas Trust Co. 130 Ill. 268; Section 20 Act 3518.

[8] Re Cooperative Law Co. 92 N. E. 15; 198 N. Y. 479.

[9] Amer. Trust Co. vs. R. R. Co. 157 Ill.; Oregon R. R. vs. Oregonian Ry. Co. 130 U. S. 1, Johnson vs. Northern Trust Co. 265 Ill. 263.

[10] Peabody vs. Gas Trust Co. 130 Ill. 268; Straacks vs. Routledge 175 S. W. 444.

[11] People vs. The Chicago Gas. Co. 130 Ill. 768.

[12] Railway Co. vs. Railway Co. 130 U. S. 1.

"NO PAR STOCK"

The Theory of No-Par-Shares.—The "Book Value" of a share of stock is the valuation determined by the books of account of the corporation. The "Market Value" is the cash value that shares will produce when sold on the market. This is often referred to as "real value". The "Par Value" is, in the case of par value stock, a pre-determined fixed monetary value, printed on the face of the stock certificate and represents "the minimum amount for which a subscription to the share may be accepted without creating a liability on the part of the subscriber to corporate creditors". In the case of "No Par" stock it represents the number of shares, as shown on its face, out of a total capitalization of a stated number of shares and ordinarily has no monetary value printed on its face. The shareholders' equity is determined in the same manner, regardless of whether his stock is "Par Value" or "No Par Value", i.e., by dividing the net worth of the corporation by the total number of shares actually subscribed for to the corporation and multiplying that result by the number of shares owned by the individual.[1]

"The "Peso-Marked" Stock Certificates.—One of the ends gained by the use of stock without par value is the abolition of the peso-marked stock certificate with its assumption of a fixed and too often purely fictitious value. Not infrequently, many of the stock selling schemes which have drawn so much from those who cannot afford the loss, have owed most of their effectiveness to the use of this peso-marked stock certificate. An intelligent investor before buying stock should pay little heed to the par value but should make a careful investigation of the organization, personnel, earning power, dividend policy, financial condition, nature of the business, and industrial outlook of the enterprise. In this way he gets a reliable estimate of the return he may expect. Unfortunately, however, the great majority of the investing public do not usually take these precautions, especially in the case of stock with par value. They regard the par value as the real value of the stock and are thus misled into purchasing stock when it is offered for less than par, believing that they have made a profitable bargain when as a matter of fact, they have been deceived.

History.—In the matter of no-par-value stock, New York was the pioneer. The plan was first agitated before the New York State Bar Association many years ago, and a committee

[1] No Par Stock by the Philippine Trust Co. Herald, Aug. 1, 1929.

report made early in 1892 suggested capital stock without money denomination. Fifteen years after this, in 1907, the Bar Association committee drafted a bill which was passed by the New York legislature that same year. Unfortunately, this was vetoed. The same bill, with some changes, was brought up again and passed April 15, 1912. Since then it has been in continuous effect in New York, and many solid corporations have been incorporated and authorized to issue this kind of stock.

The growth of no-par-value stock in the United States is evidenced by the following schedule showing which states have followed New York and when each authorized the issuance of shares of no par value: 1916 Maryland, 1917 California, Delaware and Maine; 1918 Virginia; 1919 Illinois, Pennsylvania, New Hampshire and Ohio; 1920 Massachussetts, New Jersey, Rhode Island, West Virginia and Wisconsin; 1921 Alabama, Colorado, Idaho, Kansas, Maine, Michigan, Missouri, North Carolina, Oklahoma, Utah, and others. At present there are only few states in the American Union which have not enacted statutes authorizing the issuance of no-par-value shares. In the states where stocks of no par value are allowed, almost every line of business and industry is represented by corporations without par value. Some of the most representatives of these no-par-value stock corporations are the Columbia Graphophone, Consolidated Textile, Cuba Cane Sugar, General Motors Corporation, Radio Corporation of America, Sinclair Consolidated Oil Corporation and the Vanadium Corporation. Our law authorizing the issuance of no-par-value shares became effective March 1, 1929, and in that year alone, ten corporations were organized under it. Among these may be mentioned The Aviation Corporation of the Philippines, Peoples Mortgage and Investment Company, Philippine Producing Corporation, Beam Investment Company, and Insular Sugar Refining Corporation.[2]

Judicial Indorsement.—When corporations with no-par-value stock first sought permission to do business in some states of the American union, the authorities declined to admit them on any terms.

In Kansas and Missouri, the corporations rejected brought suit before the Supreme Court of each state, which in both cases decided in favor of the corporations and issued a mandamus forcing the too conservative state authorities to admit them to do business on the same terms as other foreign corporations.

[2] Mercantile Register, Bureau of Commerce and Industry.

The Supreme Court of Kansas, in sustaining the legality of corporations issuing stocks without par value, in part, said:

"The defendants say that because the shares of stock of the plaintiff have no fixed or nominal par value it will be difficult for the officials of this state to determine the amount of annual fees that the corporation should pay, and that there is no means of knowing what the capital stock of the plaintiff is, without an examination of its assets. These objections arise out of the fact that the plaintiff corporation is organized on a plan that does not call for a division of the capital into shares, each representing so many dollars of capital. Under the plaintiffs' plan of organization, the capital may be much or little, and that capital is not divided into money shares, but into fractional parts.

"The problem of determining the solvency and *bona fide* capitalization of the plaintiff presents no unusual difficulty. The fact that the shares of its stock have no nominal par value is of little consequence. Any prudent charter board, in determining whether a foreign corporation is worthy of admission to do business in Kansas, would attach little importance to the nominal value of its shares of stock, even if they have a nominal value. As in all other cases, the charter board should concern itself earnestly to ascertain the genuine capital—those assets permanently devoted to the corporate business as a basis for its business credit, and upon which its hope of profits is rationally founded.

