

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

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(Concluded)

D. *Nature and Extent of the Reserved Power*

1. *Effect in General.*

The general effect of a reservation of the power to amend, alter or repeal seems to be, to leave the corporations subject to the power in the same position they would have occupied had the Supreme Court held in the Dartmouth College Case that charters are not contracts and that laws repealing or modifying them do not impair the obligation of contracts. (Santa Clara County vs. Southern Pac. R. Co., 18 Fed. 385; In re Mt. Sinai Hospital, 25 N. Y. 103, 164 N. E. 871, 632 A. L. R. 564).

But the tendency of the courts seems to be to limit the reserved powers rather than to extend them. And it should be remembered that even if it has been held again and again that under the reserved powers provision, the corporate franchise has ceased to be a contract, still the contract doctrine has not been completely nullified. The various expedients resorted to by the courts to evade the consequences of the charter-contract doctrine have been in effect actually to recognize the existence of the doctrine although at the same time to modify and limit its application. The charter is still accounted a quasi-contract. (Manheim Borough vs. Manheim Water Co., 229 Pa. 177, 78 Atl. 93).

The Pennsylvania case of Cross vs. Peach Bottom Ry., 90 Pa. St. 392 (1879) is authority for the proposition that the legislative reservation is in the nature of a police power designed for the protection of the public welfare; and where such protection becomes necessary, the law-making power may act without consulting either the interests or will of the company. It should not be understood however that this power is without limit. As will be shown later, the power for one thing, cannot be used to impose fundamental and material changes without the consent of the corporation.

Some courts hold that, while the reserved right is in the interest of the state to modify or repeal its own contract with the corporation, (State vs. Railroad Commission of Wisconsin, 140 Wis. 145, 121 N. W. 1919) it is in reality a continuing power of regulation and control in the interests of the public. (Delaware, L. & W. R. Co. vs. Board of Public Utilities Com'rs. 85 N. J. L. 38; 88 Atl. 849; State vs. Railroad Com. of Wisconsin, 140 Wis. 145, 121 N. W. 919).

2. *Effect of the Philippine Reservation Provision.*

From all the holdings and rulings, we may gather the general conclusion that whatever rights, immunities, privileges, or properties which a corporation may re-

ceive from the state in a corporate franchise subject to the power of amendment, alteration or repeal, should not be considered as absolute property, but merely as something in the nature of a defeasible estate, and as such therefore not coming within the term "property" as used by the Constitution in providing against the deprivation of property without due process of law.

There seems to be unsettled, however, the question of the nature of special privileges or special franchises embodied as a part of the corporate franchise. There appears to be two main lines of decisions on the question, one holding the special franchises as alterable and revocable at will, and the other holding that the privilege at least grants the grantee the right to exploit it so as to recover what it or he has put in as capital, and to deny him this would be to break the implied contract under which the grant is given.

Representative of the first line of decisions is the case of *Hamilton Gas Light etc. Co. vs. City of Hamilton*, 114 U. S. 258; 36 L. Ed. 963 where it was held that, a legislative grant to a corporation of special privileges . . . may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking or which has the effect to alter or revoke the exclusive character of such privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate, in the particular case, upon the corporation or the parties affected by it.

And of the second line of decisions may be cited the later case of *Reagan vs. Farmer's L. & T.*

Co., 154 U. S. 392, 38 L. Ed. 1022, 14 Sup. Ct. 1052. The decision in question involved the validity of a schedule of rates promulgated by the railroad commission of Texas for the railroads of that State. In attacking this schedule upon the ground that it was unreasonable and confiscatory in character, no argument was drawn by counsel from any alleged impairment of the obligation of the charter contract. The court itself however is supporting its jurisdiction, intimated that there might be deduced from the charter an implied agreement on the part of the State that the railroads should be permitted to earn a reasonable profit—a line of argument which has already been taken advantage of in a later case. (*Capital City Ins. Co. vs. Des Moines*, 72 Fed. 831).

The weight of opinion and better reason seems to be on the side of the first group of cases. For obviously, the history, origin, and object of the reservation provision precisely point to the absolute and final intention that no charter should escape from legislative control, and that no creation of the law should be placed above and beyond the control of law. All persons connected to and dealing with the corporation receiving the privilege do so with the knowledge that the grant of corporate rights and privileges are subject to legislative interference which may be exercised at any moment and which interference may not be successfully questioned judicially. The motives of the legislator may not be inquired into. To say that the interference should not be allowed since it might lead to unjust consequences would be to question the capacity of the law-makers and deny the representatives of the

people the right to act as they see fit and to account only to their constituents. To argue that the use of the power of interference may be abused is to admit that the legislature is a potential source of evil—not only as regards the exercise of this particular power in question but in the exercise of the general powers of legislation. To press the contention that it might mean the deprivation of vested rights would be to lose sight of the Constitution and to confound terms—for the Constitution protects vested rights as property—and a privilege granted under a stipulation that it may be revoked at any time cannot be vested even in the strained construction of the term. The best view would therefore be to consider all rights, privileges, and immunities given to a corporation under its charter—not as absolute property, but as a defeasible estate, defeasible because subject to divestiture without notice or reason.

In this jurisdiction, the question just discussed could only arise with respect to corporations formed before the adoption of the Philippine Constitution. For then it was possible for the legislative department of the Philippine Government to grant charters by special legislation without reserving the power to amend, alter, or repeal the franchise. The said question could not arise as regards corporations organized after the adoption of the Philippine Constitution because the Constitution expressly provides that all rights and franchises granted by the National Assembly are subject to amendment or repeal. This provision refers to all kinds of franchises, whether corporate or special, primary or secondary.

