The Power of the National Assembly to Amend, Alter, or Repeal Corporate Charters Under the Philippine Constitution

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I. INTRODUCTION .

THAT the charter of a corporation is a contract is a long established truism. That the state, under its reserved powers to alter, amend, or repeal the charter, may change the terms of the contract to an extent which in the absence of the reservation would be an impairment of the obligations of contract—is also a commonplace. But the scope of these principles in this jurisdiction does not seem to have been clearly delimited, as the statutory provisions on the subject remain unexplained by our courts. Due to the socialistic tendencies of the Philippine Constitution and the policy of centralization pursued by the Philippine Government, it becomes of pressing importance anew to resurvey the boundaries of the aforementioned principles.

This work does not presume to be exhaustive. For extensive discussions of the corporate charter, attention is called to the books on American corporation law notedly Fletchers Cyclopedia of Corporations, Permanent Edition, Vol. 7; Cook on Corporations, Vol. II; Thompson on Corporations; White on Corporations.

II. NATURE OF THE CORPORATE FRANCHISE

A. *Before the Dartmouth College Case*

Even before the Dartmouth College Case, the corporate franchise was considered in the nature of an inviolable right. This was true in the common law in England, in spite of the unrestrained powers of Parliament. So also was it in France. And in the United States, the charter contract principle was recognized as early as 1806 by Justice Parsons. (Wales vs. Stetson, 2 Mass. 143).

B. *The Dartmouth College Case (4 Wheat, 518, 4 L. Ed. 629)*

In this celebrated case, the facts appeared to be as follows: In 1769 Dartmouth College, in New Hampshire was incorporated under a charter granted the trustees by the British government. Subsequently, in 1816, the state legislature passed an act amending the charter of the college in certain material and important points. Th trustees questioned the right and power of the state to amend the college charter, without the consent of the corporation.

EDITORS' NOTE.—This thesis, submitted in partial requirements for the degree of LL.B., University of the Philippines, 1938-39, was awarded first prize.

The case was brought before the Supreme Court of the United States and Webster as counsel for the plaintiffs pressed on the contention that the charter of the corporation was a contract between the latter and the state as meant and included within the meaning of the constitutional prohibition against the impairment of the obligations of contracts (Art. 1, Sec. 10, American Constitution), and that therefore the legislative enactment aimed to alter that contract was void and of no effect. The United States Supreme Court in an opinion penned by Chief Justice Marshall upheld this contention and held that the Dartmouth College was a private elymosynary corporation, that the charter granted it by the English crown had not been dissolved by the Revolution, and that the legislative enactment attempting to amend the corporate charter, would, if enforced, impair the obligations of the contract between the corporation and the state and therefore was unconstitutional and void.

The United States Supreme Court has always and uniformly declared that Dartmouth College vs. Woodward did of itself finally settle this principle. This was the attitude of the court so many years ago; then and since, it has always and very emphatically refused to question its reasoning or reconsider its conclusion. This is so true, that in Stone vs. Mississippi, 101 U. S. 816, 25 L. Ed. 1079, Chief Justice Waite observed that, "the doctrines of Trustees of Dartmouth College vs. Woodward, announced by this court more than sixty years ago, have become so imbedded in the jurisprudence of the United States as to make them to all intents and purposes a part of the Constitution itself." In a latter case, the Supreme Court in referring to the decision has characterized it as "a cannon of American jurisprudence." (Pearsoll vs. Great Northern Ry. Co., 161 U. S. 660, 40 L. Ed. 843, 16 Sup. Ct. 708).

C. *Scope of the Contract*

As a general rule, the protection of the charter contract extends to implied charter rights, especially such as are necessary or essential to the execution of the powers expressly granted. Hence, all rights which the corporation takes by necessary implication are protected by the constitutional provision now under consideration—the prohibition against the impairment of contracts. Illustrating the point we may cite the case of Planters' Bank vs. Sharp, 6 How (U.S.) 332, reversing Payne vs. Baldwin, 3 Swedes & M. (Miss.) 661. In the first mentioned case, the charter of a bank authorized it to receive and own goods, chattels, and effects of all kinds, and to dispose of the same for its good; but nothing was expressly said in the charter as to its right to transfer by indorsement. Subsequently, a statute was passed providing that it should not be lawful for any bank in the state to transfer, by indorsement or otherwise, its note or bills receivable. In passing on the validity of this later statute, the court held that the right to transfer negotiable paper was clearly implied in the charter, and could not be impaired by a subsequent statute.

