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A Comparative Study of the Laws of the Philippine Islands and of the United States of America Applicable to Private Corporations

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PRIVATE CORPORATIONS

PHILIPPINE-AMERICAN LAWS

JAVIER
A COMPARATIVE STUDY OF THE LAWS OF THE
PHILIPPINE ISLANDS AND OF THE UNITED STATES OF
AMERICA APPLICABLE TO PRIVATE CORPORATIONS

THESIS

Presented to the Faculty of the Law
School of the University of Michigan in
partial fulfillment of the requirements for the
degree of Doctor of Juridical Science (S. J. D.)

By

Emilio M. Javier

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The main objective of the present treatise is to expound the similarities and dissimilarities of the laws of the Philippine Islands and of the United States of America applicable to private corporations. Act 1459, otherwise known as the Philippine Corporation Law, as amended and as radically modified recently, in many or its important provisions, by Act 3518, is made the basis of discussion from the Philippine viewpoint. All the decisions of the Supreme Court of the Islands interpreting the provisions of the law, and which the author considers pertinent, are also discussed herein. Due to the fact that each of the forty-eight states of the American Union has its own corporation law, special reference is made only to the corporation statutes of the states of New York, New Jersey, Maryland, Delaware, Michigan, Illinois and California for these, the author feels, are sufficiently representative of the American laws on the subject, to say nothing of the fact that most of the big private corporations of the United States of America have been incorporated in these seven states. However, the statutes of other states are referred to.

* The private corporations referred to are the business corporations only, oftentimes called corporations for profit such as would be incorporated under the general statute (Act 1459). This, of course, excludes treatment, except as illustrative of general principles of corporation law, of special types of business corporations such as banks, insurance and trust companies, railroad and street railways, etc. which are covered by special provisions and special laws.
now and then, to bring out certain important points. An effort has also been made to state the general rules, to discuss conflicting decisions and to indicate, as far as possible, the weight of American authority on the several subject-matters treated.

The author is perfectly aware that this comparative study is not only a stupendous task but one which is, indeed, ambitious. For this reason only the most important and salient features of the laws regarding private corporations are covered in this treatise. The first chapter is devoted to a brief discussion of the historical background of the laws on private corporations both in the Philippines and in America; the second chapter treats of the incorporation and organization of corporations; the third outlines the corporate powers and liabilities; the fourth deals with stock and stockholders; the fifth discusses the subject of directors and other officers; the sixth gives the rights and remedies of creditors; the seventh concerns with foreign corporations; and the eighth is a critical summary. Except as they are incidentally touched in the development of the foregoing topics, no attempt is here made to cover such matters as promoters, de facto corporations, de facto officers, ultra vires acts and contracts, reorganization, consolidation and merger, dissolution, parent and subsidiary corporations and other matters covered by special provisions and the like.

A second and, perhaps, more fundamental purpose of this treatise is to endeavor to suggest and answer to the nice
question as to what law or laws should be applied in cases of conflict of laws or in matters regarding which no specific provisions could be found in the Philippine law on private corporations. Due to the fact that this particular subject is intimately connected with foreign corporations it is included in Chapter VII of this treatise, but it is discussed more at length in Chapter VIII.

(Paragraph acknowledging help received)

The author hopes that this short treatise may be of some help particularly to lawyers and law students, and to business men who may desire to incorporate in the Philippine Islands or engage therein in some corporate business.


Emilio M. Javier
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CHAPTER 1

BRIEF HISTORICAL BACKGROUND
Chapter 1,
BRIEF HISTORICAL BACKGROUND

Philippine Laws

The Philippine Islands were "first brought to the knowledge of Europe" by Ferdinand Magellan in 1521. For over three hundred years thereafter the Archipelago was under the Spanish dominion, being governed by a Spanish Governor-General responsible to the King. During Spain's administration quite a number of substantive laws were extended to the Islands and one of these is the Spanish Code of Commerce. This Code was ordered published as law in Spain by the Spanish Cortes on August 22, 1885. It became in force in January 1, 1886, and by Royal decree of August 6, 1888, it was extended to the Philippines. After its publication in the Manila Gazette (Gaceta de Manila), with slight modifications, it became operative as law on December 1, 1888.

The part of the Code of Commerce dealing with corporations or "sociedades anonimas" (anonymous societies) is Book Two, section 4 et seq. Just what the source of these "anonymous societies" is, it is hard to state categorically. It

1. For information regarding commerce and the degree of culture and civilization of the Filipinos in general during pre-Spanish time, see Malcolm's Philippine Government and the numerous authorities cited therein.
2. Spanish Cortes—Spain's Legislative body, composed of the Senate and the Congress or Chamber of Deputies.
is reasonable and safe to assume, however, that the Spaniards must have gotten their idea of anonymous societies from the Romans. Although as early as the time of Solon (638-628 B.C.) corporations seem to have been known to the Greeks, yet the idea really originated from Italy. Plutarch says that corporations were introduced by Numa Pompilius, the second legendary King of Rome (715-672 B.C.), "who finding, upon his accession, the city torn to pieces by the two rival factions of Sabines and Romans, thought it a prudent and politic measure to subdivide these two into many smaller ones, by instituting separate societies of every manual trade and profession." ¹

The Romans societies or "societas" as they were called included both partnerships and corporations. They spread in continental Europe during the Middle Ages. Later on, however, the adjective "anonymous" was prefixed to the term "societas" to show that "the liability of the associates was limited to their contribution and that the personality of the organization was different from that of its members." ²

The provisions of the Code of Commerce applicable to corporations or "anonymous societies" were not much used in the Philippines and, consequently, were seldom interpreted by the courts. Business on corporate basis was not very popular in the Islands during the Spanish regime. The usual form of con-

² For other theories regarding the origin of corporate concept see Fletcher, Cyclopedia Corporations, Vol. 1, sec. 1 (1917).
³ Corpus Juris, Vol. 14, sec. 2; Ballantine, Manual of Corporation Law and Practice, p. 3.
ducting corporate business then was by general copartnerships and limited copartnerships. The Spanish colonial policy of monopoly and restriction and the discouraging state of affairs then prevailing, undoubtedly, contributed materially to the backwardness of business and commerce during those years. 6

The Spanish-American War marked a new epoch in the development of laws and of commerce in the Philippines. A few months after the triumph of the American squadron over the Spanish fleet in the battle of Manila Bay on August 13, 1898, the United States President appointed the First Philippine Commission, popularly known as "The Shurman Commission", composed of five members with Mr. Jacob Gould Schurman as its president, charged with the duty of bringing about the speedy consummation of the treaty of peace and of extending American occupation throughout the Archipelago. After the ratification of the Treaty of Paris by both belligerent countries on April 11, 1900, the Philippines became formally ceded by Spain to the United States. A month before this time, however, (March 16, 1900) the United States President appointed the Second Philippine Commission, composed of five members, for the purpose of initiating civil government in the Islands. The Military Governor was changed to Civil Governor, this office

6. Santos in his article entitled "Suggested Reforms on the Philippine Corporation Law" states that the reasons why very few persons organized themselves into companies for commercial enterprises during the Spanish regime are the unfavorable social conditions then existing, the lack of capital to invest, the undeveloped condition of industry and commerce and the undue emphasis laid by the Ministers of the Church on the ultra-mundane life instead of on the material progress. (See 8 Phil. L. Jr. p. 145).
being filled by the late William H. Taft, Chairman of the Sec-
ond Philippine Commission. The other four members of the Com-
misson were appointed by the President as heads of depart-
ments. Three Filipinos without portfolios were added to this
latter Commission on September 1, 1901, and one more on July
6, 1908. The Philippine Commission as thus constituted acted
as the sole legislative body of the Islands until the Philip-
pine Assembly, elected by the people, was inaugurated on Octo-
ber 16, 1907, at which time the legislative power over the
Christian provinces was vested in both. 7

The Philippine Corporation Law (Act 1459) was enacted by
the Philippine Commission on March 1, 1906, and went into ef-
fect on April 1, 1906. 8 The Philippine Commission being then
composed of five Americans and three Filipinos, naturally,
said law was influenced by American jurisprudence. During
the life time of the Commission only very few, minor amend-
ments were introduced into the law. After the inauguration of
the Philippine Assembly on October 16, 1907, the law suffer-
ed more alterations. On August 29, 1916, the Philippine Au-
tonomy Act, popularly known as the Jones Law, was passed by
the American Congress and, among other things, it provided
for a Philippine Senate and a House of Representatives, both
houses to be designated as "The Philippine Legislature", the

7. Special acts were passed by the Commission for the
government of the Moros and other non-Christian tribes.
Annual Reports of the War Department, Vol. 10.
members of which were to be elected by the Filipino people. Since 1916 more amendments were introduced into the Philippine Corporation Law, but the last and most significant of all is Act 3518 enacted on December 3, 1928, and approved by Congress on March 1, 1929.

American Laws

Fundamentally, the source of private corporations in the United States of America is also Roman, although its development has proceeded in a rather different way. After the Roman conquest of Britain in A.D. 43 the Romans established corporations therein mostly for municipal, charitable, educational and religious purposes. Most of the private corporations organized in England during the early days were of this character. They had very little in common with private business corporations as we know them today.

According to the English common law corporations were most generally organized by special charter from the Crown. It was a sort of an unusual privilege open only to a few.

9. For the composition of the Philippine Legislature, see the Philippine Autonomy Act, United States Statutes at Large (Public Laws), Vol. 39, p. 546; also found in the Appendix of Malcolm's Philippine Government.
10. Passed during the short administration in the Islands of Governor Stimson, now United States Secretary of State. See Philippine Public Laws, Vol. 27, p. 996.
11. For the various amendatory acts to the Philippine Corporation Law, see Philippine Public Laws, vol. 24; also Espiritu's Annotated Code of Commerce, 4th Ed.
12. American history is more familiar than Philippine history and so it is omitted in this discussion.
Later, Parliament could authorize the organization of corporations by special acts, but this, strictly speaking, was not in accordance with the common law method. These two methods of corporate organization (by special charter and special acts) continued until the sixteenth century when the statute of Elizabeth incorporated hospitals, thereby suggesting the idea of a general incorporation law. It was not, however, until 1844 when the first English general incorporation law—called the Companies Act of 1844—was passed containing substantially the same requirements that we find to-day in our modern statutes of incorporation.

When the early colonists came to America, naturally, they took with them the English common law or special charter method of starting a corporation and this became a part of American jurisprudence. The famous Dartmouth College was one of those institutions chartered by the King. Occasionally, the King delegated this power of chartering corporations to the lord proprietary or viceroy but this prerogative was not used much by the latter.

After the thirteen American colonies became independent this royal charter prerogative ceased. The colonists did not give this power to their respective executives, but chose to apply to their respective legislatures for special acts of incorporation. Each special act of incorporation was called a "Charter" which was really a misnomer. With the rapid de-
velopment of business and commerce the passage of special acts of incorporation increased and it became evident that this method was cumbersome and unsatisfactory. There was a growing sentiment that the Legislatures of the different states should be relieved of this burden and that the temptation to corruption should be removed from them. So, in 1811 New York passed the first general incorporation law under which business corporations could incorporate. This was followed by Pennsylvania, North Carolina, Massachusetts, Connecticut, Michigan and later on by the other states. To-day, private business corporations are organized in the United States under general incorporation laws all of which are essentially the same in all the various states, with only such differences in their provisions as special local circumstances and conditions warrant.

Although in a sense the American law on private corporations is an outgrowth of the "special charter" method under


According to Lindley, at common law, the Crown had no power to grant charters of incorporation. But an act passed in 1825, followed by another in 1834, empowered the Crown to grant charters of incorporation. These acts have since been repealed but, under the provisions of the repealing act, the powers conferred on the Crown by the Act of 1834 could still be exercised. If a charter could not be obtained from the Crown application was made to Parliament for a special Act of its own. (Lindley on Companies, 6th. Ed., Vol. 1, pp. 3-4.)
the English common law, nevertheless, the idea of a general incorporation law is, really, of American origin.\textsuperscript{16}

CHAPTER II

INCORPORATION AND ORGANIZATION
Private corporations in the Philippine Islands are usually organized under a general statute (Act 1459). Section 17. For convenience Act 1459 will be referred to in this treatise as the Philippine Corporation Law (P.C.L.). Anonymous societies (corporations) organized under the Code of Commerce upon the execution of their articles of agreement and upon contribution of funds and personal property become juridical persons. In the case of Mead vs. McCulloch, 21 Phil. Rep. 106, the P.I. Supreme Court said: "The inscribing of its articles of agreement in the commercial register was not necessary to make it a juridical person -- a corporation. Such inscription only operated to show that it partook of the form of a commercial corporation. (Compañía Agrícola de Ultramar vs. Reyes et al., 4 Phil. Rep. 2)."

Corporations organized under the Spanish regime -- how governed -- See Gov't of P. I. vs. Avila et al., 38 Phil. Rep. 383.

Legally organized corporations in the P. I. at the time of the passage of Act 1459 are subject to the provisions thereof so far as the same may be applicable and are given option to continue under the old Spanish law or to organize under this act. (E. C. L. sec. 75).

The provisions of the Code of Commerce in conflict with this act (1459) are repealed, with the exceptions of Act 52 re examination of banking institutions, etc. and Act 667, cited in Ch. VIII, p.225, infra. (P. C. L. sec. 191).

The state can always raise the question regarding the due incorporation of corporations. (Ultramar vs. Reyes, cited in this same note, supra. But the due incorporation of a corporation cannot be inquired into collaterally in any private suit to which the corporation may be a party. (P. C. L. sec. 19).

18. Occasionally the Philippine Legislature issues special charters to certain kinds of private corporations.
6 of said act provides that "five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippine Islands, may form a private corporation for any lawful purpose or purposes by filing with the Bureau of Commerce and Industry articles of incorporation duly executed and acknowledged before a notary public . . .". The articles must contain: (1) the name of the corporation; (2) the purpose or purposes for which it is organized; (3) the location of its principal office which must be within the Islands; (4) its duration which normally must not exceed fifty (50) years, except as otherwise provided by law; (5) the names and re-

19. "It would seem reasonable to say that the incorporators of a corporation ought to be natural persons, although in section 6 it is said that five or more 'persons', not exceeding fifteen, may form a private corporation. But the context there, as well as the common sense of the situation, suggests that natural persons are meant." (Gov't. of P. I. vs. El Hogar Filipino, 50 Phil. Rep. 399, 461).

20. By "residents" are meant "domiciled inhabitants". (See Fisher, The Philippine Law of Stock Corporations, pp. 16-16).


22. A corporation may be sooner dissolved in a forced sale of franchise by virtue of an execution against it, or in case the majority of the members or stockholders, holding at least two thirds of all the shares of stock issued or subscribed, decide to dissolve it by a voluntary application to the Court of First Instance for the province where the corporation's principal office is situated, or by legislative enactment, or by a forfeiture of its charter or in quo warranto proceedings for any violation of the law. (P. C. L. secs. 56, 52, 76, 15 and 190).


Where a corporation slightly violates the law, if its conduct is not obdurate and pertinacious its charter will not be
sidence of the incorporators; unless otherwise provided by the Corporation Law, the number of directors should also be stated, which number must not be less than five nor more than eleven. The directors named in the articles continue to hold office until their successors are duly elected and qualified as per the by-laws. During the corporation's existence the directors in case of non-stock corporations may be increased to a number not exceeding fifteen or diminished to any number not less than five, and in case of stock corporations the number may be increased or diminished but in no case should it be less than five nor more than eleven. Any change in the number of directors must appear in a certificate sworn to by the President or any other duly-authorized officer of the corporation and filed with the Bureau of Commerce and Industry; in case of a stock corporation the amount of its capital stock in lawful money of the Philippine Islands and the number of shares into which it is divided. If the stock is in whole or in part without par value, it is sufficient to state as to the no par value stock only the number of shares into which it is divided, and in case of stock corporations the amount of forfeited. This is addressed to the court's discretion. (Gov't. of P. I. vs. El Hogar Filipino, 50 Phil. Rep. 399). But, where it violates the provisions of its charter it may be dissolved. (Gov't. of P. I. vs. Phil. Sugar, etc. Development Co. Ltd., 38 Phil. Rep. 16).


24. The original directors named in the articles are not required to be incorporators. (Fisher, cited supra. p. 22).
capital stock or number of shares of no par stock actually subscribed, the names and residences of the subscribers, the amount or number of shares of no par stock subscribed by each, and the sum paid by each in his subscription. 25

The articles of incorporation duly sworn to before a notary public by the incorporators should be accompanied by a sworn statement of the Treasurer elected by the subscribers "showing that at least twenty per centum of the entire number of authorized shares of capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been either paid to him in actual cash for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription." 26 The articles, together with the Treasurer's

25. For other requisites required to be put in the articles of incorporation of railroad, tramway, wagonroad and telegraph and telephone companies, aside from the foregoing, see P. C. L. sec. 6 last paragraph, Appendix "A" pp. 231-232.

26. P. C. L. sec. 9. This section also provides for the publication by the Director of the Bureau of Commerce and Industry of the assets and liabilities of the corporation once in a newspaper of general circulation in the domicile of the corporation, or in absence thereof in a newspaper of general circulation in the City of Manila. Whether this requirement is a condition precedent to incorporation or not has not yet been decided by the courts. It is submitted, however, that it is not, for the duty to publish the assets and liabilities of the corporation devolves on a government official and not on the incorporators. Besides, section 11 of the act provides that upon the filing of the articles of incorporation the Director of the Bureau of Commerce and Industry shall issue to the incorporators a certificate that they are a body corporate.
certificate, are then filed with the Bureau of Commerce and Industry upon payment by the incorporators of the required fees. 27

Once the articles are duly filed the Director of the Bureau of Commerce and Industry issues to the incorporators a CERTIFICATE, under the seal of his office, stating that said articles are filed in accordance with law 28 and that thereafter the incorporators and their associates and successors shall be and thereby become a body politic and corporate under the name stated in said articles and for the number of years specified therein, which term should not exceed fifty years, unless legally dissolved sooner in the various ways provided for in the Corporation Law. 29

27. The fees range from P25 to P300 ($12.50 to $150). For the schedule of fees, see P. C. L. sec. 8.

28. Although the Director's duty is purely ministerial he may determine whether the articles presented for registration are lawful or not. (Asuncion vs. Iriarte, 28 Phil. Rep. 67). If he rejects the articles presented to him for registration his decision may be reviewed by the courts in mandamus proceedings at the instance of the aggrieved party. (Uy Siulong et al. vs. Director of Commerce and Industry, 40 Phil. Rep. 541). Should he accept the articles illegally his action may be reviewed in quo warranto proceedings by the Government. (Code of Civil Procedure secs. 197 et seq.). See also Fisher, the Philippine Law of Stock Corporations, Par. 33, pp. 33-34.

29. See foot note 10, supra.

Under the Philippine statute the life of a corporation cannot, by a subsequent amendment to the original articles of incorporation, be extended beyond the term fixed in the original articles. (See P. C. L. sec. 16; also Fisher, The Philippine Law of Stock Corporations, Par. 26, p. 22).
The issuance of the certificate to the incorporators by the Director of the Bureau of Commerce and Industry makes them a body corporate. But, in order that their corporate powers may not cease the corporation must formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation.\textsuperscript{30} Whether this provision is mandatory or is simply directory is still an open question. It is believed, however, that should this particular issue arise the local Supreme Court would, unquestionably, hold that the failure to comply with this statutory provision will just subject the corporation to an action of ouster by the state. This is the logical conclusion inasmuch as the same section 19 provides that the due incorporation of any corporation, claiming in good faith to be a corporation, cannot be attacked collaterally but that such inquiry can only be made by the Insular Government on information of the Attorney-General. And if the Insular Government chooses, either by express waiver or simply by inaction, not to question the legal existence of a corporation, that fails to comply with this provision, nobody else can attack its action for no rights of third parties are involved and no one is injured by such waiver or inaction.\textsuperscript{31}

\textsuperscript{30} P. C. L. sec. 19.

\textsuperscript{31} Fisher, however, is of the opinion that a corporation which fails to "formally organize" within the two year period is dissolved \textit{ipso facto} for its corporate powers cease. (See Fisher, \textit{The Philippine Law of Stock Corporations}, Par. 204, pp. 382-383).
The incorporators and the subscribers to the stock of the proposed corporation should hold a meeting and must adopt, for its government, a code of by-laws within one (1) month after the filing of the articles of incorporation with the Bureau of Commerce and Industry. Said by-laws should not be inconsistent with the law or with any of the acts of Congress in force in the Islands, and should be adopted by the affirmative vote of the stockholders representing a majority of all the subscribed capital stock (paid or unpaid) or if there is no capital stock by a majority of the members. The stockholders or members voting should sign the by-laws and the same should be kept in the corporation's principal office, and a copy of which, properly certified by a majority of the directors and countersigned by the Secretary, should be filed with the Director of the Bureau of Commerce and Industry, who shall attach the same to the original articles of incorporation, and collect a fee of two pesos (P2.00) for its filing.  

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32. For provisions regarding meetings, see P. C. L. secs. 24-27.
33. For contents of by-laws, see P. C. L. sec. 21. If a corporation fails to register its by-laws within the legal period it cannot be proceeded against in quo warranto proceedings, neither can it be mandamused. (Fisher, The Philippine Law of Stock Corporations, Par. 41, pp. 46-51).
34. P. C. L. sec. 20. The right to amend or repel the by-laws or to adopt new ones can be delegated to the Board of Directors by the owners of two-thirds of the subscribed capital stock or by two-thirds of the members in case of corporations with no capital stock; but if they exercise this power in any regular or special meeting the delegation to the Board of Directors is considered revoked. (P. C. L. sec. 22).
The corporation should provide itself with the necessary books. After the adoption of the by-laws, the directors should be elected and after the election said directors must organize by selecting the officers of the corporation. The corporation, with its certificate of incorporation, its by-laws, its books and its proper officers, is then ready to commence its business.

American Laws

Generally speaking, the creation of corporations in the different states of the American Union is by general statutes. Most of the states have positive, constitutional provisions for the incorporation of corporations under general statutes, while a number provide for the same thing in their constitutions by stating that no special laws should

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By-laws of a corporation must be in harmony with the law. Any unreasonable restriction upon the right of a shareholder to sell his share is not permitted. (Fleischer vs. Botica Nolasco, 47 Phil. Rep. 583).
35. P. C. L. secs. 51-52.
36. P. C. L. secs. 28-34.
37. Should the corporation issue "securities" it has to comply with the "Blue Sky Law (Act 2561), Appendix "B", p. 266.

38. Following English precedents, in the early days private corporations were organized in the United States by special charters passed by the Legislature. (Machen, Modern Law of Corporations, Vol. 1, sec. 15; Morawetz, Private Corporations, 2nd. Ed., Vol. 1, sec. 8). The grant could be withdrawn before acceptance (State vs. Dawson, 16 Ind. 40); but no particular form of acceptance was required (Morawetz, 2nd. Ed., Vol. 1, supra, sec. 23; Middlesex Husbandmen vs. Davis, 3 Met. (Mass.) 123).

be passed for the creation of corporations, except for municipal, charitable, religious or educational purposes. The state of Connecticut, the District of Columbia and the state of New Hampshire have no express constitutional provisions for the creation of corporations under general laws, but they have general acts under which corporations may organize. The state of Vermont, by its constitution, confers power upon its General Assembly to grant charters or incorporation, but it has, like all the other states, a general statute under which corporations may incorporate.

The procedure in the incorporation and organization of corporations, with slight variations in some jurisdictions, is essentially the same. Ballantine in his Manual of Corporation Law and Practice outlines the different steps to be followed thus:

"(1) Drafting the 'articles', charter or certificate of incorporation whatever the fundamental corporate constitution may be called; in some states an 'application for charter' must be filed;

(2) The signing of the articles by the requisite number of incorporators and the acknowledgement or execution before a notary public;

(3) The filing or recording the articles with the Secretary of State or other state official; in a few states publication and filing an affidavit of publication or other formalities are required;

40. Thompson, cited supra, sec. 187.
41. Chapter XXIII.
(4) Payment of the filing and incorporation fees or organization tax;

(5) The filing or recording of a copy of the articles duly certified with the county recorder or county clerk in the county in which the corporation is to have its principal office;

(6) The organization of the corporation ready for the transaction of business by the holding of the first meetings of stockholders and directors upon due notice or waiver of notice;

(7) Securing the necessary permit, if any is required, from the Secretary of State, or the performance of other statutory conditions precedent to the right to transact business as a corporation, such as filing an affidavit or certificate as to the payment of a certain amount of capital;

(8) Securing the permit, if any is required, under the 'Blue Sky' law or laws applicable, for the issue of shares and other securities;

(9) Securing subscriptions to shares, which must sometimes be secured in part before the incorporation papers are filed."

The requirements as to the number and qualifications of incorporators vary slightly in the different states, but all of them are uniform in the provision that there must be at least three (3) incorporators. Thus, the Stock Corporation Law of New York provides that the incorporators must be three
or more natural persons, of full age and that two thirds (or more) of them must be citizens of the United States and at least one of them must be a resident of the state. The General Corporation Laws of the states of Delaware, Maryland, New Jersey and California provide that any number of persons, not less than three may form a private corporation. No mention is made with regard to their residence or qualifications, except in Maryland where, by statute, they are expressly required to be adults. Under the Michigan corporation statute recently enacted "one or more persons, natural or corporate, may incorporate", except in cases of banking corporations, industrial banks, insurance corporations, etc. in which more than one incorporators are required. Illinois requires that the incorporators must be three or more adult persons, citizens of the United States of America and that at least one of them must be a citizen of the state.

The different steps to be followed in the incorporation of corporations in the seven states above cited is substantially the same, and briefly they are as follows: (1) The

42. Although most of the state statutes just say "persons", nevertheless, the necessary inference is that "natural" and not "artificial" persons are meant to be incorporators, unless otherwise so expressly provided by statute.

43. Of course, the presumption is that these incorporators are sui juris, capable of legally binding themselves.

44. Notice that the New York law provides that one of the incorporators only should be a "resident", while the Illinois law requires one of them to be a "citizen" thereof.
filing of the articles of incorporation, properly executed before a notary or any other competent officer, in the office of the Secretary of State; (2) The payment of fees and any other required taxes; (3) The filing of the duplicate original or a certified copy of the certificate of incorporation in the office of the clerk of the county where the principal office or place of business of the corporation is located; (4) The meeting of the incorporators for the drafting of the by-laws, election of directors and other important matters; and (5) The meeting of the directors for their organization, such as election of officers, etc. and the transaction of business.

Unless otherwise expressly provided for by the statute, or unless the statute sets forth further requisites to be complied with, the mere filing of the articles of incorporation with the Secretary of State makes the incorporators a body corporate, apparently without any need of the issuance of any license or certificate. The newly-enacted Michigan statute, for instance, provides that "upon the filing of the articles in the office of the Secretary of State the corporate existence shall begin ..."
The duty of the Secretary of State to receive and file articles of incorporation is purely ministerial and does not involve at all the exercise of any discretional power. If he refuses to receive and file articles of incorporation presented to him the courts, at the instance of the aggrieved party, can issue an order of mandamus against him. The courts are the only competent bodies to determine finally whether a certain proposed corporation is within the purview of the law and whether the requirements of the statute have been complied with or not.

The proper interpretation of the so-called "mandatory" provisions in corporation statutes is always giving rise to considerable difficulties. It seems to be well-settled, however, that where a statute prescribes certain formalities to be followed in the incorporation of corporations those formalities are considered as a condition precedent and must be observed before the corporation can have a de jure existence. Thus, where the statute provides that the articles of incorporation should be acknowledged before one authorized to take acknowledgements, or where it provides that the certificate should be filed in certain specified offices,

is duly authorized to transact business. (See Thompson on Corporations, 3rd Ed., Vol. 1, sec. 187 and the cases cited therein.

