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SCOPE OF THE IMPLIED POWERS OF A PRIVATE CORPORATION

By ALBERTO L. KATIGBAK *

I. INTRODUCTION

The study of the doctrine of implied powers to private corporations involves different points of views on each of which there has not yet been any decided stand made by the courts that could be regarded as a precedent. Each little variation in the facts and circumstances of a given case may give rise to a different application of the rule as reason, and the purposes and powers of a corporation may dictate. Adjudicated cases altho they establish some general principles for the interpretation of this doctrine cannot furnish a fixed rule of application that can be followed in the decision of cases. Hence the procedure followed is to decide each case on its merits and demerits and very little weight is given, if at all, to the rule of stare decisis. In my treatment of this subject I have resorted primarily to American cases and decisions because of the meagerness of material that could be gleaned from Philippine jurisprudence. The provisions of our Corporation Law, Act 1459 relating to implied powers is an exact copy of the same provision found in the several states of the United States, and therefore such decisions as are handed down by their courts would be binding and applicable, or at least have an undeniable influence in the disposal of similar cases in our courts.

Our Corporation Law provides as follows:

Sec. 13, paragraph 3.

"Every corporation has the power: * * *

"3. To transact the business for which it was lawfully organized, and exercise such powers and perform such acts as may be reasonably necessary to accomplish the purpose for which the corporation was formed."

Sec. 14, provides:

"No corporation created under this Act shall possess or exercise any corporate powers except those conferred by this Act and except such as are reasonably necessary to the exercise of the powers so conferred."

* LL.B., University of the Philippines.

At the outset, it would be worth while to call some attention to the distinction between the two powers above enumerated, namely, incidental and implied. While these terms are employed interchangeably and often used as synonymous by courts and law writers there is evidently a distinction as applied to powers of a corporation and by bearing in mind the distinction, the meaning is oftentimes made clearer. What are termed incidental powers may more properly be said to be matter that are incident to the existence of a corporation; things that have to do with the body itself and have nothing to do with the execution of the corporate franchise, or the conduct of the business in which the corporation is engaged. The term implied powers, or powers which the corporation take by implication, on the other hand, have nothing to do with the corporate existence as such, but are concerned wholly with reference to the execution of its corporate franchise, and the powers necessary to be used by it in the execution of its corporate business. To illustrate, what is called the power of succession, is not so much a power as it is an incident, to corporate existence and perpetuity of the entity; but it has nothing to do whatever with the business undertaking of the corporate body. On the other hand the power of a business corporations to borrow money, to buy and sell real estate, to mortgage and lease property, are familiar illustrations of the power which such corporations take by implication, while they have nothing to do with corporate existence, they are essential to the means and mode of carrying on the enterprises of such corporations. (Thompson on Corporations, secs. 2284-2290). "An incidental power is one directly and immediately appropriate to the execution of the power expressly granted and exist only to enable the corporation to carry out the purposes of its creation. An implied power is one that may be inferred from that granted." (State v. First Nat. Bank, 296 NW 397). It is thus clear that each of them has a distinct and independent signification which if constantly brought to mind would eliminate any confusion in the application of the doctrine we are at present considering. However, in this discussion I deem it proper to limit myself to those that are purely implied power with only a slight mention of those that are purely incidental. Suffice it to say that early text writers and older cases enumerate at least five powers that are purely incidental, namely: 1. Perpetual succession by which is meant the power of admitting member in place of those removed by death or transfer of shares and continuation as a legal entity, notwithstanding such

change of membership. 2. To sue and be sued, implead and be impleaded, grant and receive by its corporate name. 3. To purchase, hold and convey, real and personal property. 4. To have a common seal and change the same at pleasure. 5. To make by-laws. (1 Kyd's Corporation, 69). To these may be added another power incident to certain classes of corporations that of removing members. Furthermore the want of an express enumeration of powers does not exclude such incidental powers as are reasonably necessary to accomplish the corporate purpose. (Thomas v. West Jersey Co., 101 U. S. 78). As said by a federal judge "corporate powers strictly speaking are those peculiar and essential to a corporation, not those which are or may be possessed in common with natural persons, and they are very few in number, embracing those which pertain to the essence of a corporation." It has been said that the mere creation of a corporation was alone sufficient in the absence of prohibition, to confer upon such corporation all powers which are regarded as incidental to corporate existence.