In the case of Thorpe vs. Rutland & B. R. Co., 27 Vt. 140 (1857), it was laid down as a general rule that the powers expressly, or by necessary implication, conferred by the charter, and which are essential to the successful operation of the corporations are inviolable

It should be noted that the rules in all these cases were laid down as applicable to corporate franchises not complicated by the express reservation of the power to amend, alter, or repeal such franchise.

D. *The Charter Contract Doctrine in the Philippines*

In so far as the charter contract doctrine is an explanation of the obligation of contract clause and as such a part thereof, it may be considered to be a part of the political law of the United States. It therefore became a part of Philippine jurisprudence from the moment of the implantation of American sovereignty. (Villas vs. City of Manila, 220 U. S. 345, 55 L. Ed. 481). All corporations and sociedades anonimas that may have been formed and granted corporate franchises during the Spanish regime were therefore under the absolute protection of this doctrine subject only to the implied limitations arising from the exercise of the general legislative power as will be enumerated.

And so too were all corporate franchises that may have been granted before 1906—the passage of Act 1459, the Corporation Law. These corporate charters which were given by special legislative enactments of the Philippine Commission must be considered as contracts in the strictest sense, subject only to the power of the Congress of the United States to amend, alter, or repeal reserved by the Philippine Bill of 1902 and the Jones Law of 1916. Note that the reserved power is given to the Congress of the United States and not the legislative department of the Philippines. (Manila R. R. Co. v. Rafferty. 40 Phil. 224)

In 1906, Act 1459 otherwise known as the Corporation Law was passed by the Philippine Commission. This law is the general law of incorporation in the Philippines. The charter under the general incorporation law is constituted by the general law and the articles of incorporation. (Green Bay & Minnessota R. Co. vs. Union Steamboat Co., 107 U. S. 98, 100; 27 L. Ed. 413; 25 Sup. Ct. 221). Art. 76 of the said law however reserves to the legislature the power to amend or repeal the said corporation law or any part thereof at any time, and to dissolve any or all corporations created by virtue of the act providing however that no right or remedy in favor of or accrued against any corporation, its stockholders or officers, nor any liability incurred by any such corporation, its stockholders or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Act or of any part or portion thereof. Fisher in his book, Philippine Law of Stock Corporations, is of the opinion that the contractual nature of the corporate charter is not affected by the reservation of the power of dissolution by legislative act. He argues that if that power is in fact exerted, the corporation ceases to exist and the contract is rescinded. But if the reserved power to dissolve is not exerted, then the rights of the corporation and its shareholders are unaffected by its existence. He believes that the undertaking that "no right . . in favor of . . . any corporation, its shareholders or officers . . . " shall be adversely affected by amendment of the statute is, when accepted by incorporation, part of a contract which may be rescinded in toto, but

which may not be impaired during its existence.

However in the case of County Judge vs. Shelby R. Co. 5 Bush (Ky) 225, it was said that a reserved legislative power to repeal a charter includes the subordinate power to modify it in order that the ends had in view in the creation of the original may be fulfilled. And so also in the case of Pratt Institute vs. City of New York, 183 N. Y. 151, 162; 75 N. E. 1119, it was held that the power to amend a general law of incorporation involves the power to amend charters taken out under that law. It would seem therefore that the legislative authority has the power to amend corporate franchises issued out under the Corporation Law. This subject specially in relation to the rights or remedies in favor of or accrued against any corporation or liabilities incurred by such corporation shall be treated more extensively under the reserved power to amend, alter or repeal.

The Philippine Constitution, approved by the United States President on March 24, 1935, provides that "the National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof. (Art. XIII, Sec. 7).

Before the adoption of the Constitution, this provision did not exist either in Philippine organic laws or in statutes. Therefore corporate franchises could be granted by the then-existing Philippine Legislature by means of special legislative enactments. And unless these corporate franchises expressly included any limitation by the reservation of the right to amend, alter, or repeal the same, such corporate franchises though merely statutory in form could not and cannot be changed by legislative fiat in any material form without the consent of the corporation as expressed unanimously by the shareholders.