48. For a discussion of de jure and de facto corporations, see Ballantine, Manual of Corporation Law and Practice, Ch. III, sec. 19; also 4 Ill. L. Rev. 58-59.

49. For the effect of defective incorporation, etc. see 11 Colum. L. Rev. 160-163.


Gent vs. Manufacturers, etc. Ins. Co., 107 Ill. 652.
or where the capital of the corporation is fixed at a certain sum by its charter, all these must be complied with before the corporation can assume a de jure existence and thereby avoid not only collateral attacks but even direct attacks by the state. By the weight of authority, however, it is held that an honest, substantial compliance with a mandatory provision makes a corporation de jure, but that a failure to comply substantially with a mandatory provision, considered as a condition precedent, subjects the corporation to ouster in a direct attack by the state in a quo warranto proceeding.

Aside from these mandatory provisions which are considered as conditions precedent there are oftentimes a number of statutory requirements that are held only to be conditions subsequent and compliance therewith is not essential to corporate existence. For example, under the Illinois statute it

52. Warren, Collateral Attack on Incorporation, 21 Harv. L. Rev. 305-311. Warren sums up his article thus: "(1) Collateral attack should be permitted to a stranger to whose prejudice the associates seek to assert a right dependent upon incorporation,- and this whether there are the technical requisites of the de facto doctrine, or not. (2) The associates should not be shielded from full liability where their legal incorporation failed for some reason more serious than an informality or irregularity in their organization. (3) These effective checks by collateral attack being established the courts may, in many other instances, properly deny such attack,- and this whether there are the technical requisites of the de facto doctrine, or not." See also 23 Harv. L. Rev. 495-512. 3rd. Ed.,
is provided that upon the filing of the incorporation papers the corporation must organize within sixty (60) days thereafter. Under the California law such organization must be within one (1) year after the filing of the articles of incorporation and the work must be completed within three (3) years thereafter. The failure to comply with such provisions is merely a ground of forfeiture of the charter of the corporation in a direct proceeding by the state and does not affect its corporate existence. Neither could such failure subject the corporation to a collateral attack. As Fletcher rightly observes a distinction should be drawn between the "creation" of a corporation and the "organization" of the same. Normally, the filing with, and the acceptance by, the Secretary of State of the articles of incorporation gives the incorporators a corporate existence, but they may have to fulfill certain conditions subsequent in order to be able to commence business. For instance, if the enabling statute imposes a duty on the president and directors of a corporation to cause to be published, under penalty, its articles of incorporation, its capital stock, the amount actually paid in, etc., before the corporation could "commence business", or if said statute requires the filing of an affidavit setting forth that a certain per cent of the authorized capital has been paid in before the corporation can engage in business, the failure to comply with said provisions simply af-

fects the right of the corporation to commence business but it does not affect its corporate existence. In other words, such provisions are not conditions precedent to corporate existence but to the right to engage in business. 56

Still other kinds of statutory requirements are the so-called "directory" provisions. Like conditions subsequent these provisions have to do with the organization of corporations and a failure to comply with them is considered only as a mere irregularity and does not invalidate the organization of the corporation. 57 If the statute, for instance, provides that the first meeting of the incorporators should be held at the call of the majority the due incorporation of the corporation is not affected if the meeting is called by less than a majority. Requirements regarding the formalities to be followed in filing by-laws have also been held by the courts to be merely directory. 58

After the statutory requirements are complied with by the incorporators and a license or a certificate is issued to them stating that they are a body corporate, the different steps to be followed to complete the organization of the corporation are substantially uniform in all the states, to

56. Fletcher, Cyclopedia Corporations, Vol. 1, secs. 183, 184 (1917).
57. Butler Paper Co. vs. Cleveland, 220 Ill. 128.
58. For further discussion regarding directory provisions, see Thompson on Corporations, 3rd. Ed., Vol. 1, sec. 198; also Fletcher, Cyclopedia Corporations, Vol. 1, sec. 187 (1917).
wit: the meeting of the incorporators or shareholders for the
election of directors (unless they are named in the articles
of incorporation); the making of by-laws (unless this power
is delegated to the directors, an unusual provision); and the
meeting of the directors for the election of officers and the
transaction of the most important business, such as the adop-
tion of corporate seal and the form of stock certificate (or
certificates), the acquisition of the necessary books for the
corporation, acceptance of subscriptions or offers of proper-
ty or other consideration for stock, etc. 59

The corporation being duly incorporated and formally or-
ganized is then ready to go ahead and engage in its business.

59. For a detailed discussion regarding these matters,
see Ballantine, Manual of Corporation Law and Practice, Ch.
XXIII, secs. 299 and 300; Fletcher, Cyclopedia Corporations,
Vol. 1, sec. 267 (1917).
CHAPTER III

CORPORATE POWERS AND LIABILITIES
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Philippine Laws

The general powers of a corporation under the Philippine Corporation Law are briefly outlined as follows: (1) The power of succession for the period set forth in its articles of incorporation and in no case to exceed fifty (50) years; (2) To sue and be sued in any court; (3) To transact the business for which it was legally organized and to exercise any other powers or do any other acts which are reasonably necessary to carry out its lawful purpose or purposes; (4) To have a common seal with power to alter it; (5) To acquire, hold, lease, mortgage, encumber or otherwise dispose of any real or personal property which it may need for its business. It cannot, however, engage in the business of

60. P. C. L. sec. 13, as amended.
61. "Under subsection 5 of section 13 of the Corporation Law, every corporation has the power to purchase, hold and lease such real property as the transaction of the lawful business of the corporation may reasonably and necessarily require . . . . . . The law expressly declares that corporations may acquire such real estate as is reasonably necessary to enable them to carry out the purposes for which they were created; and we are of the opinion that the owning of a business lot upon which to construct and maintain its offices is reasonably necessary to a building and loan association such as the respondent was at the time this property was acquired. A different ruling on this point would compel important enterprises to conduct their business exclusively in leased offices - a result which could serve no useful end but would retard industrial growth and be inimical to the best interests of society." (Gov't of P. I. vs. El Hogar Filipino, 50 Phil. Rep. 421).
buying and selling public lands, neither is it permitted to hold or own real estate, except what is reasonably necessary to carry out the purposes for which it was organized, unless it is authorized to engage in agriculture in which case it is allowed to own and control not to exceed one thousand and twenty four (1,024) hectares (approximately 2,530 acres). Corporations organized to engage in agriculture or in mining are not allowed to be interested in any way in other corporations created for the same purposes. Persons owning stock in more than one corporation engaged in agriculture or in mining are prohibited from owning more than fifteen per cent of the capital then outstanding and entitled to vote in each of said corporations. Corporations are also prohibited from owning more than fifteen per cent of the capital stock then outstanding and entitled to vote of any corporation organized for agricultural or mining purposes. Persons owning stock in more than one corporation organized for agricultural or mining purposes are allowed to hold their stock in said corporations for the purpose of investment only and not with a view to make combinations in order to exercise control over said corporations or to violate the provisions of the public land law, directly or indirectly. The same prohibition

62. For a comprehensive discussion of the amount of land that corporations and individuals can own and control in the Philippines, see Fisher, The Philippine Law of Stock Corporations, Par. 167, pp. 248-270.

63. The original public land act was Act 926 enacted by the Philippine Legislature under the authority of the Act of Congress of July 1, 1902 (P. I. Public Laws, Vol. 1,
applies to corporations owning stock in agricultural or mining corporations. Corporations are allowed, however, to loan funds and take real estate for security and purchase real estate when necessary for the collection of loans, but within five years after receiving the title thereof they must dispose of the same; (6) To appoint and dismiss subordinate officers and agents and provide for their compensation; (7) To make by-laws not in conflict with any existing law for their own government and management; (8) To admit members, issue stock and sell the same for the payment of any indebtedness of any stockholder to the corporation; (9) To enter into any obligation or contract in connection with its business; and (10) With the limitations provided


64. See the Monopolies and Illegal Combinations Law (Act 3247) Appendix "C", p. 270.

65. Section 13 of the Corporation Law allows "the corporation 'five years after receiving the title,' within which to dispose of the property. A fair interpretation of these provisions would seem to indicate that the date of the receiving of the title in this case was the date when the respondent received the owner's certificate, or May 7, 1921, for it was only after that date that the respondent had an unequivocal and unquestionable power to pass a complete title. The failure of the respondent to receive the certificate sooner was not due in any wise to its fault, but to unexplained delay on the part of the register of deeds. For this delay the respondent cannot be held accountable." (Gov't. of P. I. vs. El Hogar Filipino, 60 Phil. Rep. 409). See also 7 Phil. L. J. Jr. 41-45.

66. "Where ostensibly the defendant entered into a contract with A. P. & C. Co. which did not have any legal existence either as a firm, partnership or corporation, but in
for in section 13, to acquire, hold, mortgage, pledge or dispose of shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation.

From the foregoing enumeration of general powers it can be seen that, with certain limitations, corporations organized under the Philippine Corporation Law have the power to acquire, hold and dispose of real estate; to borrow money, contract debts, issue bonds and mortgage their corporate property; 67 to acquire, hold and dispose of stocks and securities of other corporations; to acquire, hold and dispose of their own shares. Section 28 1/2, which has been added recently by Act 3518, 68 also empowers corporations to sell, exchange or lease their entire corporate property, provided the shares of dissenting stockholders are paid for by the corporation.

Aside from the limitations, restrictions and prohibitions to corporate powers mentioned under the general powers, a few others may be noted. Under section 12 of the statute corporations are prohibited from using or occupying private

truth and in fact it was a branch or subsidiary of B. & Co., which the defendant knew, and where B. & Co., entered upon the performance of the contract and purchased property from the defendant for that purpose, the purported contract which the defendant ostensibly made with A. P. & Co., which is null and void as to A. P. & C. Co., is valid and binding as between B. & Co. and the defendant." (Blossom & Co. vs. Manila Gas Corporation, 48 Phil. Rep. 848).

67. "Anonymous partnerships are prohibited from making loans or extending credits upon the security of their own shares, etc." (Union Farmaceutica Filipina vs. Icasiano, 9 Phil. Rep. 319).

property without the owner's consent or without prior condemnation proceedings; neither are they allowed to occupy or use public lands or any other property of the government without securing first from the government of the Philippine Islands the proper franchise. From these are excluded those corporations engaged in operating railroads, street railways, etc. which are governed by Act 667; they have to get their permit from the municipalities concerned. Street railway, tramway, telephone, etc. corporations for the purpose of doing business in Manila and railroad corporations for the purpose of doing business in the Philippine Islands are allowed to form and organize under the General Corporation Law.

Section 14 of the statute provides that corporations organized under it are to exercise only those powers granted and those which are necessary to the proper exercise of the said conferred powers. Section 15 further limits and restricts corporate powers by providing that no corporation doing business in the Islands or receiving any grant, franchise or concession from the Philippine government shall use, employ, or contract for the labor of persons claimed or alleged to be held in involuntary servitude and that a violation of this prohibition subjects the offending corporation to a fine of twenty thousand pesos, aside from the forfeiture of its charter, grant, franchise or concession. Section 16 prohibits a corporation organized under the statute from

creating or issuing bills, notes, or other evidences of debt for circulation as money and provides that no stock or bonds shall be issued except (1) in exchange for actual cash paid to the corporation or (2) for property actually received by it at a fair valuation equal to the par or issued value of the stock or bonds thus issued, or (3) for profits earned by the corporation but not distributed to its stockholders or members. Corporations are also prohibited from declaring any dividend except from the surplus profits arising from their business, or from dividing or distributing its capital stock or property, other than actual profits, among the stockholders or members until all the debts of the corporation are paid. Under section 17 corporations are prohibited from increasing or diminishing its capital stock or from incurring, creating or increasing any of its bonded indebtedness without the consent and approval of two-thirds of the entire capital stock subscribed at a regularly called meeting. Under section 174, as amended, corporations engaged in commerce are not allowed to acquire, either directly or indirectly, the whole or any part of the stock or share capital of another corporation also engaged in commerce if the effect of such acquisition is to lessen competition, restrain such commerce or create a monopoly. 70 In the same section it is also provided that corporations 71 are not allowed to acquire, direct-
ly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce if such acquisition or the use of such stock by the voting or granting of proxies may substantially lessen competition between such corporations, or may restrain such commerce or tend to create a monopoly in any line of commerce.

The Philippine Supreme Court, the highest tribunal in the Islands, has had very few occasions thus far to interpret the powers of corporations under the statute. In a rather early case of COLEMAN VS. HOTEL DE FRANCE CO., the court had a chance to discuss the so-called "incidental powers" of corporations. In that case the defendant hotel corporation, through its manager, contracted with the plaintiff, a professional gymnast, to have the latter perform acrobatic exhibitions for the entertainment of the patrons of the defendant hotel and for the purpose of attracting more patronage. This contract was later repudiated by the defendant corporation. In an action by the plaintiff to recover damages for breach of contract the court held that these vaudeville entertainments are included within the incidental powers of the hotel corporation. The court cited the ruling of In Railway Co. vs. Mc Carthy, 96 U. S., 267, where the Federal Supreme Court said: "When a contract is not on its face necessarily beyond the scope of the power of the corporation by which

72. 29 Phil. Rep. 323.
73. P. C. L. sec. 13, par. 3, speaks of powers "reasonably necessary" for the accomplishment of the conferred powers.
it was made, it will, in the absence of proof to the contrary, be presumed to be valid. Corporations are presumed to contract within their powers."

The case of PHILIPPINE NATIONAL BANK VS. PRODUCERS' WAREHOUSE ASSOCIATION involved the power of a corporation to appoint another corporation as its general manager. In that case the defendant corporation appointed the Philippine Fiber and Produce Company to be its general manager for a term of ten years, subject only to the control and instructions of its Board of Directors. It then issued to said managing corporation negotiable quedans for a certain amount of piculs of copra. The managing corporation arranged for an overdraft with the plaintiff bank and endorsed the quedans to the plaintiff as collateral to secure said overdraft. Upon failure to deliver the copra the plaintiff bank brought action. The court held that the defendant corporation was estopped to deny the authority of its manager and was bound by the acts of the latter. Though not decided squarely, it would seem from this decision that a corporation, under section 13, paragraph 6 of the Corporation Law, could appoint not only natural agents but even artificial persons as agents. Another logical deduction seems to be that a corporation can delegate the management of its corporate affairs to another corporation, provided that its Board of Directors retains the supervisory control.

74. 42 Phil. Rep. 608.
Most of the limitations, restrictions and prohibitions to corporations under the statute have not as yet been interpreted by the Philippine Supreme Court. The only judicial pronouncement of the court regarding this matter is in the case of PEOPLE VS. VENANCIO CONCEPCION. In that case the Philippine National Bank was prohibited by section 36 of Act 2747 from granting loans, directly or indirectly, to any of the members of its Board of Directors, etc. and any person violating the same was penalized. The defendant as President of the bank authorized one of its branch offices to extend credit, without sufficient security, to a co-partnership in which the defendant's wife was the controlling stockholder.

It was strongly argued by the defense that the prohibition was to the bank and, consequently, the defendant was not criminally liable. The court, speaking through Justice Malcolm, held: "That when the corporation itself is forbidden to do an act, the prohibition extends to the board of directors, and to each director separately and individually."

The common bases of the liabilities of a corporation are those arising from contracts and those resulting from fault or negligence and crimes. The Philippine statute has codified

75. 44 Phil. Rep. 126.
77. Torts as such are really unknown in Philippine substantive law. They are referred to as negligence (commission or omission) fault or carelessness. For a discussion of this subject see "The Position of the Law of Torts in the Spanish System," 6 Mich. L. Rev. 137-149. In this article
fied the contractual liability of a corporation in paragraph (9) of section 13, in which it is provided that a corporation can enter into any obligation or contract in connection with its business. Of course, as a general rule, to be binding, a corporation's contracts must be within its charter powers. The mere fact, however, that a corporation goes beyond its legal powers does not always invalidate its contracts. As was said by the Supreme Court in the case of COLEMAN VS. HOTEL DE FRANCE CO., "the doctrine of ultra vires, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong."

To hold a corporation liable for the contracts entered into by its Board of Directors, officers or other agents said contracts must be within the scope of their employment. "The general rule is that officers of corporations acting within the scope of their authority may bind the corporation in the same way and to the same extent as if they were the agents of natural persons, unless the charter or by-laws otherwise provide. They cannot, in general, bind the corporation by acts in excess of the authority with which they are clothed unless such acts are ratified . . . . It follows that the declara-

Judge Lobingier is quoted by De Witt, the author, as saying: "The Spanish law, it may be remarked, has no department corresponding exactly to what in the English law is designated by the term 'torts', - i.e., wrongs independent of contract and redressed by a civil as opposed to a criminal action."

76. 29 Phil. Rep. 323, cited on p. 32, supra.
tions of an individual director relating to the affairs of the corporation, but not made in the course of, or connected with, the performance of the authorized duties of such director, are not binding on the corporation. 

Illegal contracts and those against morals or contrary to public policy are invalid and unenforceable. Where the parties enter into an illegal contract the law leaves them where they are.

Nothing is better settled than that a corporation is liable for the fault, carelessness or negligence of its officers, employees and agents when acting within the scope of their employment. Thus, where one is severely and permanently injured due to the negligence of the defendant he is entitled to recover damages from the latter. In like manner, if an employee dies as a result of the negligence, fault or carelessness of his employer or the person in his service for whose negligence he is liable, his heirs or next of kin have a right to claim damages from said employer. And where a railroad company negligently allows sparks to escape from its locomotive engine by means of which fire destroys houses near its track said company is liable for

the damage done. 84

There is as yet no Philippine decision regarding the corporation's responsibility for the torts of its officers and agents committed in the course of an ultra vires transaction. Should this question come up before the Philippine courts, undoubtedly, they would follow the American decisions holding the corporation not liable, unless the transaction is authorized by the stockholders or is subsequently ratified by the corporation.

Whether a corporation can be prosecuted for crimes has been definitely settled in the case of WEST COAST LIFE INSURANCE CO. VS. HURD. 85 In that case the Insurance Company which was criminally prosecuted for libel, brought an original action in the Supreme Court praying for the issuance of a writ of prohibition against the defendant, judge of the Court of First Instance for the City of Manila, commanding him to desist or refrain from further proceeding with said criminal action then pending in that court. The Supreme Court, speaking through Justice Moreland, granted the remedy and held that "the courts of the Philippine Islands are creatures of statute and, . . . . . have only those powers conferred upon them by statute and those which are required to exercise that authority fully and adequately. The courts here have no common

65. 27 Phil. Rep. 401.
law jurisdiction or powers. If they have any powers not conferred by statute, expressly or impliedly, they would naturally come from Spanish and not from common law sources. It is undoubted that, under the Spanish criminal law and procedure, a corporation could not have been proceeded against criminally, as such, if such an entity as a corporation in fact existed under the Spanish law, and as such it could not have committed a crime in which a willful purpose or a malicious intent was required. 86

American Laws

Private corporations in the United States derive their powers from the constitution and enabling general statute of the state wherein they incorporate, 87 and also from their charters. The constitutional and statutory provisions serve as a sort of general source of powers, but the particular things that the corporation should do or engage in are usually enumerated by the incorporators in their articles of incorporation or in the charter. The charter is commonly spoken of as the contract which the incorporators execute among themselves on the one hand and between them and the state or the public on the other.

86. If at all, criminal actions should be directed against the officials of the corporation and not against the corporation itself (Id).

87. Not all the states have constitutional provisions governing private corporations but all of them have general enabling statutes. (See Corporation Manual, 33rd. Ed., 1932).
Two diametrically opposed theories are advanced in the construction and interpretation of the charter. The first one holds that the charter being a contract its provisions should be observed and complied with strictly. The basic reason for this view as regards the incorporators and stockholders is that they have contributed their funds to a particular venture and, therefore, the corporation should not go beyond the powers conferred upon it. As regards the state or the public it is asserted that the charter is also a contract between the corporation and the state, and in order not to mislead the public (with whom the corporation has to deal) as to the powers of the corporation it should not go beyond those powers. This strict view regards the corporation as a mere creature of the law and can have no powers other than those granted it by the law. The second and more liberal theory is that a corporation duly organized has the same powers as a natural person and can exercise any power that a natural person could exercise. Under the first or "special capacity" theory when a corporation does an act the question raised is: Is it empowered to do it? Under the second or "general capacity" theory the question asked is: Is it prohibited from doing this particular act?

For a general discussion of corporate powers, see 9 Colum. L. Rev. 243-247.


89. Thompson on Corporations, sec. 2177, supra. The tendency of the courts is to broaden the implied powers. (Fletcher, Cyclopedia Corporations, Vol. 2, sec. 803 (1917).
Originally, corporate powers were classified into the Incidental or Inherent powers, Express powers and Implied powers. The incidental or inherent powers usually include: (1) Power to have perpetual existence; (2) To sue and be sued in its corporate name; (3) To purchase, hold and convey real and personal property; (4) To have a common seal with power to alter it and (5) To make by-laws for its own government. The express powers are those definitely conferred and the implied are those which could be inferred from the express powers.

As we examine the American statutes governing private corporations to-day we find that the five incidental or inherent powers of corporations are now included under the so-called "general powers." Thus, the General Corporation Law of New York mentions four of these under the general powers, omitting only the power to sue and be sued. The General Corporation Law of Delaware mentions all of them among the first six general powers of corporations. The state of Michigan has all of them. The General Corporation Act of Illinois, as amended, enumerates all the five among the first ten general powers of corporations.

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91. Cahill's Consolidated Laws of New York (1930), sec. 14, Ch. 23.

92. G. C. L., sec. 2.

93. Michigan Corporation Law, 1931 session (newly-enacted) sec. 10.

Civil Code of California, as amended, also states all the five among the first six general powers of corporations. 95

The five incidental or inherent powers of corporations have been supplemented by other express powers and also by certain limitations, restrictions and prohibitions, depending upon the needs and conditions obtaining in particular jurisdictions. Although the distinction between incidental and implied powers still subsists, generally speaking, private corporations have only those general powers expressly given and those that are inferred or implied from those express powers. In effect, Ballantine says "a corporation has such powers, and such powers only, as are expressly or impliedly conferred upon it by the objects specified in its charter, and any other act which is not reasonably conducive to such objects is ultra vires however beneficial it may be to the corporation." 96

It is generally conceded that a corporation has the power to take and hold real and personal property if it is reasonably necessary to carry out the business, purpose or purposes authorized by its charter, unless the constitution, enabling statute or its charter expressly prohibits it. In fact, there is no need or expressly granting this power. As the Michigan court said the power to take, hold and convey real and personal estate is incident to every corporation,

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unless expressly prohibited, or the power be clearly "repugnant to the purposes of its creation or forbidden by some positive law." 97 In like manner, in the absence of restrictions, a corporation has the power, like a natural person, to dispose of the property thus acquired, including all its rights and franchises, subject only to legislative restrictions. 98 If it could dispose of its property it could lease, mortgage, pledge or otherwise encumber it, "provided the transfer or encumbrance is not prohibited by its charter or by statute, and is not foreign to the objects for which it was created." 99

Although the English mortmain statutes are not considered as enforced in the United States, nevertheless, in many of the states the power of private corporations to acquire, hold and dispose of real estate is limited or restricted by constitutional or statutory provisions. In Michigan, for example, the Constitution provides that "no corporation shall hold any real estate for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchise." 100 The General Corporation Act of Illinois contains provisions that, except as specifically provided therein, no corporation shall

100. Art. XII, sec. 5.
be organized under said act for the purpose of acquiring or owning real estate; that real estate acquired by the corporation for the purpose of providing homes for its employees shall not be held by it for a longer period than five years if it is unimproved, nor for more than fifteen years if it is improved; the same limitations apply to real estate improvement corporations; that real estate acquired by the corporation in satisfaction of any liability or indebtedness should be disposed by it within five years, unless the same is needed by said corporation. 101 The California Civil Code contains a rather peculiar provision prohibiting corporations from maintaining any action or proceeding in relation to real property, its rents, issues or profits, unless they have filed a certified copy of their articles of incorporation, duly certified by the Secretary of State, with the clerk of the county or counties where such property is located. Corporations already in existence are also required to observe the same formality, with regard to real property that they may subsequently acquire, within ninety days after such acquisition. 102

With regard to contracting obligations the general rule is that a corporation, in the absence of express restrictions or prohibitions, has the power to borrow money, contract debts, issue bonds and mortgage its property to secure its

indebtedness. It can enter into any kind of contract which is fairly and reasonably incidental to the purpose or purposes authorized by its charter. Thus, in the case of BRADLEY VS. BALLARD, where the question raised involved the validity of certain promissory notes issued by a mining corporation for money borrowed, the court held: "The money was not borrowed to be used for an illegal or immoral purpose. The lenders have been guilty of no violation of law, nor wrong of any kind. The corporation has received their money and used it for a purpose, which, whether ultra vires or not, was unquestionably the sole purpose for which the corporators associated themselves together, and for which this complainant became a stockholder. Justice requires the corporation to repay the money it has thus borrowed and expended." But, a corporation has no power to contract regarding matters foreign to the object or objects for which it was created, irrespective of how beneficial said contract might be.

For instance, a corporation organized for the manufacture and sale of carriages has no power to speculate in the purchase and sale of excelsior. Being authorized by its charter

103. These powers are expressly conferred by statute in New York, Delaware, Maryland, Michigan, Illinois and California and in many other states of the Union.

104. 55 Ill. 413, 419.


to do a certain particular thing only it cannot lawfully do anything else entirely foreign to its conferred power. In like manner, an insurance company cannot engage in banking business. It has no authority to insure against other risks. Neither can a corporation for constructing and maintaining a toll road engage in transporting passengers over the road for hire, or legally purchase vehicles for such purpose.

As a general rule a corporation has no power to take, purchase, subscribe for or otherwise hold stock of another corporation, unless expressly authorized by its charter, or unless by necessary inference such acquisition is indispensable to the accomplishment of the object or objects for which the corporation was created. In many of the states, however, this power is expressly conferred with certain limitations. For instance, in New York only stock corporations are allowed to acquire and hold stock in other corporations, moneymed corporations being prohibited from doing so. Unless the stock of other corporations is transferred or held only as collateral security with the consent of the Public Service Commission, no stock corporation, domestic or foreign, other

110. Stock Corporation Law (S. C. L.) sec. 18, as amended by L. 1929, c. 326.
than railroad corporations, etc. and gas corporations, etc. are allowed in New York to hold more than ten per cent of the total voting capital stock issued by similar corporations. In Maryland corporations can acquire shares in other corporations if such acquisition is "appropriate to enable it to carry on the operations or fulfill the purposes named in the charter." In Illinois the limitation is that the acquisition of stock should not be for the purpose of monopoly or in restraint of trade. It is also provided as a further restriction that the stock of other corporations thus acquired should be held for investment only and not to lessen competition. A further limitation is that stock of a building corporation or of an agency and loan corporation cannot be acquired by other corporations, except as collateral security and the same should be disposed of within five years by the acquiring corporation.

In spite of the general rule that a corporation has no power to acquire stock in another corporation, unless expressly authorized or such acquisition is incidental to the purpose of its creation, it seems to be well settled that for the purpose of collecting a debt and to avoid loss, or for the purpose of effecting a compromise it may do so provided

111. Public Service Commission Law, secs. 54 and 70, as amended by L. 1929, c. 687, sec. 1 and L. 1930, c. 788 and by L. 1930, c. 796, respectively.