E. Corporations Within the Reserved Power

In general, corporations formed subsequent to the enactment of the general law reserving the power, is affected by such a power. Naturally, all corporations whose corporate franchises have been granted by special legislation and whose charters reserve the power, are within the scope of its exercise.

The general incorporation law of the Philippines, Act 1459 took effect on April 1, 1906. As has been stated, Sec. 76 of said law contains the reservation of powers. It is clear therefore that all corporations formed and organized after April 1, 1906 in accordance with the provisions of that act come within the provisions of Sec. 76.

The repealing provisions of Act 1459 (Sec. 191) provides:

"That existing corporations or sociedades anonimas, lawfully organized as such which elect to continue their business as such sociedades anonimas instead of reforming and reorganizing under and by virtue of the provisions of this Act, shall continue to be governed by the laws that were in force prior to the passage of this Act in relation to their organization and method of transacting business and to the rights of members thereof as between themselves, but their relations to the public and public officials shall be governed by the provisions of this Act."

Section 75 of the same act reads:

"Any corporation or a sociedad anonima formed, organized, and existing under the laws of the Philippine Islands and lawfully transacting business in the Philippine Islands on the date of the passage of this Act, shall be subject to the provisions hereof so far as such provisions may be applicable and shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this Act, transferring all corporate interests to the new corporation which, if a stock corporation, is authorized, to issue its shares of stock at

par to the stockholders or members of the old corporation according to their interests."

As a general rule laws have no retroactive effect in accordance with the maxim, "Lex prospicit, judex respicit." But under the provisions cited the question arises: Does the reservation of powers provision retroact so as to bring within its scope the corporations and sociedades anonimas organized before the passage of the law? There is no question but that the corporations formed before April 1, 1906 which reorganized by virtue of and under the provisions of the Corporation Law are included in or affected by reserved powers. This is expressly provided for by the law. But the doubts arise with regards to the corporations and sociedades anonimas not reorganizing or reforming under Act 1459. For the action under discussion provides that these artificial persons shall be governed by the laws in force prior to the passage of this Act in relation to their organization and method of transacting business and to the rights of members thereof, but also states that they shall however be subjected to the provisions of Act 1459, as regards their relations to the public and public officials. The Code of Commerce of Spain of January 1, 1886 extended to the Philippines on August 6, 1888 and effective as law on December 1, 1888 contains no provision reserving the power to amend, alter, or repeal corporate franchises. Section 191 of Act 1459 clearly applies the law (Act 1459) to matters involving corporations in relation to the public and public officials. "In an act of assembly, 'public' may refer to the whole body politic; that is to say, to all inhabitants of the state, or to the inhabi-

tants of a particular place only; it may be properly applied to the affairs of the state or of a county or community." (Huston Tp. Poor Dist. vs. Benegette Tp. Poor Dist., 135 Pa. St. 393, 398; 19 A 1060). The "public" has been defined as the people in general. The people act through their government, and their lawful representatives. The members of the legislative departments cannot but be termed "public officials." Amendment, alteration, or repeal of corporate charters presuppose a transaction or proceeding involving the public and public officials. The nature, history and origin of the reservation of powers to amend, alter, or repeal bear out the proposition that its main aim is the public welfare.

In an analogous case involving the question as to whether the *Compañia Maritima*, a sociedad anonima organized under the provisions of the Code of Commerce, was subject to the power of the Governor General to examine its affairs, administration, and condition by virtue of Section 54 of Act 1459 expressly giving him such power over all corporations transacting business in the Philippines, in relation to Section 191 of the same act, the Attorney General in an opinion handed down in February 17, 1910 said that Section 191 of Act 1459 extended the application of Section 54 of the same act to sociedades anonimas formed under the Code of Commerce. (5 Op. Atty. 442). It would seem as if this should be authority for the conclusion that Section 191 extends Section 76 to sociedades anonimas formed under the Code of Commerce. It is true that the Attorney General, in his opinion stated that the investigation contemplated by Section 54 of the

Corporation Law, in no manner seeks to interfere or settle matters of controversy between the members thereof, or to in any wise interfere with the organization of said corporation or the proper transaction of business in accordance with the provisions of the Code of Commerce. But as it will be noted later, the reserved powers is also limited by the usual constitutional reservations for all legislation and therefore cannot destroy vested rights. But Section 76 of Act 1459 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."

The words of the statute are clear. It embraces within its literal meaning only "any and all corporations created by virtue of the Act. It doesn't presume to include any other. To extend its application to corporations and sociedades anonimas created by virtue of the provisions of the Code of Commerce would be to extend its literal meaning. This would be permissible under the rules of legal hermeneutics, if the liberal construction would not result in the unconstitutionality of the provision. It is a general rule that when a statutory provision is susceptible of two or more interpretations, that interpretation is to be followed which is consistent with its validity and constitutionality. (In re Guarina, 34 Phil. 37). It is not to be lost sight of, that the charter or corporate franchise of all corporations and sociedades anonimas organized under the Code of Commerce are contracts under the doctrine of the Dartmouth College Case. These contracts are necessarily inviolable. To subject them to the reserva-

tion of powers provision would be to violate the obligation of these contracts. It is true that it would take another statute to actually impair the stipulations of the contract by the amendment, or alteration, or revocation of the charter. But whether it be by the first amending statute or by the second or the next, the result is an impairment none the less. For the law will not permit a thing to be done by indirection which it forbids to be performed directly.