II. General Concept

A great amount of decision of different courts have been handed down containing the general statement that corporation possess only such powers as are expressly granted, and such as are necessary to carry into effect the power expressly granted. From these it is obvious that corporations have powers other than expressly granted. This doctrine arises not only naturally but necessarily. It would be a matter of impossibility to incorporate into a special Act granting a charter or in the articles of association, the complete detail of all the powers any particular corporation may exercise. This would also be impossible because according to a suggestion already made the power of a corporation may vary under different circumstances. Hence there has arisen in connection with the construction of charters the general and somewhat elastic doctrine of implied powers.

It has long been a rule that a corporation along with their express and specific powers, take all the reasonable means of execution, all that are convenient and adapted to the end in view. Indeed, a corporation has liberty of choice among those means, and where in the exercise of such liberty, an intelligent good faith is used the power to select the means adapted cannot be called in question.

It has been said that there is no good reason why a corporation should act in the execution of its charter purposes, resort to any means that would be necessary and proper for an individual, in transacting the same matters, unless prohibited by the charter or some public law. While grants of corporate powers are strictly construed, yet they are not to be so construed as to defeat the object of the grant itself. Such a construction would be entirely quixotic and out of harmony with the general rules of logical construction. From this follows the implication of powers that are strictly and purely incidental and necessary to the object of the grant. The principle is, that the powers which a corporation take by implication are limited to those that are reasonably necessary for the accomplishment of the purposes for which the corporation was created, and therefore cannot be exercised by it for purposes that are alien to its own declared ends. An implied power could be defined therefore as one which is directly and immediately appropriate to the execution of the express powers of a corporation.

Great caution should however be observed that the implication of powers is not abused. Against the evil numerous safeguards have been provided to insure a safe and reasonable exercise of the right. Among them is that the express power of a corporation may not be enlarged by implication. An act may fall within the implied powers of a corporation if it is unchallenged by the state, and where it is not prohibited by the charter, and where it has a reasonable tendency to aid in the accomplishment of one or more of the corporate purposes.

In the case of North Side Ry. Co. v. Worthington (33 Am. State Rep. 778) Chief Justice Gaines said "Corporations are creations of the law and can only exercise such powers as are granted by the law of its creation. An express grant however is not necessary. In every express grant there is an implied power to do whatever is necessary or reasonably appropriate to the exercise of the authorities expressly conferred. The difficulty arises in every particular case when we attempt to determine whether the power of a corporation to do an act may be implied or not. The question has given rise to much litigious controversy and to much conflict of decision. If the means be such as are usually resorted to, and a direct method of accomplishing the purpose of the incorporation, they are without its powers. If they be unusual and tend in an indirect manner only to promote its interests, they are held to be ultra vires."

It has been squarely pointed out in the principal cases that the determination of the implied powers of a corporation involves what is called a mixed question of law and fact, that is, a question of fact to be determined by the court in accordance with certain general rules of interpretation and construction. One of these rules require the court to consider (a) the character of the corporation its objects and purposes and (b) the means and methods which at any given time, according to approved usage and custom, are employed to accomplish these objects and purposes.

For the purpose of determining the implied powers of private corporations they may be divided broadly speaking, into four classes: (1) Ordinary manufacturing, mining and trading corporations, (2) Corporations subject to the banking and insurance laws, (3) Public service corporations, as railway company, gas, electric and power companies and the like, (4) Religious, charitable, educational corporations such as churches, private hospitals, colleges, universities, and the like. (This classification has been approved by Prof. Lynch, 3 Col. Law Rev. pp. 29.)

In Hess v. Sloane, (66 App. Div. 522) the Court said "the purposes of the defendant's organization are very material in determining the question as to its authority to make the alleged agreement. Where a corporation is organized for business or trading and the only persons interested therein other than its business creditors are its stockholders and their only interest is to secure dividends upon their investment, the question of ultra vires is of comparatively small importance except in behalf of the people of the state in their public capacity, and the courts treat the question as it relates to such corporation very differently than they do in banking corporation.

In Gauze v. Commonwealth Trust Co. "A banking corporation occupies a different relation to the public in that it invites individuals to submit to it the possession and care of their money and property. All banking institutions occupy a fiduciary position. (Profs. Canfield and Wormser—Cases on Private Corporations, pp. 258). Machem on Modern Corporations give certain general rules which he claims are well established. First, all powers not affirmatively granted either expressly or impliedly are denied. A corporation has such power and such only, as are conferred upon it by the Act of Incorporation or its incorporation paper; all powers not expressly or impliedly given are prohibited. Secondly, a corporation may exercise all pow-

ers that are fairly incidental, or reasonably adapted to the at- that no corporation shall exercise any power except such as are necessary to the exercise of the express power or the attainment of the objects of a corporation set forth in the incorporation paper does not alter this rule. (Ellerman v. Chicago Junction Rys. Co., 23 Atl. 287.)