"The defendants contend that the plaintiff is not such an organization as is called a corporation in the constitution and laws of this state. The answer to this contention is that corporations without capital stock and without par value shares of stock are not new; they are as old as corporations themselves, and have existed in England and in this country for many years; our constitution recognizes them, and we have laws for their control and government." [3]

In Missouri the same situation arose, was referred to the courts, and was decided in the same way.

Philippine Law.—Our corporation law provides that the shares of any private corporation may be divided into classes with such rights, voting powers, preferences, and restrictions as may be provided in the articles of incorporation. Any or

[3] Petroleum Co. vs. State Charter Board, 105 Kansas 161.

all of the shares may have a par value or have no par value as provided in the articles of incorporation.

When Issued, Value.—The law provides that shares without par value may be issued from time to time subject to the laws creating and defining the duties of the Public Service Commission. These shares may be issued, (1) for such consideration as may be prescribed in the articles of incorporation; or (2) in the absence of fraud in the transaction, for such consideration as, from time to time, may be fixed by the board of directors pursuant to authority conferred in the articles of incorporation; or (3) for such consideration as shall be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner provided in the by-law, provided the call for such meeting shall contain such purpose. Shares without par value cannot be issued for a consideration less than the value of five pesos per share.[4]

Rights of Shareholders.—The rights of holders of shares without par value are exactly the same as those of a holder of common stock, except as otherwise provided in the articles of incorporation and stated in the certificate of stock. Thus when preferred stock, common stock, and stock without par value have been issued, the preferred stock takes precedence in dividends and in the distribution of assets. In such case the no-par-value stock has the same rights as common stock would have if there were no shares without par value. In the event of liquidation, after the preferred stock has been paid in full and all accumulated dividends have been satisfied, if any assets remain they are either surplus profits or else capital distributions from no-par-value stock, and which ever is the case, the holders of the no-par-value shares are entitled each to his proportionate share. If no preference as to assets is given preferred stock, the holders of no-par-value shares would be entitled to an interest in assets proportionate to the amount actually paid in on such shares. If there were surplus profits above the par value of the preferred stock and above the accumulated dividends to preferred stockholders, the surplus profits would be divided among the holders of the no-par-value shares. The law provides that no certificate of no-par-value stock shall be issued to a subscriber until the full subscription has been paid.[5] Any or all shares so issued shall be deemed fully paid and non-assessable

[4] Section 2 Act No. 3518.
[5] Section 16 Act No. 3518.

and the holder thereof shall not be liable to the corporation or to its creditors in respect thereto.[6]

Prohibited Classes.—A great majority of the States in the American union and the territory of Alaska permit the issuance of no par common stock. In most cases in the United States the privilege is limited to companies engaged in mining, manufacturing and mercantile purposes. Here, the only corporations prohibited by our present laws from issuing no par value shares are banks, trust companies, insurance companies, and building and loan associations.[7]

Wherever laws have been passed permitting the issuance of "no par stock", the statutes provide that all such shares shall stand on an equal footing in voting rights, dividend participation, and other rights. Some states have even gone so far as to permit the issuance of preferred stock at no par value, but there is a great doubt as to the wisdom of such a course as it would tend to destroy the privileges of preferred over common stock. It will be noted that under our present laws, "preferred shares" may only be issued with a stated par value.[8] The reason given is that where preferred shares are issued without par value, an unwise board of directors might, under such a system, allow the affairs of the company to get into such shape that in case of liquidation or dissolution, there would not be sufficient assets to cover the principal of the preferred shares.

Advantages of No Par Value Shares.—The following are the advantages that may be derived from the issuance of no par value shares: (1) The par value printed on a share of stock is not a true indication of its real value. Even if the stock is paid in cash at par, it may have a value greater than par at the date of organization because of the prospect of unusual profits. The value of a share of stock depends on the value of the corporation's net assets and its earnings, not upon the figures printed on the certificate.

(2) Printing a par value on a certificate has not infrequently resulted in making it easy for promoters to extract money from the uninformed and unsuspecting. There is an inevitable attraction about a hundred-peso share of stock offered for fifty pesos which many people find it impossible to withstand. If the certificate shows only the total shares auth-

[6] Section 2 Act No. 3518.
[7] Section 2 Act No. 3518.
[8] Section 2 Act No. 3518.

orized and the number of shares represented by the certificate, a prospective purchaser is more likely to make inquiries as to the net assets and the earnings of the corporation.

(3) The use of no par stock relieves the stockholders from liability for discount unless there was fraud in the consideration. The liability for discount results from the purchase of stock at less than par. If there is no par there can naturally be no discount.

(4) The use of no par stock reduces the incentive for the overvaluation of assets in order to balance the books at the time of organization. Properties can be put on the books at a fair value, and capital stock can be credited at the same value.

(5) No par stock is peculiarly suited for use in reorganizations where several companies are to be combined and stock is to be issued for goodwill. If par value stock is issued and if the amount is based on the future earnings, the capitalized value of the excess earnings to be set up as goodwill may be a very considerable amount and entirely disproportionate with the assets. If no par value stock is used, any desired number of shares may be issued, and the goodwill may still be placed on the books at a reasonable figure.

(6) It is also an advantageous form of stock to issue when new capital is being sought to put a financially embarrassed company on its feet again. Take, for instance, that of a company which has suffered losses until its stock is worth only sixty pesos. It desires to obtain additional capital by selling shares at sixty pesos or below. If par value stock were used, it probably could not be sold at sixty because of the discount liability. The issuance of no par stock will make it easier to make sales at any figure which will be equitable and attractive without imposing on the purchasers the risk of a discount liability.