112. Annotated Code of Maryland (Bagby) Sec. 9, par. 6.

113. General Corporation Act (G. C. A.) sec. 7 and sec. 8, as amended by L. 1929, p. 287.
there is good faith. But, the purchase of stock in another corporation for the purpose of control or speculation is injurious to public interest and is prohibited.  

Regarding the power of a corporation to purchase its own stock there is a conflict of authorities. It is held on one hand that a corporation has no such power, for if it buys its own stock it is reducing, in effect, the capital upon which the creditors rely; and if it buys its stock for the purpose of reissuing it this amounts to trafficking in stock and is prohibited. In Illinois there is no statutory provision granting this power. The weight of authority, however, is that in the absence of express prohibition or restriction, a corporation can purchase its own stock, provided it does it in good faith and uses its surplus in doing so and provided further that the rights of creditors of the corporation are protected. 

Unless expressly authorized a corporation has no power to enter into a copartnership. The reason for this is fundamental. A corporation is managed by a Board of Directors and can only be bound by the action of said Board acting within their powers as a Board and in conformity with the by-laws.

116. Clap vs. Peterson, 104 Ill. 26; 34 Harv. L. Rev. 293-295; 24 Yale L. Jr. 177-186; See also 56 U. of Pa. L. Rev. 299, 305; 13 Colum. L. Rev. 146-150.
Since in a partnership any member could bind the other partners a corporation entering into a contract of copartnership would be bound by the act of a single individual and this strikes at the very root of the corporate concept. In transactions temporary in character, however, such as mere joint contracts in a single venture a corporation can bind itself.\footnote{118}

A corporation is also liable to third persons for engaging in business as a partner.\footnote{119}

In most of the states corporations are given the power to sell, exchange or lease their entire corporate property. In New York, Delaware, Michigan, Illinois and California this power is expressly given by statute, the difference being only in the method of obtaining the consent of the stockholders. Corporations are also empowered to do business outside of the state of incorporation.

As to limitations, restrictions and prohibitions state statutes have provisions covering limitations, restrictions and prohibitions varying in many details. In New York corporations not engaged in banking are prohibited from engaging in banking transactions like discounting notes, etc. A similar provision is found in the Illinois statute. There is also a prohibition to corporations from transferring any of their property to any of their officers for less than its real value in cash, if the corporation has refused to

\footnote{118. Marine Bank vs. Ogden, 29 Ill. 248.}
\footnote{119. Cleveland Paper Co. vs. Courier Co., 67 Mich. 152.}
pay any of its legal obligations when due. In Delaware a corporation is not allowed to loan any money to any of its officers. In Michigan gambling in stock is prohibited. In California no corporation can issue bills, notes or other evidences of debt for circulation as money. Other provisions might be added from time to time to the corporation statute of the different states as the exigencies of business may require, but essentially the general powers of American private corporations are those above discussed.

The corporation statutes of most of the states contain specific provisions empowering corporations to enter into contracts.\(^{120}\) Such provisions are hardly necessary, for the power to enter into contracts is of the essence of private business corporations. In the words of Thompson "the power to contract inheres, naturally, in every corporation."

As a general rule, valid and binding contracts of corporations are measured by their charter powers. Being creatures of the law they have no more powers than those expressly conferred and those fairly incidental to them.\(^{121}\) By virtue of their implied powers they can make such contracts as are necessary to carry out the purposes of their organization.\(^{122}\) Corporations are liable for contracts that can

\(^{120}\) A corporation is not ordinarily liable on a contract made in its behalf before it comes into existence, unless it ratifies it after it comes into being. (Weiss vs. Arnold Print Works, 188 Fed. 688; Kline vs. Royal Ins. Co., 192 Fed. 376)

\(^{121}\) Nat. etc. Bldg. Ass'n vs. Home Savings Bank, 181 Ill. 35

\(^{122}\) Pain vs. Kiel, 288 Fed. 527.
fairly and reasonably be based, either on their express or implied powers, provided all the elements of a valid contract are present. Any other contracts beyond their charter powers or in excess of such charter powers are ultra vires and are generally held not to be binding on the corporation. 123

Being an artificial creature and existing only in contemplation of law, a corporation, necessarily, must act through natural persons as its agents. It has the inherent power to appoint its agents. For the acts done by its agents a corporation is liable, either ex contractu or ex delicto, always provided that the agents have been duly authorized and have acted within the scope of their authority. This is the general rule and is based on the well-known principle of agency. It follows that acts done by the agents beyond the scope of their powers are not generally binding on the corporation.

From what has been said it would seem that to hold a corporation liable for its contracts two conditions must concur: (1) the contracts must be within the charter powers of the corporation; and (2) its agents must act within the scope of their employment. Although authorities sustaining this view are not altogether wanting, the concensus of authority is to the effect that a corporation may be held liable without the presence of either one of these two requisites. In other

words, there are well-known exceptions to the general rule that contracts beyond the charter powers of a corporation are void. For instance, if an agent is invested with apparent authority to enter into a certain kind of contract an innocent party, having no notice of the extent of that apparent authority and who contracted with the agent in good faith, may hold the corporation liable for said contract. Although it is said that those dealing with a corporation must take the risk if they do not take notice of its charter, nevertheless, it cannot be denied that, oftentimes, the powers of a corporation cannot be ascertained by an inspection of its charter. And so it has been held that where a corporation, having the power to make a negotiable promissory note, issues an accommodation note such note could be enforced against it by a bona fide holder for value. Distinction should be made between a total lack of power and a mere abuse of general powers.

Another exception to the general rule that a corporation can only be bound by intra vires transactions is where it has received some benefits under the contract. Where the contract is beyond the scope of the corporation's powers or is in excess of such conferred powers, if the corporation has received money or property by virtue of such ultra vires contract it must account for the same. It would be inequitable

to have it retain the money or property on the sole ground
that it did not have any authority to enter into the con-
tract. More than that. If the parties cannot be restor-
ed to their former status, without injury or damage, the cor-
poration must make good its contract. Thus, where a corpo-
ration, authorized to insure only buildings, insures crops
against loss or damage by hail, by the doctrine of equitable
estoppel, it must make good the loss.

Though it is not within the scope of this treatise to
discuss the doctrine of ultra vires at length a short resume
of the general principles governing the subject is, at this
juncture, necessary. If an ultra vires contract is executory,
although it is partly executed by either or both parties, it
is generally held unenforceable. If it is executory only on
one side and is fully executed on the other the authorities
are conflicting. The federal view is that the main contract
is void but there is a quasi-contractual obligation to return
what has been received under the contract. The majority of
the courts, however, hold that the party receiving the money,
property or any other consideration is estopped to set up
the defense of ultra vires and the contract must be upheld.
If the ultra vires contract is fully executed on both sides
generally the courts refuse to take action.

sec. 715.
127. Ballantine, Manual of Corporation Law and Prac-
tice, sec. 72 et seq.
We have thus far discussed the liabilities of a corporation for intra vires contracts. The next question is: Is a corporation liable for the contracts of its agents beyond the scope of their authority? As has already been seen, as a general rule, it is not. Two well-known exceptions, however, should be noted, namely: (1) where the circumstances are such that the corporation is estopped to deny the agent's authority; and (2) where the corporation subsequently ratifies the acts of its agent or agents. 128

Regarding contracts that are illegal and those that are against public policy the settled doctrine is that they are void and unenforceable. 129 The reason is, of course, self-evident. The law will not help in the enforcement of contracts which are in violation of law itself or against public policy as it is revealed in the settled adjudications of the courts. Where the parties are in pari delicto generally the courts refuse to grant a remedy.

It is a well-established rule that a corporation is

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There are two lines of decisions regarding ultra vires acts. The English and Federal Supreme Court hold that a corporation has no power to commit an ultra vires transaction. The common law view is that even if a corporation has no power to commit an ultra vires transaction, nevertheless, it can commit it and can be held liable.

For a more extensive discussion of the doctrine of ultra vires acts of corporations see 43 Am. L. Rev. 69-80; also 81-96; 23 Harv. L. Rev. 495-512.


liable for the torts committed by its officers and agents within the scope of their employment; and this is so even if specific intent or malice (such as fraud or malicious prosecution) is involved. 130 The corporation's liability for torts is based on the doctrine of respondeat superior. 131 There is a conflict of authority as to whether it can be made liable for exemplary or punitive damages. The rule is that it can be held so liable if it has authorized or ratified the act. 132

A corporation is not generally held liable for the torts of its officers and agents, committed in the course of an ultra vires transaction, for the reason that the same is beyond the scope of their employment. If the transaction, however, is ratified by it or is authorized by the stockholders it is liable for it. 133

A corporation can also be indicted for the violation of a criminal statute. It is liable for the publication of a libel as for other torts. 134 To make it responsible for libel, however, (1) it must authorize its publication, or (2) must have ratified or approved it, or (3) it must be published by its agent while acting within the scope of his author-

131. Melady vs. South St. etc. Exchange, 142 Minn. 194, 171 N. W. 806.
132. Ballantine, cited supra, sec. 89.
133. Id., sec. 90 et seq. But, see section 725, Morawetz, Private Corporations, 2nd. Ed. Vol. 2 where it is stated that a corporation is liable even for ultra vires acts of its agents.
134. Stanley vs. Inhabitants of Town of Sangerville, 119 Me. 26, 109 Atl. 189.
The early view used to be that a corporation, being an ideal person, cannot commit a crime involving malicious or criminal intent, although its members or stockholders can. The tendency in modern legislation, however, is to make corporations responsible for all crimes, except those that can only be perpetrated by natural persons. For instance, a corporation can be made liable for public nuisance, for violations of public regulations, for non-feasance or for misfeasance or malfeasance. Of course, a corporation cannot be punished for murder, bigamy, rape, perjury or for any other crime that can be committed only by natural persons, unless the statutory penalty is made applicable to it. When a criminal statute is violated two questions must be asked: (1) are corporations included under the statute; and (2) is the punishment such that it can be meted out to corporations? Thus, the court in convicting the defendant corporation for the violation of the eight-hour-labor law, in the case of UNITED STATES VS. JOHN KELSO CO., held that "when a statute in general terms prohibits the doing of an act which can be performed by a corporation, and does not expressly exempt

135. Choctaw etc. Mining Co. vs. Lillich, 204 Ala. 533.
137. 86 Fed. 304, 306.
corporations from its provisions, there is no reason why such statute should be construed as not applying to them, when the punishment provided for its infraction is one that can be inflicted upon a corporation, - as for instance, a fine." After all, corporate liability in criminal cases is a matter of statutory construction and interpretation.
CHAPTER IV

STOCK AND STOCKHOLDERS
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STOCK AND STOCKHOLDERS

 Philippine Laws

STOCK: Classes, consideration, etc.- Section 35 of the Corporation Law provides that "the capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws." The shares "may be divided into classes with such rights, voting powers, preferences, and restrictions as may be provided for in the articles of incorporation." They may have par value or no-par value. Banks, trust companies, insurance companies, and building and loan associations, however, are not allowed to issue no-par value shares. The issuance of no-par value shares may be (1) for such consideration as the articles of incorporation may prescribe; or (2) any consideration that the Board of Directors, pursuant to the by-laws, may fix, provided there is no fraud; or (3) for such consideration as the majority of the voting shares may determine in a meeting called for the purpose and in conformity with the by-laws. Under the broad language of this provision it is logical to infer that the consideration may be for cash, for property or for services.
The issuance of no-par shares is made subject to the laws creating and defining the duties of the Public Service Commission. Shares thus issued are deemed fully paid.

"No public utility as herein defined shall:

(e) Hereafter issue any stocks, stock certificates, bonds, or other evidences of indebtedness payable in more than one year from the date of the issuance thereof until it shall have first obtained authority from the Commission for such proposed issue. It shall be the duty of the Commission, after hearing, to approve of any such proposed issue maturing in more than one year from the date thereof, when satisfied that the same is to be made in accordance with the law and the purpose of such issue be approved by said Commission." (Act 3108, sec. 16, cited supra).

"No public utility as herein defined incorporated under the laws of the Philippine Islands shall sell nor shall any such public utility make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility, unless authorized to do so by the Commission. Nor shall any public utility incorporated under the laws of the Philippine Islands sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, result of which sale or transfer in itself or in connection with other previous sales or transfer shall be vested in such corporation a majority in interest of the outstanding capital stock of such public utility corporation, unless authorized to do so by the Commission. Every assignment, transfer, contract, or agreement for assignment or transfer by or through any person or corporation to any corporation in violation of any of the provisions hereof shall be void and of no effect, and no such transfer shall be made on the books of any public utility corporation. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired." (Id., sec. 17).

This act (3108) repeals acts 2307, 2362 and 2694.

Originally, this body was called "Public Utility Commission, but Act 3216 changed the name to "Public Service Commission". (See P. I. Off. Gaz., Vol. 25, p. 428).
and non-assessable and the holders thereof shall not be liable either to the corporation or to its creditors. No-par value shares, however, cannot be issued for less than five pesos ($2.50) per share. Shares of stock shall all be equal, unless otherwise provided in the articles of incorporation and stated in the certificates themselves. Preferred shares entitled to preference in the distribution of assets can only be issued with a par value and the amount which the holders thereof are entitled to receive shall be stated in the certificates themselves. The same section \(^\text{139}\) lastly provides that "the entire consideration received by the corporation for its no-par value shares shall be treated as capital, and shall not be available for distribution as dividends."

Before the recent introduction into our statute of the no-par value stock it was provided that "no corporation shall issue stock . . . except in exchange for actual cash paid to the corporation or for property actually received by it at a fair valuation equal to the par value of the stock . . . so issued.\(^\text{140}\) The Philippine Supreme Court interpreted this provision in the case of the NATIONAL EXCHANGE CO., INC. Vs. DEXTER.\(^\text{141}\) In that case the defendant subscribed for 300

\(^{139}\) Sec. 5 (new section) recently added to the Corporation Law (Act 1459) by Act 3518.

\(^{140}\) P. C. L. sec. 16. As amended by sec. 9, Act 3518, see p. 60, infra; also Appendix "A", pp. 236-237.

\(^{141}\) 51 Phil. Rep. 601.

In the case of Phil. Trust Co. vs. Rivera, (44 Phil. Rep. 469), the court said that a corporation has no power to release a subscriber from paying his share without valuable consideration for such release.
shares of the par-value capital stock of C. S. Salmon & Co. and according to stipulation the amount was "payable from the first dividends declared on any and all shares of said company owned by me at the time dividends are declared, until the full amount of this subscription has been paid."
The Company, through the Philippine National Bank, assigned this document to the plaintiff which brought action to recover the balance of the par value of said 300 shares. The Court held that the stipulation was unlawful and the defendant was liable for the par value of the stock to the same extent as if no such stipulation has been made. It was further held that it was immaterial whether the shares were subscribed before or after the incorporation of the corporation.

As amended by Act 3518, section 16 of the Philippine Corporation Law provides that stock can be issued only for actual cash, or for property at its fair valuation equal to the par or issued value of the stock, or for profits actually earned but not distributed among the stockholders. As can readily be observed, "services" are not included as one of the considerations for the issuance of stock.

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142. No doubt, section 16 refers both to par value and no par value stock as the law mentions par or issued value of the stock.
143. As to what is included in the term "property" see Fisher, The Philippine Law of Stock Corporations, Par. 66, pp. 98-104.
144. For a definition of the term "fair valuation" of property see Fisher, cited supra, Par. 145, pp. 219-220.
of no-par stock. "Services" may, perhaps, be a consideration for the issuance of no-par stock, under the Philippine law, but it is submitted that it cannot be a consideration for the issuance of par value stock. This conclusion is based upon the fact that the Philippine statute provides for the issuance of no-par stock for such consideration as the Board of Directors or the stockholders (as the case may be) may, from time to time, determine. On the other hand, the law, speaking of stock in general, mentions definite considerations thereof, namely, actual cash, property or undistributed profits. Whether par value stock can be issued for "services" has not as yet been decided. Should this question come up, however, it seems almost certain that the Supreme Court of the Islands would answer the question in the negative, basing its decision on the well-known principle that inclusio unius est exclusio alterius. The Philippine statute, having spelled out actual cash, property and undistributed profits as consideration for the issuance of stock, has impliedly excluded "services" as one of the possible considerations.

Id: Amount of Capital Required to Begin Business.- Before the articles of incorporation can be received by the Director of the Bureau of Commerce and Industry they must

145. Section 5 of the statute empowering the Board of Directors or the stockholders to fix the consideration of no-par value stock is particular, while section 16 providing for the consideration of (all) stock is general. On principle of logical, statutory construction the particular
be accompanied by a sworn statement of the treasurer duly elected by the subscribers showing that of the authorized shares of capital stock at least twenty per cent thereof has been actually subscribed, and that at least twenty-five per cent of the subscription has been actually paid in, in cash, for the benefit and to the credit of the corporation, or that he has received property, which has been transferred to him in trust to the credit and for the benefit of the corporation, the fair valuation of which is at least equal to twenty-five per cent of the subscription. 146

**Id:** Increase or Decrease of (Capital Stock).—The capital stock of the corporation can be increased or decreased by a two-thirds vote of the entire corporate capital stock subscribed at a meeting regularly called for that purpose and after a registered notice has been sent to each stockholder at his residence as shown by the books of the corporation. A majority of the directors must sign a certificate in duplicate, which certificate must be countersigned by the chairman and the secretary of the stockholders' meeting, showing (1) that the statutory requirement regarding the written provision should govern. Hence, the Board of Directors or the stockholders (as the case may be) should be free to receive any consideration for no-par value stock and to this end may accept "services" as consideration thereof. It would not be surprising, however, if the local Supreme Court would hold that, in spite of the discretion given the Board of Directors or the stockholders, by section 5 of the statute to fix the consideration of no-par value shares, they should, nevertheless, limit themselves to the different considerations enumerated in section 16, namely, actual cash, property or undistributed profits.

146. P. C. L. sec. 9, as amended by Act No. 2792, sec. 1, and by Act 3518, sec. 6.
notice has been complied with, (2) the amount of increase or
diminution of the capital stock, (3) in case of an increase
of the capital stock the amount subscribed, description of
shares, names and residences of subscribers, amount paid by
them on their subscription either in cash or in property,
etc., (4) the amount of stock represented at the meeting,
and (5) the vote authorizing such increase or diminution.

One of these duplicate certificates shall be kept by the
corporation on file in its office and the other shall be
filed in the office of the Director of the Bureau of Com-
merce and Industry who shall attach the same to the origin-
al articles of incorporation. From and after such filing
the capital stock shall stand increased or diminished. If
the capital stock is increased the duplicate certificate
must be accompanied by the sworn statement of the treasur-
er showing that twenty per cent, at least, of such increas-
ed capital has been actually subscribed and, at least, twen-
ty five per cent of the amount subscribed has been either
paid in actual cash to the corporation or that there has
been transferred to it property the fair valuation of which
is equal to twenty five per cent of said subscription. 147

The capital stock of the corporation cannot be increas-
ed without the knowledge and consent of the stockholders.

147 P. C. L. sec. 17, as amended by Act 2728, sec. 1
and by Act 3518, sec. 10.

For the filing of the duplicate certificate the direct-
or of said bureau is entitled to collect fee according to the
amount of increase of the capital stock at the same rate as
In the case of the NATIONAL EXCHANGE CO. LTD. VS. RAMOS, it appeared that the plaintiff company secured the subscription of the defendant to 100 shares of its capital stock. The subscription contract stated that the capital stock of the company was P250,000 when, in fact, it had been increased by said company to P500,000. The company did not reveal this fact to the defendant at the time of the signing of the subscription contract. The Supreme Court of the Islands held that this subscription was null since the defendant had not consented to such increase and his consent was essential.

Neither can the capital stock be reduced without complying with the formalities of the law. In the case of the COOPERATIVE NAVAL FILIPINA VS. RIVERA, this issue was presented. In that case the company was incorporated with a capital of P100,000 divided into one thousand shares of a par value of P100.00 each. The defendant Rivera was among the incorporators and had subscribed for 450 shares amounting to P45,000.00. At a meeting of the stockholders it was resolved to reduce the capital of the corporation by 50% and it was supposed that the subscribers were released from their obligation to pay the unpaid balance on their subscription in excess of 50% of the same. There was no evidence tend-
ing to show compliance with the requirements of section 17 of the Corporation Law. In an action by the assignee in insolvency against the defendant the Supreme Court held: "A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by law."

Id: Subscription.- Shares of the capital stock may be subscribed either before or after the filing of the articles of incorporation. The twenty per cent of the entire capital stock required by law to entitle the corporation to commence business may be subscribed in whole or in part by the incorporators themselves. 150 Section 37 of the statute, as amended, provides that the subscribers have to pay the corporation interest at the rate of 2% each quarter year (6% per annum) on all their unpaid subscription from the date of said subscription, unless the by-laws otherwise provide. Until the full par value of par value stock has been paid to the corporation, or until the corporation has received the legal consideration in case of no-par value stock 151 no certificate of stock shall be issued to the subscribers. The

150. The usual practice in the Philippines is for the incorporators themselves to subscribe to all the capital stock required to commence business.
151. See foot note 139, p. 59, supra.
subscribed shares, however, though not fully paid may be voted provided they are not delinquent either in the payment of subscription call or interest due.

In the leading case of VELASCO VS. POIZAT, the Supreme Court, interpreting the provision of said section 36 of the Corporation Law (section 37 as reenacted), said that a stock subscription is a contract between the corporation and the subscriber, and courts will enforce it for or against either. No express promise to pay is necessary to make the subscriber liable. The Court continuing said: "Section 36 of the Corporation Law clearly recognizes that a stock subscription is a subsisting liability from the time the subscription is made, since it requires the subscriber to pay interest quarterly from that date unless he is relieved from such liability by the by-laws of the corporation."  

Id: Transfer.- According to the common law the shares of stock issued by the corporation are personal property and may be transferred by the delivery of the certificate properly

152. P. C. L. sec. 36, as reenacted into sec. 37.
154. In Salmon, Dexter & Co. vs. Unson (47 Phil. Rep. 649) the court draws a distinction between subscription to capital stock of a corporation after organization and sale of shares by it. The Court said: "Whether a particular contract is a subscription or a sale of stock is a matter of construction, and depends upon its terms and the intention of the parties. It has been held that a subscription to stock in an existing corporation is, as between the subscriber and the corporation, simply a contract of purchase and sale. (Bole vs. Fulton (1912), 233 Pa. 6)9; 2 Fletcher, Cyclopedia Corporations, pp. 1120 et seq.)"
ly indorsed by the owners, their attorney-in-fact or any other person legally authorized by them to make the transfer. The transfer, however, is valid only as between the parties until after it is noted in the books of the corporation showing the parties to the transaction, the date of the transfer, the number of the certificate and the number of shares transferred. Shares of stock over which the corporation holds any unpaid claims cannot be transferred on the corporation's books.

The statutory provisions regarding the transfer of stock have been interpreted several times by the highest tribunal in the Islands. In the case of UY PIACO VS. McMICKING ET AL, the court said that the purchase of stock transfers to the purchaser only an equitable title, and in order for him to acquire the legal title he must follow the charter or the

155. The Philippine statute in its section 35 simply adopts this same common law principle making shares of stock personal property.

Whether mandamus will lie to compel the transfer of shares of stock is still an open question in the Philippines (Fisher, The Philippine Law of Stock Corporations, p. 158).

156. P. C. L. sec. 33. P. C. L. section 52 requires the corporation to have a "Stock and Transfer Book". "The stock and transfer book shall be kept in the principal office of the corporation and shall be open to the inspection of any director, stockholder or member of the corporation at reasonable hours; provided, that the corporation may open a share register in any state or territory of the United States and employ an agent or agents to keep such register and to record therein transfer of shares made in such state or territory, or elsewhere. No such transfer shall be valid except as between the parties until they are noted upon such share register so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred." (As this section has been amended recently (1930) by Senate Bill 387).

157. 10 Phil. Rep. 286.
by-laws of the corporation regarding making the transfer. In the case of FLEISCHER VS. BOTICA NOVASCO, INC., the court held that a corporation cannot, by its by-laws, impose an unreasonable restriction upon the right of a stockholder to sell his shares. Shares are personal property and can be transferred. An agreement, however, not to sell stock for one year, in order to give the corporation a chance to stand on its feet financially, is valid.

In HAGER VS. BRYAN, the doctrine was established that ordinarily mandamus will not lie to compel a corporation to transfer stock on its books for there is no public duty involved; the action is for damages. In another case, however, between the same parties the court held that mandamus will lie to compel the Secretary to transfer on the books of the corporation the shares of a registered owner if: (a) application has been made and denied; (b) there is no unpaid claim on the stock; (c) an ordinary action against the corporation is inadequate; and (d) an action in equity is also inadequate. This duty is impliedly, if not expressly, imposed on the Secretary by section 52 of the statute.

Id: Calls, Assessments and Forfeiture (of Shares).- The statute provides that the Board of Directors or trustees of stock corporations can make calls on unpaid subscriptions

158. 47 Phil. Rep. 585.
159. Lambert vs. Fox, 26 Phil. Rep. 588.
160. 21 Phil. Rep. 523.
and determine the amount to be paid by the delinquent subcribers.\textsuperscript{162} Delinquent shares can be sold by the corporation at public auction to the highest bidder, but in case there is no bidder the corporation itself can purchase the delinquent stock and can dispose of it according to law and the by-laws of the corporation by a vote of the majority of the shares remaining. As was said by the Supreme Court in the leading case of \textit{VELASCO VS. POIZAT},\textsuperscript{163} the corporation in such cases has two remedies: (1) to sell the stock for the account of the delinquent subscriber; and (2) to bring legal action against him for the amount due. Under the law the corporation can choose between either of these two courses of action.\textsuperscript{164}

**STOCKHOLDERS: Liabilities.** Under the Philippine statute stockholders are liable to the corporation and its creditors only for the full par value of the share or shares held by them, or for their full subscription in case of no-par stock. Unless the by-laws of the corporation provide

\textsuperscript{162} For the procedure to be followed in making calls, see \textit{P. C. L.} sections 37 and 38, both sections being reenacted as section 38 by sec. 17, \textit{Act 3518}.

\textsuperscript{163} 37 Phil. Rep. 802, cited in foot note 149, p. 64, supra.

\textsuperscript{164} Sale of delinquent stock is governed by sections 38 to 48 inclusive, \textit{P. C. L.} In the Velasco-Poizat case, cited supra, the court said that these provisions cannot be applied in case the corporation brings a legal action to recover upon the stock subscription. It was also said in this case that in the event of the insolvency of the corporation and the court assumes jurisdiction to wind it up unpaid stock subscription become payable on demand and can be recovered at once in an action by the assignee in insolvency.

See also \textit{P. C. L.} sec. 49.
otherwise, they are also answerable to the corporation for interest on their unpaid subscriptions at the rate of six per cent per annum payable quarterly from the date of their subscription. Beyond these they have no other liability. 165

Id: Rights and Powers. - 166 (a) Inspection of books and accounts. - On the other hand, the law grants to the stockholders a number of rights and powers. They have access to the records of all business transactions and the minutes of any meeting of the corporation. The Supreme Court in PARDO VS. THE HERCULES LUMBER CO. INC. ET AL, 167 said that the Board of Directors cannot, by resolution, limit the right of stockholders to inspect the books of the corporation; it is against section 51 of the statute. In another case 168 the Court said that the right given to stockholders by said section 51 to examine corporate affairs may be exercised by them in person or by a duly authorized representative. It would seem, therefore, that so long as the demand to examine any of the corporate records is made by the stockholders "at reasonable hours", irrespective of their motives, the corporation is bound to accede.