And inasmuch as the Philippine Constitution provides, as already noticed, that the National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof, and inasmuch as the National Assembly has not amended or modified the general incorporation law, Act 1459 of the Philippine Commission as amended by Act 3518 of the Philippine Legislature, then under Section 15 of the Tydings-McDuffie Law this general incorporation law remains the law on the subject. And since Art. 76 of said Act 1459 reserves the power of dissolution and repeal to the legislative power, and in so far as Section 8, Art. XIII of the Philippine Constitution expressly reserves to the National Assembly the power to amend, alter, or repeal all rights and franchises granted by such Assembly, then it may be said that the charters of all corporations formed after the adoption of the Philippine Constitution are contracts only in so far as within the limits of the right of amendment, alteration or repeal by the National Assembly.

It may be added that the Congress of the United States is not bound by the prohibition against the impairment of the obligations of contracts of the Federal Constitution inasmuch as this inhibition applies only to the states of the

union but not to the national legislature. (Legal Tender Cases, 12 Wallace; 20 L. Ed. 287, 311). And the power to repeal all the legislative enactments of the defunct Philippine Legislature was expressly reserved to Congress. (Phil. Bill, Sec. 86; Jones Law, Sec. 19). And furthermore, even in the absence of any express reservation of the power to amend or repeal legislative enactments of the governments of its territories, Congress has the inherent power to alter, amend or repeal laws passed by a territorial legislature, including laws creating or authorizing formation of corporations. Territorial governments occupy towards Congress something of the same relation as municipalities —such as city governments—feel towards the state legislatures. A state legislature can repeal the charter of a municipal government, and the ordinances passed under it; so Congress can repeal the organic act of a territory and all territorial enactments, in pursuance of the organic act. Congress is the sovereign power to legislate for the territories, and all charters from territorial legislatures must be held to have been accepted with the knowledge that Congress possessed the authority to change or repeal the law creating them. (U. S. vs. Church of Jesus Christ of Latter Day Saints, 5 Utah 361).

It may be concluded therefore that the Congress of the United States has plenary and absolute power to alter, amend, or repeal all corporate franchises whether issued in the form of special legislative enactments or under the general incorporation law, subject perhaps only to the Federal Constitutional provision against the deprivation of property without due process of law.

E. *Limitations Upon the Charter Contract Doctrine*

The limitations of the charter contract principle may in general be divided into:

1. Express limitations.
2. Implied limitations.

The first class is constituted by the express reservation of the power to amend, alter, or repeal the corporate charter. The discussion of this class, we forego for the moment and leave it for a more extended treatment in the second part of this work.

The second class of limitations are derived from the great powers of government which are always reserved and by virtue of the generality of their scope are applicable to corporations. Due to the apparently confusing nature of this question, it is necessary to establish a definite, if arbitrary, classification. In many cases, the courts have refused to base their holdings on any particular ground but have been content to justify their holdings on the general effect of as many powers or limitations and powers as may be discovered. The limitations constituting this class may be classified into:

1. Those arising from the general legislative power.
2. Those arising from the police power.
3. Those arising from the power to tax.
4. Those arising from the right of eminent domain.
5. Those peculiar to public utilities and corporations affected with a public interest.

It is to be remembered that the following discussion on the implied limitations of the charter contract theory is made with the

presumption that the charter as meant is not subject to the power of amendment, alteration, or repeal.

1. *Legislative control of private corporations*

In General

In upholding the assertion and exercise of these powers by the legislative branch of the government, the courts have resorted to various expedients. Assuming the proposition that a charter is a contract, the ordinary rules of contract have been invoked and applied. This argument has been followed not only to evade the operation of the contract doctrine but also to deny the existence of any contract at all on grounds like the absence of consent, the lack of capacity of one of the parties to contract, the lack of jurisdiction over or illegality of the subject matter, the want of consideration, and the failure to comply with the formalities required by law for incorporation.

a. *Consent*

If the charter be a contract, then its acceptance by the corporation is necessary. In the Philippines charters could be said to be offered for acceptance, if the legislative department grants the charter by special legislation. So if this charter be not accepted by the corporation, the contract does not arise. However, special legislation to grant corporate franchises could have been enacted only before the adoption of the Philippine Constitution.

The general incorporation law also seems to consider as in the nature of an offer, the charter or corporate franchise which may be granted under its provisions and which offer may be deemed as rejected if the "corporation does not formally organize and commence the transaction of its business or the construction of its works within two years from the date of its incorporation" and its corporate powers automatically cease. (Sec. 19, Act 1459).