The issuance of no par value shares seems to have met general favor among those who are using the corporate form for legitimate business and who do not desire to take advantage of ignorant investors. In some cases the shares may be more difficult to sell from the very fact that they carry no "peso" indication of their value, or they may be unacceptable because of their novelty, or they may be found objectionable from the standpoint of taxation. On the whole, however, the advantages of issuing no par value shares would appear far to outweigh the disadvantages. It is safe to predict that with the appreciation of the advantages of no par value shares, corporations hereafter formed in the Philippines will adopt this method, and those cor-

porations now existing will substitute the "no par" for "par" stock.

OWNERSHIP OF STOCK IN AGRICULTURAL AND MINING CORPORATIONS

Under the old law, any member of a corporation engaged in agriculture or in mining and any corporation organized for any purpose except irrigation was prohibited from becoming in anywise interested in any other corporation engaged in agriculture or in mining.[1] Now, any stockholder of an agricultural or mining corporation or any person or corporation organized for any purpose, except agriculture or mining, is authorized to own stock in two or more corporations engaged in agriculture or mining not exceeding fifteen (15) per cent of the stock entitled to vote in each of such agricultural or mining corporation.[2] Thus, we see, that while under the former law, the prohibition to own stock in agricultural or mining corporation was absolute, under the present law as amended, this prohibition was relaxed, by allowing stockholders of an agricultural or mining corporation or any person or corporation not engaged in mining or agriculture to own stock in agricultural or mining corporations. Fear has been expressed in some quarters that this provision might provide a loophole whereby organized capitalists might go around the provisions of our Public Land Act to the detriment of the future interests of the country. Advocates of this provision, however, claim that the provisions of the Public Land Act will not in any manner or form be affected. I believe, however, that these fears are not unfounded. To give a concrete example. Let us take that Company A in Bukidnon leases or buys off 1,024 hectares with which to plant rubber. As soon as it is organized Company B enters and occupies an adjoining piece of land leasing or buying off 1,024 hectares as provided by law. Then Company C also is organized and enters and occupies an adjoining piece of land leasing or buying off 1,024 hectares. Let us suppose that D, E, F, G and H, are stockholders of an agricultural corporation each holding 15 per cent of the capital stock of Companies A, B, and C. Let us suppose further that D, E, F, G, and H, enter into a verbal agreement, without creating a voting trust, that they will reciprocally and mutually vote for each other as members of the Board of Directors for Companies A, B, and C.

[1] Section 13 Act No. 1459.
[2] Section 7 Act No. 3518.

This could be done as there is no provision whatsoever prohibiting them from being elected members of the Board of Directors. It is clear from the above that stockholders D, E, F, G, and H own 75 per cent of the capital stock in each of the Companies A, B, and C. It is evident then, that whatever action may be decided upon by D, E, F, G, and H with regard to Companies A, B, and C goes thru as they hold three fourths of the voting power. In the final analysis, therefore, we see that the prohibition in the Public Land Act that no corporation can own or control more than 1,024 hectares would become a mere farce.

The former corporation law has been branded as antiquated and as such it constituted an obstacle to the economic development of the country. By a close scrutiny of our new law it is manifestly clear that our public lands are now at the mercy of outside organized capital. If the true intent of our Legislature in modifying the rigid provisions of our Public Land Act was to permit persons who have capital to evade the provisions of the Public Land Act so that the economic development of the country might be hastened, why was not that intent made clear at the very beginning?

STOCK DIVIDENDS

Nature.—Under our present Corporation Law as amended by Act No. 3518, any corporation may issue or declare stock dividends with the approval of stockholders representing not less than two-thirds of all outstanding stock entitled to vote.[1] A stock dividend is a dividend payable in reserved or additional stock of the corporation, instead of in cash or in property. The fact, however, that a dividend may first or last take the shape of certificates of stock does not necessarily make it a stock dividend. By a stock dividend is generally understood a distribution made by a corporation of shares of its own stock. So a distribution of shares of stock of another corporation in which the company declaring the dividend has invested a part of its surplus earnings is not a stock dividend.[2]

Effect of Issue.—As in the case of a cash dividend, a stock dividend can only be issued to represent surplus profits. The assets of the corporation, over and above its debts, must be equal to the amount of the new stock added to the amount of the original stock.[3]

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[1] Section 9 Act No. 3518.

[2] Gray vs. Hemenway 212 Mass. 239; 98 N. E. 789; Union etc. Trust Co. vs. Taintor 85 Conn. 452 (1912).

[3] Williams vs. Western U. Tel. Co. 93 N. Y. 162.

A stock dividend converts surplus assets into capital. Such a dividend takes nothing from the property of the corporation, and in no way depletes its assets.[4] The corporation still has just as much property as it had before and is just as solvent and just as capable of meeting all demands upon it.[5] Nor such a dividend add anything to the capital of the shareholder. It changes the form of his investment by increasing his number of shares, thereby diminishing the value of each share, leaving the aggregate value of all his stock substantially the same.[6] While he acquires the ownership of more shares, each represents a smaller fractional interest than before in the total amount of the corporate property, and his proportionate interest and ownership in the assets of the corporation remain precisely the same.[7] As has been said by the Supreme Court of the United States: A stock dividend really takes nothing from the property of the corporatiou, and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. After such a dividend, as before, the corporation has the title in all the corporate property, the aggregate interest therein of all the stockholders are represented by the whole number of shares; and the proportional interest of each stockholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of the new ones.[8]

It will be observed that a stock dividend here considered is entirely different from that derived form "stock watering", in which the new stock does not represent profits at all but is merely a dilution of the existing capital and is illegal and objectionable.