165. P. C. L. sec. 36 as reenacted into sec. 37 by Act 3518.
166. Under the Philippine statute the majority stockholders are given much power. Unless otherwise provided in the articles, or unless the power is given to the Board of Directors, they have the right to fix the consideration of no-par value stock. No stock or bond dividend can be declared without their approval. They can dissolve the corporation, apparently, even against the will of the minority stockholders. (Sec. 62 et seq). See also Fisher, The Phil. Law, etc. p. 379.
(b) Voting,—Another important right that stockholders have is the right to vote. They may vote in person or by proxy. In important matters, such as making or changing by-laws, increasing or decreasing the capital stock and others, their vote is indispensable, although the power to enact and alter by-laws can be delegated by them to the directors. In voting for directors they may distribute their shares or may cumulate them, giving one candidate as many votes as the number of directors to be elected multiplied by the number of shares he holds shall equal. By the recent amendment to the statute they can also surrender their voting right to voting trustees, (either a person, persons or a corporation authorized to act as trustee), for a length of time not exceeding five years. The voting trustees may also vote either in person or by proxy, unless the agreement provides otherwise. The only limitation to the right of stockholders to vote their shares is when there is a subscription call or interest due on subscription which is unpaid and delinquent, in either of which cases the shares cannot be voted.

(c) Preemption,—Whether stockholders under the Philippine statute have the preemptive right or subscription to newly authorized shares is still an open question. It is submitted, however, that this being a common law right they are

169. Executors, administrators, guardians, or other persons in a position of trust and legally authorized may vote as stockholders upon stock held in their representative capacity. (P. C. L. sec. 27).
entitled to it. This conclusion is strengthened by the inference that can be logically deduced from the case of ENRIQUES VS. ENRIQUEZ. In that case the corporation (sociedad anonima) issued new shares and gave the owners of the old stock the first right to buy a proportionate part of the new stock. An owner of six shares was given the first option to buy the three shares under the new issue. The money was paid to the corporation by a third party, who was the son and attorney-in-fact of the administrator of the then deceased, owner of the six shares. The Court did not discuss the right of the corporation to offer the new shares to stockholders before offering them for sale to the public. It just held that the three shares under the new issue belonged to the person whose money paid for them. By implication, however, it seems that there was nothing wrong or illegal in the act of the corporation giving the right of preemption to its stockholders.

(d) Dividends,—Another important right of stockholders is the right to receive dividends declared by the Board of Directors. Under the statute, however, stock or bond dividends can only be issued with the approval of the stockholders representing no less than two thirds of all the stock then outstanding and entitled to vote, given either at a general meeting of the corporation or at a special meeting.

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170. 12 Phil. Rep. 380. This case was decided on December 29, 1908 and the Philippine Corporation Law went into effect on April 1, 1906. Clearly, it falls under the statute.
expressly called for the purpose. Although there is no positive statutory provision barring unpaid shares from a participation in the dividends it seems to be settled that it is perfectly legal for the corporation to provide such a stipulation in the by-laws. Corporations can declare dividends only from the surplus profits arising from the business.

(e) Actions.- Although the statute is silent on the point, it is settled that a stockholder has the right to sue the corporation of which he is a member for the protection of his own rights. He can also maintain a representative suit for and on behalf of the corporation if his rights as a stockholder are affected and if the corporation refuses to take action. He does not even need to make a formal demand on the Board of Directors if to do so is futile. As the Supreme Court said in the case of EVERETT ET AL VS. ASIA BANKING CORPORATION ET AL, "when the board of directors in a corporation is under the complete control of the principal defendants in the case and it is obvious that a demand upon the board of directors to institute an action and prosecute the same effectively would be useless, the action may be brought by one or more of the stockholders without such demand." The right, however, to bring an action is not absolute. It depends upon when the stockholders ac-

172. The words "surplus profits" used in the Philippine Corporation Law refers to the surplus arising from the profits of the business and not from the surplus arising from capital.
173. 49 Phil. Rep. 512.
quired his shares, his motive for acquiring the same and his purpose in bringing the action. As was said by the Supreme Court in the case of PASCUAL VS. DEL SAZ OROZCO ET AL, 174 (speaking of representative suits), it is settled "that a stockholder in a corporation who was not such at the time of the transactions complained of, or whose shares had not devolved upon him since by operation of law, cannot maintain suits of this character, unless such transactions continue and are injurious to the stockholder, or affect him especially and specifically in some other way."

(f) Assets. At the termination of the life of the corporation, either by the lapse of the agreed term for its existence, or by a voluntary dissolution or through a forced sale of its franchise, the stockholders, after the debts of the corporation are paid, are entitled to their proportionate share in the corpus or assets of the corporation. However, until after the payment of its debts and the termination of its existence it cannot divide or distribute its capital stock or its property among its members or stockholders with the exception of actual profits. Even in the case of an amendment to the articles of incorporation a dissenting stockholder cannot be paid for his shares "unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of capital

174. 19 Phil. Rep. 82.
stock. As a further limitation to a stockholder's right to the corporate assets it was held by the Supreme Court that if the corporation is a going concern no stockholder can compel the payment to him of his proportionate share of the assets. 175

American Laws

STOCK: Classes, consideration, etc. - The statutes of most of the states of the American Union permit the division of shares into those having par value and no-par value. 176 They also permit classifying them into the preferred and common. The usual set-up in the capital structure of most corporations is a combination of the preferred and common stock. Both the preferred and the common stock may be with


176. To obviate the many difficulties arising by the falling in value of par value stock, to simplify accounting and to avoid useless quibbles regarding consideration for stock no par value stock came into existence. The first state to adopt it was New York in 1912. According to the Corporation Trust Co. of New York by 1926 thirty eight states of the American Union have adopted no-par stock. Only the District of Columbia, Iowa, Mississippi, Montana, Nebraska, South Carolina, North and South Dakota, and Oklahoma had not adopted it. Since then Mississippi and North Carolina have adopted it, leaving only seven states of the Union without no par stock provisions in their statutes.

For more information on the subject of no par stock, see Wickersham, Stock Without Par Value; Robbins, No Par Stock; Wildman & Powell, Capital Stock Without Par Value. See also 26 Harv. L. Rev. 729-731; 7 Am. Bar Ass'n. Jr. 534-537; and 11 Am. Bar Ass'n. Jr. 377-380.
or without par value. Sometimes the shares of preferred stock are issued with a par value and the common stock without par value. The practice is becoming widely spread of issuing the preferred stock with par value and dividing the common stock into the Class A and Class B common stock without par value, giving only one of these latter classes voting rights. The modern tendency of corporate financing is becoming more complex, and the incorporators can set up any capital structure in their articles of incorporation. As Ballantine says the "shares may differ as to priority of claims on profits, dividend rates, conversion rights, voting rights, amounts payable on redemption, dissolution, consolidation, merger or sale of entire assets, protection against changes of capital structure or otherwise." 177

Regarding the consideration for the issue of stock, if the shares have a par value and they are sold at par they must be paid for in full. If only a part of the par value shares sold at par is paid the shares are subject to future calls. But the consideration for the no-par value shares is the question that presents many perplexing and serious problems. The statutes of most of the states provide that shares may be paid in money, in property or in services. In Illinois where the statute requires that no par shares must not be issued for less than five dollars 178 it is compara-


178. Strictly speaking, there is no no-par value shares in Illinois but par value shares with a minimum value of five dollars per share.
tively easy to determine the minimum consideration which may be received by the corporation for a certain number of no par value shares. But, under many no-par stock statutes shares may be issued either for property or services without fixing the value of said property or services in terms of money. Although, as a general rule, the judgment of the Board of Directors as to what certain property or service is reasonably worth usually stands, unless collusive or fraudulent, nevertheless, under said arrangement doubts and suspicions are bound to arise and litigation is apt to occur. It would be advisable, therefore, for the Directors to fix a monetary value for the no-par stock issued by the corporation, both for the benefit of the stockholders, who desire to know how much is credited to surplus from which dividends can be declared, if permitted by statute, and of the creditors who must know how much is credited to capital upon which they can rely.

Id: Amount of Capital Required to Begin Business.- The initial capital necessary to begin business differs in various jurisdictions. Most states statutes require a nominal capital and usually it is fixed at one thousand dollars.

Id: Increase or Decrease of (Capital Stock).- Practically all the states of the Union authorize corporations to increase or decrease their capital stock with varying limitations. In some jurisdictions the capital stock can be decreased but not below the one thousand dollars minimum.
In Florida it must not be below five hundred dollars. In other jurisdictions the increase or diminution can only be done if the controlling stockholder or stockholders assent to such a change. The majority vote required to effect the change differs, some states providing for a two thirds vote, others a three fourths vote and sometimes by a bare majority of the interest represented, as in Minnesota. It is very unusual to find any statutory limitation on the maximum capital which a corporation may have.\textsuperscript{179}

\textbf{Id: Subscription.}— A distinction is made between subscription to the capital stock before the formation of the corporation and after its incorporation. In a few jurisdictions it is held that when several persons sign a subscription contract to take shares in a corporation to be later formed by them there is a contract created among themselves to become stockholders, their respective mutual promises being the consideration.\textsuperscript{180} This contract is said to be irrevocable, unless all the subscribers agree to cancel it before the formation of and acceptance by the corporation. It is also claimed that this subscription agreement is a continuing offer to the corporation which, upon its acceptance, after it is formed, becomes a perfect and irrevocable con-

\textsuperscript{179} In Kansas, for instance, it is provided that the capital stock can be increased by not more than three times the amount of the authorized capital of the corporation. \textsuperscript{180} Marysville Elec. etc. Co. vs. Johnson, 93 Cal. 538; International etc. Ass'n. vs. Walker, 97 Mich. 159. See also 8 Colum. L. Rev. 47-48.
tract, unless it is revoked by the subscriber before it is formally accepted by the corporation. The better rule, however, and the one which is supported by the numerical weight of authority is that such a subscription is not a contract with the corporation for there is no corporate party to the contract until the corporation comes into existence and then makes itself such party; and besides until after the corporation comes into existence it cannot become a party to any contract, and there being no two competent parties there could not be a valid contract. As the New York Court has well said "such an agreement is not valid and binding when made, as there is then in existence no party, representing the company, who is capable of contracting." After the formation of the corporation the subscription problem becomes much simpler. A person may then become a stockholder "either by a subscription contract with the corporation for the issue of shares, or by the purchase of treasury stock from the corporation..." This is sometimes called a contract for present subscription. It requires no formalities. All that is needed is the application by the subscriber to purchase stock and the acceptance

by the corporation of such application. The issue of certificates of stock is not even needed to make the contract binding. The subscriber becomes a stockholder by virtue of his subscription and the acceptance of it by the corporation.184

A present subscription of stock is not to be confused, however, with a contract for the sale of stock. In the latter case mere application and acceptance are not sufficient. The purchaser, in a contract for the sale of stock, is not made a stockholder with all the rights and liabilities incident thereto, until the contract is actually executed by the formal delivery of the stock. Neither should a present subscription be confounded with an executory agreement to subscribe for stock in the future. As the Illinois Court said where persons agree to subscribe to the stock of a corporation when its books "may be opened for subscription" such an agreement is not a present subscription but one executory in character and for breach of which the corporation is entitled only to actual damages sustained.185

If the subscription is subject to a condition precedent the contract is not consummated until the fulfillment of said condition. After all, in determining the validity of a subscription contract the intention of the parties must

184. Richmondville Union Seminary vs. McDonald, 34 N. Y. 379.

For the distinction between a subscription to stock and an executory contract for the purchase of stock, see 13 Minn. L. Rev. 257-258.
Id: Transfer.- Two different legal theories are prevalent among the states of the American Union regarding the transfer of shares. According to the common law rule, which has been adopted by the majority of the states in their corporation statutes, shares are personal property and can be transferred by delivery. The minority rule, however, is that such transfer is valid only as between the parties but is not binding on the corporation until after the same is recorded on its books. Where the transfer on the books of the corporation is required, unless such a provision is against the statute, it must be complied with. Before its compliance the transferee acquires only an equitable title but the legal title remains in the transferor or registered owner of the shares so transferred. In other words, the transferee does not acquire any right in the corporation by virtue of the transfer to him of said shares, neither does he incur any liability in connection therewith. The transferor or registered owner continues as a stockholder with all the rights and liabilities that attach thereto.

Time and again the question has arisen regarding the right of a corporation to restrict, qualify or limit the transfer of shares.

186. Some authorities hold that where shares are transferable by delivery there must be a written assignment either on the reverse side of the certificates or on a separate paper. The better view seems to be that mere delivery of the certificate is sufficient.

187. In some jurisdictions refusal to transfer shares on the books of the corporation has a statutory penalty.
transfer of its shares. The decisions of the courts are conflicting on this point. It seems to be settled, however, that if the charter of the corporation or a statute allows a corporation to restrict the transfer of its shares such restrictions are valid and binding so long as they are reasonable. This view is based on two grounds. As regards the corporation, the business being strictly private, it has a right to choose its stockholders. As the New York Court has said "a single share of the stock of any one of the corporations passing into hostile possession places in the hands of the possessor unlimited opportunity to harm and harass the management. The business is strictly private, and carried on in competition with other similar establishments. The inviolability of its business privacy and commercial secrets would be no longer safe from its aggressive rivals if the stock might be transferred in disregard of the prohibitions mentioned." 188

As regards the stockholders and subsequent purchasers of stock the former are not prejudiced for they become stockholders with knowledge of such a restriction; and the latter are also charged with notice of such a restriction for, where the restriction is on the certificates themselves, it forms a part of the contract. It follows from this that if there is a charter authorization or an express agreement in the


As to restrictions upon the transferability of shares of stock, see 42 Harv. L. Rev. 555-559; 954-955.
articles of incorporation (and there is no statutory prohibition) a corporation can provide in its by-laws that before its stock can be sold to outsiders it should be offered first to its stockholders.\textsuperscript{189} This restriction is not against public policy as it does not absolutely prohibit the transfer of stock but simply limits and regulates it, and there is nothing unreasonable or oppressive in this regulation.

It seems to be equally well-established by authorities that where the object of the corporation in restricting and limiting the transfer of its shares is not for self-protection but one which is capricious and unreasonable the same will not be given effect. Thus, a corporation has no right to prevent a \textit{bona fide} transfer of its shares by requiring that such transfer should be approved and consented to by its Board of Directors.\textsuperscript{190} A provision in the by-laws to this effect interferes with the right of property of the stockholder and is against public policy. Neither is an agreement that no shares should be transferred without the consent of all the parties concerned valid, inasmuch as it is in restraint on alienation and is also against public policy.\textsuperscript{191} A provision in the by-laws, without more, that the stockholders must first give the corporation an option to buy their shares before selling them to others cannot be

\begin{itemize}
\item \textsuperscript{189} Bloomingdale case, cited supra; also Hasel vs. Pohle, 214 N. Y. App. Div. 654.
\item \textsuperscript{190} McNulta vs. Corn Belt Bank, 164 Ill. 427, 447.
\item \textsuperscript{191} Williams vs. Montgomery, 68 Hun (N. Y.) 416; Fisher vs. Bush, 35 Hun (N. Y.) 641.
\end{itemize}
legally sustained. But, if originally such is the agreement between the stockholders and the corporation, or if such condition is printed on the back part of the certificates they are generally held to be binding. 192

According to the modern view (as opposed to the common law view prevailing in the majority of the states) the indorsement and delivery of shares of stock transfers not only the equitable but the legal title to the same. In effect, the Uniform Transfer Act 193 provides:

"Section 1. - How title to certificates and shares may be transferred. - Title to a certificate and to the shares represented thereby can be transferred only, (a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby.

Such assignment or power of attorney may be either in blank or to a specified person. The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent."

193. The modern tendency is toward uniformity of laws. There are now in the United States of America several uniform laws and one of them is the Uniform Stock Transfer Act. In 1922 this Act was adopted in fifteen jurisdictions. (See Uniform Laws, Annotated by Greene). To-day, this Act is in force in Alaska, Arkansas, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island,
Although the above provision of the Uniform Stock Transfer Act is not a total departure from the existing law regarding transfer of stock, it nevertheless introduces a perfectly sound change. Under the common law rule the transfer of the certificate is not complete until after it is registered on the books of the corporation. In other words, the mere transfer of the certificate does not have the effect of transferring the share itself of the stockholder in the corporation. Under the Uniform Stock Transfer Act, however, the transfer or delivery of the certificate properly indorsed, either on the back part of the same or on a separate sheet of paper, transfers the ownership of the share itself, provisions in the charters, articles of incorporation or by-laws of the corporation to the contrary notwithstanding. In other words, the practical effect of the Uniform Stock Transfer Act is to make the certificate representing the share (an intangible interest in the corporation) as a negotiable instrument. 194 In the language of the National Conference

194. Although there is a tendency in Judicial decisions (See Masurey vs. Arkansas Nat. Bank et al, 93 Fed. 602) toward making certificates of stock negotiable, nevertheless, until now they are regarded as non-negotiable for they lack many of the requisites of negotiability. As Ballantine says (Sec. 149, Manual of Corporation Law and Practice) "shares of stock are not negotiable instruments and, therefore, in the absence of elements of estoppel, a transferee acquires

South Dakota, Tennessee, Utah, Virginia, West Virginia and Wisconsin, with slight variations in some jurisdictions. Pennsylvania, however, has amended section 6 of its Uniform Stock Transfer Act in 1929 (L. 1929, Act 548) and Tennessee has repealed section 23 of its Uniform Act as enacted in 1925 (P. A. 1929, ch. 90, sec. 21). For more information regarding this Act see Corporation Manual, 23rd. Ed., 1932.
of Commissioners on Uniform State Laws "the reason for the change is in order that the certificate may, to the fullest extent possible, be the representative of the shares."

ID: Calls, Assessments and Forfeiture (of Shares).— It is the uniform practise to vest the power to make assessments and calls on shares in the Board of Directors of the corporation. From time to time the Board, by proper resolution, makes such assessment or call when in their opinion the demands of the business so require. The amount depends upon their discretion. As a matter of general practise, however, any assessment or installment required to be paid is levied pro rata upon all shares of such stock of the same class.

With slight variations, the time and manner in which assessments and calls are made are almost uniform. Usually, the time given to stockholders to pay the amount of the assessment or call varies from thirty to sixty days. The notification to them is sometimes made personally or by ordinary mail; but the common practise is to send the notices, by registered mail of necessity, to the latest address of every stockholder as it appears on the books of the corporation.

It is not uncommon for the statutes to provide how, when and under what circumstances assessments and calls are to be made. In such a case the discretionary power of the Board

no better title than his transferrer had,"

On negotiability of stock, see 17 Cal. L. Rev. 403-411.
of Directors ceases, and they simply have to follow the provisions of the articles. As was said by the Michigan court in the case of WESCOTT VS. MINNESOTA MINING CO., when articles of association prescribe conditions upon which stock assessments are to be made, they must be strictly complied with.

Upon failure of the stockholders to pay the assessment or call within the required time their shares are forfeited to the corporation. The ordinary procedure is for the corporation to sell them to the highest bidder. In some jurisdictions there are no statutory provisions empowering the corporation to reissue or resell the shares thus forfeited. In most jurisdictions there is such a provision. It is reasonable to assert, however, that in the absence of constitutional, statutory or charter provision to the contrary forfeited shares can be reissued or resold by the corporation.

The majority of the states have codified the common law rule which gives the corporation the right to sue the delinquent stockholders on their unpaid subscriptions, aside from the remedy of forfeiture of their shares. It seems, however, that both remedies cannot be exercised simultaneously. Thus, the Michigan statute provides that only the unpaid balance could be recovered from the delinquent stockholder in case the proceeds of the sale of his stock are not sufficient to

195. 23 Mich. 145.
pay his installment. The Delaware statute also puts the remedies of the corporation against the delinquent stockholders in the alternative.

STOCKHOLDERS: Liabilities.- Normally, the corporation is the one primarily liable for its debts. The liability of the stockholders is just secondary. It is only when the assets of the corporation are exhausted, or when the corporation is insolvent and an execution against it is returned nulla bona that the liability of the stockholders can be enforced; and this is only in cases where their stock is only partly paid. 196 But, if their shares are fully paid and non-assessable they have no other responsibility beyond the capital already contributed by them to the corporation, except in a few corporations, such as banks, where there is the so-called "double liability" of stockholders.

It seems that the tendency in legislative enactments was to protect corporate creditors even if this meant additional liability on stockholders. As has already been observed, this is especially true of banking or trust corporations. Thus, the Maryland statute makes stockholders of banking corporations, safe deposit, trust and loan companies liable for the debts of the same. 197 While the new amendment to the Minnesota Constitution wipes out the "double liability" of stockholders, nevertheless, stockholders of

196. For stockholders' liability for unpaid subscription, see 62 U. of Pa. L. Rev. 133-135.
any banking or trust corporations or associations are still held liable for any debt of said corporations. This "double liability" provision in cases of banks, trust companies, etc., is a sort of a compromise between the "limited" liability of stockholders in general and the "unlimited" liability of partners in case of partnership associations.

In some jurisdictions it is provided that if the capital stock of the corporation is refunded to the stockholders before the creditors of the corporation are paid such stockholders are jointly and severally liable to any creditor of the corporation. This provision is not really necessary, for, by the very nature of corporate business, it is illegal to withdraw the capital contributed by the stockholders after the corporation has incurred debts and obligations. Such a procedure is highly fraudulent.

Another liability of stockholders which obtains in quite a number of jurisdictions is regarding labor performed, either by laborers, servants or employees, for the corporation. A number of corporation statutes make the stockholders individually liable for such services to the

198. Laws of Minnesota, (1931) Ch. 210, S. F. No. 1035. See also 15 Minn. L. Rev. 222-229.
199. The state of California, however, which, for many years, has provided in its Civil Code a "double liability" for stockholders of all kinds of corporations has repealed said provision in the 1931 session of its Legislature (See Ch. 267, p. 444 of the Statutes and Amendments to the Codes of California, 1931).
200. In New York this liability attaches only to stockholders of "stock" corporations, but in Michigan, by constitutional provision, it applies to all kinds of corporations.
corporation in case of the insolvency of the corporation or if its assets prove insufficient to pay its debts. The stockholders paying such debt, however, have the right to demand contribution from the other stockholders of the corporation.

The liability of the stockholders to the corporation for their shares presents no difficult problem. Where no creditors' rights are involved (and creditors' rights usually arise only in case of the insolvency of the corporation), as a general rule, in the absence of any statutory or charter provision, stockholders' liability is only to the extent of their contract with the corporation. If the corporation, in pursuance of what it considers a sound business policy, sells its $100 par value stock for only $25 a share and there is no statute or charter prohibiting it the contract stands and the stockholders' agreement with the corporation is the measure of their liability. They cannot be held liable for more.201 Even in the case of no-par value stock the stockholders are not liable beyond the price for the stock fixed by the Directors, assuming that the Directors are empowered to fix the price.202 The reason for this proposition seems to be sound. The corporation, just like any natural person, has the power to contract and bind itself. If it agrees with the stockholders to sell its shares for so much, unless such a contract is prohibited by statute or by its

201. Southworth vs. Morgan, 205 N. Y. 293.

charter, it ought to stand. If some of its stockholders consider themselves prejudiced they can enjoin the proposed action of the corporation, or if the action has already been done they can sue the Directors or the officers responsible for such an action, if they think they have a ground for so doing.

Where the assets of the corporation, however, prove insufficient in case of its insolvency and the creditors' rights are involved the stockholders' liability becomes complicated. Regarding their liability to the creditors of the corporation three different theories have been advanced. The first is the so-called Trust Fund Theory which regards the capital of the corporation as a trust fund for the benefit of creditors. Under this theory the capital of the corporation must be kept intact, and the corporation cannot issue "watered" stock, i.e. stock issued at a "discount" or for a fictitious consideration. The reason for this theory is that the creditors of the corporation

203. The Trust Fund Theory, otherwise called the American doctrine, is criticized because in trusts the title to the property is in the cestui que trust, while in case of a corporation, the legal title is in the corporation and the shareholders have no equitable title to the corporation's property. Besides, in trust the beneficiaries have some control of the property - they can interfere with its management and can ask for an accounting; but in case of a corporation the creditors have nothing to do at all with its property.

The best criticism of the Trust Fund Theory see the Hospee case cited in foot note 205, infra. See also 8 Colum. L. Rev. 303-305; Ballantine, Manual of Corporation Law and Practice, sec. 211.

204. Scovill vs. Thayer, 105 U. S. 143; Bates vs. Great Western Tel. Co., 154 Ill. 556; Utica Fire Alarm Co. vs. Wagner Clock Co., 166 Mich. 618.
have no means of inquiring into the corporation's contracts, and they just presume that the stock subscribed has been really and actually paid up by the stockholders, the consideration for said stock being considered in equity as a trust fund.

The second theory is the Fraud or Holding Out Theory which holds that the trust fund theory is not the real basis of stockholders' liability to the creditors, but that such basis is fraud, actual or constructive. This theory proceeds on the proposition that the credit of the corporation is based on the capital that it represents to the public. If, because of such representation, the public extends credit to the corporation and later finds out that said corporation does not have all the capital paid in, (because it had issued "bonus" stock), equity steps in and compels the stockholders to make good the unpaid balance. It follows from this that only those creditors who have relied are allowed to recover, but those who had knowledge of the

For stockholders' liability for "watered" stock or stock issued at a discount, see 17 Cal. L. Rev. 290-297.

205. Neither is this theory accurate, for the stockholders who receive "watered" or "bonus" stock from the corporation do not really make any representation to the creditors that they had paid for their stock in full. (See 12 Yale L. J. 63). Besides, the creditors do not really rely; they do not see the certificates and they do not know how much of the authorized capital stock has been actually issued by the corporation. (See 9 Cal. L. Rev. 61; 25 Harv. L. Rev. 78). Furthermore, the argument of reliance is really ridiculous because sensible creditors, before extending credit to the corporation, do not look into the original capital (which perhaps is already impaired) but they inquire into and depend upon the actual net assets of the corpora-
"watered" or "bonus" stock, or those who in any way have participated in or consented to its issue do not have a right of action.

The third basis of stockholders' liability is the so-called Statutory Obligation Theory. According to this view stock must be paid for in the manner provided by statute. Thus, where the statute provides that stock must be paid in "money" it cannot be issued for less than par, and stockholders receiving it for less than par must make good the balance. Even no-par value stock cannot be issued as "bonus" if the statute provides that it must not be issued without consideration. The reason for this is not because the capital of the corporation is a trust fund or because the creditors have relied and have been defrauded but it is because full payment of stock is the price of limited liability of the stockholders; that anything contrary to the law is void as against legislative policy.

Id: Rights and Powers. (a) Inspection of Books and Accounts. In most of the states there are specific provisions.

In support of this theory see the leading case of Hospes vs. Northwestern Mfg. etc. Co., 48 Minn. 174; also Bank vs. Northup, 82 Kansas, 638. See also Ballantine, Manual of Corporation Law and Practice, sec. 212.

206. The Statutory Obligation Theory by far seems to be the most sound of the three theories regarding stockholders' liabilities. Ballantine, Manual of Corporation Law and Practice, sec. 213.


sions granting stockholders the right to inspect the books and accounts of the corporation. This right is given to stockholders, even if they are in the minority, for their own protection. Oftentimes inspecting the books and accounts of the corporation is the only way by which stockholders can determine if their affairs have been properly managed by the Board of Directors. In some jurisdictions this right has its limitations. For instance, in New York it is provided that in order to entitle a stockholder to this right he must be a stockholder of record of the corporation "at least six months immediately preceding his demand"; if he does not comply with this requirement then he must own at least three per cent of all the outstanding stock of the corporation. The same statute provides for a penalty to be forfeited by the corporation to the stockholders from whom it has illegally withheld this right, reserving to the corporation certain defenses, as, for example, that said stockholder has, within two years, sold or offered for sale a list of the stockholders of the corporation, etc. The New York Court has held that this right of stockholders to inspect the books and accounts of the corporation is absolute and mandatory.