It is in the application of this rule that doubts and difficulties are encountered; for the application of the rule involve, "either a question of fact or at least either a question of law and fact," so that former adjudicated cases often furnish an unsatisfactory guide. (Atty. Gen. v. Mersey R. Co. per Lord Loreburn). The rule itself is settled beyond peradventure of a doubt both in England and America. But the uncertainties of its application give rise, as already stated, to the desirability of mentioning expressly in the incorporation paper all powers that the company may desire to exercise, even tho they might be thought implied or incidental to the attainment of its other objects. (Machem on Modern Law on Corporations, secs. 69-100).

III. Modern Rule of the Doctrine

The old interpretation and application of the doctrine has been so far modified as to conform to present needs. The term "Modern Rule" however is at most only a relative term which cannot be taken on its face value but must be accepted with some qualification, for it is very hard if not impossible to set up and determine with accuracy a code that could properly be called a set of rules. The best expression of the modern rule that I have found so far is found in the case of Steinway v. Steinway and Sons of the Supreme Court of New York (40 N. Y. Supp. 718) penned by Justice Reebman. "The general rule is undoubtedly that a corporation must keep within the prescription of its charter. The difficulty arises however, giving rise to conflicting decisions, is in the application of the rule to individual cases, so that the question is merely one of construction. It may be stated as a general rule that the charter of a corporation read in connection with the general laws applicable thereto, is the true measure of its powers, and a transaction manifestly beyond these powers is ultra vires; yet whatever under the charter and general laws, reasonably construed, may fairly be considered as incidental to the purposes for which the corporation was created, is not to be taken as prohibited, but is as much granted as that which is expressed."

"It is a question therefore, in each case of the logical relation of the act to the corporate purpose expressed in the charter.

If that act is one which is lawful in itself and not otherwise prohibited is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends, in a substantial and not in a remote and fanciful sense, it may fairly be considered within charter powers. The field of corporate action in respect to the exercise of incidental powers is thus, I think, an expanding one. As industrial conditions change, business methods must change with them, and acts become permissible which at an earlier period would not have been considered to be within corporate powers."

The changes in the rule may be attributed to the more complicated purpose, aims and powers of modern corporation. The change in world conditions led to more specialization and broader field of endeavors necessitating a change too in the rules of conduct of the bigger, more intricate and more diversified object of corporations today. Not unlike the construction of constitutional provision they need to stretched and flexed to meet the growing necessities accompanying the progress of the world. The influence of newer things permeating our daily lives must necessarily be felt in everything, and this seemingly irrelevant subject we are now considering, forms no exception.

Thompson on Corporations gives a somewhat similar version of the application of this doctrine on present day corporations. According to him the more recent judicial expressions as to the enforcement of the doctrine of implied powers is decidedly against the strict application of earlier cases. The tendency now is to permit corporations in many instances to engage in collateral undertakings, to do particular acts, and hold them liable on contracts, that formerly would have been beyond their powers. The theoretical nation that a corporation has exceeded its powers, or violated some shadowy principle of public policy, has practically been abandoned; and in such cases the court now place their decision on more solid ground of damage, either suffered or threatened. It seems that public policy no longer require business corporation to confine themselves within the strict limits of the words of their charter; and in any event there is no person to complain where the stockholders either assent or acquiesce and where creditors are all paid. Illustrations of this principle are found in cases where the corporations made subscriptions for charitable objects, outside of their incidental purposes. While such things are regarded as beyond corporate powers, they were not illegal; yet if every stockholder expressly assented, to such an application of the cor-

porate funds, no wrong would be done, no public interest harmed; and no stockholder could object, and unless such acts are expressly prohibited they could not be avoided by the stockholders to the harm of third persons. (Thompson, Modern Law on Corporations, secs. 2290-98).

A Georgia case quoted and approved a statement of Mr. Coole on this proposition "A private corporation may exercise many extraordinary powers, provided all of its stockholders assent and none of its creditors are injured. There is no one to complain except the state, and the business being entirely private, the state does not interfere. Thus, fifty years ago the courts would summarily have declared it illegal for a business corporation to become an accommodation indorser of commercial papers." But today if all the stockholders assent thereto, and creditors are not injured, such an act is perfectly valid and legal.