Declaration Stock Dividend.—When the directors of a corporation lawfully declare a dividend the effect is to create the relation of debtor and creditor between the corporation and each stockholder for his proportion of the dividend.[9] After a dividend is declared, all community of interest in relation to such dividend, as between the stockholders themselves and the

[4] Humphrey vs. Lang 169 N. C. 601; L. R. A. 1916 B. 626; 86 S. E. 526.
[5] William vs. Western Te. 93 N. Y. 162.
[6] Terry vs. Eagle Lock Co. 47 Conn. 141.
[7] Staats vs. Biograph Co. 236 Fed. 452; L. R. A. 1917 B. 728.
[8] Gibbons vs. Mahon 136 U. S. 549; 34 L. Ed. 525.
[9] Hunt vs. O'Shea 69 N. H. 600; 45 Atl. 480.

corporation, is at an end. The right of the party to whom the dividend is payable is recognized as a separate and independent right, which may be enforced against the corporation. The dividend, from the time it is declared, becomes a debt due from the corporation to the individual stockholder, for the recovery of which, after demand of payment, an action at law may be maintained.[10]

Revocation of Declaration of Dividend.—Since the right of the stockholders of a corporation to a dividend becomes vested as soon as the dividend has been fully declared by the directors, and the corporation becomes their debtor for their respective shares, it necessarily follows that neither the same board of directors nor their successors can afterwards reconsider their action and revoke the declaration of a legally declared dividend without the stockholders' consent.[11] It has been held that a mere vote of the directors to pay a dividend may be revoked, either by them or by their successors, if it has not been made public or communicated to the stockholders and no fund has been set apart or appropriated for payment of the dividend, since, until there has been at least a communication of the vote, the action of the directors is not final.[12]

There is authority, however, to the effect that the rule precluding rescission does not apply to stock dividends, and that the declaration of such a dividend may be rescinded at any time before the actual issuance of the stock.[13] The reason for the exception in the case of stock dividends is found in the difference in the nature of cash and stock dividends. In the case of a cash dividend the amount to be distributed is severed from the general fund and becomes the property of the stockholders prorata as soon as the dividend is voted, while in the case of a stock dividend all the formalities necessary to a valid increase of the stock must be complied with before the stockholders are entitled to anything, and the mere declaration of the dividend does not, therefore, give them a vested right.

DISPOSITION OF CORPORATE ASSETS

Our law authorizes the board of directors of a corporation, upon notice to the stockholders and by the affirmative vote of the latter holding at least two-thirds of the voting power of the corporation, to sell, lease, exchange, or otherwise dispose of

[10] King vs. Patterson & H. River R. Co. 29 N. J. L. 82.
[11] Staats vs. Biograph Co. 236 Fed. 454, L. R. A. 1917 B. 728.
[12] Ford vs. Easthampton Rubber Co. 158 Mass. 84; 20 L. R. A. 65.
[13] Staats vs. Biograph Co. supra.

all the property and assets of the corporation including its goodwill upon sufficient consideration.[1] This power must not be confused with the inherent powers of the board of directors without the authorization of the shareholders, to sell, lease, exchange or otherwise dispose of, any of its property for the conduct of the corporate business. This provision refers to the disposition of all the corporate property and assets of a corporation. Much controversy has arisen as to whether or not express statutory power is necessary in order to authorize transfer by a corporation of the entire corporate assets. At common law neither the directors nor a majority of the stockholders had power to sell or otherwise transfer all of the property of an active and prosperous corporation able to achieve the objects of its creation as against the dissent of a single stockholder.[2] The view is taken by the New Jersey Court in Coler vs. Company that the sale of the corporate assets as an entirety is equivalent to a dissolution, and therefore can only be done through the courts under statutory authority.[3] Many courts, however, take the view that it can be done where it is not in fraud of the rights of creditors or in violation of the charter or statutory restrictions, and this, too, by a majority of the stockholders against the dissent of a minority where the exigencies of the business seem to require it.[4] Thus, it has been asserted that "it is a well settled rule that a strictly private corporation has the same right to dispose of its property that an individual has, and that when insolvent or in a failing condition it may sell all thereof without the consent of all the stockholders. It is a general rule, however, that neither the directors nor a majority of the stockholders of a corporation have power at common law to sell or otherwise transfer all its property while the corporation is a going, prosperous concern against the dissent of any shareholder." [5]

Effect of Sale or Transfer.—Generally a transfer of all the property of a corporation whatever its effect may be on the life of the corporation as a legal proposition is, for all practical purposes, a dissolution.[6] In other words, ordinarily it ceases to do business after a transfer of all the property, and

[1] Section 13 Act No. 3518.
[2] Forrester vs. Company 21 Mont. 544; 55 Pac. 229.
[3] 64 N. J. Eq. 117; 53 Atl. 680.
[4] Treadwell vs. Company 7 Gray (Mass.) 393.
[5] Traer vs. Company (Ia.) 99 N. W. 290.
[6] Coler vs. Tacoma Ry. Co. 65 N. J. Eq. 347; 103 Am. St. Rep. 786.

while it has power to purchase other property and resume business, this is seldom done, but instead the proceeds of the transfer are divided among the stockholders. However, notwithstanding that in such a case there is practically a dissolution, there is no dissolution as a matter of law merely because of the transfer or the distribution of the proceeds. In the absence of a surrender of its charter by a corporation and its acceptance by the state, or such a surrender under authority of a statute in force at the time, a corporation is not dissolved by the fact that it has not only ceased to exercise the powers conferred upon it by its charter, but has also disposed of all its property by absolute sale, or distributed it among its stockholders, or assigned it for the benefit of creditors, or parted with it for a long term of years, or lost it, since a corporation may exist without property.[7]

Recovery by Dissenting Shareholders.—The law provides that any stockholder who did not vote to authorize the action of the board of directors to sell the entire corporate assets may within forty days after such action object to such sale or transfer in writing and may demand the payment of his shares. If the corporation and the dissenting stockholder cannot agree upon the value of his shares, such value shall be determined by three disinterested persons whose appraisal shall be final. If within thirty days, the award is not paid, the shareholder may recover the value of his share by proper action before the courts. Stockholders, however, shall not be entitled to the payment of their shares unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of capital stock. It is also provided that unless and until the sale, lease or exchange, as the case may be, is abandoned, any dissenting stockholder ceases to be such and shall have no rights with respect to his shares except the right to receive payment.[8] It follows, therefore, that the moment the required number of votes decide on the sale of the entire corporate assets, the stockholder automatically ceases to be a stockholder and is converted into a mere creditor until the sale, lease, or exchange, as the case may be, is abandoned.