The opinion of the Attorney General cited as regards the application of Section 54 of Act 1459 should not be considered as a basis for the extension of Section 76 to like artificial beings because the provisions of Sec. 76 and Sec. 54 are materially different. Sec. 54 provides that its provisions shall be applicable to "any corporation transacting business in the Philippines." Sec. 76 provides that it should apply only to "any or all corporations created by virtue of" Act 1459.

It would seem therefore as if the reservation of power contained in Sec. 76 of Act 1459 is not applicable to sociedades anonimas of the Code of Commerce.

Corporate franchises granted by special legislation are not subject to amendment, alteration, or repeal unless such power is specially reserved in the special legislation. Grants of corporate franchises by special legislation were only possible before the adoption of the Philippine Constitution, in so far as Sec. 7, Art. XIII of the constitution provides that formation and organization of corporations shall not be provided for except by general law. So all corporations formed after the adoption of the Constitution have charters subject to amendment, alteration, or repeal.

However, if two corporations, formed before the adoption of the Constitution, and granted a corporate franchise not subject to amendment, alteration, or repeal, consolidate, a new corporation is created as of the time of the consolidation, and the charter of this new corporation is subject to amendment, alteration, or repeal. This is so because the Philippine Constitution expressly reserves the power—and the consolidated corporation is created as of the date of the consolidation, coming therefore under the constitutional reservation of power. (See *Atlantic & G. R. Co. vs. Georgia*, 98 U.S. 359, 25 L. Ed. 185; *Shields v. Ohio*, 95 U.S. 319, 24 L. Ed. 357).

If a corporation was granted a corporate franchise, before the adoption of the Constitution, by special legislation which did not reserve the power to amend, alter, or repeal the corporate franchise, and the corporation formally organizes and commences the transaction of its business or the construction of its works within two years from the date of its incorporation in accordance with Sec. 19 of Act 1459 and afterwards ceases operation, and if further, during this period of suspended animation, the Philippine Constitution was adopted and under its authorization a new law of incorporation passed by the National Assembly, prescribing additional conditions precedent for incorporation, the old conditions precedent of incorporation in order to resume operation. On this point, see *Darling v. Service Transp. Corp.*, 118 Misc. 811, 194 N. Y. Supp. 902.

But since a charter must be accepted before a corporation comes into existence, a charter not subject to amendment, alteration or

repeal, offered before the adoption of the Philippine Constitution but accepted after such adoption is subject to the reserved power. (See *Attorney General vs. Chicago & N.W. Ry. Co.*, 35 Wis. 425, 599).

A corporation with an unalterable or irrevocable charter may be brought within the reserved power by the acceptance, express or implied, of the benefits of a general incorporation law passed by the National Assembly after the adoption of the Philippine Constitution. (See *Somville & N. R. Co. vs. State*, 154 Ala. 156, 45 So. 296).

But a corporation existing before the adoption of the Constitution is not brought within the state's reserved power in the constitution by other private transactions. Therefore, if the National Assembly now passes a general law making the reserved power applicable to all corporations accepting any rights or privileges thereafter granted by any general or special act, this would not render a corporation subject to such reserved right where it merely purchases the properties of another corporation in which the government may be chief stockholder, or accepted rights under a municipal or provincial ordinance or regulation. (See *State vs. Baltimore & O. R. Co.*, 127 Md. 434, 96 Atl. 636).

It has already been said that since the charter is in the nature of a contract, it may be modified by the consent of the parties. Thus, a corporation by applying for an amendment of its charter after the adoption of the Philippine Constitution, acquires under that instrument and becomes liable to regulation by legislation passed pursuant thereto. (See *Meadville Theological School vs.*

Hempstead, 290 Pa. 222, 138 Atl. 747). And under such conditions, the constitutional provisions cannot be evaded by a declaration, in the application for amendment, stipulating that the charter is to be amended in no other respect. (*Winfree vs. Riverside Cotton Mills*, 113 Va. 717. 75 S. E. 309).

But statutes enacted after the adoption of the Philippine Constitution, confirming the title of a corporation, formed under a charter containing no such reservation, to certain property and enlarging its powers with respect to its property, do not affect its contract rights under its charter, or authorize the legislature to amend or repeal the same, though they were enacted upon the petition or with the approval of the corporation. (See *In re Opinion of Justice*, 235 Mass. 619, 13 N. E. 29).

Extensions of pre-existing charters also bring such charters within the operation of the reserved powers. This is true not only because extensions of corporate life could not be accomplished except in accordance and by virtue of the provisions of the general incorporation law, but also because such giving of additional life to a corporation, beyond the period limited in its charter is a new grant and, in a sense, a new charter. (See *Northern Bank of Kentucky vs. Stove*, 88 Fed. 413, 420; *Deposit Bank of Owensboro vs. Davies County*, 102 Ky 174, 39 S.W. 1030, 44 L.R.A. 825).

The reserved power can be exercised only as to domestic corporations. (*Long Island R. Co. vs. Department of Labor of New York*, 138 Misc. 612, 247 N.Y. Supp. 278).

One very interesting question arises in this jurisdiction. As it has already been seen, the Philip-

pine Bill of 1902 and the Jones Law of 1916 reserved the power to amend, alter, or repeal corporate franchises, to Congress. Thus the Supreme Court of the Philippines held in the case of *Manila Railroad Co. vs. Rafferty*, 40 Phil. 229, that the then existing Philippine Legislature cannot amend, alter, or repeal franchises it may have granted, if it did not reserve the power to do so in the grant. Therefore, if Congress alone can amend, alter, or repeal these charters, will they be subject to any power of amendment, alteration, or repeal at all, after the Philippines shall have become independent, and Congress no longer has any right of control over affairs Philippine? Does the National Assembly fall heir to the power of amendment, alteration, or repeal? Or is the power lost and extinguished?