In a Wisconsin case where this doctrine was discussed the court concluded thus, "when a corporation offends against the law of its creation such offense is against the sovereignty of the state; hence it is most proper that the state should apply the remedy and be charged with sole responsibility in that regard, and such is the law by the trend of modern authorities." (Farwell v. Wolf, 37 L. R. A. 138.)

Illustrations of this liberal construction could be afforded by the many cases decided by different courts. In the case of Brown v. Winnisimmet Co. the court held that a narrow and restricted construction of the powers granted to the defendants is inconsistent with any reasonable view of the intention of the legislature in conferring on them a corporate franchise and is not required by any considerations of justice or sound policy. On the contrary under their charter they are authorized to hold any amount or kind of personal property, within the limit of value fixed by the Act, which they may deem necessary or expedient for the proper conduct and management of the business of the ferry; that it is no excess of the corporate power to own steamboats which are not required for immediate or constant use in the daily prosecution of their ordinary business, but which may be convenient or useful in case of sudden emergency or accident, or when those which are employed in the regular service of the ferry might be withdrawn for repairs; that it is competent to defendant to let them for hire to others when they are not in use. (Brown v. Winnisimmet Co., Richard's Cases on Corporations, p. 260.)

Examples of the construction of this modern doctrine are also found in some of the more important cases decided by our local Supreme Court. The decisions tended toward the more liberal interpretation, allowing greater latitude in favor of modern corporation, perhaps, because of the greater range of activities and corresponding need for greater and more flexible powers.

In the case of Uy Siuliong v. Dir. of Commerce and Industry, 40 Phil. 541, the court held—Under the laws of the Philippine Islands a corporation may be organized for mercantile purposes "and engaged in such incidental business as may be necessary and advisable to give effect to, and aid in, the successful operation and conduct of the principal business; that all of the power and authority included in the Articles of Incorporation of Siuliong and Co. were only incidental to the principal purpose of its proposed incorporation, to wit; "mercantile business" and the petitioners are therefore entitled to have such article of incorporation filed and registered, and to have a certificate issued. The defendant cannot therefore refuse to file the petitioners certificate on the ground that it has more than one purposes namely, banking real estate, etc."

This is a sample of the extent our Supreme Court would go to favor the grant of power to corporations. This case is more replete with the intention and purposes actuating the application of the modern rule than any others. We could then easily glean the jealousy entertained by our courts of justice against the usurpation of powers and the consequent defeat of the object of incorporation. At the rate of progress of modern jurisprudence it would not be a long guess to dub the present corporations a paupered child, growing strong and robust thru the aid and protection of the interpreters of our laws. And yet who could say that they are unwise steps? Who could call them misguided, and erroneous ways? Who knows but that they may be for the betterment and good of the world at large? The birth of new things that are sometime of daily recurrence requires new readjustment, adopted to the resulting new need. And who could assert that these novel conceptions of a corporate powers were made to effect the needed changes? That question however, we cannot very well consider today. We shall then leave it to the future and hope for the best.

Another example of a modern decision in the Philippines is the case of Hogar Filipino v. Government of the Philippine Islands, 50 Phil. 421. Among the many questions decided in

the famous case is one of incidental power. The court said "Under subsection 5 of Sec. 13 of the Corporation Law every corporation has the power to purchase, hold and lease such real property as the transaction of the lawful business of the corporation may reasonably and necessarily require. The law expressly declares that corporation may acquire such real property as is reasonably necessary to enable them to carry out the purposes for which they are created; we are of the opinion that the owning of a business lot upon which to construct and maintain its offices is reasonably necessary to a building and loan association such as the respondent was at the time this property was acquired. A different ruling on this point would compel important enterprises to conduct their business exclusively on leased offices—a result which could serve no useful end but would retard industrial growth and be inimical to the best interest of society."

The above is another illustration of the attitude assumed by our local courts toward the newer Philippine corporations. In the case of Hogar Filipino I have found a more pronounced leaning in its favor perhaps due to the many people that would be crippled if the said company should die out. In this instance at least, I am convinced that public policy forbids a more stringent interpretation of the principles of implied powers against the corporations.