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[7] Swan Land & Cattle Co. vs. Frank 39 Fed. 456; Bradley vs. Mckee 5 Cranch C. C. 298 Fed. Cas. No. 1784; Harton vs. Johnston 166 Ala. 317; Evarts vs. Killingworth Mfg. Co. 20 Conn. 448; Brock vs. Poor 216 N. Y. 387/111 N. E. 229.

[8] Section 13 Act No. 3518.

VOTING TRUSTS

Definitions and General Consideration.—A voting trust may be comprehensively defined as one created by an agreement between a group of stockholders of a corporation and the trustee, or by a group of identical agreements between individual stockholders and a common trustee, whereby it is provided that for a term of years, or for a period contingent upon a certain event, or until the agreement is terminated, control over the stock owned by such stockholders, either for certain purposes or for all, shall be lodged in the trustee, either with or without reservation to the owners or persons designated by them of the power to direct how such control shall be used.[1] Webster defines a voting trust as "one created by a transfer of shares in a corporation by shareholders to trustees, to hold and to vote on them for a specified period, in order to secure a certain line of corporate action." Bouvier applies the term to "the accumulation in a single hand or in a few hands of shares of corporate stock belonging to several or many owners in order thereby to control the business of the company".

Our law authorizes the creation of a voting trust for a period not exceeding five years.[2] The voting trust here considered must be distinguished from the trust under which it was formerly attempted to monopolize certain industries. Under that plan the stock of a number of otherwise competing corporations was placed in the hands of trustees, who were to manage them so that they did not cut prices or otherwise conflict with each other—an arrangement that was held illegal and has been abandoned. The voting trust here considered affects only the stock of one corporation and that usually as to its voting rights, and has nothing to do with competition or prices. The primary object of the voting trust is the continuance and perpetuation of a certain agreed management of one corporation. It concerns the stockholders of a particular corporation, and does not concern or affect in any way other corporations controlled by the voting trust. While the creation of a voting trust is sometimes attended by the giving of a proxy or power of attorney to the trustee, the relationship thereby created is not in any sense analogous to that existing between a stockholder and his designated agent for attending a certain meeting and voting his stock thereat. In the latter case the beneficial owner al-

[1] Fletcher's Cyclopedia Corporation Vol. III p. 2871.

[2] Section 15 Act No. 3518.

ways remains the legal owner of the stock, while in the former the trustee usually becomes, if the agreement is valid, the legal owner and entitled to exercise all the rights of ownership, subject to the terms of the trust agreement, and is always answerable to the beneficial owner only as any trustee is responsible to his *cestui que trust.* A new deposit of shares of stock in the hands of a depositary with directions to vote in the manner in which he is instructed by a committee appointed by the stockholders and subject to their control, is not a voting trust, it not appearing that the ownership of the stock and the voting power were separated by the agreement under which the committee was appointed and the stock deposited.[3]

How Formed.—Generally a voting trust is formed by placing in the hands of the trustees such proportion of the stock of the particular corporation as may be necessary to secure the desired control. These trustees act under, and their powers are defined by, an agreement styled the "voting trust agreement" subscribed by all the parties entering the trust. This agreement specifies the length of time for which the stock is to be held, which in the Philippines is not to exceed five years, and the manner in which it is to be voted at the annual election of directors. Voting trusts are frequently formed at the time a corporation is organized, and less commonly thereafter to secure certain specified stock action. If the management then in power is to be retained, the trustees would be instructed to cast the vote of the trustee stock in all elections of directors for the parties then constituting the board, suitable provision being made in the case of the possible death of any of the directors named. If the object of the trust were to insure minority representation on the board, the trustees would be instructed to cast the trustee vote for directors in favor of parties named by the designated minority interests up to a specified number the other members of the board being named by the majority interests. Or if the object of the trust were to secure an efficient and nonpartisan board, the trustees might be instructed merely to cast the vote of the stock held by them for such persons as in their judgment would be suitable and acceptable to the interests involved. The trust agreement might also provide the manner in which the trustee stock is to be voted in matters of general interest, or it might be forbidden to vote on these matters, or its vote under such circum-

[3] Ohio & M. Ry Co. vs. State 49 Ohio St. 668; 32 N. E. 933.

stances might be left to the direction of the trustees. The law also authorizes other stockholders to join a trust agreement already executed under the same terms stated in said agreement. Unless otherwise provided in said agreement the trustee may vote in person or by proxy. This agreement must be filed in the principal office of the corporation and shall be opened daily during business hours to the inspection of any stockholder or any depositor or the attorney of any such stockholder or depositor. Section 15 of Act 3518 of the Philippine Legislature was patterned after the New York law on corporations. The following is a simple form of a Trust Agreement of a New York Corporation:

VOTING TRUST AGREEMENT

We, the undersigned, stockholders of the Glen Harbor Improvement Company, a corporation duly organized under the laws of the State of New York, and having its principal office in the City of Yonkers, in the State of New York, having transferred and delivered to Emmett M. Brown, William Swift, and Andrew McBride, all of the said City of Yonkers, as Voting Trustees hereunder, the shares of stock held by each of us in said corporation, do hereby, in consideration of the promises and of the mutual undertakings hereinafter set forth, agree with them and with each other that said Trustees shall hold and vote the said stock for the period of five years from the date hereof, for the purposes and under the following terms and conditions:

1. All stockholders of the said Company may join the voting trust hereby created, by signing this present agreement and transferring, in whole or in part, the shares of stock held by them in said Company to the said Trustees, under the conditions and for the purposes of this present agreement.