It is submitted that the corporate charters subject only to the power of amendment, alteration, or repeal of the Congress of the United States, will be subject to no power of amendment, alteration, or repeal whatsoever after the independence of the Philippines.

It is to be remembered that all corporate charters, although subject to the power of alteration or repeal, are and must be considered as contracts. The reserved power provision is only a stipulation in the contract. It does not totally nullify the contract. The reserved powers, being a mere stipulation of the contract, must be followed strictly, or the other party will have ground for objection. And clearly, the stipulation provides that the reserved power is to be exercised by the Congress of the United States. The Philippine Legislature could not exercise the power before the adoption of the

Philippine Constitution. (Manila Railroad Co. vs. Raforty, 40 Phil. 229). The independence of the Philippines will add no ounce of power to the legislature—so as to avoid its contracts. (Trustees of Dartmouth College vs. Woodward, 4 Wheat. 519, 4 L. Ed. 629).

Fisher in his book, *The Philippine Law of Stock Corporations* says that the word "franchise" as used in Sec. 74 of the Philippine Bill and Sec. 28 of the Jones Law in reserving to the Congress of the United States the power to alter or repeal the same, means only the special franchise or the power to do and not the corporate franchise or the power to be a corporation.

But even if the word "franchise" be so used, as already seen (See the Charter Contract in the Philippines), the Congress of the United States would still have the power to amend, alter or repeal any corporate franchise for it can amend any legislative act of the Philippine legislative department even to the extent of impairing the obligations of contracts, subject only, perhaps, to the constitutional prohibition against the deprivation of property without due process of law.

F. *Limitations of the Reserved Power*

Any power is as extensive, and runs only as far as its limitations. We have so far only seen the general range of the reserved power. The attempt will next be made to delimit its scope.

The reserved power is subject to three general limitations: First, the State cannot deprive the corporation of anything which it has not granted under the terms of the charter contract; Second, the State cannot alter the charter contract in any material or fundamen-

tal provisions; Third, the legislative enactment seeking to amend, alter, or repeal the contract must be within the general legislative power, and the restrictions of the fundamental law.

1. *The State Can Exercise the Power Only as to the Subject of the Contract.*

The state cannot act on any subject-matter outside that of the charter contract, for to do so would be to make a new contract, and a new contract needs the consent of the other contracting party. Its reserved power can only be applied to the objects of the grant. In charter contracts granted by special legislation subject to amendment, alteration or repeal, many grants, immunities and privileges were given to corporations before the adoption of the Philippine Constitution. The right to use the public streets and highways, exemptions from taxation, the development of water power, subsidies and bounties—all these, since granted under and subject to the power of amendment and revocation may be modified or taken away. So also may be modified and revoked the rights and powers granted under Act 1459: the right of a corporation engaged in large-scale cattle business to own and deal in real property even exceeding one thousand and twenty-four hectares in area (Art. 1459, Sec. 13, No. 5); to loan funds upon real estate security (*Supra*); to sell or dispose of all or substantially all of its property (Sec. 28 1/2); the right of voluntary dissolution (Sec. 62-67); the rights of railroad corporations under Sec. 86; and the other special classes of corporations. It can take away all these. It can modify them. But this is all. Property

acquired during the exercise of these powers, it may not divest; contracts already executed it may not annul; taxes remitted it may not exact; the legislation must be prospective and not retrospective in effect. It cannot deprive the corporation of rights already vested; it cannot destroy interests acquired independently of the charter contract, though such acquisition be brought about by the exercise of the powers granted by the charter. (See Sinking Fund Cases, 99 U.S. 721, 25 L. Ed. 502; Railroad Tax Cases, 13 Fed. 755, 765; Pearsall vs. Great Northern Ry. Co., 161 U.S. 660, 40 L. Ed. 843, 16 Sup. Ct. 708).

It may be opined that the special rights, privileges, and grants contained in the corporate franchise is property and as such protected by the constitutional provision against the deprivation of property without due process of law. But as has already been said, these rights and privileges embodied in the corporate franchise are not to be considered as absolute property. It is more accurate to conceive of the property right of a corporation in its powers and franchises as a sort of defeasible estate, or as a species of license, terminable at the will of the grantor. Under this view of course, no constitutional prohibition is infringed by their divestiture at the hands of the power granting them.

2. *The State Can Provide No Material or Fundamental Change in the Corporate Franchise Without the Consent of the Corporation.*

The reserved power does not give the National Assembly the power to amend the corporate franchise so as to impose upon the stockholders a virtually new charter. At the outset, it is to be

remembered that it is difficult to determine just what amendments are fundamental and what are not. Each particular case must be left for determination upon its own particular facts. (Perkins vs. Coffin, 84 Conn. 275, 79 Atl. 1070, Ann. Cas. 1912C 1118). Perhaps the clearest illustration of the difference between fundamental and auxiliary changes may be the statement of Chancellor Zabriskie in the case of Zabriskie vs. Hackensack & N.Y.R. Co., 18 N.J. Eq. 178; 90 Am. Dec. 617, in which he said, "the legislature can repeal or suspend the charter; it can alter or modify it; it can take away the charter; but it cannot impose a new one, and oblige the stockholders to accept it. It can alter or modify the old one; but power to alter or modify anything can never be held to imply a power to substitute a thing entirely different. It is not the meaning of the words in their usually received sense. Power to alter a mansion-house would never be construed to mean a power to tear down all but the back kitchen and front piazza, and build one three times as large in its place. In anything altered, something must be preserved to keep up its identity; and a matter of the same kind wholly or chiefly new substituted for another is not an alteration; it is a change." (Cited by Fletcher, *Cyclopedia Corporations*, Permanent Edition, p. 839).