In the United States it has been held, upon a parity of reasoning, that a corporation may not surrender its charter without legislative consent. (Mechanics' Bank vs. Heard, 37 Ga. 411). This ruling however may not be applied to the Philippines in so far as Secs. 62 to 67 of Act 1459 do not only permit but authorize voluntary dissolution by the procedure therein specified. However, the ruling may apply to public service corporations, in so far as the Public Service Commission may compel the corporation to continue in a business inherently public in character.

Upon theory also, an insurance company chartered with immunity from taxation lost this privilege by neglecting to act under its charter until after the adoption of a new State Constitution prohibiting special privileges of the sort. (State vs. Planters, etc. Ins. Co., 93 Tenn. 207; 3 S. W. 992). This doctrine may be applicable in this jurisdiction to corporations, which before the adoption of the Philippine Constitution were granted irrevocable and exclusive franchises, rights, and privileges in their charters, and which acted upon their franchises within two years after incorporation, and therefore did not lose their right to corporate existence under Sec. 19 of Act 1459, but which however instituted and commenced such use or application of their corporate rights after the adoption of the Philippine Constitution. They may be so affected as to render non-exclusive any

rights or privileges to them granted in exclusive form, or amendable and revocable such franchises and rights although they may not provide for the power. This is so because of Sec. 8, Art. XIII of the Philippine Constitution which reads:

"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, *nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires.*

Since the charter is a contract, it may be modified by mutual consent. So under the provisions of the general incorporation law, there may be considered as a standing offer of modification by the state, Section 75 which gives to "any corporation or sociedad anonima formed, organized, and existing under the laws of the Philippine Islands and lawfully transacting business in the Philippines on the date of the passage of this Act, the option to continue business as such corporation or to reform and organize under and by virtue of the provisions of" the act.

The corporation may in a compromise with the State lose its right to enforce certain charter stipulations. A corporation entitled under its charter to a subsidy of ₱8,000 a year, if it later accepts the provisions of an act giving only ₱2,000 annually, thus loses all right to the former stipulation. (See St. Johns College vs. Comptroller, 23 Md. 640).

b. *Competent Parties*

Corporations cannot become incorporators. If they do, however, there would be no competent party with whom the state could contract. The charter could not then be considered a contract.

c. *Want of consideration*

This has been particularly the basis for the refusal to find a contract in grants of tax exemptions. (Casanovas vs. Hord, 8 Phil. 125).

d. *Unexecuted Powers and Grants, Subject to Legislation*

This proposition was settled in the case of Pearsall vs. Great Northern Ry. Co., 161 U. S. 646; 40 L. Ed. 843, 16 Sup. Ct.

This limitation is different from the loss of the right to corporate life under Section 19 of the Corporation Law in that it treats of special rights, privileges or immunities and not of the right to exist as a corporation. And here no period is set or established. It is also different from the limitation arising from the constitutional provision that no exclusive franchises shall be granted, and all rights and franchises shall be subject to amendment, alteration or repeal, in that the rights and privileges herein treated may not be exclusive and they may not be subject to the power of amendment and repeal.

Thus if a corporation is authorized to consolidate with other corporations by its charter granted by special legislation before the adoption of the Constitution and which charter is not subject to the power of amendment, alteration, or repeal, it would be clear that neither the Philippine Legislature nor the National Assembly could change or revoke the right,

as it would be considered a material stipulation of the charter contract. But if the corporation, although exercising its other corporate rights and powers granted by the charter, fails to enforce and use its right of consolidation, and the National Assembly now passes a law prohibiting consolidation of corporations of any kind, the right of consolidation would be lost. Until executed, the right of consolidation is merely a license and not a vested right.

e. *Matters not part of the contract*

Not all of a charter are parts of the contract. Those grants incidental in nature are not of the essence of the contract. A provision in a bank's charter permitting the issuance of one dollar notes is considered an incidental grant. (State vs. Mathews, 3 Jove [N.C.] 464).

The niceties of construction, as a general rule, have been responsible for all of the restrictions with which the courts have hedged in the doctrine of the Dartmouth College case. Thus when grants of corporate rights, privileges, or immunities are in derogation of public right, they are to be construed most strongly against the corporation, and in favor of the State.