2. Each stockholder in said Company joining this voting trust as aforeprovided shall become a party thereto from the date on which stock owned by such stockholder in said Company shall be transferred and delivered to said Trustees for the purposes of this agreement.

3. The said Trustees shall surrender to the proper officer of the said Glen Harbor Improvement Company, for cancellation, the certificates for all shares of stock transferred to said Trustees, and shall, in place thereof, have certificates of said Company issued to themselves as Trustees, and on the face of each said Trustees' certificate shall be stated the fact that such certificate has been issued pursuant to this agreement.

4. The said Trustees shall collect and receive all dividends and profits accruing to said stock and shall pay over the same to the respective equitable owners thereof.

5. The said Trustees shall issue to each stockholder becoming a party thereto one or more transferable Trustees' receipts for the number of shares of stock placed by each of said stockholders respectively in this Voting Trust, and when such Trustees' receipts are duly transferred to other parties, said Trustees shall recognize such other parties as the lawful assigns and successors of the original parties hereto, entitled to all of their rights in the premises.

6. The stock held under this agreement shall, except as hereinafter specially provided, be voted at any meeting of the stockholders of said Company by such of the said Trustees as may be present thereat, and said stock shall be so voted as may in the judgment of a majority of the said Trustees present at any such meeting be for the best interest of the stockholders subscribing to this agreement.

7. In all elections of Directors the said stock shall be voted for the re-election of the present members of the Board of Directors of said Company, or, in the event of death, disability, or refusal to serve of any such members, the said stock shall be voted for such other person or persons, as in the judgment of said Trustees, shall be most suitable for such office.

8. This agreement shall terminate five years from the date hereof, and upon such termination the said Trustees shall, as the outstanding Trustees' receipts are surrendered to them, duly indorsed, give over to the said Company the certificates of stock held by said Trustees, in pursuance of this agreement, properly indorsed, and shall direct the officers of said Company to deliver to the respective owners of the said surrendered Trustees' receipts certificates for such numbers of shares of stock as may be necessary to satisfy the requirements of the said surrendered Trustees' receipts.

9. In the event of the death, disability, resignation, or refusal to act of any of the Trustees herein named, the remaining Trustees or Trustee, shall have power to suitably fill such vacancy or vacancies, and the person or persons so appointed shall be empowered and authorized to act hereunder in all respects as if originally named herein.

10. A duplicate of this agreement shall be filed in the principal office of the said Company in Yonkers and shall be kept for the inspection of any stockholder of the Company, daily, during business hours.

IN TESTIMONY WHEREOF, the parties to this agreement have hereunder affixed their hands and seals in the said City of Yonkers this 27th day of February, 1922.

Voting Trustees	*Stockholders*	*Shares Assigned to Trustees*
Emmett M. Brown	James Halsey	50
William Swift	Ernest Jurgens	125
Andrew McBride	Harold M. Gilsey	75
	Willis M. Ames	75

The Stock in Trust.—The law provides that the certificates of stock so transferred to the trustee shall be surrendered and cancelled and new certificates shall be issued to the trustee in which certificates it shall appear that they were issued pursuant to a trust agreement. The nature of such transfer must also appear in the books of the corporation.[4] Thus the stock included in a voting trust is actually transferred to the trustees and is by them taken out in their own names. The trustee on the other hand executes and delivers to the transferors voting

[4] Section 15 Act No. 3518.

trust certificates which are transferable in the same manner and with the same effect as certificates of stock.[5] Below is a simple form of a Voting Trustees' Certificate:

VOTING TRUSTEES' CERTIFICATE
Organized under the Laws of the State of New York

Number 125 35 Shares

ALBANY PAPER COMPANY
Capital Stock, $750,000

CERTIFICATE FOR STOCK DEPOSITED UNDER VOTING TRUST AGREEMENT OF APRIL 12, 1922

The undersigned Trustees, by the National Trust Company, their agent, having received on deposit the entire capital stock of the Albany Paper Company, fullpaid and non-assessable, all being held under the above-named agreement, to the terms of which the holder hereof assents by receiving this certificate, certify that John N. Allen is entitled, subject to the provisions of said agreement, to Thirty-five Shares of the stock deposited thereunder. This Certificate entitles the holder to all rights, dividends, and privileges belonging to the actual stock, excepting only the right to vote. The Trusteeship herein agreed to may be terminated after three years upon the terms set forth in the above-named agreement, and is ended by limitation in ten years from date of agreement.

Transferable only on the books of the undersigned at the office of the National Trust Company, New York City, by the holder hereof in person or by duly authorized attorney, upon surrender of this certificate properly indorsed.

Date April 15, 1928.

HENRY W. TURNER,
FRANK D. MCCALL,
WILLIAM H. MONTGOMERY,
HOWARD F. BERGMAN,
PHILIP T. ARWATER,
Trustees.

By NATIONAL TRUST COMPANY
Depositary and Agent
By HOWARD T. LATHAM,
Secretary.