The National Assembly therefore cannot so amend the charter of a railroad corporation as to make it a mining corporation.

But "amendments which do not change the nature, purpose, or character of a corporation or its enterprise, but which are designed to enable the corporation to conduct its authorized business with greater facility, more beneficially,

or more wisely, are auxiliary to the original object." (*Mower vs. Staples*, 32 Minn. 284, 20 N. W. 225).

Thus the 1928 amendment (Act 3518) to Sec. 5 of Act 1459 giving corporations the power to issue preferred and no-par value stocks may come under the rule.

What seems to be the best view taken of the reserved power of the state is that under it, a fundamental amendment to the charter does not authorize a majority of the stockholders to accept the amendment and proceed, but that unanimous consent of the stockholders is necessary.

This is true in the Philippines, inspite of the liberal provisions of the general incorporation law on the subject.

It is true that Section 18 of Act 1459 provides that, "any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees and the vote or written assent of two-thirds of its members, if it be a non-stock, or, if it be a stock corporation, by the vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of the corporation."

From this may be implied the fact that since the mentioned number of members and stockholders can initiate an amendment to the articles of incorporation, the same number can accept such amendments. Yet, conceding the premise, the conclusion that a radical or fundamental amendment may be made be thus accepted by the same number even without the consent of the other third, does not necessarily follow.

For, in the first place, the power to initiate the amendment does not extend to the power to initiate

a fundamental or radical change. The Supreme Court of the Philippines, in the case of *Reyes vs. Cia. Maritima* held that the power, granted by Par. 3, Art. 168 of the Code of Commerce, to the majority of the stockholders in a sociedad anonima, does not give such majority the right to change the nature of the company, nor alter its principal purpose. And Fisher believes that this ruling is just as applicable to corporations under Act 1459 as to sociedades anonimas under the Code of Commerce.

Perhaps a different rule may apply to amendments which consist in any change in the rights of holders of shares of any class, or would authorize shares with preference in any respect superior to those of outstanding shares of any class, or would restrict the rights of any stockholder. Section 18 of the Corporation Law on the point provides, "That if such amendment to the articles of incorporation should consist in any change in the rights of holders of shares of any class, or would authorize shares with preferences in any respect superior to those of outstanding shares of any class, or would restrict the rights of any stockholder, then any stockholder who did not vote for such corporate action may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment of his shares."

As stated by Fisher, two thirds of the members of shareholders may compel the remaining one third to accept the amendments—or to lease the corporation. (See Fisher, *The Philippine Law of Stock Corporation*, pp. 56-59).

Amendments of the class already alluded to may perhaps be

accepted by two-thirds of the members or stockholders, with the remaining one-third having no other remedy than to demand the purchase of their stocks within the established period.

If this is right, then amendments which consist in any change in the rights of holders of shares of any class, or would authorize shares with preference in any respect superior to those of outstanding shares of any class, or would restrict the rights of any stockholder (Sec. 18) may be considered as merely auxiliary or incidental and not fundamental or material.

Again, although in the United States it has been held that the legislature is incompetent as against protesting stockholders to change materially the amount of its capital stock (*Railroad Co. vs. Viagie*, 39 M. 571), in this jurisdiction, it would seem as if the acceptance by two-thirds of the stockholders in a meeting regularly called for the purpose, of an amendment which may materially increase the capital stock, is sufficient. For Section 17 of Act 1459 provides:

"No corporation shall increase or diminish its capital stock, . . . unless, at a stockholders' meeting regularly called for the purpose, two-thirds of the entire corporate capital stock subscribed shall favor the increase or diminution of the capital stock . . ."

This provision would seem to allow the presumption that if two-thirds of the stockholders at a regular meeting can originally initiate the increase of the corporate capital stock, then an equal number can accept an amendment to the charter to that effect.

The *Zabriskie* case (*supra*) also holds that the concurrence to or acceptance by the stockholders of the amendment may be presumed

from silent acquiescence for a period of time. The question then presents itself: Does this ruling have the effect of doing away with the formalities ordinarily required by our statute for amendments to the corporate charter when such amendments are initiated by the National Assembly? Section 17 provides that the corporate capital may be changed by a two-thirds vote of the entire corporate capital stock, in a regular meeting; Section 18 authorizes amendments to the articles of incorporation but only by a majority vote of its board of directors or trustees and the vote or written assent of two-thirds of its members or stockholders. For the acceptance of amendments of the class specified in the cited sections, are the formalities also therein enumerated required to be followed? Can an amendment to change capital stock or the articles of incorporation be accepted by acquiescence when offered by the National Assembly?

Section 28 of Act 1459 reads:

"Unless otherwise provided in this Act, the corporate powers of all corporations formed under this Act shall be exercised, all business of such corporations conducted, and all property of such corporations controlled and held by a board of not less than five nor more than eleven directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation."