209. At common law this right to inspect books and accounts of the corporation is not absolute. It cannot be exercised to satisfy curiosity, or for vexatious or speculative purposes. In England it could only be exercised if there was some SPECIFIC dispute (See Varney vs. Baker, 194 Mass. 239). See also 7 Ill. L. Rev. 156-159; 38 Yale L. Jr. 541.

In most jurisdictions provision is made that the books and accounts of the corporation should be kept open "at all reasonable times" for the inspection of the stockholders. The Illinois statute says that the books shall be kept open for examination "for all proper purposes." Under such loose and liberal provisions there is nothing to prevent stockholders from getting information from the corporation and furnishing the same to competitors of said corporation; in fact, there is nothing to prevent them from circularizing their information. Be that as it may, the rule is well-settled that this right of inspection by stockholders of the books and accounts of the corporation cannot be denied them. As was said by the Massachusetts Court in the case of VARNEY VS. BAKER, in the United States it is enough if the stockholder inspects the books and accounts of the corporation in good faith to protect the corporation and his own interest.

(b) Voting,— Under the common law each stockholder is entitled to one vote. But this right is often changed by statute. Where such right exists it is sometimes cumulative. It can be exercised either in person or by proxy. Stock of beneficiaries or persons under a legal disability (such as minors and insane persons, etc.) are voted by the trustee or guardian as the case may be. Usually only the stockholders of record are allowed to vote. In some juris-

211. 194 Mass. 239; also Matter of Steinway, 159 N. Y. 250, 263.
dictions certain limitations are imposed regarding the transfer of stock for the purpose of voting. In Delaware, for instance, it is provided that "no share of stock shall be voted on at any election for directors which shall have been transferred on the books of the corporation within twenty days next preceding such election of directors."

The institution called "voting trusts" has affected very materially the voting right of stockholders. The majority of the states embody voting trust provisions in their corporate statutes. The Illinois statute contains no specific provision regarding voting trusts, but in a number of cases such practice has been referred to and sustained.

Two conflicting views have developed in connection with voting trust agreements. One view maintains that such an agreement is not binding on the stockholders on the basic ground that a corporation should be managed by the majority

212. This institution started as early as 1864. New York was the first state to give it statutory sanction. It was found that pooling and deposit agreements of stock were not satisfactory, and in order to readjust and reorganize a financially embarrassed corporation it was necessary to surrender the voting stock to certain voting trustees empowered to vote them for a certain stipulated length of time. In this way a consistent policy could be followed for the reestablishment of the corporation, through a control of the directors by the voting trustees.

For more information regarding this subject, see Cushing, Voting Trusts; 18 Colum. L. Rev. 123-136; 22 Colum. L. Rev. 627-637; 1 Yale L. Jr. 1-15; 15 Yale L. Jr. 109-120; 137 Atl. Monthly 97-99. As to its legality, see 24 Harv. L. Rev. 51-53. But see 10 Colum. L. Rev. 558-660.

of its stockholders, acting through its chosen directors. It should not be "managed by the determination of persons other than its stockholders, or by a minority of its stockholders ...."\(^{214}\) The other view is predicated on the proposition that the stockholders are free to transfer their stock to voting trustees.\(^ {215}\) Although the first seems to be the better rule, nevertheless, voting trust agreements are valid if there is a real purpose to be served, provided they are only for a certain period of time and not permanent.

(c) Preemption.- The statutes of the different states are generally silent regarding the stockholders' preemptive right of subscription to new shares. This may or may not be spelled out in detail in the articles of incorporation. The general rule, however, is that the stockholders are entitled to it,\(^ {216}\) for, at least, three reasons justify it, namely, the voting right, right to dividends and interest in the surplus. If the corporation increases its capital stock and does not give its present stockholders their proportionate share in the new issue their proportionate voting

\(^{214}\) Luthy vs. Ream, 270 Ill. 170; Warren vs. Pim, 66 N. J. Eq. 353, 59 Atl. 773.

\(^{215}\) Brightman vs. Bates, 175 Mass. 105; Smith vs. San Francisco, etc. Ry., 115 Cal. 584.

\(^{216}\) Ballantine, Manual of Corporation Law and Practice, sec. 136 and authorities cited therein. After a corporation has offered a new issue to its shareholders, the right to subscribe therefor can be sold or assigned. (Miles vs. Safe Deposit & Trust Co. of Baltimore, 259 U. S. 247, 252).

power is diminished and hence they lose their proportionate voting control of the corporation. This new issue may have the tendency to dilute the stock already outstanding and thus may reduce the book value of the old issue. As to dilution, the right to dividends and interest in surplus, if the new issue is sold for the same price as or a greater price than the book value of the old, there is no injury to the present stockholders. But, if the stock is sold for less the old stockholders are injured, for the simple reason that the stock that should go to them is being given to strangers. Just as in a partnership if the capital of the business is to be increased the present members should be given a preference.

There are, however, few exceptions to this right of preemption. If the corporation issues stock for property the stockholders have no preemptive right. Neither are they entitled to it in case of stock turned over by the promoters to the corporation as treasury stock. As to property received by the corporation the cases are illogical but overwhelmingly support the doctrine. As to treasury stock the stockholders are not prejudiced because the same is a part of the original issue, and they had notice of it since the beginning.

As to the authorized but unissued stock of the corporation there is a conflict of authorities. Some courts hold that said stock can be issued without giving the stockholders a preemptive right. The better view, however, is
that they are entitled to it. The unissued stock is in trust for the stockholders, and for the corporation to discriminate in favor of some and against the others would amount to a fraud on the stockholders denied the right, and a court of equity is quick to grant them a remedy. 217

(d) Dividends,- 218 The right of stockholders to receive dividends is inherent in the very nature of private corporation itself. The corporation is organized for profit and, naturally, the stockholders are interested in the profits of their investment. As a matter of common law the power to declare or not to declare dividends is vested in the Board of Directors of the corporation. Some statutes codify this rule. Declaring dividends is within the discretion of the Board and can only be attacked if there is bad faith or palpable abuse of discretion. As the New York Court said "whether a dividend shall be made, and if made, how much it shall be, and when and where it shall be payable, rest in the fair and honest discretion of the directors, uncontrollable by the courts." 219

This discretion, however, is not without its proper limitations. The first of these is that directors cannot

218. For a good discussion of the subject, see "Declaration and Distribution of Dividends" by Geier and Mautner, Corporate Practice Review, Vol. 1, No. 5, pp. 28-34; also Anglo-American Dividend Law: Surplus and Profits, 30 Colum. L. Rev. 954-985, and other previous articles cited.
distribute the capital of the corporation to the stockholders in the form of dividends. The reason is apparent. To do so would be to defeat the very purpose of the corporate organization itself. It would be like turning in their own capital with their right hand and withdrawing it with their left. Neither can the directors declare dividends if the capital of the corporation is impaired. Practically all the statutes of the different states contain positive provisions prohibiting the corporation from declaring dividends if its capital is thereby impaired. This rule is based not so much upon the fact that the creditors of the corporation rely upon this capital, but because this is the price of limited liability. The stockholders' liability is generally limited to their contribution to the capital stock and the law requires that this capital must remain intact for the benefit of creditors, unless otherwise diminished by legitimate losses of the corporation.

What, then, is the source of dividends? A few statutes provide that dividends could be declared from "net profits" (net earnings). In the leading case of GOODNOW VS. AMERICAN WRITING PAPER CO. this phrase was interpreted by the New Jersey court to mean either "an excess of gross earnings over the operating expenses of the cor-

220. The capital referred to is that capital actually paid in and not the nominal share capital, for the shares may not all be fully paid in and are subject to calls. Then, too, all the authorized shares may not have been issued and outstanding.

221. 73 N. J. Eq. 692.
rent year" or "the net profits upon the whole of the company's business from its organization", the real meaning being dependent upon the legislative intent, which the New Jersey court held to demand the latter construction. Almost all the states, however, embody specific provisions declaring that dividends can only be declared out of "surplus", and by this is meant surplus profits as distinguished from capital surplus. 222 The mere presence, however, of

222. The term "surplus" is hard to define being used in many senses. As applied to the accounts of corporations, it represents "any accumulation of economic values in excess of the amount called for by the total outstanding par value of the capital stock." "Surplus" has six sources: (1) It may be paid-in surplus, amount paid in by the stockholders directly at the beginning of business to give the corporation a good start; (2) It may arise from the sale of stock or bonds at a premium above the par value; (3) It may come from the sale of capital assets above cost; (4) It may come from a gift of property to the corporation as in the case of treasury stock; (5) It may arise through the reappraisal of the assets of the corporation in case of its readjustment or reorganization; and (6) It may arise from the accumulation of successive annual profits from the business. The first five are usually called "capital surplus" as distinguished from "surplus profits" from which dividends are normally declared. Net profits "is the surplus left after the direct outlays have been paid and the capital brought up to the same point of value as it was at the beginning." (See Chs. III and IV, Dewing, Financial Policy of Corporations).


From the above it is clear that the net profits of a corporation from its business for one year which, for some special reason, is not used for dividends becomes a part of the earned surplus and it is only from these surplus profits that dividends can be declared, for "capital surplus" is not really the profits of the business, and to distribute capital surplus is tantamount to distributing the corporation's capital and is illegal.
a surplus arising from profits does not automatically oblige the corporation to declare dividends. The exigencies of the business might require the retention by the corporation of said surplus profits, either to reinforce or improve the business, or for necessary incidental repairs of the plants of the corporation or for any other unforeseen expenses. Where this is done in a fair and honest way and for a legitimate intra vires purpose calculated to benefit the corporation it has almost invariably been sustained. But, where the corporation is very prosperous, has accumulated a large surplus and promises to continue its earnings in the future an arbitrary refusal by the directors to declare dividends is unwarranted. As was said by the Michigan Court in the leading case of DODGE VS. FORD MOTOR CO., 223 the refusal of the directors to declare dividends under such circumstances amounts to such "an abuse of discretion as would constitute fraud or breach of that good faith which they are bound to exercise towards the stockholders."

If the capital of the corporation is impaired from the start, as in the case of overvaluation of property, the general rule is that the corporation does not need to make up for the overvaluation before declaring dividends. The reason for this is that, since the start, the creditors are apprised of such overvaluation and they know the amount of capital upon which they can rely. But, where the impairment

is the result of losses from a previous year and the corporation makes a profit during the current year the authorities are conflicting. Some courts hold that so long as there are profits for the current year dividends can be declared without making up for the capital impairment, due to losses, the previous year. As the Court said in the case of IN RE CRIGHTON'S OIL CO., 224 there is "no rule of law that profit on one year's trading could not be divided merely because on the profit and loss account there was a debit balance on the trading of former years." (Syllabus). The overwhelming weight of authority, however, is that dividends can only be declared out of surplus (surplus profits) and the corporation should make up for previous losses. This, unquestionably, is the sounder and more practical rule. 225

Once the existence of a surplus is determined and the corporation decides to pay dividends the question arises as to who are entitled to receive them. To do this we have to refer to the set up of the capital structure of the corporation to find out what the agreement of the corporation and the stockholders is. The general rule is that the stock-

224. 2 Ch. Div. (1901) 184; See also Bolton vs. Natal Land Co., (1892) 2 Ch. Div. 124 to the same effect.

holders of record of stock entitled to dividends receive the declared dividends. 226 If the dividends are cumulative they constitute a charge against the corporation whether declared or not. If they are non-cumulative, if not declared in the year, they are lost. 227 In case that a stockholder of record has transferred his share or shares to a third party, barring an agreement to the contrary, he is still entitled to the dividends declared prior to said transfer. Where the corporation, however, fixes a date for the closing of its transfer book, even though the transfer is subsequent to the declaration of dividends, in the absence of an express agreement, the transferee holder of stock, after the closing of the books, is the one entitled to the dividends. 228

Whether the Board of Directors can legally revoke dividends already declared is a ticklish question. Regarding this matter two different theories have developed. The first or the Trust theory holds that once the dividend is declared and is set aside it is in trust for the stockholders and is beyond the control of the corporation; the other or the Debtor and Creditor theory maintains that once the dividend is declared the corporation becomes the debtor and

the stockholders the creditors of the corporation. This is not based on any contract; it is simply a status. Although the general rule is that when a dividend is declared it becomes the property of the stockholders, nevertheless, if such declaration has not yet been made public or communicated to the stockholders and if no fund has been set apart for the payment of said dividends the corporation can still rescind it. 229 Although the declaration of dividends has been made public it would seem that it can still be revoked if it can be proved that the directors acted on an erroneous conception of the corporation's profits or that the declaration was illegal in some other ways. 230

Usually dividends are paid in cash. But it is not unusual for the corporations to declare stock dividends. Where the corporation does not wish to dispose of its cash or property it can still declare dividends in any of the following ways: (1) by increasing its capital stock and distributing it in the form of "stock dividends". For this purpose it could also use its treasury stock; (2) by distributing bonds according to the amount of the de-

230. Corporate Practice Review, Vol. 1, No. 5, p. 29. This is the logical inference for the rule is that a corporation can recover from the stockholders dividends unlawfully declared. (Ballantine, Manual of Corporation Law and Practice, sec. 168; Fletcher, Cyclopedia Corporations, Vol. 6, sec. 3733 (1919). If it can recover unlawfully declared dividends already in the hands of the stockholders, surely, it can revoke it before its delivery to them.
clared dividends: or (3) by issuing "scrip"\footnote{231} to cover the dividends.

(e) Action,- Stockholders or members of a corporation, just like strangers, have the right to sue the corporation, its officers or agents to enforce any individual right that they might have. Thus, they can bring action to recover their declared dividends wrongfully withheld from them by the corporation; petition for mandamus or bring an action for damages if they are wrongfully excluded from the corporation or if their certificates of stock are not issued to them without any legal justification; to compel the corporation to give them access to the books and accounts of the corporation; and in general, to bring any other action for the vindication of any other right conferred upon them either by statute or by the articles of incorporation.

But, when they are bringing a representative action for or on behalf of the corporation the courts are reluctant to interfere with the internal management of the corporation. Therefore, as would be expected, the stockholder's right is subject to definite limitations. They have no right to bring an action at law on their behalf either against the corporation or third parties, to enforce a

\footnote{231} "Scrip" is a form of promissory note usually issued when the corporation desires to declare a dividend to its stockholders, but wants to reserve its available cash in the furtherance of certain corporate activities. The cash can then be paid at a more convenient time in the future. \cite{Corporate Practice Review, Vol. 1, p. 28}.\footnote{Vol. 1, p. 28}
right of, or redress a wrong to, the corporation.\textsuperscript{232} The corporation itself must bring the action. In fact, even if the stockholders own the majority or all of the stock the action must be brought in the name of the corporation. This is based on that well-known legal fiction that a corporation has a distinct and separate legal entity from that of its members. Another reason for this rule is to avoid multiplicity of actions.

The same principle applies regarding suits in equity. Stockholders cannot bring the action for, primarily, they are not the ones injured or concerned; it is the corporation. Their right is derivative through the corporation. But, they have a right of action if the corporation goes beyond its conferred powers, or if its officers are guilty of breach of trust or disregard of duty which they owe to the stockholders. Thus, if the directors refuse to bring an action to recover secret profits of promoters, the stockholders can bring a representative action.\textsuperscript{233} In the same way if the directors refuse to resist an illegal tax

\textsuperscript{232} As to the right of a stockholder, suing on behalf of a corporation, to complain of misdeeds occurring prior to his acquisition of stock, see 21 Harv. L. Rev. 195-203. The general rule is that he has no such right. The article cited takes the contrary view.

As to the stockholder's remedy for an injury to his corporation or to himself, see 22 Harv. L. Rev. 594-596. As to his right to sue to enforce corporate rights, see also 38 Yale L. Jr. 391-392.

\textsuperscript{233} Groel vs. United Elec. Co., 70 N. J. Eq. 616.
imposed on the corporation, the stockholders can also bring the action. They must, however, include the corporation as a party defendant. Courts of equity are quite ready to give relief in such and other similar cases.

The authorities do not seem to be settled regarding the procedure to be followed in a representative suit by the stockholders to assert a corporate right. In the leading case of DODGE VS. WOOLSEY, the Federal Supreme Court held that before such a suit can prosper it must be alleged and proved that a demand was made to the directors or managing body of the corporation to have the corporation bring the action and that such demand had been refused. In the case of HAWES VS. OAKLAND (Hawes vs. Contra Costa Water Co.) the same court held that to maintain such a representative suit it must be shown "that he has exhausted all the means within his reach to obtain within the corporation itself the redress of his grievances, or action in conformity to his wishes." This seems to require an appeal by the aggrieved stockholder (or stockholders) to the stockholders as a body, after having been turned down by the directors. However, the recent case of HILL ET AL VS. WALLACE ET AL,
seems to hold that if the matter is of such a gravity that no time can be spared the refusal alone of the directors to bring the action entitles the stockholder to maintain the representative suit in behalf of the corporation, without, apparently, exhausting all the means within his reach. Whatever the true doctrine on this procedural matter is, the general rule (which is the latest pronouncement of the court) is that at least, a demand must be made on the governing body of the corporation and if such demand is refused the stockholder can bring the representative suit. There is no need, however, to apply to the directors if they themselves are the wrongdoers, or are in fraudulent combination with the wrongdoers, or when the corporation is controlled by them or where time is a material ingredient and prompt action is imperative.

(f) Assets,- The right of the stockholders to participate in the assets is not provided by statutes for it is of the essence of corporate organization itself. It is customary and necessary, however, to define such right - amount, preferences and their order - in the articles of incorporation. Whatever the stockholders get in the final winding up of the corporation depends upon the kind of stock they hold as provided in the articles of incorporation.

240. Dunphy vs. Traveller Newspaper Ass'n., 146 Mass. 495, 498.
CHAPTER V

DIRECTORS AND OTHER OFFICERS
Chapter V
DIRECTORS AND OTHER OFFICERS

Philippine Laws

Number and Qualifications of Directors.—Section 28 of the Corporation Law states that "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 the holders of stock, or, where there is no stock, from the members of the corporations." Section 6, paragraph 6 provides for the increase or diminution of the members of the Board. The fixing or changing of the number of directors may be provided for in the by-laws which by-laws should not be inconsistent with any existing laws.241

No one can be a director in a stock corporation unless he owns at least one share of the capital stock of said stock corporation and that said share must stand in his name on the books of the corporation. 242 A director who ceases to

241. Ch. II, p. 11, supra.
243. This refers to the directors elected by the stockholders and not to the provisional directors named in the articles of incorporation. (P. C. L. sec. 29; Fisher, The Philippine Law of Stock Corporations, sec. 28, p. 23).
own one share of the capital stock of a stock corporation of which he is a director ceases to be a director of the same. Directors of all other corporations must be members thereof. At least two of the directors of all the corporations organized under the corporation law must be residents of the Philippine Islands. 244

There are no express statutory disqualifications of directors. The Supreme Court of the Islands has had practically no occasion to pass on this matter. The only case where this point is slightly touched is in MEAD VS. McCULLOUGH. 245 The plaintiff Mead in that case was a director and at the same time the manager of the corporation. He resigned as manager and accepted a position in China. He did not resign as a director. The Court held that "where a director in a corporation accepts a position in which his duties are incompatible with those of such director, it is presumed that he has abandoned his office as director of the corporation."

Election, Term of Office and Organization.- The directors named in the articles of incorporation shall serve as the directors of the corporation until their successors

244. P. C. L. sec. 30. The statute is silent as to the age qualification of directors, but, evidently, only those who are sui juris are eligible. Sec. 21 of the Corporation Law expressly gives the power to the corporation to provide in its by-laws for the qualifications of directors, and the requirement of security from them for the proper discharge of the duties of their office. (Gov't. of P. I. vs. El Hogar Filipino, 50 Phil. Rep. 441-442).
245. 21 Phil. Rep. 106.
are duly chosen and qualified according to the by-laws. At
the meeting for the adoption of the original by-laws or at
a subsequent meeting called for the purpose directors shall
be elected by ballot by the owners of the majority of the
capital stock entitled to vote, in case of stock corpora-
tions or by the majority of the members of non-stock cor-
porations entitled to vote. These directors shall hold
office for one year and until their successors are duly
elected and qualified. Thereafter they shall be elected
annually as provided in the by-laws. As soon as the
directors are elected they organize immediately and elect
the President, Vice-President, Secretary and other officers
provided for in the by-laws. The President must be one
of the elected directors. The Secretary need not be a di-
rector, but he must be a resident of the Philippine Islands
and a citizen either of the Islands or of the United States.
A majority of the directors shall constitute a quorum for
the transaction of business.

The Philippine Corporation Law contains no specific
 provision regarding the appointment or election of an exe-
cutive committee of the Board. The case of DEEN VS. PACI-
FIC COMMERCIAL CO. is the only one that mentions "exe-

246. For the time and manner of holding elections see
P. C. L. secs. 29, 31 and 32.
247. The Treasurer is already chosen before this time
by the subscribers for he has to file a sworn statement or
certificate regarding the initial capital of the corpo-
tion. (Ch. II, p. 12, supra; also P. C. L. sec. 9).
cutive officers". In that case the Supreme Court held that the power of a corporation to sell, convey or contract for the sale of real property is primarily vested in its "executive officers and directors", and a local manager (of a branch office) does not have such authority, unless empowered to do so. The decision does not define the term "executive officers", but it, doubtless, applies to such officers as are given the management of the business and does not refer to an "executive committee" as this body is known under the American corporation statutes.

Meetings.— As provided by section 33 of the statute the first meeting of the Board is for its organization and election of officers. The calling and conducting of the regular or special meetings for the transaction of business must follow the by-laws of the corporation. For the transaction of corporate business there must be present a majority of the directors to constitute a quorum. The decision of the majority of the quorum "duly assembled as a Board" shall be valid and binding as the act of the corporation. From this it is quite clear that in order for an act of the corporation to have corporate significance the directors must act as a Board and not singly or individually; more than that, they should meet at the time and place and in the manner provided for by the by-laws.

As to the place for holding the meetings of directors it is expressly provided by section 24 of the Corporation Law that "directors' meetings may be held at the place
fixed in the by-laws." Judging from the context of this section, directors' meetings can be held anywhere, even outside of the Philippine Islands if the by-laws of the corporation permit.

The problem so often met by the American courts regarding the validity and binding effect of the acts of the Board of Directors done outside of the state of incorporation is practically unknown in the Philippines; at least, it has not arisen in the courts. Should this question be presented, however, no doubt, the Philippine courts will follow American precedents and hold that matters arising in the routine of the conduct of the corporation's business, like indorsing notes, etc., can be transacted outside of the corporation's state of creation, but matters that are fundamental, like the election of officers, etc. must be done in the jurisdiction where the corporation is incorporated.

Powers. - In general the powers of the directors are the powers of the corporation, for, by statute, it is provided that all corporate powers shall be exercised and all corporate business shall be controlled and held by them.

Quite a number of Supreme Court decisions have thrown light on the proper interpretation of the powers of the Board of Directors. In the leading case of RAMIREZ VS. THE ORIENTALIST CO. ET AL.,249 the acceptance by the defendant

249. 38 Phil. Rep. 634.
of the plaintiff's offer for the sale of film was signed, in
the name of the corporation, by one Fernandez, who was a di-
rector and at the same time the Treasurer of the same. Af-
ter signing the name of the defendant company and under it
his name as Treasurer, on the lower left margin Fernandez
again affixed his signature. His action was later approv-
ed by the Board of Directors, but was repudiated by the
stockholders by resolution at a meeting. The Court said
that although the power to make corporate contracts primari-
ly resides in the Board of Directors, nevertheless, the
Board may ratify an authorized contract made by an officer
of the corporation, and where this is done, a resolution
of the stockholders repudiating the contract is without
effect. On first impression this holding seems to relax
the statutory provision that in order for an act to have
corporate significance the Board must meet "as a Board".
The Court, however, continuing said that "the fact that the
power to make corporate contracts is vested in the Board of
Directors does not signify that a formal vote of the Board
must always be taken before the contractual liability can
be fixed upon the corporation; for the Board can create
liability, like an individual, by other means than by a
formal expression of its will."

In the case of XU CHUCK ET AL VS. "KONG LI PO", the
Court discussed at length the powers of the Board of Direct-

250. 46 Phil. Rep. 608. See also Arnold vs. Willits
& Patterson, 44 Phil. Rep. 634, 646.
ors. The plaintiffs were employed in that case by the general manager of the defendant corporation to run the paper of said corporation for three years at a monthly compensation of P580.00. There was no formal action by the Board authorizing such an employment. The plaintiffs were later discharged by the new manager. In an action to recover the amount due them under the contract it was held that although the power to bind the corporation, which is vested in the Board of Directors, may be delegated, expressly or impliedly, to other officials or agents of the corporation, nevertheless, where (as in this case) the general manager, acting as agent for the corporation, had no express authority, in order to bind the corporation his act must be reasonable and the employment must be such as is "usual and necessary in the conduct of the business." The duration of the contract being unusually long and so onerous as to threaten the insolvency of the corporation it did not bind the corporation. The plaintiffs should have inquired into the scope of the real powers of the general manager before entering into the contract of employment.

In the Yu Chuck case (supra) the local Supreme Court expressly recognized the power of directors to delegate their authority. The soundness of this decision may well be questioned. The Philippine statute does not even em-

251. The dissenting opinion of Justice Malcolm based on estoppel seems to be more sound. He said: "It is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to do acts within
power directors to vote by proxy; they must vote personally. Oftentimes, it has been argued that what the directors can do personally they can authorize others to do for them. The decided cases, however, unanimously hold that the trust imposed upon the directors by the stockholders being personal they must exercise their powers and perform their duties personally. The reason behind this rule is based on that oft-repeated principle *delegata potestas non potest delegari*. It should be borne in mind that in the choice of directors the stockholders usually take into account their character, efficiency, wise discretion, business experience and foresight and other qualifications which they think will insure the success of their business enterprise. Therefore, it is unreasonable and unfair for the directors to delegate their authority to others without the express consent and approval of the stockholders who have elected them.

The powers of the directors are not without limitations. For instance, it has been held that they have no power to release a subscriber and cancel his share without a valuable consideration for such release.252 Neither can they cancel shares subscribed for without just cause.253 Neither have they power to limit, by resolution, the right of the stockholders to inspect the books of the corporation the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against any one who has in good faith dealt with the corporation through such agent, be estopped from denying his authority."

252. Phil. Trust Co. vs. Rivera, 44 Phil. Rep. 469.
for such limitation is in contravention of section 51 of the statute.\textsuperscript{254} As was said in the case of \textit{PEOPLE VS. CONCEPCION},\textsuperscript{255} any act forbidden to the corporation is extended to its directors collectively and individually.