Revocability.—The law provides that a voting trust may be created for a period not exceeding five years. In the absence of any stipulation to that effect any trust agreement may be revoked. If the voting trust agreement is based upon a consideration, the question of its revocability is largely dependent upon its validity. If the agreement is valid, it is irrevocable, if it is void or voidable, the subscribing stockholder may withdraw.[6]

[5] Idem.

[6] Chapman vs. Bates 61 N. J. Eq. 658, 88 Am. St. Rep. 459.

Another matter to be considered is whether the irrevocable trust is or is not coupled with an interest. If coupled with an interest, such agreements have been generally sustained, but, if not coupled with an interest, they are regarded as in the nature of a revocable power. Thus it was held that a provision in a voting trust agreement which gives the trustees the first right to purchase the stock of any contracting party who does not desire to continue the trust relation, at double the par value for the use and benefit of the remaining parties, creates a power coupled with a beneficial interest which is irrevocable.[7]

If the element of consideration is wanting, the agreement is revocable. The consideration which is sufficient to render an agreement, valid in other respects, irrevocable, may take various forms, such as detriment of one of the parties,[8] or it may consist in the purchase of stock on the faith of the promise of others to enter into the agreement because it may be assumed that neither of the parties would have entered into the transaction or agreed upon the purchase of the stock except upon these conditions, and it must be held that each contributed his money to the purchase of the stock upon the promise made to him by the others.[9] But where the owners of the stock transfer the shares to trustees with authority to vote at elections according to the direction of the majority of those holding trust certificates, and the only consideration for such transfer and agreement is the mutual promises of several stockholders, any stockholder may revoke and withdraw his stock at will.[10]

Whether an agreement is open to the objection that it binds the subscribers so that they cannot withdraw from it is a question which does not concern any other person and as long as they are satisfied and continue to act in accordance with it, no one else has a right to complain.[11]

Validity—In General.—There are two lines of decision, one sustaining and the other denying the validity of voting trusts. Those decisions which uphold the validity of voting trusts usually base their holdings upon the right of the owner of property to make such use of his property as he may see fit, as long as this use is confined to the limits imposed by law, and take the

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[7] Boyer vs. Nesbitt 227 Pa. 398; 136 Am. St. Rep. 890. Brightman vs. Bates 175 Mass. 105, 55 N. E. 809.

[8] Thompson-Starret Co. vs. E. B. Ellis Granite Co. 84 Atl. 1017

[9-10] Smith vs. San Francisco & N. P. Ry. Co. 115 Cal. 584; 47 Pac. 582.

[11] Venner vs. Chicago City R. Co. 258 Ill. 523; 101 N. E. 949.

the view that, therefore, in the absence of prohibitory statute, the owner of shares of corporate stock may exercise the powers conferred by such stock either alone or in combination with others and either in person or through the medium of a trustee, always provided that the purposes for which and the manner in which the power is exercised are lawful.[12] Decisions of this class recognize "the general inherent right, resulting from the ownership of stock in a corporation, to exercise the elective power such ownership confers, and to exercise it wisely or unwisely, alone, or pursuant to an agreement with other stockholders".[13] A further basis for this view is "the general rule, sanctioned by the policy of the law, that those who have the largest interest in corporations may control them, as they have the greatest interest that they shall be well managed".[14] Accordingly, it has been held that stockholders who own a majority of the stock of a corporation may elect themselves directors or appoint themselves its agents, or form and carry into effect policies of management as freely as if the business were their own, and so long as they act honestly, and do not devote the corporate assets or business to their own private gain or to the prejudice of other stockholders, no one can question their acts, which are purely *intra vires*.[15]

Those decisions that deny the validity of voting trusts hold the view that such agreements are invalid because they effect a separation of the voting power from the beneficial interest, contrary to the policy of the law,[16] the view being taken that the power to vote the stock of a corporation is inherently attached to and inseparable from the ownership thereof and only delegable by a proxy subject to revocation.[17] In a comparatively recent case the Supreme Court of Illinois took the position that the plan was illegal and objectionable. The Court said, "the power to vote for directors can be exercised only by stockholders in person or by proxy, and they cannot be deprived or deprive themselves of this power. Stockholders cannot evade the duty imposed upon them by law of using their power as stock-

[12] Bowditch vs. Jackson Co. 76 N. H. 351; L. R. A. 1917A 1174; 82 Atl. 1014.

[13] Memphis & C. R. Co. vs. Woods 88 Ala. 630; & L. R. A. 605; 16 Am. St. Rep. 81.

[14] Barnes vs. Brown 80 N. Y. 537.

[15] White vs. Snell 35 Utah 434; 100 Pac. 927.

[16] Shepaug Voting Trust Cases, 60 Conn. 553; 24 Atl. 32.

[17] Bache vs. Central Leather Co. 78 N. Y. Eq. 484, 81 Atl. 571; Morel vs. Hoge 130 Ga. 625; 16 L. R. A. (N. S.) 1136.

holders for the welfare of the corporation, and the general interest of its stockholders. A stockholder may refuse to exercise his right to vote and participate in stockholders' meetings, but he cannot deprive himself of the power to do so".[18]

The weight of authority however is in favor of the validity of voting trusts. Many courts in the United States said that "experience has shown that, so far from exercising an injurious influence upon trade, voting trusts have added efficiency, economy, and stability to the administration of corporate affairs".[19]

Legal Voting Trusts.—The touchstone of the validity of voting trust agreements is primarily the purpose for which the agreement is formed. If its object is to advance in a lawful manner the interests of all the stockholders, usually the agreement is held valid. If its purpose is to benefit the stockholders forming it at the expense of the other stockholders or of the corporation, or if it is in furtherance of an unlawful or fraudulent design, it will not be sustained. The fact that they expect 'gain and advantage' to accrue to them does not make the combination unlawful. That expectation and intent would have that effect only if the gain was to be at the expense of the corporation or in some way was to work a wrong on the other stockholders.[20] Thus, an agreement which has for its purpose the establishing or perpetuation of a policy or management deemed by the subscribing stockholders to be to the best interests of the corporation will be upheld.[21] Also, an agreement for the purpose of the voting of the stock for the sale of all of the corporate assets is valid.[22] In like manner a contract by the owners of more than one-half of the shares of stock of a corporation to elect the directors of the corporation so as to secure the management of its property, to ballot among themselves for directors and officers if they could not agree, to cast their votes as a unit as the majority should decide, so as to control the election, and to buy or sell stock except for the joint benefit, is not dishonest, violative of the rights of others, or in contravention of public policy, so long as no fraud is committed or wrong done to other stockholders.[23]

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[18] Luthy vs. Ream 270 Illinois 170 (1915).