The theory of a corporation is that the stockholders of a corporation may have all the profits but shall turn over the complete management of the enterprise to their representatives and agents, called directors. Accordingly there is little for the stockholders to do beyond electing directors, making by-laws, and exercising certain other special powers defined by law. (*Ramirez vs. Orientalist Co. et al.*,

38 Phil. 634, 654). The Board of Directors therefore can engage in contracts and perform other acts from which the corporate acquiescence to the amendments may be implied. All these can be done without notice to or knowledge of the stockholders. If done without the notice or knowledge of the stockholders and if such acts are considered as an acceptance by the stockholders, would they not violate the contract of such stockholders and the corporation? For it is clear that the formalities required by Sections 17 and 18 are in the nature of rights granted to the stockholders as much as they are powers given the corporation. The charter of a corporation is a contract between the state and the corporation, between the stockholders and the corporation, and between the stockholders themselves. The provisions of Sections 17 and 18 constitute stipulations of the contract between the stockholders and the corporation as well as the contract between the state and the corporation.

But, it is submitted that even in this jurisdiction mere acquiescence by the corporation without the objection of the stockholders is sufficient acceptance of amendments to the corporate charter. It is true that the requirements of Sections 17 and 18 as to the formalities for amendments to the articles of incorporation may be considered as protections of the rights of stockholders. And Fisher believes that all rights granted the stockholders are inviolable. (Philippine Law of Stock Corporations, Par. 183). He cites the case of *Pigua etc. Bank vs. Knoop*, 16 Howard 369; 4 L. Ed. 977, 982, wherein the Supreme Court of the United States held that, "every valuable privilege granted to a corporation and which conduced to

an acceptance of it and an organization under it, is a contract which cannot be changed by the Legislature, where the power to do so is not reserved . . ." From which holding it may be implied that the rights granted the stockholders by the general incorporation law are in the nature of a contract. But it must also be remembered that if the charter is in the nature of a contract, it may also be altered or amended by an express reservation of such a power. The case cited by Justice Fisher also recognizes this when the holding reads that, "privileges granted the corporation . . . cannot be changed by the Legislature, where the power to do so is not reserved . . ." And it must be remembered that Section 76 of Act 1459 reserves not only the power to dissolve corporations created by virtue of the act but also to amend or repeal at any time the Act or any part thereof. Even if only the power to dissolve the corporations organized under the provisions of the general incorporation law had been reserved, since the general incorporation law and the articles of incorporation constitute the charter of the corporation, and the reserved power to dissolve the corporation implies the power to amend its corporate charter, still the National Assembly would have the power to amend the general incorporation law. And our law precisely does not put this question in doubt when it clearly and expressly provides that the Act or any part thereof may be amended or repealed at any time by legislative enactment.

This clears all doubts as regard corporations formed under the general incorporation law before the adoption of the Constitution. And as far as corporations organized

after the adoption of the Constitution are concerned, the express constitutional reservation of the power to amend, alter, or repeal corporate charters thereafter granted allows no doubt. Therefore, if the general incorporation law is subject to change any time by the National Assembly, all rights therein granted are changeable or repealable any time by the same procedure. Any right therefore which can only be called such until it is abrogated by the legislative power, can never become vested. As has already been explained in the earlier portions of this work, the true nature and concept of all property rights received by the corporation and its members by the charter are in the nature of defeasible estates, and not absolute property; their divestiture therefore would not constitute a violation of the constitutional prohibition against the impairment of the obligations of contract nor of the inhibition of the due process clause.

It may be argued that the rights are not granted to the corporation but to the stockholders and therefore the grant constitutes a stipulation of the contract between the stockholders and the corporation as much as it is a stipulation of the contract between the state and the corporation and that the state cannot step in and interfere with a contract to which it is not a party, nor violate the obligations in an agreement over which it can have no interest or control.

It is true that the rights thus involved would also constitute a stipulation in the contract between the stockholders and the corporation. But, although among the different states comprising the American Union, there seems to be a conflict as regard the power of the state to amend, alter, or re-

peal such a contract, the Federal Supreme Court in the case of *Bigelow vs. Calumet & Hecla Min. Co.*, 167 Fed. 704, aff'd 167, Fed. 721 cited by Fletcher, *Cyclopedia Corporations*, Vol. 7, p. 855, held that the power to make amendments changing the contract of the stockholders is recognized. The question therefore reverts back to the old proposition that the rights granted by the general incorporation law can never become vested.

Ex Justice Fisher also questions the retroactive application of amendments to the general incorporation law. From the history and origin of the reservation of power provision, however, it can be gleaned that the purpose was to give retroactive effect to the subsequent amendments, so that the state may not lose control over the corporations it created.

3. *The Exercise of the Power Must be Within the Constitution.*

Sec. 76 of Act 1459, the 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 corporations, 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."

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

"... 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."

Under the Corporation Law, the power of the National Assembly to amend, alter, or repeal cor-

porate franchises was absolute—subject to no express limitation except that stated in the second sentence of Sec. 76 of said law, which, as we have submitted, is merely an express application of the due process clause of the Constitution. The Constitution however demands that the power of amendment, alteration or repeal shall be exercised only when the *public interest so requires*. This limitation narrows down the power of the National Assembly to confine perhaps coterminous and not unlike with the police power. A law by which the amendment, alteration, or repeal is sought to be brought about must be dictated by the public welfare, which embraces the primary social interests of safety, order, morals, economic interest, and non-material and political interests. *State v. Hutchinson Ice Cream Co.*, 147 N. W. 195, 199. The aim must be the general good and not the convenience and welfare of the few.

This constitutional limitation upon the reserved power of amendment, alteration, or repeal may therefore be said to have modified Sec. 76 of the Corporation Law. All corporations organized after the Constitution took effect must be deemed to come within the protection of this requirement. It was incorporated as a stipulation in their charters.