\textbf{Duties and Liabilities.} The statute provides that the directors elected by the corporation shall perform the duties imposed upon them by law and by the by-laws of said corporation.\textsuperscript{256} The duties expressly given by statute to the directors can be epitomized thus: They have the duty and the power to amend or repeal any by-law or to adopt an entirely new set of by-laws, if this power is delegated to them by the majority of the stockholders. In case of the increase or decrease of the capital stock of the corporation a majority of them must sign a certificate in duplicate, containing the statutory requirements in such cases, one of which is to be kept on file in the office of the corporation and the other to be filed with the Director of the Bureau of Commerce and Industry. It is their duty to declare assessments and calls on unpaid stock. In case a meeting for the election of directors is not called as required by law or by the by-laws they themselves are em-

\textsuperscript{254} Pardo \textit{vs. The Hercules Lumber Co. Inc. et al, 47 Phil. Rep. 964.}
\textsuperscript{255} 44 Phil. Rep. 126.
\textsuperscript{256} When a corporation is not shown to possess a Board of Directors, a petition in the Court of Land Registration may be presented in its behalf by a duly-authorized person." (Capellanias \textit{de Tambo\textasciitilde{}ng vs. Cruz et al, 9 Phil. Rep. 145}).

Any competent person, whether officer of the corpora-
powered to call the meeting. In the event of a voluntary
dissolution of the corporation a majority of them shall cer-
tify a copy of the resolution authorizing such dissolution.
In general they "shall perform the duties enjoined on them
by law and by the by-laws of the corporation." 257

The degree of vigilance, care and diligence required
of directors under the statute, as interpreted by the local
Supreme Court, is rather exacting. In the case of STEINBERG
VS. VELASCO ET AL, 258 the Court held that "the directors of
a corporation are bound to care for its property and manage
its affairs in good faith, and for a violation of their du-
ties resulting in waste of its assets or injury to its pro-
erty, they are liable to account to the same as any other
trustee." The Court continuing said that "a director of a
corporation is bound to exercise ordinary skill and judg-
ment and cannot excuse his negligence or unlawful acts on
the ground of ignorance or inexperience."

The leading case of STRONG VS. REPIDE, 259 illustrates
the position of the same Court regarding the liability of
the directors of the corporation toward the stockholders.
In that case the defendant, who was the controlling stock-

259. 6 Phil. Rep. 680.
holder of the corporation and one of its directors, was appointed as the general agent of the company to negotiate the sale to the Philippine government of the Dominical friar lands which belonged to the company. Without disclosing the fact that the negotiations were about to be consummated and without revealing the price for such proposed sale, he bought, indirectly, through a third person, the 800 shares of the plaintiff which were then in the hands of the plaintiff's agent. After the sale of her shares was effected the plaintiff discovered that she had received a shockingly low price for them; that at the time of the sale the defendant, as general agent, knew that he was getting very much more for those shares than what he had paid for them due to the sale of the friar lands to the government. In an action to recover her shares the Court held that although it is true that the administrators or managers of anonymous societies (corporations) are the agents of the stockholders and of the society, yet they are only so as regards the property in their actual and immediate charge and not as to the stocks in the hands of the stockholders; that in the absence of any statement by them or request for informations on the part of a stockholder, they have the right to purchase his stock through an agent or broker, without revealing their identity or disclosing their plans for the company. But, on appeal this case was completely reversed, the Federal Supreme Court holding that, under the circumstances, the defendant had the
duty to disclose. This, therefore, is now the Philippine law on this particular subject-matter.

The liability of directors under the statute is couched in general language. There are no specific provisions regarding it. As has been said it is only provided that they are required to perform those duties enjoined on them by law. Their liability is determined as particular cases arise. For a violation of the by-laws of the corporation, however, the statute states that it may be provided in the by-laws that a penalty not exceeding two hundred pesos may be imposed upon any director or officer who violates any provision of said by-laws.

We know of no Philippine decision thus far discussing the liability of directors for their fault or negligence (torts). Should this question come up, however, it is certain that the local Supreme Court would hold them liable, although the act committed was authorized by the corporation. The aggrieved party may sue them alone, but usually they are included with the corporation as party defendant.

Regarding the contracts of the directors the same

260. 213 U. S. 419.
261. "Joint tort feasors are jointly and severally liable for the tort they commit. The person injured may sue all of them, or any number less than all. Each is liable for the whole damage caused by all, and all together are jointly liable for the whole damage." (Worcester vs. Ocampo et al, 22 Phil. Rep. 44, 96).
262. For the liability of directors who contract in their own names, see Fisher, The Philippine Law of Stock Corporations, Par. 161, p. 239 and authorities cited.
rules governing agency apply. They are not personally liable generally if they act within the scope of their employment. Sometimes even if they go beyond their conferred powers, if the corporation is estopped or has ratified their act, they are exempt from responsibility.

Resignation and Removal. - Though not expressly provided for by statute, by implication, directors have the right to resign. No formalities are required. As was said by the Supreme Court a member of the Board of Directors can resign "per verba or per scripta". If the resignation is unqualified and absolute it does not need any acceptance. 263

As to removal it is provided by statute that directors can be removed by a two thirds vote of the members in case of non-stock corporations or by a vote of the stockholders holding or representing two thirds of the subscribed capital stock of the corporation entitled to vote. 264

264. For further details regarding the procedure to be followed in case of removal of directors, see P. C. L. sec. 34. Vacancies thus created may be filled at once in the same meeting or at another special meeting called for the purpose.

"Under the law the directors of a corporation can only be removed from office by a vote of the stockholders representing at least two thirds of the subscribed capital stock entitled to vote (Act No. 1459, sec. 34); while vacancies in the board, when they exist, can be filled by mere majority vote (Act No. 1459, sec. 25). Moreover, the law requires that when action is to be taken at a special meeting to remove the directors, such purpose shall be indicated in the call (Act No. 1459, sec. 34)." (Roxas vs. De la Rosa, 49 Phil. Rep. 609, 612-613).
the directors, however, are appointed for a specified period in the articles of incorporation they cannot be removed before the expiration of the time without just cause.

Other Officers.—Regarding the other officers of the corporation their number, qualifications, duties, rights, powers, compensation, liabilities, resignation and removal are all to be determined by the by-laws as provided by section 21 of the statute. By section 33 of the statute they are also enjoined to perform their duties according to existing laws.

This section (34) of the law does not specify whether a motion for the removal of a director must be for cause or may be without cause. However, the exercise of the right of stockholders to remove directors without specified cause has been upheld by the local Supreme Court. (Gov't. of P. I. vs. Agoncillo, 50 Phil. Rep. 355).


"Where it appears that a corporation already has a duly functioning board of directors, without any existing vacancies, the election of a new board of directors at a called meeting is irregular; and a Court of First Instance has jurisdiction to enjoin the holding of a special meeting of the shareholders called by a committee representing a majority of the shareholders, when the call shows that the purpose is to elect a new board of directors. The action of the court in issuing a temporary injunction against the holding of such meeting will not be disturbed by the Supreme Court upon petition for the writ of certiorari." (Roxas vs. De la Rosa, 49 Phil. Rep. 609-610).

266. The by-laws may provide also for the compensation of directors.

"The Corporation Law does not undertake to prescribe the rate of compensation for the directors of corporations. The power to fix the compensation they shall receive, if any, is left to the corporation, to be determined in its by-laws." (Gov't. of P. I. vs. El Hogar Filipino, 50 Phil. Rep. 436).
Number and Qualifications of Directors.—The number of directors or trustees who are to manage the affairs of a private business corporation depends upon the charter or upon the enabling statute. Practically all the states of the American Union (New York, Delaware, Maryland, New Jersey, Michigan, Illinois and California included) provide that there must be at least three directors. 267 In their by-laws corporations may provide for the increase or decrease of their directors but the number must not fall below three.

Following, undoubtedly, the common law practice no special qualifications are required of directors, unless expressly provided for by the charter or the enabling law. Any person of sound mind legally capable of acting as agent for another may become a director of a corporation. A married woman or even one who has not yet attained the age of majority may be elected as director, provided there is no charter or statutory restriction. 268

In most jurisdictions it is customary to require certain qualifications of directors. In Louisiana it is spe-

267. In fact, the state of Washington is the only one that permits two directors. A few states just leave the number of directors to be determined in the by-laws.

cifically provided that directors must be "natural persons". In some jurisdictions, as in New York, it is required that one of the directors must be a citizen of the United States and a resident of the state. In Illinois it is enough that one of them is a resident of the state. Most of the qualifications and disqualifications of directors are generally provided for in the by-laws.

Requiring directors to be shareholders in the corporation seems to be the most important qualification. In the majority of the states this is statutory and must be complied with. Persons who are not stockholders in the corporation are not eligible to the office of director. Unless expressly so provided, it is not necessary, however, that the stockholders must be the beneficial owners of the stock. It is enough that they appear on the books of the corporation as the holders of the legal title to said stock although the transfer to them was for the purpose of qualifying them as directors. An executor or trustee having the power to vote the stock is eligible to the office

269. There is now a growing tendency, however, to do away with this qualification. In quite a number of states, such as Delaware and California, the ownership of shares of stock in the corporation is not necessary in order for one to qualify as a director. Sec. 13 of the Michigan Corporation Law recently enacted provides that directors "need not be shareholders unless the articles so provide."


271. People ex rel Mattiessen vs. Lihme, 269 Ill. 351.
of director. 272 Usually, the ownership of one share of stock is enough to qualify a person as a director. In a few jurisdictions, however, (as in Kentucky) it is required that to become a director of a corporation one must hold at least three shares of stock "in his own right." Where, as in this case, the ownership of stock is required in order to qualify as a director the moment one ceases to hold the requisite number of shares he automatically ceases to be a director, although he may have owned the necessary number of shares at the time of his election. 273

Election, Term of Office and Organization.—Where the incorporation statute specifies the first board of directors are named in the articles of incorporation. These directors hold office until their successors are duly elected and qualified. Normally, the term of office of directors is one year and they are elected annually by the stockholders. Some statutes, however, provide for a continuous board in which only a certain portion of the directors are elected annually and the rest hold over for a specified length of time. Thus, the New York statute prescribes that the directors may be divided into classes

and at least one fourth in number of said directors (of stock corporation) shall be elected annually. The Michigan corporation statute provides that "a director shall be elected for a term of one year: Provided, that, if a term of more than one year shall be so prescribed, at least one third of the members of the board shall be elected each year."

Once the directors are duly chosen they are supposed to organize. In some states there are no express statutory provisions for the election of officers of the corporation. In practice, however, such officers are elected. Most of the states provide for the election of a President, Vice-President (or vice-presidents), Secretary, Treasurer and also for the appointment of such agents and subordinate officers as the by-laws may prescribe or as the directors may deem necessary. Where there are no incompatible duties to be performed two of these positions may be combined in one, such as the office of the Secretary-Treasurer.

It has become the increasing practice, especially by large business corporations, to delegate the powers of the Board to a committee of itself which shall act for the Board during the intervening period from one meeting to another. This is especially true where the membership of the Board is large and unwieldy, or where the members are scattered in distant places and are not always available whenever needed. The committee cannot delegate discre-
tionary powers to one of its number based on the maxim de-
legata potestas non potest delegari.\textsuperscript{274} It can, of course,
select agents for the corporation if such power is dele-
gated to it either expressly or by implication.\textsuperscript{275}

Meetings.-- As a general rule, a majority of the di-
rectors constitute a quorum for the transaction of business,
and a majority of the votes of those present is necessary
to make an act valid and binding on the corporation. This
is what practically all the corporation statutes of the
different states provide. Where the Board is rather large
in size some statutes provide that the by-laws may fix the
quorum at less than the majority but in no case should it
be less than one third of the entire membership of the
Board.\textsuperscript{276}

The time and place of meetings are usually provided
for in the by-laws. In case of regular stated meetings no
formal notice to the directors is needed, unless there is
an express provision to that effect. Notices, however,
are required in case of special meetings. Meetings may
be held anywhere within the state of incorporation, but if
the charter or by-laws provide that they shall be held at
the domicile or principal place of business of the corpo-

\textsuperscript{274}. Caldwell vs. Mutual Reserve Fund Life Ass'n.
65 N. Y. Supp. 825.

\textsuperscript{275}. Sheridan, etc. Co. vs. Chatham Nat. Bank, 127
N. Y. 517, 28 N. E. 467.

\textsuperscript{276}. The New York statute and the new Michigan stat-
ute contain such a provision. The California statute goes
even further and provides that in no case should the quorum
be less than two.
ration or at any other specified place such requirement must be adhered to. 277

Whether directors can legally hold their meetings outside of the state of incorporation is still a debatable question. Where this is authorized by statute no difficulty arises. 278 In absence of statutory authorization the decisions are conflicting. The courts seem to be consistent in holding, in one line of decisions, that in ordinary contracts, such as executing promissory notes and mortgages, 279 or in simple conveyances, such as issuing mortgage bonds, 280 the directors' meetings can be held outside of the state of incorporation. But, in important matters where the Board has to act in its corporate capacity, such as the election of officers, allotting shares or making calls for unpaid subscriptions 281 the meetings must be held within the state of incorporation. Machen says, however, that this distinction is "shadowy and unsound." According

278. The statutes of twenty states, New York and Illinois included, authorize directors to hold meetings outside of the state of incorporation, and eight also permit the same if provided for in the by-laws. The visible tendency is toward a more liberal rule for the facility of business transactions. In fact, only California and Missouri require directors' meetings to be held within the state. (Corporation Manual, 33rd Ed., 1932).
to the other line of decisions directors' meetings should be held at any reasonable and convenient place (whether in the corporation's own state or outside) depending upon the circumstances and the exigencies of the corporation's business.

It is the general rule that in order that the acts of the directors may have corporate significance they should meet and act "as a Board". 282 As was said in the case of GERARD VS. EMPIRE SQUARE REALTY CO., 283 the reasons for this general rule are twofold: First, it is the collective action of the directors that is required, after deliberations, discussions and an interchange of ideas; and second, the directors as agents of the stockholders have no power to act individually except as a Board. There are a few sporadic decisions holding that where the action of the directors is unanimous, even if there is no formal meeting and even if their assent has been given separately their action should stand. There seems to be much weight to this position, at least, on principle, for, after all, mere technicalities are immaterial. But, the great weight of American authorities is that even in such cases there must be a Board action in order to make their act regul-

lar. 284 The directors must be present and contribute their judgment and counsel. They cannot even vote by proxy but must vote personally. 285 In quite a number of states the acting as a Board and the prohibition from voting by proxy are made statutory.

Powers. — Once the directors are elected by the majority of the stockholders they have the power to manage the affairs of the corporation and to conduct and control its business. Machen says that their powers "are, broadly speaking, coextensive with the powers of the company." According to Ballantine "they have the implied authority to bind the corporation by any act or contract which is within its ordinary business." Within the proper sphere of their powers thus delegated they are supreme. Even the majority of stockholders cannot interfere with their actions done within the limits of their authority. All they can do is to refuse to reelect them. This may appear paradoxical but the reason is basic. Once elected their authority is derived "from the unanimous agreement of the shareholders, expressed in their charter or articles of association." They then represent, not only the majority stockholders, but also the minority stockholders. In other words, they are supposed to protect the interests

284. Dennison vs. Austin, 15 Wisc. 334; Baldwin vs. Canfield, 26 Minn. 43, 54-55; Besch vs. Western Carriage Mfg. Co., 36 Mo. App. 333.
of the corporation as a whole and not of particular stockholders or groups of stockholders.

However, their powers do not go beyond the management of the ordinary or regular business of the corporation, unless so especially conferred either by the charter, statute or by-laws. In matters fundamental they have, without more, no authority to act. Thus, where the corporation is empowered to increase its capital stock the directors have no power to issue the additional shares. This change being radical and as it affects the constitution of the corporation itself, the power must be exercised by the stockholders themselves. In like manner directors, unless expressly authorized, have no power to increase or reduce the capital stock of the corporation; or to surrender the corporation's charter or wind up its business; or to make, amend or repeal its by-laws, unless expressly so authorized. Neither have they the power to change the purpose for which the corporation was organized, for any change in the purpose or object of the

289. Watson vs. Sidney F. Woody Printing Co., 56 Mo. App. 145. Even where the directors are authorized to amend or alter the by-laws they cannot change their qualifications, compensation and tenure of office as originally fixed by the stockholders. To allow them to do it would enable them to perpetuate in office even to the detriment, perhaps, of the corporation and other interested parties.
corporation is fundamental. Only the stockholders can change the purpose of the corporation for it is their own business. It is settled, nevertheless, that the directors of a corporation can mortgage its property to secure its debt. They can even assign the corporate property for the benefit of creditors, provided they do it in good faith.

Duties and Liabilities. The orthodox rule used to be that the directors of a corporation stand in a strict fiduciary relation toward the corporation and they are in duty bound to protect its interests. They cannot hold any interest adverse to that of the corporation. In an Alabama case it was held that the directors' contract with the corporation is voidable at the option of the corporation.

291. Wood vs. Whelen, 93 Ill. 153. It is customary, however, for the statute to require the consent of a certain per cent of the stockholders to radical steps, such as the borrowing of an unusually large amount.
292. Hutchinson vs. Green, 91 Mo. 367; Reischwald vs. Com. Hotel Co., 106 Ill. 439. Whether the directors can assign the corporate property for the benefit of creditors without the consent of the stockholders is purely statutory. (Gilbert's Collier on Bankruptcy, 2nd. Ed. p. 139, (II) and cases cited).
293. Directors have been called "agents", and in a sense they are for they represent the corporation. Strictly speaking, however, they are not for they can only act collectively as a Board and not individually as ordinary agents. They also have been termed "managing partners". This is a misnomer for they are not partners at all- their contract is not that of partners, neither are their liabilities the same as those of partners. Besides, they need not be stockholders, pecuniarily interested in the corporation. They have been referred to also as "trustees", but they are not really trustees for they do not hold the title to the property of the corporation as ordinary trustees do.
294. Mobile Improvement Co. vs. Gass, 142 Ala. 520.
tion. It is improper, the court said, for a director to represent the company and at the same time represent himself; the law will not put any temptation in his way. The same rule applies in case of common or interlocking directors. In such case either corporation can rescind the contract. This rule is based on the same fiduciary relation between the directors and the corporation, and the question of good faith, fairness or benefit is immaterial.

The modern tendency, however, is to relax this rigid rule discouraging directors from dealing with their own corporation. It is now the growing practice to provide in the articles of incorporation that, in the absence of fraud, contracts between directors and their corporation cannot be set aside. The state of Michigan is the pioneer in sponsoring this view by providing in its recently enacted corporation statute "that no contract of any corporation made with any director of such corporation or with a partnership or other group or association of which any such director shall be a member or with any other corporation of which such director may be a member or director and no contract between corporations having common directors shall be invalid because of such respective facts alone." 296

296. Sec. 13, par. 5. This paragraph also provides that the burden of proving the fairness of the transaction is on the director, partnership, association or corporation asserting its validity.
Whichever of these two rules is to be applied, in the last analysis, the dealings between the directors and their corporation resolve themselves into a pure question of fairness and justice. Thus, in spite of a few scattered decisions holding that directors can buy valid claims against their corporation for less than par and enforce them against said corporation for the full amount the decided weight of American authorities is to the contrary: that in such cases it is the duty of the directors to give their corporation the first option to buy the claims against the company, for it is immoral and against public policy for them to speculate upon such claims. Where, however, the director is at the same time a creditor of the corporation and the corporate property is in the hands of a trustee or a receiver, he can buy said property, in an open and fair way, to protect his right, and his title thereto is absolute. The weight of authority, according to Ballantine, is that the directors' transaction with the corporation is valid and binding if it is fair and free from fraud, providing at the time said transaction takes place they do not represent the corporation.

297. Seymour vs. Spring Forest Cemetery Ass'n., 144 N.Y. 323.
298. McDonald vs. Haughton, 70 N. C. 393; Martin vs. Chambers, 214 Fed. 769; Bonney vs. Tilley, 109 Cal. 346, 42 Pac. 459; Higgins vs. Lansingh, 154 Ill. 301, 40 N. E. 362. Whether a director can bid against his corporation, see 7 Colum. L. Rev. 533-539.
299. Janney vs. Minneapolis Ind. Exposition, 79 Minn. 488. A director can buy corporate property at an execution sale on a judgment held by him. (See 21 Harv. L. Rev. 51-53).
The first duty of the directors is toward the corporation. The degree of diligence required of them in the supervision and management of the corporation's affairs, according to Morawetz, "depends upon the character of the business in which the company is engaged." Ballantine, summarizes the directors' responsibility in general thus: "The directors and other officers of a corporation are liable to the corporation for losses resulting from fraudulent acts, from acts in excess of the authority conferred upon them, or from their negligence in failing to exercise the care, skill, and diligence, in the management of the corporation and supervision of its affairs, which ordinarily skillful and prudent men would exercise under similar circumstances. But they are not liable for losses resulting from mere mistakes, either of law or fact, or from errors of judgment on their part, if they have exercised ordinary care and skill, nor for the fraudulent or wrongful acts or neglect of subordinate officers or agents, where they have exercised ordinary care in selecting and supervising them." Machen says that the American cases tend to hold directors to a high degree of responsibility. They must possess sufficient business knowledge, experience and discretion.

The next duty of the directors is toward the stockhold-

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300. Directors' liability is joint and several. (Cooper vs. Hill, 94 Fed. 582; Mills vs. Hendershot, 70 N. J. Eq. 258, 62 Atl. 542).
ers. As has already been seen, as a general rule, the stockholders do not have a direct action against the directors for injury to their right or interest, for whatever action they may have is derivative through the corporation. Yet, they owe certain fiduciary duties toward the stockholders. In this connection there are two conflicting lines of decisions. The first holds that directors are not trustees of individual stockholders and are not bound to disclose to them facts regarding the corporation. The second, to which the Federal Supreme Court is committed, holds that they have the duty to disclose.

There is no question but that the second is the better and the controlling opinion, not only because it is the holding of the highest American judicial tribunal but because it is more in consonance with justice and fair play.

The directors, finally, owe a duty toward the creditors of the corporation. They are answerable to the creditors in case of insolvency of the corporation if the said insolvency can be traced back to their negligence or fault.


The weight of authority is that "there is no fiduciary relationship between a director and an individual stockholder and hence no duty to disclose voluntarily any facts relating to present conditions or future prospects of the corporation, even though such facts might have a vital bearing on the value of the shares." (See 14 Minn. L. Rev. 530-537).

302. Strong vs. Repide, 213 U. S. 419, cited in foot notes 259 and 260, pp. 119 and 121, respectively, supra. Whether a different rule should prevail if the stock bought by the director is listed and it was bought in the market, quaere.
There are two rules governing the liability of directors for their action or inaction: the Pennsylvania and the New York rules. The former, as it was discussed in SPERING'S APPEAL, 303 holds that "while directors are personally responsible to the stockholders for any losses resulting from fraud, embezzlement or wilful misconduct or breach of trust for their own benefit and not for the benefit of the stockholders, for gross inattention and negligence by which such fraud or misconduct has been perpetrated by agents, officers or co-directors, yet they are not liable for mistakes of judgment, even though they may be so gross as to appear to us absurd and ridiculous, provided they are honest and provided they are fairly within the scope of the powers and discretion conferred to the managing body."

The latter rule, as it was expounded in the leading case of HUN VS. CARY, 304 is to the effect that a director "is bound not only to exercise proper care and diligence, but ordinary skill and judgment. As he is bound to exercise ordinary skill and judgment, he cannot set up that he did not possess them. When damage is caused by his want of judgment, he cannot excuse himself by alleging his gross ignorance."

303. 71 Pa. 11, 10 Am. Rep. 684. This was an action by the receiver in insolvency to make the directors responsible for losses.
304. 82 N. Y. 65. This also was an action by the receiver in insolvency against the trustees for their misconduct resulting in loss.
According to the Pennsylvania rule it seems that so long as a director acts "honestly" he is not liable for losses of the corporation however unwise and unfortunate his management may be. This rule sounds very liberal but there is much to be said for it. To hold directors to a degree of accountability higher than this might leave the corporation without any director at all, for nobody would risk and expose his own private property by accepting the position of a director if he is to be made responsible for honest mistakes of judgment, whether of law or of fact. Then, too, nothing could be required more of a man than his best. The New York rule, however, is conceded to be the better view and the one which is usually followed. Enormous sums of money are continually being invested in big business corporations and, this being true, it stands to reason that a high degree of diligence, business skill, knowledge and experience should be required of those into whose hands the management and control of the whole venture is entrusted. As Machen says nobody is forced to become a director, unless he possesses the necessary business experience, skill, knowledge and judgment to qualify him for such an important and responsible position. The New York rule appears to be strict, but the test, after all, is what an ordinarily prudent and reasonable man would do under the circumstances.

305. Directors voting against the proposition which occasioned the loss are not liable. The same is true if
The statutory liabilities of directors and trustees vary in different jurisdictions. The most common ones, however, and the ones which are found in the statutes of many of the leading states are these: directors are liable if they incur or authorize the incurring of debts beyond the capital of the corporation; if they declare dividends illegally, that is, not from surplus or net profits but from the capital of the corporation; if they distribute the capital of the corporation to the stockholders; if they fail to file reports and other documents required by law; if they submit any certificate, report or any public statement which is false or fraudulent in any material representation; if they falsify any of their records, books or accounts; and if they fail or refuse to pay the legal taxes and other government assessments.

The only remaining important liabilities of directors are in cases of torts and contracts. As to torts the set-

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they were absent when the action was taken and did not do anything subsequently to show their comformity. Ordinarily, if a director records his protest against the proposition he is protected in case of loss. In some states, as in Illinois, these safeguards to the directors are made statutory.

For the liability of the inactive corporate directors, see 8 Colum. L. Rev. 18-26. Ordinarily, a passive director is not responsible for the wrongdoings of his associates unless he participates in it.

As to vacation of directors as an excuse for negligence, see 8 Mich. L. Rev. 127-140.

306. For a discussion of directors' and other officers' liability under statutory provisions, see Ballantine, Manual of Corporation Law and Practice, sec. 121 et seq.
tled rule is that "officers of a corporation are personally liable for any tort committed by them against third persons, although they may act for the corporation, and although their act may be authorized by the corporation." The offended party has a right of action against either or both but usually holds both. 307 To hold them liable, however, it is necessary to show that they have participated in it or have authorized its commission. 308

As to contracts the rules of agency apply. If the directors or officers act within their power and contract in the name and on behalf of the corporation and this fact is known to the other party, they are not personally liable. Even if the contract is beyond their authority if it is ratified by the corporation, or even if it is not ratified, if the other party knew of their lack of authority, they cannot be held personally liable. 309 But, they are personally responsible if they contract in their own name without revealing that they are acting for the corporation, 310 or if they contract without authority or in excess of their authority, 311 or in the name of a non-exist-


For the liability of an agent of a corporation for its ultra vires contracts, see 26 Harv. L. Rev. 542-544.
Resignation and Removal.- It is the general rule that directors and other officers may resign at any time, even though they have accepted to serve for a definite term. Unless the charter or by-laws provide otherwise, their resignation need not be in writing and does not require the acceptance of the stockholders. Regarding removal, it is settled that, without cause, directors cannot be removed or suspended from office until the end of their term, unless there is a statute, charter provision or by-laws authorizing it. The statutes of some states (e.g. Delaware and Illinois) contain no provisions regarding the removal of directors, but the statutes of most states embody such a provision. For instance, the new Michigan statute provides that directors can be removed for cause by a majority vote of all the shares of stock outstanding and entitled to vote. The California statute requires the vote of two thirds of the stockholders holding two thirds of the stock.