Before the adoption of the Philippine Constitution, the legislative department of the Philippine Government could grant exclusive franchises in the corporate franchise. However, under the rule of legal hermeneutics just stated, unless the enactment expressly and clearly makes the grant exclusive, it is not to be so considered. (See Cacho & Hidalgo vs. Manila Electric Co., 57 Phil. 470).

f. *Remedial Laws*

It is a common principle of constitutional law that there can be no vested right in particular forms of remedies and procedure that may exist at any given time. This applies to artificial as well as to natural persons. Sec. 13, Art. VIII of the Philippine Constitution makes the then existing laws on pleading, practice, and procedure mere Rules of Court, and further provides that, "The National Assembly shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure."

2. *Limitation Growing Out of the Police Power*

The general rule that the welfare of the few must give way to the good of all is also applicable to corporations. The rule may be stated thus: Conceding that one legislature may tie the hands of its successors in the matter of regulating and controlling the corporations which it has created, yet the immunity thus created cannot be permitted so to operate as to hamper the lawmaking power in the task of protecting the public safety, the public health, and the public morals. "No legislature can bargain away the public health or the public morals." (Stone vs. Mississippi, 101 U. S. 819; 25 L. Ed. 1080).

The National Assembly, being the repository of the general police power, may therefore exercise that power even to violate the charter contract. It can terminate the eixstence of corporations devoted to lottery, cockfighting, horse-racing or other forms of gambling, although the corporate charter may have granted these powers. It may also compel the removal, from a city or town, of corporations whose business authorized by their charters have become nuisances.

For an extensive discussion of the subject, look up Sinco, Phil. Gov't. and Pol. Law, 4th ed.

3. *Limitation arising out of the right of eminent domain*

Another important restriction of the charter contract principle arises out of the right of eminent domain, inherent in every sovereignty. By the exercise of this right, properties and franchises otherwise protected by an irrevocable charter and even the very charter itself may be acquired after the payment of just compensation. (West River Bridge Co. vs. Dix, 6 How. 541, 542, 543, 548; 12 L. Ed. 549, 550, 552; and see Opinion of Justices, 66 N. H. 637, 33 Atl. 1081).

Our constitution in addition to the usual constitutional provision recognizing and prescribing the manner of the exercise of the right of eminent domain also provides:

"The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government." (Art. XII, Sec. 6.)

Prof. Sinco calls this an "openly socialistic provision." He further adds upon the subject: "This provision authorizes the state to do two things: (1) to establish and operate any industry or means of transportation or communication; (2) to expropriate any private enterprise belonging to private individuals. These two things may be done by the Government when it is deemed necessary for the national welfare and defense. While under the Constitution of the United States and under the laws in force in the Philippines previous to the adoption of the Constitution public utilities could be operated by the Government, the acquisition of purely private enterprise could not be carried out with public funds. That was so because public funds derived from taxation may only be devoted to public use. But with the above provision of the Constitution, the scope of the Government's power to own and operate private business has been considerably extended. The government may, by the above provision, expropriate a factory controlled by alien capitalists. It should be borne in mind that the power of the Government under this section is not dependent upon the consent of the owner of the private enterprise as in ordinary sale; but it may be exercised even against the consent of the owner, the only requirement being the payment of just compensation." (Sinco, Phil. Gov't. and Pol. Law, 4th ed. 404-405).

When the irrevocable franchise of a corporation is appropriated by the exercise of the right of eminent domain, there is no impairment of the obligations of contract. On this point, Mr. Justice Brewer said that, "condemnation proceedings do not impair the contract, do not break its obligations, but appropriate it" to public uses. (Long Island Water Supply vs. Brooklyn, 166 U. S. 685, cited by Sinco, Phil. Gov't. and Pol. Law, 4th ed. p. 561).

The right of eminent domain as a limitation upon the charter contract doctrine differs in nature and extent from the other kinds of limitations. With the exercise of the right of eminent domain, there is an appropriation—from the other limitations arise a destruction, or at most a modification—of the corporate charter. In the former, there is a transfer

of ownership, in the latter ownership remain where originally vested but is merely restricted. In the former, as there is a transfer of ownership, there is a commensurate payment of the value of the thing transferred, in the latter as there is no transfer, there is no such payment of valuable consideration. Although both are mandatory in their nature in so far as respect the corporation, the former partakes of the characteristics of a contract first by the transfer of something as in sale, and the payment of valuable consideration, but the latter class is in the nature of a mandate—coming from a power, dictating to a subject, which has no other alternative but to obey.