But the question arises: Does the limitation affect corporations organized before the Constitution took effect? The requirement that the National Assembly may exercise its reserved power of amendment, alteration, or repeal only when the public interest so requires is in the nature of an immunity or privilege granted to corporations by the Constitution. It was a grant of a right to pre-existing corporations as well as to those

that may in the future come to exist. It was an act of grace extended by the sovereign people to existing corporations as it was an encouragement to the organization of others. It automatically becomes a part of the charter-contract between the state and the corporation. The people ordained it, and it is only by that authority that the same may be rescinded. To allow the National Assembly to amend, alter, or repeal a corporate charter granted before the Constitution took effect would be to disregard the fundamental law. For the Constitution is the limitation of the general powers of government irrespective of whether such subjects upon which the power so limited was existing at the moment the limitation was so established or not. And if the argument be pressed, perhaps it could be asserted that the limitation should apply with greater propriety upon the exercise of the power on corporations already existing than on those not yet so existing, for the framers of the Constitution are presumed to have known the then existing law, and in so deliberately altering or modifying that law, they must have meant to include within the operation of the amendment, the initial subjects of the law so amended.

The general rule that all legislative enactments must come within the scope of the general legislative power as well as within the constitutional inhibitions, governs statutes amending corporate franchises just as much as they do any other classes of legislation. The rule must be specially remembered in relation to the reservation of power provision for such provision is so worded as to give ground for ingenious arguments that it is a waiver of all constitutional restric-

tions. Our general incorporation law (Sec. 76, Act 1459) seems to have anticipated this problem and it provides that "no right or remedy in favor of or accrued against any 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 any part or portion thereof." It is believed that this provision is nothing but a recognition and express application of the due process clause of the Constitution.

As has already been repeatedly stated, the due process clause of the Constitution does not cover the rights, privileges and immunities granted by the corporate charter. It is now further submitted that the provision of section 76, Act 1459 just cited also refers to property rights and remedies acquired by the corporation not as grants by the legislature but independent of and separate from the grants of the charter, or at most acquired by virtue of the exercise of the powers or rights granted by the charter. To illustrate: Section 86 of Act 1459 gives railroad corporations the power to exercise the right of eminent domain. If railroad corporations XYZ, validly organized under the Act exercises this power and acquires land A, it would then have two classes of property rights, the right to the power of eminent domain, and the right to property A. Act 1459 can be amended by the National Assembly. As already seen, it can deprive XYZ corporation of the right of eminent domain. But it cannot deprive the corporation of land A. Land A is property right, an absolute and vested estate covered by the due process clause, while the power of eminent domain, can never be vested because

subject to the power of revocation. Land A comes within the restrictions of the second sentence of Section 76. Again, Section 12, No. 5 of Act 1459 gives corporations the power to loan funds upon real estate security and purchase real estate when necessary for the collection of loans. If a corporation under this authorization should enter into a contract of loan with a third person A, who mortgages his land B for the security of the loan, and subsequently, the National Assembly under its express reserved power abolishes the right of corporations to lend money or receive real estate in security of the same, the question may arise, would the amendment, admittedly retroactive as already discussed, operate so as to deprive the corporation of the right to recover the loan, or divest the third person A, the borrower, of the right of redemption of the mortgaged premises? The deprivation of the right to lend money or receive real estate as security for the same is valid. But the right to recover the loan, or to recover the mortgaged properties are vested rights, protected by both the Constitution and the second sentence of Section 76.

The Philippine Constitution provides:

"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." (Sec. 7, Art. XIII)

This constitutional provision gives occasion for the question: Can the National Assembly amend or repeal a corporate charter applicable to only a single corporation? Can the National Assembly deprive corporation X of the right of eminent domain, leaving the

same right to corporations Y, Z and others?

In the United States, in States where there is no constitutional provision like ours, it has been held that the legislature may under its reserved powers amend or repeal the charter of a single corporation without applying such amendatory or repealing statute to other corporations. (*Bush v. N. Y. Life Ins. Co.*, 135 A. D. 447, 451 [1909], 119 N. Y. Supplement 796)

It would seem as if, in this jurisdiction, the National Assembly must exercise the power of amendment and alteration through general legislation but can provide for the repeal of corporate charters by special statute. The question resolves itself into a determination of the meaning of the terms "formation, organization or regulation" as used in our Constitution. It is clear that these terms embrace "amendments." But do they include "abolition" of corporations or, "revocation" or "repeal" of the corporate charter? The terms "formation" and "organization" imply the creation of a being. They cannot therefore embrace "abolition" or "repeal." Does "regulation" then include "abolition" or "repeal." To "regulate" means to subject something to a rule or mode. It implies a continued existence of the matter to be regulated. For to abolish the thing regulated is to abolish the right to regulate, as there would be nothing to subject to any rule or mode. Thus it has been held that a law which extinguishes a municipal corporation by repealing its charter is not a law regulating the internal affairs of such corporation. (*Worthley v. Steen*, 43 N. J. Law 14 [Vroom] 542, 543. If, therefore, "regulation" does not include within its meaning, the abolition

of a corporation or the complete repeal of its charter, then such abolition or repeal does not come within the requirement of Art. XIII, Section 7 of the Philippine Constitution. Therefore the abolition of a corporation or the repeal of its charter may be provided for by special law. Nor is this a violation of the constitutional requirement of equal protection of laws. (*Bush v. N. Y. Life Ins. Co.*, *Supra*) These special laws must of course come within the other limitations already enumerated and discussed.