312. Ryerson & Son vs. Shaw, 277 Ill. 524.
317. In the absence of statutory or charter provisions the stockholders can provide in the by-laws how directors shall be removed. There is a tendency now to stipulate in the by-laws that directors can be removed by the stockhold-
Other Officers. - Usually, the other officers of a corporation are the President, Vice-President (or Vice-Presidents), Secretary, Treasurer, Manager, Cashier and other subordinate appointed agents. The duties assigned to each one of these as well as their qualifications, compensation, liability, term of office, resignation and removal are provided by the by-laws of the corporation. Generally, however, they perform those duties customarily assigned to their respective offices, unless by express authority they are directed to do other acts for the corporation. They are mere agents and their acts are only binding on the corporation if they are within their express or implied authority. If they go beyond the powers conferred upon them by the by-laws or by the resolution of the Board of Directors, the corporation is not liable, unless it ratifies the act or is estopped to deny it.

ers with or without cause. On principle there is nothing wrong with such a provision, for, after all, the business is not that of the directors' but of the stockholders'. Hence, they should control.
CHAPTER VI

RIGHTS AND REMEDIES OF CREDITORS
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RIGHTS AND REMEDIES OF CREDITORS

Philippine Laws

The Philippine Corporation Law contains a number of provisions concerning the creditors of corporations. Creditors' protection, however, is chiefly based on section 16 of the statute. Among other things that section, as amended, provides that "no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for: (1) property actually received by it at a fair valuation equal to the par or issued value of the stock or bonds so issued ... or for (2) profits earned by it, but not distributed among its stockholders or members." Should there be a disagreement as to the real value of the property transferred to the corporation for stock issued by it the assessed value of said property or

318. "In section 74 of the Organic Act of July 1, 1902, as well as in section 28 of the Jones Law of August 29, 1916, it is declared that all franchises granted by the Government of the Philippine Islands shall forbid the issuance of stock except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock. Pursuant to this provision the Philippine Commission inserted in section 16 of the Corporation Law of March 1, 1906, a provision declaring that no corporation shall issue stock except in exchange for actual cash paid to the corporation or for property actually received by it at a fair valuation equal to the par value of the stock." (The National Exchange Co., Inc. vs. Dexter, XXVI Off. Gaz. 1462, 51 Phil. Rep. 601).

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its value appearing in invoices or other commercial papers shall control. The corporation has the burden of proof to show that the present value of the property is greater than its assessed value or the value appearing in invoices or other commercial papers. For the protection of creditors it is further provided by this section that any officer of the corporation who consents to the issuance of stock or bonds in exchange for property valued in excess of its real fair cash value, or who having knowledge of the same does not express his protest or dissent in writing shall be jointly and severally liable to the corporation and its creditors.

Several decisions of the local Supreme Court have interpreted the above section 16 of the corporation statute. In the case of STEINBERG VS. VELASCO ET AL, it appeared that the Sibuguey Trading Company, a domestic corporation, diverted its funds by buying its own stock and also declared dividends when the company was in financial embarrassment and in contemplation of insolvency and dissolution. In an action brought by the receiver of the company, on behalf of the creditors, making the directors responsible for the losses, the court held that "creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the Board of Directors

will not use the assets of the corporation to purchase its own stock, and that it will not declare dividends to stockholders when the corporation is insolvent." This decision is perfectly in line with the statute which provides that "no corporation shall make or declare any dividend except from the surplus profits 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."

Whether creditors have the right to make arrangements or compositions with a financially embarrassed corporation, after the appointment of a receiver, was definitely decided in the case of THE NATIONAL BANK VS. PHILIPPINE VEGETABLE OIL CO. In that case the plaintiff, which was the largest creditor of the corporation, secured a new mortgage on the defendant's property then in the hands of the receiver. In an action to foreclose the mortgage the Supreme Court held that a mortgage executed by a corporation and a creditor while a receiver is in charge of the corporation is a nullity. Continuing, the Court said: "It must be evident to all that the Philippine National Bank could legally secure no new mortgage by the accomplishment of documents between its officials and the officials of the Vegetable

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320. P. C. L. sec. 16, par. 3.
Oil Co. while the property of the latter was in custodia legis. The Vegetable Oil Co. was then inhibited absolutely from giving a mortgage on its property. The receiver was not a party to the mortgage. The Court had not authorized the receiver to consent to the execution of a new mortgage. Whether the Court could have done so is doubtful, but that it would have thus consented is hardly debatable, considering that it would desire to protect the rights of all the creditors and not the rights of some particular creditor."

The case of the PHILIPPINE TRUST CO. VS. RIVERA presents another instance in which creditors' rights may arise. The Trust Company, as assigness in insolvency of the "La Cooperativa Naval Filipina", incorporated under the laws of the Islands, brought action to recover the unpaid balance of defendant's subscription to the capital stock of said insolvent corporation. The defense was that the stockholders had made a resolution "to the effect that the capital should be reduced by 50 per centum and the subscribers released from the obligation to pay any unpaid balance of their subscription in excess of 50 per centum of the same." The Supreme Court held that "a corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such

322. 44 Phil. Rep. 469.
release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation." The Court further said: "It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts."

A rather novel situation is presented by the case of the NATIONAL EXCHANGE CO., INC. VS. DEXTER. The defendant Dexter subscribed for 300 shares of the stock of C. S. Salmon & Company, at par, and his subscription agreement was couched in the following language: "I hereby sub-

323. P. C. L. sec. 17 gives the procedure to be followed in case of increase or decrease of the capital stock of the corporation. See Ch. IV, pp. 62-63, supra.

The Corporation Law "clearly recognizes that a stock subscription is a subsisting liability from the time the subscription is made, since it requires the subscriber to pay interest quarterly from that date unless he is relieved from such liability by the by-laws of the corporation. The subscriber is as much bound to pay the amount of the share subscribed by him as he would be to pay any other debt, and the right of the company to demand payment is no less incontestable." (Velasco vs. Poizat, 37 Phil. Rep. 805).

"In the absence of special agreement to the contrary, a subscriber for a certain number of shares of stock does not, upon payment of one-half of the subscription price, become entitled to the issuance of certificates for one half the number of shares subscribed for; the subscriber's right consists only in an equity entitling him to a certificate for the total number of shares subscribed for by him upon payment of the remaining portion of the subscription price." (Fua Guan vs. China Banking Corporation, 44 Phil. Rep. 705).

324. 51 Phil. Rep. 601.
cribe for three hundred (300) shares of the capital stock of C. S. Salmon and Company, payable from the first dividends declared on any and all shares of said company owned by me at the time dividends are declared, until the full amount of this subscription has been paid." One half of the entire subscription (P15,000) was paid in dividends declared by the company, supplemented by defendant's money, but the other half was not paid at all. In an action by the assignee (through the Philippine National Bank) to recover the other half the Supreme Court held that the stipulation was illegal, it being in contravention of section 16 of the statute. The Court said that to hold said stipulation valid "would lessen the capital of the company and relieve the subscriber from liability to be sued upon the subscription." The Court further said: "The law in force in the Philippine Islands makes no distinction, in respect to the liability of the subscriber, between shares subscribed before incorporation is effected and shares subscribed thereafter. All subscribers alike are bound to pay full par value in cash or its equivalent, and any attempt to discriminate in favor of one subscriber by relieving him of this liability wholly or in part is forbidden."

In order that a creditor's right may be recognized and protected he (or it) should deal with the duly-chosen Board of Directors of the corporation or with its legally-
authorized officer. However, as has already been observed, in the case of RAMIREZ VS. ORIENTALIST CO., it is not always necessary that the Board should signify its action by means of a formal vote for, as the Court said, "In dealing with a corporation the public at large is bound to rely to a large extent upon outward appearances. If a man is found acting for a corporation with the external indicia of authority, any person, not having notice of want of authority, may usually rely upon those appearances; and if it be found that the directors had permitted the agent to exercise the authority and thereby held him out as a person competent to bind the corporation, or had acquiesced in a contract and retained the benefit supposed to have been conferred by it, the corporation will be bound, notwithstanding the actual authority may never have been granted." 

325. "The declarations of an individual director relating to the affairs of the corporation, but not made in the course of or connected with the performance of the authorized duties of such director, are held not binding on the corporation. So, false statements made by a single director, for the purpose of defrauding the creditors of the corporation, including the corporation itself, could not affect or bind it." (Mendezona vs. Philippine Sugar Estate Development Co., 41 Phil. Rep. 475.

326. 28 Phil. Rep. 634.

Some of the statutory safeguards to the rights of creditors are just as exacting as the foregoing decisions which have been discussed. For instance, the law empowers the corporation to amend its articles of incorporation changing the rights of stockholders, classifications of shares, preferences, etc. and provides for the payment of the shares of dissenting stockholders. While in this respect it protects the stockholders, it makes the creditors' rights paramount by providing that "a stockholder shall not be entitled to payment of his shares under the provisions of this section 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." 328

Another example of statutory protection to the rights of creditors is seen in cases of certain important actions by the Board of Directors regarding the policy to be followed by the corporation. By statute a corporation, by action of its Board and authorized by the affirmative vote of two-thirds of the voting stock, may "sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, stocks, bonds or other instruments for the payment of money or other property or considerations, etc." The corporation

328. P. C. L. sec. 18, par. 3.
is required to buy the shares of any stockholder who does not vote in favor of any such action. But, "a stockholder shall not be entitled to payment for his shares under the provisions of this section 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.\footnote{329}

A perusal of the statute and the various decisions of the local Supreme Court interpreting its provisions reveals the conscious and determined legislative intent to protect the rights of the creditors of corporations. From the filing of the articles of incorporation it is required that at least twenty per centum of the authorized shares should be subscribed and at least twenty five per centum of the shares actually subscribed must be paid in, either in cash or in property.\footnote{330} The assets and liabilities of the corporation are to be published as required by law, evidently, for the protection of creditors. The shares cannot be issued except for cash or for property at its vair valuation, or for profits earned but not distributed to stockholders. \textbf{In case of an amendment to the articles and in all contracts of the corporation affecting corporate assets the creditors' rights must be protected.} 

\footnote{329}{P. C. L. sec. 28 1/2, par. 3.}

\footnote{330}{Of course, the amount may be large or small depending upon the set-up of the corporation's capital structure, but at least the creditors are apprised and know the capital upon which they can rely. (Fisher, The Philippine Law of Stock Corporations, sec. 30, pp. 24-27).}
solution of a corporation the rights of creditors are taken into account. With all these safeguards to creditors it seems that only the stockholders' double statutory liability is lacking to make their rights and remedies more secure.

There are no statutory provisions governing the rights of creditors as affected by the reorganization of corporations. Neither are there many legal adjudications interpreting such rights. The only case where this matter is slightly discussed is that of ABOITIZ vs. OQUINENA & CO. ET AL. Oquinena & Co. was dissolved and its creditors and stockholders reorganized the company and named it "Oquinena & Co. Ltd." The new company assumed all the liabilities of the old. In an action brought by the administrator of one of the creditors of the old company the new company voluntarily intervened and assumed all the obligations of the former. It was held that in fact and in law the old company had not existed since the organization of the new, and the latter having assumed the former's obligations voluntarily and in good faith, there is no reason why the former should still be held liable.

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332. No license is issued to foreign corporations unless they are solvent and in sound financial condition (P. C. L. sec. 68).
Secs. 77 and 78, P. C. L. empower a corporation (domestic or foreign) to continue as such for three years after the expiration of its charter by its own limitation, forfeiture or otherwise, in order to settle and close its affairs, convey its property in trust for the benefit of its members, stockholders, creditors and other interested parties.
333. 39 Phil. Rep. 926.
While the corporation is a going concern the corporate creditors do not have anything to do with its affairs. Unless, by some fraudulent acts or breach of trust on the part of the corporation, their rights are clearly injured, or unless some of their liens or special rights are violated, ordinarily, they cannot interfere with its management on the ground that they are protecting their interests as such. This is the general rule, whether the corporation is solvent or insolvent. All the right they have is to be paid their legitimate claims. The Missouri Court in the case of READY vs. SMITH even said that a creditor of a corporation cannot complain of a fraud perpetrated upon the corporation, though such fraud has the effect of diminishing the assets of the company available for the payment of its debts. Neither have the corporate creditors ipso facto any lien on the assets of the corporation while it is solvent and is engaged in the business for which it was organized. As was said by the Alabama Court while a private corporation is a trustee of its capital and effects for the payment of its creditors, and afterwards for the benefit of

334. For the rights of creditors in corporate assets, see 22 Harv. L. Rev. 523-524.
336. 170 Mo. 163, 70 S. W. 484.
its stockholders, yet, during its life and operation, its general creditors have no specific lien entitling them to sue in a court of equity, although its property may be subjected to the payment of its debts by action at law.\textsuperscript{337} But, when it becomes insolvent and its assets prove insufficient to pay its debts creditors' right becomes paramount.

In the first place, the corporate creditors in case of insolvency have the right to inquire if the shares of stock had been issued as required by statute. Under the common law stockholders must pay for the total value of their shares. If this is done no difficulty arises. But, oftentimes, the corporation issues its stock at a discount, even though it considers it to be sound business policy, in the absence of any constitutional, charter or statutory prohibition, such contract is valid and binding as between the parties, but it is fraudulent as regards the creditors of the corporation. As the Federal Supreme Court said in the leading case of SCOVILL VS. THAYER,\textsuperscript{338} the creditors have no means of inquiring into such contracts and they just rely and presume that the stock subscribed has been really and actually paid for. Neither can the corporation release a subscriber without consideration, for such release

\textsuperscript{337} Montgomery & W. P. R. Co. vs. Branch, 59 Ala. 139, 153.
\textsuperscript{338} 105 U. S. 143, 26 L. Ed. 968.
is a fraud to creditors and is void. 339

As regards stock issued for overvalued property the authorities are not in accord. There are decisions holding that the stock of a corporation is a trust fund for the benefit of creditors and, as Morawetz says, debts due to a corporation are equitable assets and may be reached by the creditors if the legal assets prove insufficient. 340 The weight of authority, however, is that so long as there is no fraud, actual or constructive, although there is a material discrepancy between the aggregate par value of the stock and the value of the property transferred to the corporation, the creditors cannot hold the stockholders beyond their subscription contract. 341 This is based on the ground that mere honest mistake in judgment in appraising the property is no deceit to the creditors of the corporation though excessive and erroneous.


For a discussion and criticism of the trust fund doctrine, see Ch. IV, p. 91, foot note 203, supra.

The expression that the property of a corporation constitutes a 'trust fund' for its creditors only means that when the corporation is insolvent, and a court has possession of its assets, they must be appropriated to the payment of its debts before any distribution to the stockholders; but, as between a corporation itself and its creditors, the former does not hold its property in trust in favor of the creditors, in any other sense than does an individual debtor. (Hollins vs. Brierfield Coal & Iron Co., 150 U. S. 371, 37 L. Ed. 1113).

Whether stock can be issued as "bonus" depends upon the statute in particular jurisdictions. In the leading case of HOSPES VS. NORTHWESTERN MFG. & CAR CO., the Minnesota Court held that, unless prohibited by the charter or statute, stock can be validly issued as "bonus" and the corporate creditors cannot make their holders responsible for it would be contrary to their contract with the corporation. But, where the statute provides that stock should be paid it must be paid; and if payment is to be made in money it cannot be issued for less than par. Under the New York statute even no par stock cannot be issued as "bonus" for it is provided that it must not be issued without consideration.

In the second place, corporate creditors have the right to reach the unpaid subscription to stock legally issued. Unless authorized, however, by statute they

342. 48 Minn. 174.
343. 70 N. J. Eq. 732.

The Delaware statute contemplates that no par stock must be issued for some consideration and it has been held that where property is sold to the corporation in exchange for cash and no par stock its holders are not liable to creditors, unless the issue is fraudulent, for there is here "some" consideration. (Johnson vs. Louisville Trust Co., 293 Fed. 857).

If the directors are authorized by statute to fix the price or consideration for no-par stock the stockholders are not liable to creditors beyond the price fixed by said directors, unless shown to be fraudulent or arbitrary. (Bodell et al vs. Gen. Gas, etc. Corp., 132 Atl. 442, 15 Del. Ch. Rep. 119, 420; Hodgman et al vs. Atl. Refining Co. et al, 300 Fed. 590, 13 Fed. 2nd. 781).

346. The statutes of practically all the states (New York, Delaware, New Jersey, Maryland, Michigan, Illinois
cannot bring a direct action against the stockholder for
unpaid subscription for the contract is between the corpo-
ration and the stockholders. 346 They must first bring an
action at law against the corporation for the payment of
their claim and if the execution against the corporation is
returned either partially or completely unsatisfied and if
they have exhausted all their legal remedies, then they can
bring a bill in equity to compel payment of the unpaid sub-
scription. 347 The creditors, however, are not obliged to
exhaust all their legal remedies against the corporation
before going to a court of equity where the corporation has
been adjudged a bankrupt or is notoriously insolvent, 348 or
where it has been dissolved. 349 By statute in some states
(e. g. Alabama and Illinois) they are also permitted to
maintain an action to recover the unpaid subscription with-

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and California included) have codified the common law
rule which holds stockholders personally liable to cred-
itors for any unpaid balance on their stock subscriptions.
Rep. 158; Singer vs. Hutchinson, 183 Ill. 606, 76 Am. St.
In Illinois it is not necessary to obtain a judgment
first in an action at law before a suit in equity can be
presented. Both can be presented simultaneously. In Ar-
kansas the return of an execution unsatisfied is not a
condition precedent to the filing of a bill in equity.
348. Terry vs. Anderson, 95 U. S. 628, 636, 24 L.
Ed. 365.
349. John etc. Sons Co. vs. Federal, etc. Car Co.,
out first obtaining a judgment against the corporation. 350

Various remedies are open to corporate creditors for the enforcement of the balance due on partly-paid-up stock. One of these is by garnishment. Thus, where a call has been made on an unpaid subscription and the same has not been paid, either wholly or partially, by the subscriber, to the extent of such call it is considered as an asset of the corporation and is subject to garnishment by corporate creditors just like other assets. 351 By the weight of authority, however, where calls have not been made the remedy of garnishment is not proper. 352

Another remedy of the corporate creditors to recover unpaid subscription is by attachment. Assuming that a call has already been made by the corporation, the unpaid balance on the stock subscription being then considered a part of the assets of the corporation, is subject to attachment by corporate creditors. 353 The rule is that a creditor of an insolvent corporation may, by attachment, acquire a specific lien upon its property, which will entitle him to a preference over other unsecured creditors, as the

351. Dean vs. Biggs, 25 Hun. 182, aff'd. in 93 N. Y. 662; Kern vs. Chicago, etc. Assoc., 140 Ill. 371.
352. Bohrer vs. Adair, 61 Neb. 824, 86 N. W. 496; In re Bunn's Appeal, 105 Pa. St. 49; Teague, etc. Co. vs. Le Grand, 85 Ala. 413, 7 Am. St. 64. See also Cook, Corporations, 8th Ed. Vol. 1, sec. 201; Thompson on Corporations, 3rd Ed. Vol. 7, sec. 5829.
mere fact that a corporation is insolvent does not require
that there shall be a pro rata distribution of its assets
among its creditors. In order that the lien by attach-
ment may be valid, however, it is a condition sine qua non
that the insolvent corporation should carry on its business
in the usual course of trade, for if it is insolvent
and has ceased to do business, or if it is already in the
hands of a receiver its assets become a trust fund for the
benefit of all corporate creditors and no one can then
claim preference by attachment.

As to how much should be assessed the stockholders on
their unpaid subscription and who are the proper parties
to a suit in equity there is a disagreement among the
authorities. The minority rule is that only enough should
be required of the stockholders on their unpaid subscrip-
tion to cover the debts and, therefore, all the delinquent
stockholders should be included as party defendants.

The majority rule, however, is that it is not necessary

S. W. 955; Mallette vs. Ft. Worth Pharmacy Co., 51 S. W. 859.
357. Some state statutes provide that a judgment creditor
may summon a delinquent stockholder and compel him to pay
said judgment creditor.

It is doubtful whether a delinquent stockholder can be
mandamused to pay his unpaid subscription. (Hatch vs. Dana,
Rep. 168; Gedney Co. vs. Sanford, 106 Neb. 112.

Those who are beyond the court's jurisdiction or are
insolvent need not be joined. (Wilson vs. California Wine
Co., 95 Mich. 117.)
to sue all the stockholders. Their liability being several and not joint, one or more of them can be sued together with the corporation and if they are compelled to pay more than their share (or shares) they are entitled to demand contribution from the others. But the assets being for the benefit of all creditors the action must be brought by all, or by some of the creditors in behalf of all. 358

In the winding up of the affairs of the corporation the receiver, by statutory provision in most jurisdictions, when authorized by the court, can maintain an action at law or in equity, in his own name, against the stockholders to recover their unpaid subscriptions. This is done even in jurisdictions where there are no express statutory provisions authorizing the bringing of an action, provided the court gives the necessary authority to the receiver. 359 After a receiver is appointed a creditor can no longer institute proceedings to collect unpaid subscriptions. 360 In like manner, under the Fed-

358. Bickley vs. Schlag, 46 N. J. Eq. 533, 20 Atl. 250; Patterson vs. Lynde, 106 U. S. 519.

"When one subscribes or becomes the transferee of partially-paid stock, which does not purport to be fully paid, he assumes as an incident of the relationship of stockholder the obligation to respond to calls upon him for further contributions to the capital of the company until the par value of his stock is fully paid in." (Ballantine, Manual of Corporation Law and Practice, sec. 200 and cases cited).


360. Rouse, etc. Co. vs. Detroit, etc. Co. 111 Mich. 251.
eral Bankruptcy Law the trustee in bankruptcy can bring an action in his own name against the stockholders on their unpaid subscriptions for, under the law, these assets pass to him. At the instance of corporate creditors, the court can also make assessments or calls on delinquent stockholders which the trustee can enforce. Whether the trustee in bankruptcy can collect from the holders of watered or fictitiously paid-up stock the decisions are not uniform. One line of decisions holds that he can for these are corporate assets; the other maintains that he cannot for these are not corporate assets and the right to bring the action belongs to the creditors only.

Whether a corporation can make compositions with creditors or assign the corporate assets for their benefit is purely a statutory matter. In some jurisdictions an assignment is only valid if consented to by the stockholders. In others it is only sustained if it reserves to each creditor the right to share equally according to the amount of their respective claims. It is the established principle, however, that a corporation can make compositions with creditors or make an assignment for


their benefit unless restrained by its charter or by statute, and this can be done even if there is no special authority in its charter. 364

There is a conflict of authorities on whether or not an insolvent corporation can give preferences. Some courts hold that it cannot. 365 It is the settled rule, however, that an insolvent corporation, in the absence of charter or statutory prohibition, can make a general assignment for the benefit of creditors, with preferences just like a natural person. 366 But, it is also equally settled that in making the general assignment for the benefit of creditors the corporation cannot prefer its directors and stockholders over the general creditors of the corporation, for such preference is fraudulent and is consequently void. 367

In the third place, corporate creditors have the right to demand the so-called "statutory liability" 368 of the stockholders in satisfaction of their claims. As


368. On the creditor's remedy on a stockholder's statutory liability, see 12 Colum. L. Rev. 636-637.
has been observed, under the common law, stockholders are liable only to the extent of the unpaid balance of their stock. But, in certain jurisdictions there are other liabilities imposed by the constitution, charter or statute. This is especially true in case of banks and trust companies. Thus, as has already been seen, in Maryland and in Minnesota the stockholders of banking and trust corporations are liable to the corporate creditors for the debts of the same, in addition to their subscription. In other jurisdictions, as in New York and Delaware, stockholders are also made liable for wages of laborers and other employees of the corporation. All these statutory liabilities, however, are only for corporate creditors and before they can be enforced against the stockholders a judgment must first be obtained against the corporation and an execution returned either wholly or partially unsatisfied.

Corporate creditors are not always third persons, strangers to the corporation. The settled doctrine is that "stockholders may become the creditors of their own


370. For a detailed discussion on this subject, see Cook, Private Corporations, 8th Ed. Vol. 1, Ch. XII.

On the question whether stockholders who are creditors can enforce this statutory liability against the other stockholders there is a conflict of authorities. In New York, Massachusetts, Michigan and Illinois they cannot maintain such action. In Maine, Pennsylvania, Minnesota and California they can. (See Cook, Private Corporations, 8th Ed. Vol. 1, sec. 218).
corporation. This is based on the ground that as stockholders they do not occupy any fiduciary relation toward the corporation and do not have any control of the corporate assets. However, in order that their transactions with the corporation may be free from the attacks of other corporate creditors they must be open, fair and not collusive or fraudulent. They can even obtain a preference. As was said by the Massachusetts court, a stockholder of a corporation, who is a creditor thereof, has the same right as any other creditor to secure his demand by attachment or levy on the corporate property, though he may be personally liable to satisfy judgments against the corporation obtained by other creditors. In a few states, however, corporations are forbidden by statute to give preferences to their stockholders over other corporate creditors.

Whether a stockholder can set off a valid claim against the corporation when he is indebted to it on his subscription depends upon the nature of his claim. Where the corporation is solvent and is a going concern there can be no question as to his right to do it, provided it

372. Merrick vs. Peru Coal Co., 61 Ill. 472; Duncomb vs. New York, etc. Co., 84 N. Y. 190.
373. Pierce vs. Partridge, 44 Mass. (3 Merc.) 44.
is done fairly and honestly. But, it is the established rule that a stockholder cannot exercise this right of set-off, where the corporation's claim is upon an unpaid stock subscription, when the corporation is insolvent; he must first pay what he owes the corporation and then recover pro rata with the other corporate creditors.\textsuperscript{375} The reason for this is that in insolvency the creditors' right comes in and the corporate assets, including unpaid stock subscriptions, are treated as a "trust fund" for the benefit of all the creditors.\textsuperscript{376} Even though the stockholder's subscription has been induced through fraud of the corporation he cannot set up this defense. He may have an action against the corporation but he must respond to creditors, for the creditors are not concerned whether he has been deceived or not.\textsuperscript{377} 

It is also equally settled that the directors and

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\textsuperscript{375} Scovill vs. Thayer, 105 U. S. 143; also Sawyer vs. Hoag, 17 Wall. (U. S.) 610, 21 L. Ed. 731.

\textsuperscript{376} Sawyer vs. Hoag, supra; Bausman vs. Kinnear, 79 Fed. 172.

Ballantine says that the "trust fund" theory is not the true basis. The real ground is that the amount due the corporation from the stockholders is the basis of credit and it would encourage fraud to have the stockholders wait until their corporation is insolvent and then set off their claim instead of paying the corporation what they owe it for the benefit of the general creditors. (Ballantine, Manual of Corporation Law and Practice, sec. 204).

A further reason may be suggested and that is that there is no mutuality in the two claims and they are not in the same right. What the corporation owes the stockholders is for the latter's benefit alone, whereas what they owe the corporation is for the benefit of all its general creditors.