Another slant on the subject bearing towards the same tendency is found on Thompson on Corporations, sec. 4137, p. 674. The power to enact by-laws restraining the sale and transfer of stock must be found in the governing statute of the charter. Restrictions upon the traffic in stock must have their sources in legislative enactment, as the corporation itself cannot create such impediments. By-laws are intended merely for the protection of the corporation and prescribe regulations and not restrictions; they are always subject to the charter of a corporation. The corporation in the absence of such a power, cannot ordinarily inquire into or pass upon the legality of the transaction by which its stock passes from one person to another, nor can it question the consideration upon which a sale is based. A by-law cannot take away or abridge the substantial right of stockholders. Under a statute authorizing by-laws for the transfer of stock, a corporation can do no more than prescribe a general mode of transfer on the corporate books and cannot justify an unreasonable restriction upon the right of sale.

When the corporation itself is forbidden to do an act the prohibition extends to the Board of Directors, and to each director separately and individually. (P. P. I. v. Concepcion, 44 Phil. 126.)

The general rule is that an office of a corporation has no implied power to borrow money in its behalf; but where a general business manager of a corporation is clothed with apparent authority to borrow and the amount borrowed does not exceed the requirement of the business, it has often been held that the authority is implied and that the corporation is bound. (Pua Casim and Co. v. Newark and Co., 46 Phil. 342).

IV. LIMITATIONS

According to our Corporation Law the exercise of implied powers are limited by the condition that they must be reasonably necessary to the accomplishment of the purposes for which the corporation was organized, or that they must be reasonably necessary to the exercise of powers expressly conferred. It may not be amiss to look to the construction of the phrase "reasonably necessary" given by American court. (See Richards, Cases on Corporations) Chief Justice Marshall in the case of McCulloch v. Maryland, 4 Wheat. 413, says with regard to the construction of the term "necessary" as found in the constitution of the United States, "the word "necessary" is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of granted powers, to such as are indispensable, and without which the power would be nugatory, that it excludes the choice of means, and leaves Congress in each case, that only which is most direct and simple. Is it true that this is the sense in which the word necessary is always used? Does it always import an absolute physical necessity, so strong that one thing to which another may be termed necessary cannot exist without the other? We think it does not. If reference be had to its use in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient or useful or essential to another. To imply the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable. Such is the character of the human mind that no word conveys to it, in all situations, one single definite idea, and nothing is more common than to use words, in a figurative sense. Almost all compositions con-

tain words which, taken in their rigorous sense would convey a meaning different from that which is obviously intended. It is essential to just construction that many words, which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justify. The word "necessary" is of this description. It has no fixed character peculiar to itself. It admits of all degrees of comparison and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases."

From the opinion could be gathered the conclusion that by the qualification "necessary" is simply meant that a power is convenient, useful or essential to the purposes of a corporation or to a power granted expressly to it. If the doctrine enunciated by Chief Justice Marshall is true of the constitution of the United States surely it could not be contended that a more stringent rule will be applied in the construction of the powers of a corporation than is applied in the construction of the power of Congress under the Constitution.

Corporations are not permitted to run under the doctrine of implied power. The doctrine is not without its legitimate limitations, and these will be reasonably enforced by the courts. The prime and governing rule limiting the doctrine is that corporations have no implied power to engage in any enterprise other than that named in its charter or Articles of Incorporation; or execute contracts or do other acts not in pursuance of the purposes for which they are created. (Chiwaka Lime Works v. Dismukes, 5 L. R. A. 100.) The charter or Articles of Incorporation are the standard by which the powers of a corporation and the purposes for which it was organized must be determined; and the exercise of these powers are limited to those stated, and such as may arise by necessary implication. (Gould v. Fuller, 82 NW 673.) Another rule on this subject is that a corporation is not held by either the government or the stockholders as authorized to act or to make contracts beyond the scope of the purposes named. The whole doctrine hinges on the proposition that the powers of a corporation are limited by its charter.

Another limitation may be noted where it was ruled that corporate powers could never be created by implication nor extended by construction. In limiting the definition of implied

powers the Supreme Court of Illinois said "Implied powers exist only to enable a corporation to carry out the express powers granted—that is, to accomplish the purpose of its existence and can in no case avail to enlarge the express powers and thereby, warrant it to devote its efforts and capital to other purposes than such as its charter expressly authorizes, or to engage in collateral enterprises not directly but only remotely connected with its specific corporate purposes. A power which the law would regard as existing by implication must be one in a sense, necessary, that is, needful, suitable and proper to accomplish the object of the grant—and one that is directly and immediately appropriate to the execution of specific powers, and not one having only, a remote relation to the specific purposes of a corporation." (State v. Lincoln Trust, 46 SW 593.)