G. *Legislative Amendments to the General Incorporation Law*

The most important amendments to the general incorporation law, and therefore amendments to the charters of corporations organized under its provision are embodied in Act 3518 approved by the Governor General on Dec. 3, 1928 and by the Congress of the United States on March 1, 1929.

Some of the amendments are the following:

1. Sec. 5 now authorizes expressly the classification by the corporation of the shares and the issuance of preferred stocks and no par value stocks where it did not so before.

2. Sec. 6, subsection (2) now provides that no corporation thereafter 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 purpose. The restrictions provided for shall also apply to foreign corporations thereafter licensed to do business in the Phil-

ippine Islands. This provision was absent in the original Act 1459.

3. Sec. 9 now provides that the affidavit of the treasurer of the corporation to be filed with the articles of incorporation may state that the prescribed 25% of the subscribed capital stock has been paid for in property of equal value and requires publication of assets and liabilities of the corporation in a newspaper of general circulation.

4. The old Act 1459 in Sec. 13, Subsection (5) provided that no corporation may conduct the business of dealing in real estate. Now the prohibition refers to public land. The new law also provides that it shall be unlawful for any person owning stock in more than one corporation organized for the purpose of engaging in agriculture or in mining to own more than fifteen per centum of the capital stock then outstanding and entitled to vote of each of such corporations; that it shall be unlawful for any corporation to own in excess of fifteen per centum of the capital stock then outstanding and entitled to vote of any corporation organized for the purpose of engaging in agriculture or in mining; that any stockholder of more than one corporation organized for the purpose of engaging in agriculture or in mining may hold his stock in such corporation solely for investment and not for the purpose of bringing about or attempting to bring about a combination to exercise control of such corporations, or to directly or indirectly violate any of the provision of the Public Land Law, and any corporation holding stock in any corporation organized for the purpose of engaging in agriculture or in mining may hold such stock solely for investment, and not for the purpose of bring-

ing about or attempting to bring about a combination to exercise control of such corporation, or directly or indirectly violate any of the provisions of the Public Land Law.

These provisions were not present in the old law.

Into the same section was engrafted subsection (10) which provides that except as in this section otherwise provided, in order to accomplish its purpose or purposes as stated in the articles of incorporation, or to acquire, hold, mortgage, pledge or dispose of shares, bonds, securities, and other evidence of indebtedness of any domestic or foreign corporation.

5. Into section 16 is also added the proviso that no stock or bond dividend shall be issued without the approval of stockholders representing no less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the corporation or at a special meeting duly called for the purpose, that any officer of any corporation consenting to the issuance of stock or bonds in exchange for property valued in excess of its real fair cash value, or who, having knowledge thereof, does not forthwith express his disapproval in writing, shall be severally and jointly liable to the corporation and its creditors for the difference the real present cash value of the property at the time of the issuance of the stock and the issued or par value of the same, as the case may be; and no corporation shall make or declare any dividend except from the surplus profit arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of

its existence by limitation or lawful dissolution.

6. The new law inserted in Section 18 the requirement that if the amendment to the articles of incorporation, made by the corporation itself, should consist of any change in the right of holders of shares of any class, or would authorize shares with preferences in any respect superior to those of outstanding shares of any class, or would restrict the rights of any stockholder, then any stockholder who did not vote for such corporate action may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares; that unless and until such amendment to the articles of incorporation shall have been abandoned or the action rescinded, the stockholder making such demand in writing shall cease to be a stockholder and shall have no rights with respect to such shares, except the right to receive payment therefor as aforesaid; and such payment shall not be made 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.

7. Section 28½ was inserted in the law—which section authorizes the corporation to dispose of all its property and assets under certain conditions.

8. Section 36, a totally new provision authorizing voting trusts agreements was intercolated.

9. Into section 62 was added the right of members or stockholders owning at least two-thirds of the capital stock outstanding, to voluntarily dissolve the corporation, if the dissolution does not affect the rights of any creditor

having a claim against the corporation.

10. The old law, in Section 174 required that paid-up and investment stock issued by Building and Loan Associations be sold at par. The new law carries no such requirement. Then, the former also provided that these paid-up and investment stock so issued may be surrendered upon a ninety-day notice to the corporation or such briefer period as the association may fix. The new law requires such notices as the association may fix not to exceed one year. Furthermore, the old law provided that the capital stock shall in no case exceed three million pesos. The new law establishes twenty million pesos as the limit.

IV. SUMMARY

From these discussions, we may gather the following points:

1. That the corporate charter principle of the Dartmouth College Case is part and parcel of Philippine jurisprudence.

2. That the doctrine is not absolute but admits of exceptions.

3. That the most important limitation to the doctrine is the reserved power to amend, alter, or repeal the same, found in the general incorporation law, and in the Philippine Constitution.

4. That the corporations within the reserved power to amend, alter, or repeal generally are:

(a) *Sociedades anonimas* organized under the Code of Commerce but which have reformed under Act 1459.

(b) Those granted charters by special legislation which provided for the power.

(c) Those organized under Act 1459.

3. That when the power to amend, alter, or repeal is not re-

served expressly, the charter may not be amended, much less repealed; that when the power is thus reserved, the charter may be amended with the approval of at least a majority of the members or stockholders, as regard its auxiliary and incidental provisions only; and that when the amendment is fundamental or material, even if the power is reserved, the amendment must be approved by the unanimous vote of the members or stockholders for the amendment to be valid and effective against the corporation.

TIME

“**M**AKE use of Time, if thou valuest eternity. Yesterday cannot be recalled; tomorrow cannot be assured; today only is thine, which, if thou procrastinatest, thou lovest; which loss is lost forever.”—JEREMY TAYLOR.