[19] Carnegie Trust Co. vs. Security Life Ins. Co. of America 111 Va. 1; 31 L. R. A. (N. S.) 1186; 68 S. E. 412.

[20] Venner vs. Chicago City R. Co. 258 Ill. 523; 101 N. E. 949.

[21] General Inv. Vo. vs. Bethlehem Steel Corp. 100 Atl. 347; Venner vs. Chicago supra.

[22] Bowditch vs. Jackson Co. 76 N. H. 351; L. R. A. 1917 A. 1174.

[23] Faulds vs. Yates 57 Ill. 416; 11 Am. Rep. 24.

Illegal Voting Trusts.—As has been seen, in order that the agreement may be valid, the purpose for which it is entered into must not be for the benefit of the subscribers at the expense of the other stockholders or the corporation. It is therefore undeniable that a voting trust agreement is contrary to public policy and void if the purpose of the agreement is to enable a majority of the stockholders to conduct the business of the corporation, in their own interest, or in the interest of another corporation, or otherwise in fraud of the rights of the minority stockholders.[24] Neither can a voting trust agreement be entered into for the purpose of engaging two or more corporations organized for the purpose of engaging in agriculture or in mining, or by reason of their corporate purposes cannot be organized as one corporation in accordance with the Corporation Law, under the control and management of the same trustee, or for the purpose of lessening competition or creating a monopoly of any line of business.[25]

The motives and intention of those executing the trust will not be allowed to establish the validity of the agreement, the controlling question being what the agreement permits to be done, not what those exercising the power under it intend to do.[26] Thus it has been held that the fact that the voting trustee deny any intention of voting the stock or of causing it to be voted for a certain purpose to which objection is made by one seeking to compel the issuance of a certificate for stock which he has purchased from a subscriber to the agreement, and the fact the trustees are advised by counsel that they have no power to vote the stock for such purpose or to cause it to be voted without the consent of all the holders of the certificates issued under the trust agreement, are not sufficient ground for refusing to compel the issuance of the stock certificate.[27] Apparently, the purpose which determines the validity or invalidity of a voting trust agreement is the purpose which the instrument itself discloses.[28]

VOLUNTARY DISSOLUTION

Under our former law, a private corporation may voluntarily dissolve itself only with the approval of the Court of First Instance where the principal office of the corporation is

[24] Shepaug Voting Trust Cases 60 Conn. 24 Atl. 32.
[25] Section 15 Act 3518.
[26] Morel vs. Hoge 130 Ga. 625; 16 L. R. A. (N. S.) 1136.
[27] Sheppard vs. Rockingham Power Co. 150 N. C. 776; 64 S. E. 894.
[28] Dady vs. Georgia & A. Ry. 112 Fed. 838.

situated and upon application of a majority of the stockholders holding at least two-thirds of all the shares issued or subscribed.[1] In order that a voluntary dissolution may be had, an application to a court, and a judgment or decree ordering the dissolution were absolutely necessary. The reason for court intervention is the fact that "charters are in many respects compacts between the government and the corporators. And as the former cannot deprive the latter of their franchises in violation of the compact, so the latter cannot put an end to the compact without the consent of the former. It is equally obligatory on both parties. The surrender of the charter can only be made by the formal act of the corporation, and will be of no avail until accepted by the government. There must be the same agreement of the parties to dissolve, that there was to form the compact. It is the acceptance which gives efficacy to the surrender." [2]

Under our present law, however, a corporation may be dissolved without court intervention by the vote of two-thirds of the members or stockholders holding at least two-thirds of the subscribed stock, provided that said dissolution does not affect the rights of any creditor having a claim against the corporation.[3] This provision of law now amounts to an acceptance by the legislature of the surrender of a charter, but the winding up and dissolution to be effectual, must be in strict compliance with the statute.[4] It is clear, therefore, that to effect a voluntary dissolution a resort to the courts is not always necessary. It may be done either with or without court intervention.

CONCLUSION

By and large these new amendments to our Corporation Law are good and sound. They are bound to revolutionize our conceptions of industrial and corporate organizations.They give a wider latitude in the exercise of corporate purposes and methods of carrying them out. They have been patterned after

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[1] Section 62 Act No. 1459.

[2] Boston Class Mfg. Co. vs. Langdon 24 Pick (Mass.) 49; 35 Am. Dec. 299.

[3] Section 18 Act 3518.

[4] Economy Bldg. & Loan Ass. vs. Paris Ice Mfg. Co. 113 Ky. 246; 68 S. W. 21.

In re Pyrolusite Manganese Co. 29 Hun (N. Y.) 429;

In re French Mfg. Co. 12 Hun (N. Y.) 488;

In re Marieta Bldg. & Loan Ass. 10 Lanc. Bar (Pa.) 37.

the most progressive statutes of other jurisdictions existing at the present time. With the exception of that provision referring to public lands which engenders fear in the minds of those conservatively inclined, the new amendments present the last word in modern corporate law.