4. *Limitation Arising from the Power to Tax*

Considering the vital character of the taxation power, the courts have always considered it legal for the legislature to amend or revoke an exemption from taxation although such an exemption is embodied in a corporate charter not expressly subject to amendment or repeal—unless the grant of exemption is expressly made irrevocable. We have seen that if a corporate charter is silent as regard the power of the legislature to amend, alter or repeal such charter, then such a power does not exist. But this is not the rule as regard a charter provision granting a tax exemption. For such a grant to be inviolate and irrevocable, it is not enough that the charter be silent about the legislative power to amend or alter such charter. It is necessary that the tax immunity be expressly made irrevocable and unamendable. For if the charter is merely silent, the power of amendment, alteration, or repeal is considered as reserved.

5. *Limitation peculiar to public utilities and corporations affected with public interest*

The limitation herein treated is distinct from that arising from the police power. Corporations maintaining public utilities or engaged in industries affected with public interest are also subject to the other powers already enumerated. But in addition to all these, by virtue of their peculiar public character, they are further subjected to additional regulation.

For examples of its application see Sinco, Phil. Gov't. and Pol. Law, 4th ed. 509-519 on Due process and Property Clothed with Public Interest.

III. THE RESERVED POWER TO AMEND, ALTER OR REPEAL

A. *History*

The reserved power to amend, alter, or repeal corporate franchises has been classified as the primary and most important limitation to the charter contract doctrine. Its origin dates as far back as the charter contract idea, and each developed with the other.

In the common law grants of land or gifts of incorporeal hereditaments, such as corporate franchises, made by the crown, when executed, were considered as irrevocable and unalterable except only in so far as the power to do so had been reserved. (2 Bl. Com. 317, 346; See also Shep. Touch. ch. 12, p. 227, and The King vs. Passmore, 3 T. R. 246).

In the United States, Justice Parsons in the case of Wales vs. Stetson, 2 Mass. 143 (1806) held that the corporate charter could not be controlled or destroyed by any subsequent statute, unless the power for that purpose be reserved to the legislature in the act of in-

corporation. The same suggestion to counteract the binding and irrevocable effect of the charter contract by the reservation of the power to amend, alter or repeal the corporate charter was also made by Justice Story in the Dartmouth College Case.

Public alarm and protest had followed the decision in the College case. Great anxiety was caused by the belief that danger threatened the public welfare as now a thing created by law was placed beyond the control of the law, and it was felt that if the then existing corporate charters were stronger than the state, no future charter should be. Action was accordingly instituted along the line suggested by Justices Parsons and Story. The intention was absolute and final that no charter should escape from legislative control. It has been the universal practice therefore to include in constitutions, general incorporation laws, or in the very corporate charters or franchises, reservations of the power to amend, alter, or repeal. And since this provision constituted a part of the contract itself, its application and enforcement would be in accordance with the contract, and could not therefore, impair its obligation. (Greenwood vs. Union Freight R. Co., 105 U. S. 13; 26 L. Ed. 961. See also Arondale Land Co. vs. Shook, 170 Ala. 379, 54 So. 268; Lord vs. Equitable Life Assur. Soc., 194 N. Y. 212, 22 L. R. A. (N.S.) 420, 87 N. E. 443).

The object therefore of the reservation was, and still is, to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with its exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the state control over its contract with the incorporators, which without that provision would be irrepealable and protected from any measures affecting its obligation. (Tomlimson vs. Jessup, 15 Wall (U.S.) 454, 458 (1872); People ex rel. Cooper Union vs. Gass, 190 N.Y. 323, 328 (1907).

B. *Modes of Reservation*

The reservation of the power to amend, alter or repeal corporate franchises may be made in the constitution, in a general law specially for the purpose, in the general incorporation law, in the corporate charter, or in the special legislation granting the corporate franchise. In any of these cases, the effect of the reservation is the same. It is immaterial whether the power to alter the charter is reserved in the original act of incorporation, or in the articles of association under general laws, or in the constitution in force when the incorporation under a general law is made. (Polk vs. Mutual Reserve Fund Life Ass'n of New York, 207 U. S. 310; 52 L. Ed. 222; 28 Sup. Ct. 65). The reservation may be made in relation to the whole corporate franchise or in relation to special franchise. Again it may be made conditionally or unconditionally.

The general comprehensive power to amend, alter or repeal may be reserved. Or the power to repeal alone without the power to amend or alter may be retained.