Illustrations of these rules are found in many cases. A corporation organized to manufacture and brew malt liquors have no power to sell malt liquors not of its own manufacture. A banking corporation cannot conduct a manufacturing business. A corporation organized to carry passenger for hire has no authority to maintain exterior advertising signs for its vehicles as this is not necessary to the exercise of its corporate powers but independent and separate from it. An incorporated golf club, has no authority to dispense intoxicating liquors to its members. A corporation to furnish gas and electricity for public and private use has no power to purchase stock in other corporations. (In re Pittsburg Pure Beer Co., 7 Pa. 233; Louie Beetz Co. v. Bank of Kentucky, 55 SW 697; Fifth Avenue Co. v. New York, 11 N. Y. S. 759; State v. Country Club, 173 SW 570; People v. Union Gas, 254 Ill. 395.)

In drawing up the object clause of an incorporation paper much may safely be left to implication. The old list of implied power given by Blackstone is too limited. Moreover such implied powers are expressly conferred by the general enabling act upon all corporations organized by it. There are many other powers not enumerated in the textbooks, on the subject, and indeed so many and various as almost to defy enumeration, which are incidental to almost every modern corporation—certainly to every corporation framed in the joint stock plan. Such powers need not be expressly mentioned in the incorporation paper in specifying the objects of the company.

Caution as reliance upon implication of law.—But altho much may safely be left to implication, a few pregnant phrases carrying a world of meaning, yet the fact of wisdom is to rely

comparatively little in important powers being read into the incorporation paper by construction or implication. A learned and experienced English lawyer has said on this subject, "A very concise statement of objects may, by implication as the lawyer is aware, cover a great deal, but a memorandum of association is a popular document intended not merely for lawyer but for the guidance of shareholders, directors, and of the general public, and accordingly, it is not expedient to rely too much on implication. Experience shows that it is better to be explicit and thus to preclude so far as practicable the doubt and difficulties which inevitably arise in the construction of a very concise statement of objects. Hence the somewhat elaborate statement of objects now so commonly found. These clauses may err by excess of detail; but over elaboration is better than over conciseness. Nothing is more irritating to those who have to manage a company than to find that the powers of the company are filtered or questioned, and its business impeded or prejudiced simply because the framers of the memorandum of association has framed it without sufficient foresight or judgment, and has contrary to the fact assumed that the ordinary business man is familiar with the legal and somewhat conflicting decisions as to the powers which may be implied by a concise statement of objects. (Palmers Company Law III Ed. pp. 16.)

Maxim of Expresio Unius.—One danger lurks in our elaboration and statement of unnecessary details; that is that the express mention of certain powers which would ordinarily be implied would be held an inferential exclusion of all similar powers which would likewise ordinarily be implied. *Expresio unius Exclusio Alterius.* Thus an express power to borrow up to a certain amount would probably uphold as an implied prohibition of borrowing to a greater amount, altho had nothing been said on the subject, the corporation would have possessed an unlimited power of borrowing. This danger may be averted by an express provision that the mention among the company's objects of certain powers shall not be deemed to exclude by inference the exercise of any powers that might have been implied, if no such mention had been made.

In order to determine what objects or powers must be expressly mentioned in preparing an incorporation paper, and what need not, it is necessary to consider somewhat in detail what powers and objects may be implied. This consideration will not be permitted however, to extend to the thoroughly exhaustive examination of the subject of the implied or incidental power

of a corporation but will be confined to such points as are more general and broader in character.

V. Conclusion

No amount of discussion could be made that could decidedly settle the limits and boundaries of implied power. The sources of implication can never be exhausted, and as long as cases would come up for adjudication involving a question of this power newer and more novel points would be made that would form fresh sources for this already broader power. In fact the spring is as inexhaustible as the field of human activity and as varied and changeable. It would be ridiculous to pretend to set down in this short thesis anything more than a superficial study of the power and endeavor to clarify the necessities calling for its exercise and the circumstances warranting the invocation of such power. The general and very flexible provision in our Corporation Law that serve as the authority for the exercise of implied powers is the best that could be done in the case. To try to be more specific would be to narrow the scope of possible action and consequently cause the greater confusion. The law is more preferable as it is so long as it does not thereby prejudice the rights of third persons.

Therefore the safest criterion in resolving questions of these kind is that a corporation can only exercise such implied power as are reasonably necessary to accomplish the purpose for which they are organized, or such as are reasonably necessary to aid in the exercise of the powers expressly conferred. Both of these are with a view to the objects of a corporation and the facts and circumstances of a given case. All other would be questions of facts and matters of evidence for which no possible norm of proof could well be prescribed.