A provision in a charter that it shall not be altered in any other manner than by act of the legislature is equivalent to an express reservation to the state to make alterations in it. (Pennsylvania College Cases, 13 Wall. (U.S.) 190).

C. *Reservations of Power in the Philippines*

The Philippine Bill of 1902 reserved the power to amend, alter or repeal franchises granted by the Philippine Government—only to the Congress of the United States. (Sec. 74). The Jones Law of 1916 did the same. (Sec. 28). The legislative branch of the Philippine government had no right whatsoever, from the implantation of the American sovereignty in 1898 to the approval of the Philippine Constitution to amend, alter, or repeal any franchise it itself conferred, whether special or corporate and so long as it was not granted under Act 1459, the Corporation Law passed in 1906, unless such power was expressly reserved in the grant.

Thus in the case of Manila Railroad Co. vs. Rafferty, 40 Phil. 224, (1919), the Philippine Supreme Court held that the Philippine Legislature had no power to amend or alter Act 1510, the special franchise granted to the Manila Railroad Company, as this power to amend or alter, only the Congress of the United States can exercise.

But article 76 of Act 1459, the Philippine Corporation Law, provides:

"This act or any part thereof may be amended or repealed at any time by the legislative authority, and any or all corporations created by virtue of this Act may be dissolved by legislative enactment. No right or remedy in favor of or accrued against any corporation, its stockholders or officers, nor any liability incurred by any such corporation, its stockholders or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Act or of any part or portion thereof."

The Philippine Constitution by providing in Art. XIII, Sec. 7, that, the National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof, renders impossible the creation of corporations and the grant of corporate franchise by special legislative enactment. All corporations formed after the adoption of the Constitution were therefore, necessarily organized under the provisions of the general incorporation law, Act 1459. They, therefore, all come under the provisions of Art. 76.

It will be noted that the reservation provision of our statute, like the California Civil Code (Sec. 404), is peculiar. It provides that the law itself—the general incorporation law—may be amended or repealed at any time. But it does not authorize the amendment or alteration of the corporate charter. It expressly gives the power to dissolve all corporations that may be organized under the provisions of the statute, but it remains silent about changes in the corporate franchise. This characteristic of our law has caused Fisher in his book, Philippine Stock Corporations, to opine that the legislative branch of our government has no power to amend or alter corporate franchises; that the legislature may rescind the grant of the right to corporate life altogether, but it cannot change its terms or conditions. This observation was made as regards corporations formed by virtue of Act 1459, before the adoption of the Philippine Constitution. But as already stated in the earlier portion of this work, the courts have held that a reserved legislative power to repeal a charter includes the subordinate power to modify it in order that the ends

had in view in the creation of the original may be fulfilled (County Judge vs. Shelby, supra); further, that the power to amend a general law of incorporation involves the power to amend charters taken out under that law. (Pratt Institute vs. City of New York, supra).

Art. XIII, Sec. 8 of the Philippine Constitution provides:

"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. *No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires.*"

Some doubts may arise as to whether the last sentence of the above-quoted paragraph applies to special franchises or corporate franchises or both, in so far as the sentence is embodied in a paragraph that deals with "franchises, certificates, or any other form of authorization for the operation of a public utility" and is not included in the paragraph immediately preceding, which paragraph deals with private corporations—these facts tending to lead us to believe that the constitutional reservation of the power to amend, alter, or repeal franchises refers only to special franchises and not to corporate franchises.

But from the report of the Committee on Franchises, headed by Jose Aruego, submitted to the President of the Constitutional Convention on September 27, 1934, we get the following statement:

"Your committee proceeded to its work giving to the term franchises its 'primary' and 'secondary' meanings. By the term primary franchises or corporate franchises, is meant 'the right or privilege given by the State to two or more persons of being a corporation, that is, of doing business in a corporate capacity.' (Home Ins. C. etc. vs. M. Y. 134 U. S. 549). By the term secondary franchises, is meant special privileges conferred by government upon individuals which do not belong to the citizens of the country, generally of common right. (Bank of Augusta vs. Earle, 13 Peters 519)."

It must be concluded therefore that the last sentence of Art. XIII, Sec. 8 of the Philippine Constitution is a reservation of the power on the part of the National Assembly to amend, alter, or repeal both corporate or special franchises. This being so all corporate franchises granted after the adoption of the Constitution can be amended, altered, or repealed under the authority of both the general incorporation law and the constitution.

(To be continued)