\textsuperscript{377} Oakes vs. Turquand, L. R. 2 H. L. 325.
other officers of the corporation may loan money to or otherwise contract with it and thereby become its creditors so long as the transaction is in good faith and it is done during the solvency of the corporation. "A person is not precluded from asserting a claim against a corporation because he is a director or officer thereof."378 Being, however, in a condition to abuse their position to the detriment of the general creditors of the corporation, where rights of third parties are involved, courts of equity closely scrutinize their transactions and cast upon them the burden of proving the bona fides of their claims.379 And when the corporation is insolvent and ceases to do business the established rule in most jurisdictions is that they cannot have any preference over the general creditors of the corporation, for then they occupy a quasi fiduciary relation toward said general creditors by virtue of their control over the remaining corporate assets.380

It now remains to consider the rights and remedies of corporate creditors as affected by the reorganization of the corporation. Where a corporation is dissolved and its assets are transferred to another newly formed, for the purpose of defeating its creditors, there is no ques-

tion but that the creditors may attach and seize the assets and subject them to the satisfaction of their claims. 381 But, if the dissolution of an old corporation and the formation of a new one in its stead are done in good faith the rights of the creditors of the old corporation are different. As a rule, they can, by an action in equity, follow the assets of the old corporation in the hands of the new, but, unless the new corporation assumes to pay the obligations of the old, either by a new contract or by novation, or the statute fixes such obligation, they have no action at law against it for there is no privity between them. 382

It is increasingly becoming the practice to provide by statute that in case of merger or consolidation 383 the new corporation, being entitled to all the rights, priv-

For the rights of creditors against a successor corporation (transferee) see 44 Harv. L. Rev. 260-265.
383. The terms "merger" and "consolidation" are ordinarily used interchangeably, but, really, they should be distinguished. In the case of merger one of the merging corporations continues to exist, the others being simply united or fused with it, whereas in the case of consolidation all the corporations consolidating lose their respective distinct corporate entities and in their stead an entirely new corporation is formed. As was said by the Illinois Court "the effect of the consolidation of two or more corporations is to dissolve the original corporations and create a new one, and the new corporation is required to pay fees for its organization as a new corporation." (Southern Illinois Gas Co. vs. Commerce Commission, 311 Ill. 299). See also 30 Colum. L. Rev. 732-733.
ileges, franchises and assets of the old, should also assume all their liabilities. Thus, the Stock Corporation Law of New York provides that "the rights of creditors of any corporation that shall be consolidated shall not in any manner be impaired, nor shall any liability or obligation due or to become due, or any claim or demand for any cause existing against any such corporation or against any stockholder thereof be released or impaired by any such consolidation; but such new corporation shall be deemed to have assumed and shall be liable for all liabilities and obligations of each of the corporations consolidated in the same manner as if such new corporation had itself incurred such liabilities or obligations."384

To the same effect, substantially, are the provisions of the corporation statutes of Delaware, Maryland, New Jersey, Michigan, Illinois, California and several other important states of the Union.

But, the reorganization of corporations is not only by merger or consolidation. As Ballantine says reorganization "may be brought about in pursuance of an agreement of all the parties, without any foreclosure, or by transfer of the property to a new corporation, or by purchasing the property at a foreclosure sale, and organizing a new corporation to take the same and continue the business."385

384. S. C. L. sec. 90.
Where either one of these methods is pursued the corporation should see to it that the rights of creditors are protected. The reorganizers cannot simply go ahead disregarding the rights of creditors. The principle laid down by the Federal Supreme Court in the leading case of NORTHERN PACIFIC RAILWAY CO. VS. BOYD, 386 is that "contracts for reorganization made between bondholders and stockholders of corporations, insolvent or financially embarrassed, involving the transfer of the corporate property to a new corporation, while proper and binding as between the parties, cannot, even where made in good faith, defeat the claim of non-assenting creditors; nor is there any difference whether the reorganization be made by contract or at private sale or consummated by a master's deed under a consent decree." It was further held that "even in the absence of fraud, any device, whether by private contract or under judicial sale, whereby stockholders are preferred to creditors, is invalid. Louisville Trust Co. vs. Louisville Railway, 174 U. S. 683." So, in the Boyd case the court permitted the dissenting unsecured creditors to follow the property of the old corporation in the hands of the new. 387

386. 228 U. S. 482, 57 L. Ed. 931.
387. The logical inference from this decision is that if the old stockholders had paid the full par value of their stock in the new corporation neither they nor the new corporation would be liable to creditors, provided
they had given the creditors a fair chance to participate in the reorganization. The reason for this is that if they had paid the full par value of their stock in the new corporation they are not receiving it by virtue of their stock in the old corporation and, consequently, creditors have no right to complain.

For more information on the subject of reorganization of corporations, see Tracy, "Corporate Foreclosures"; Stetson, Byrne, Gayath and others, "Some Legal Phases of Corporate Financing, Reorganization and Regulation"; and Rosenberg and others, "Corporate Reorganization and the Federal Court."
CHAPTER VII

FOREIGN CORPORATIONS
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Philippine Laws

There are only six sections in the Philippine statute governing foreign corporations. The first one provides that "no foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the Chief of the Mercantile Register of the Bureau of Commerce and Industry, upon order of the Secretary of Finance in case of banks, savings and loan banks, trust corporations, and banking institutions of all kinds, and upon order of the Secretary of Commerce and Communications in case of all other foreign corporations." The proper Secretary shall not order the issuance of a license until after the managing agent of the foreign corporation files a statement, to the satisfaction of said Secretary, showing that the corporation is solvent and is financially sound and stating its resources and liabilities. The statement must be

388. P. C. L. sec. 68.
submitted within the time fixed by said Secretary and should contain (1) the name of the corporation; (2) its purpose; (3) the location of its principal or home office; (4) its capital stock and the amount actually subscribed and paid in; (5) its net assets; and (6) the name of its resident agent authorized to receive service of summons and process in all legal proceedings against the corporation, as well as of all notices affecting it. After proper investigation by, and upon the recommendation of, the Bank Commissioner, the Secretary of Finance may, in his discretion, order the issuance of a license to a foreign banking corporation, to transact business in the Islands. The foreign banking corporation, however, cannot open a branch or branches in the Islands without obtaining the written approval of the Bank Commissioner. Should the Bank Commissioner refuse to give such approval an appeal lies to the Secretary of Finance.

Aside from the filing of the statement above mentioned the foreign corporation is also required to file a certified copy of its charter. Upon the filing, with the Mercantile Register of the Bureau of Commerce and Industry, of the statement, a certified copy of the charter and the order of the Secretary of Finance or the Secretary of Commerce and Communications (as the case may be) for the is-

suance of a license the Chief of said register then issues a license to the foreign corporation, in conformity with the order, and said foreign corporation is then empowered to do business in the Islands, after paying the fees required by section 6 of the statute.

It is also provided by the statute that a foreign corporation is not permitted to transact business in the

390. "Any corporation operating at the time of the passage of this Act under a special franchise granted by the Philippine Commission is hereby exempted from compliance with the provisions of sections sixty-eight, sixty-nine, seventy, and seventy-one of the Corporation Law; Provided, however, that the corporation so exempted shall be obliged to name an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation and shall file its designation of such agent in the Division of Archives, Patents, Copyrights, and TradeMarks of the Executive Bureau, together with a duly authenticated copy of its articles of incorporation, and pay a fee of fifty pesos for the filing of said designation and copy of articles of incorporation, on or before the first day of August, nineteen hundred and seven: And Provided, further, that any corporation by this section exempted from compliance with sections sixty-eight, sixty-nine, seventy-one of the Corporation Law, as above provided, shall file with the Division of Archives, Patents, Copyrights, and TradeMarks of the Executive Bureau a statement of the amount of stocks and bonds actually issued and the cash or property consideration for such issue or stocks or bonds. In case stocks or bonds were issued in consideration of property transferred or conveyed to such corporation, then such statement shall contain a declaration of the fair valuation of such property. And Provided, further, that all other sections of the Corporation Law which are applicable to corporations and to corporations not formed or organized under the laws of the Philippine Islands shall be applicable to corporations exempted by this section from compliance with the provisions of sections sixty-eight, sixty-nine, seventy, and seventy-one of the said Corporation Law." (Sec. 1, Act 1659, amending secs. 66, 69, and 71 of the Corporation Law).

The fees are the same as those required of domestic corporations. (P. C. L. sec. 8).
Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in section sixty-eight; that any one violating this provision is punishable by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or both such imprisonment and fine in the court's discretion. 391

It is further provided that foreign corporations doing business in the Islands at the time of the passage of the Corporation Law (Act 1459) are given seventeen months within which to secure the necessary license. 392

The other provisions of the statute affecting foreign corporations can be briefly stated thus: The Secretary of Finance or the Secretary of Commerce and Communications (as the case may be) with the approval of the Governor General, if the corporation becomes insolvent or if its continuance would be prejudicial to those with whom it deals, may revoke the license; service on the resident agent is service on the corporation, and that should said resident agent become mentally incompetent or otherwise incapacitated to accept service the corporation should at once appoint another in its place, otherwise service on the proper Secretary (as the case may be) will be con-

391. P. C. L. sec. 69.
392. P. C. L. sec. 70.
sidered as service on the corporation. It is finally provided that foreign corporations "shall be bound by all laws, rules, and regulations applicable to domestic corporations of the same class, save and except such only as provided for the creation, formation, organization or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of members, stockholders, or officers of corporations to each other or to the corporation." 394

Only a few decisions of the local Supreme Court have thus far interpreted the statutory provisions affecting foreign corporations. 395 The earliest case under the statute was that of CLAUS SPRECKELS ET AL VS. D. H. WARD ET

393. "Where a foreign corporation has designated a person to receive service of summons in a judicial proceedings affecting the corporation, that designation is exclusive and service of summons is without force or effect unless made on him. Where such a person has been designated, section 396 of the Code of Civil Procedure is not applicable, and the only person on whom summons can be served is the person so designated. Where, however, the foreign corporation has neglected to designate such a person, then the provisions of section 396 of the Code of Civil Procedure and section 72 of Act No. 1459 are applicable and control the service." (Poizat vs. Morgan et al, 28 Phil. Rep. 597).

394. P. C. L. sec. 73.

395. The first reported case is that of Dampfschiff Rhederei Union vs. La Compania Transatlantica (8 Phil. Rep. 766). The cause of action took place in 1905 before the enactment and promulgation of the Corporation Law (Act 1459) in 1906. The case was, therefore, governed by the Spanish Code of Commerce. In that case it was held that a foreign corporation which had not established itself in the Philippine Islands, nor engaged in business there, could in 1905, maintain an action against another corporation for damages caused to one of its ships while in the harbor in Manila.
in which the question was raised whether a foreign unregistered corporation has the right to maintain an action in the Philippine courts for the recovery of any debt, claim or demand. The Court, speaking through Justice Carson, held that "the provisions of section 69 of the Corporation Law denying to unregistered foreign corporations the right to maintain suits for the recovery of any debt, claim or demand, do not impose on all plaintiff-litigants the burden of establishing by affirmative proof that they are not unregistered foreign corporations: that fact will not be presumed without some evidence tending to establish its existence."

The same section 69 of the statute was later more clearly discussed in the leading case of MARSHALL-WELLS CO VS. H. W. ELSER & CO. The plaintiff, an Oregon corporation, sued the defendant, a domestic corporation for the unpaid balance of a bill of goods which it had sold to said defendant. By demurrer the defendant challenged the plaintiff's capacity to sue on the ground that it had not qualified to do business in the Philippine Islands. This contention was sustained by the lower court. On appeal the Supreme Court held that "the object of the statute was to subject the foreign corporation doing business in the Philippines to the jurisdiction of its

396. 12 Phil. Rep. 414.
397. 46 Phil. Rep. 74. This decision is criticized as against the express provision of Sec. 69, P. C. L. (See 10 Phil. L. Jr. 51-64).
courts. The object of the statute was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations.

An unlicensed and unregistered foreign corporation can also maintain an action for injunction to restrain the issuance of a license to a domestic corporation whose avowed object, in using the plaintiff's corporate name, is to mislead the public and thereby take advantage of the plaintiff's good will. As was said by the Supreme Court in the case of WESTERN EQUIPMENT AND SUPPLY CO. ET AL VS. FIDEL REYES, ETC., "a foreign corporation which has never done any business in the Philippine Islands and which is unlicensed and unregistered to do business here, but is widely and favorably known in the Islands through the use therein of its products bearing its corporate and trade name, has a legal right to maintain an
action in the Islands to restrain the residents and inhabitants thereof from organizing a corporation therein bearing the same name as the foreign corporation, when it appears that they have personal knowledge of the existence of such a foreign corporation, and it is apparent that the purpose of the proposed domestic corporation is to deal and trade in the same goods as those of the foreign corporation."

The right of foreigners and foreign corporations to engage in business in the Philippines is settled. Both our Spanish Code of Commerce and our Corporation Law have specific provisions to that effect. The Supreme Court said: "Our Code of Commerce and our Corporation Law permit foreigners, and companies created in a foreign country, to engage in commerce in the Philippine Islands." When corporations qualify and engage in business in a foreign jurisdiction usually conflict of laws are bound to arise. Regarding the subject of conflict of laws cer-

399. "Foreigners and companies created in a foreign country may engage in commerce in the Philippine Islands, subject to the laws of their country, in so far as their capacity to contract is concerned; and in all that refers to the creation of their establishments, and the jurisdiction of the courts of this country, the provisions of this code governs."

"The provisions contained in this article shall be construed without prejudice to what may, in particular cases, be established by treaties and conventions with other powers." (Art. 15 Code of Commerce).

Part of section 73, P. C. L. is quoted supra. For the full text, see Appendix "A", p. 260.

tain basic principles are well-imbedded in Philippine jurisprudence. To start with, it is the settled doctrine that corporations have no legal status beyond the bounds of the sovereignty by which they are created; that their right to engage in business in a foreign jurisdiction and their right to sue in its courts may be restricted by the latter; that by comity, however, they are allowed to transact business in the foreign jurisdiction and to sue in its courts. 401

It is also settled that "in the absence of anything to the contrary as to the character of a foreign law, it will be presumed to be the same as the domestic law on the same subject;" 402 that in the interpretation of a contract a foreign law must be pleaded and proved just like any other fact, otherwise it will be presumed to be the same as the laws of the Islands. 403

In the reported cases the Supreme Court of the Philippines has not as yet had the chance to thresh out the problem of conflict of laws as applied to foreign corporations. However, such a question is not likely to be puzzling in view of the precise and unequivocal statutory provisions on the matter. As has already been observed the Code of Commerce provides that companies created in

a foreign country and engaged in business in the Islands are subject to the laws of their country as far as their capacity to contract is concerned, but in all other matters, such as the creation of their establishment in the Islands, their commercial transactions therein and the jurisdiction of the courts they are subject to the local laws. 404 The Corporation Law is no less clear and exacting as it provides that foreign corporations doing business in the Islands are bound by all the local laws, rules and regulations, just like domestic corporations, except in matters regarding their creation, formation, organization and dissolution as well as those fixing their relations, duties and liabilities to each other or to the corporation. 405 It is thus seen that should there be a question of conflict of laws it is comparatively easy to apply the law (whether it be the domestic or the foreign law) in a given case. And there is no hardship, injury or injustice done to foreign corporations for they qualify in the Islands with a full knowledge of its laws affecting them. 406

405. P. C. L. sec. 71, quoted supra.
406. In cases not covered by statutory provisions, no doubt, the courts will apply the well-established principles in conflict of laws (quoted with approval in the Government of the P. I. vs. Frank, 13 Phil. Rep. 236) that "matters bearing upon the execution, interpretation, and validity of a contract are determined by the law of the place where the contract is made. Matters connected with performance are regulated by the law prevailing at the place of performance. Remedies, the bringing of suit, admissibility of evidence, and the statute of limitations, depend upon the law of the place where the action is brought."
The manner in which a corporation qualifies to do business in a foreign jurisdiction has come to be purely statutory. The different steps to be followed in order to qualify are substantially the same, with slight variations in certain jurisdictions. In some states, like Illinois and Michigan, the procedure is rather detailed. Essentially, however, the different steps can be outlined thus: (1) filing with the Secretary of State of a certified copy of the corporation's charter; (2) giving the name or names of its authorized resident agent or agents; (3) filing of a sworn statement of its assets and liabilities; (4) payment of the legal fees; and (5) in general, complying with any other minor requisites that the statute may require, depending upon the legal provisions in particular jurisdictions. Once the statutory requirements are complied with the Secretary of State issues to the corpora-

407. A corporation created by or under the laws of a particular state or country is called, with respect to that state or country, a "domestic corporation". A corporation which owes its existence to the laws of another state, government or country is a "foreign corporation". (Fletcher, Cyclopedia Corporations, Vol. 8, sec. 5692 (1919) and decisions cited; also Thompson on Corporations, 3rd. ed. Vol. 8, sec. 6580).

The sovereignty by which a corporation is organized or under whose laws it was created determines its national character, not the residence or citizenship of its incorporators or stockholders. (Fletcher, Cyclopedia Corporations, Vol. 8, sec. 5702 and 5703 (1919).

For state control of foreign corporations, see 19 Yale L. J. 1-16; 9 Mich. L. Rev. 549-575.

408. Practically all state statutes provide that
tion the so-called Certificate of Authority, and the corporation then becomes duly registered to engage in business in the state. Ballantine summarizes the procedure in the following language: "Statutes frequently require foreign corporations as a condition of doing business, to register by filing a copy of their articles of incorporation with the secretary of state, to pay license fees, to appoint an agent on whom process may be served, to designate and maintain an office in the state, to take out a license or permit of authority to do business, to keep books and records in the state, to deposit securities with some official for the protection of those who do business with the corporation." 409

Distinction is often made between a "franchise" and a mere "license". The prevailing view seems to be that when a corporation, created under the laws of one state, voluntarily incorporates under the laws of another state or of a foreign country the permit issued to it is a "franchise", inasmuch as it is deemed to be the creature of the state or country of re-incorporation. When, however, a corporation is compelled to re-incorporate in a

where no resident agent is appointed or where the one appointed becomes incompetent or is otherwise incapacitated service on the Secretary of State is service on the corporation.

foreign jurisdiction, in order to be able to engage in business therein, the permit granted is termed just a mere "license". In other words, the corporation continues to be the creature of the state of incorporation and is only being given a "license" to engage in business in the foreign jurisdiction. The Illinois court said that "the right of a corporation to do business in Illinois is a mere license and not a franchise, as the franchise of the corporation is the privilege emanating from the state of its creation and hence a bill to enjoin a foreign corporation from further continuing business in Illinois does not involve a franchise."

Foreign corporations are generally prohibited by statute from "doing business" in the state unless they qualify and get the corresponding certificate of authority. Considerable difficulties have arisen as to the proper interpretation of the term "doing business". Although the context of the particular statute affords great light in the interpretation of this term, nevertheless, in the last analysis, what constitutes "doing business" resolves itself generally into a pure question of fact.

There are, however, certain fundamental principles that may serve as a guide. The real test of whether a

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410. Fletcher, Cyclopedia Corporations, Vol. 8, sec. 5706 (1919); also 28 Mich. L. Rev. 436.
411. People ex rel Potts et al vs. Continental Beneficial Ass'n, 280 Ill. 113.
412. As to the scope of the term "doing business", see 7 Colum. L. Rev. 541-543.
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benefits of the same. Statutory provisions applicable to domestic corporations, such as the filing of annual reports, prohibition from transfer of property when the corporation is insolvent, declaring dividends from capital, etc. are also applicable to a qualified foreign corporation. Being reciprocally entitled to the protection of the local laws it cannot be discriminated against. Thus, they cannot be legally forced to pay an additional franchise tax for the privilege of doing business within the state if such additional burden is not likewise imposed on domestic corporations, for, to do so would be in violation of the equal protection clause of the federal constitution.

When a corporation has legally qualified in a foreign jurisdiction its power to hold real property inside the state is unquestioned, unless limited by local statutes. Though quite a number of states are exceedingly conservative in this respect, more and more it is becoming the practice to provide, by statute, that foreign corporations can acquire and hold real estate generally, or to a certain extent, or for certain limited purposes, or only under certain conditions. Thus, by implication, the new Michigan statute grants this power to acquire and hold real estate to foreign corporations. The Georgia statute


423. Southern R. Co. vs. Greene, 216 U. S. 400, 54 L. Ed. 536.
prohibits a foreign corporation from holding more than five thousand acres of land. The Illinois statute authorizes foreign corporations to hold real estate but only "such as may be necessary for the proper carrying on of its legitimate business." The New Jersey statute allows foreign corporations to acquire real estate inside the state only when at the time of such purchase the country under whose laws the foreign corporation was created is not at war with the United States. The New York statute is reciprocal in character. It confers the privilege of holding real estate on foreign corporations only if the laws of the state or country in which said foreign corporation was organized confers similar privileges on corporations incorporated under the New York laws.

Unless expressly prohibited by local statutes, foreign corporations, in the proper exercise of their charter powers, may give or accept mortgages or make or take leases; 424 may take and hold land by devise; 425 and may act as administrator, executor or trustee and thereby hold real property. 426 But, they cannot exercise the right of eminent domain unless they are expressly authorized by local statutes. 427

425. Id., sec. 6647.
426. Id., sec. 6648.
427. Id., sec. 6649.
There is a general presumption as to the validity of contracts entered into by foreign corporations. This is especially true if they have legally qualified to transact business in the foreign jurisdiction. However, in order for these contracts to be really valid and binding they must be (1) within the conferred powers of the corporations and (2) permitted by the laws of the state where they were made or where they are to be performed. If foreign corporations enter into contracts not authorized by their charters such contracts are generally held to be without corporate significance, unless some other elements, such as estoppel, unjust enrichment or implied warranty of authority are present. This rule is based on the fact that a corporation can only exercise those powers which are expressly given and no others. However, even if the contracts are within the charter powers, if they are prohibited, either by the law where celebrated or where they are to be performed, they are also generally held void and of no effect.

Not infrequently foreign corporations enter into contracts in a particular state before they qualify to engage in business therein. The decisions are most confusing as to the status of their contracts made under such circumstances. One line of decisions holds that such contracts are void. There seems to be no question but that such would be the holding of the Michigan and Illinois courts.
for, under the statutes of these two states, contracts of foreign corporations which fail to qualify are void. Another line of decisions, however, holds that contracts of foreign corporations, which do not comply with the local statute, are not void but the right to enforce them is just suspended until the corporations can qualify. This seems to be the logical deduction from the statutory provisions of the states of New York, New Jersey and Maryland. Usually, the penalty imposed on the offending foreign corporations is of no consequence. The validity of contracts of foreign corporations which do not qualify really hinges on the statutory provisions in particular jurisdictions and in the way those provisions are interpreted. 428

Two different theories have likewise developed with regard to the doctrine of estoppel as applied to foreign corporations which fail to qualify. It is claimed on the one hand that those dealing with such corporations are estopped to question their capacity to enter into the contract, and they cannot set up, as defense, the fact that said foreign corporations had not complied with the local statute. 429 On the other hand, it is urged that third persons are not estopped to set up said defense on the ground that estoppel cannot be invoked by foreign corporations to aid them in doing something which the statute

429. Id., sec. 6665 and cases cited.
prohibits them from doing. 430 Third persons are not, however, allowed to retain the property of foreign corporations on the sole ground that they have not complied with the statute. 431

In some states the statute holds the officers, agents and stockholders liable on contracts of foreign corporations which fail to properly qualify. This is predicated on the theory that, if the corporation does not qualify, there is, really, no corporation, and persons contracting for a non-existing corporation personally bind themselves as partners. 432 There is, however, a minority view to the effect that failure on the part of a foreign corporation to qualify does not make its officers partners. 433

Sometimes it happens that, after a foreign corporation has qualified to do business in a certain state, a subsequent statute is passed prescribing certain conditions in order for said foreign corporation to continue in business therein. Regarding corporate contracts made prior to the enactment of said statute the prevailing opinion is that they are valid and binding, based on the well-known constitutional ground that no legislature can enact a law impairing the obligation of a contract. 434

430. Id. sec. 6666.
431. Id.; sec. 6666.
2d.; Mandeville vs. Courtright, 142 Fed. 97.
597.
838; Bedford vs. Eastern Bldg. & Loan Ass'n. 181 U.S. 227.
There is a presumption that all corporations act in conformity with the law and that they have the legal capacity to sue. There is no question about the right of foreign corporations to sue in the local courts, provided they have complied with the conditions imposed by domestic statute. And it is immaterial whether the contract was made inside or outside the state, so long as the court acquires jurisdiction. When foreign corporations, however, fail to qualify the decisions are not in harmony as to their right to bring actions in the local courts. A few courts deny them this right to sue, calling their contracts void. The decided weight of authority, however, is to the effect that, by the modern principle of conflict of laws, they are entitled to bring actions at law or in equity, in other states or countries provided there are no express statutory provisions to the contrary, or provided they are enforcing a claim which is not against the policy of the forum. To borrow the language of a prominent writer, "various reasons are given for permitting a foreign corporation to sue without complying with such a statute. Some of the courts grant the right on the ground that the statute merely imposes a penalty for not complying with its provisions; and others say that such a statute is directory merely. Still other courts put it upon the ground that the object of the statute is not to prevent the foreign corporation from making isolated contracts or performing
a single act but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to bring it within the jurisdiction of local courts.\footnote{435} This last one is the view that has consistently been followed especially by the federal courts. Many courts, while recognizing the validity of such contracts, suspend the remedy until after the foreign corporations can qualify.

When foreign corporations are being sued complicated problems arise due to the principles of conflict of laws (which will be discussed later) that are usually involved. Where foreign corporations comply with the conditions prescribed by the local statute for doing business in the state it is easy to acquire jurisdiction over them for, ordinarily, their place of business inside the state is fixed, or, at least, they appoint their resident agent (or agents) to receive service of summons and other legal processes. As has been pointed out by the cases, in order for a state to acquire jurisdiction \textit{in personam} over a foreign corporation two things must be present: (1) the corporation must be engaged in business inside the state; and (2) summons must be served there on its resident agent.\footnote{436} In other words, for jurisdictional purposes, the foreign corporation is treated just like a domestic

\footnote{435. Thompson on Corporations, 3rd. Ed. Vol. 8, p. 917.}
\footnote{436. U. S. etc. Engineering Corp. \textit{vs.} Lloyds, 291 \textit{Fed.} 889; Ewald \textit{vs.} Ortynsky, 77 \textit{N. J. Eq.} 76; Pembleton \textit{vs.} Illinois Com. Men's Ass'n. 289 \textit{Ill.} 99.}
corporation.

But, where the foreign corporation has not legally qualified to transact business inside the state the common law rule is that the state courts cannot acquire jurisdiction over it and render against it a personal judgment. Neither can the federal courts have jurisdiction over said foreign corporation, unless it has a regular place of business, or has an authorized agent, in the district where the action is brought. It is immaterial if the contract or any other cause of action took place inside the state, for that alone will not confer jurisdiction on the state courts, unless the corporation is found doing business within its confines. 437 However, in proceedings in rem the state courts may acquire jurisdiction over the foreign corporation, provided the statutory requirements regarding the service of summons is strictly observed. 438

It is almost impossible to discuss the court's jurisdiction over foreign corporations without touching, if only briefly, the rather complicated rule regarding diversity of citizenship in connection with the removal of cases to the federal courts. 439 It is established by the cases that corporations are "citizens" for the purposes of jurisdiction; and they are citizens of their state of creation.

This is properly called the rule of "indisputable citizenship". Where a corporation voluntarily incorporates in several states it is considered as a separate and independent corporation in each of those states. Hence, it cannot remove to the federal court an action brought in the courts of the state by one of its citizens, for there would be no diversity of citizenship. Where the re-incorporation, however, in the other states is compulsory (being a condition precedent to doing business) the corporation is treated as the corporation of the state which originally incorporated it. The reason is that the re-incorporation amounts only to a mere license. Besides, courts are reluctant to extend the doctrine of the indisputable citizenship beyond the actual boundaries of the state of creation. Hence, the corporation can bring an action in the federal courts against the citizens of the state of re-incorporation for there is diversity of citizenship. Foreign corporations uniting or merging with domestic corporations are considered citizens of the state of creation or of the states where the constituent units of the consolidation or merger were incorporated, depending upon the nature of the union formed. The test is: Have two distinct and separate corporations been created or not? 440

440. See 26 Mich. L. Rev. 436, cited supra; also Henderson, The Position of Foreign Corporations in American Constitutional Law, Ch. IV. For the citizenship of corporations created by consolidation, see 2 Ill. L.Rev. 522-524.
No less perplexing are the rules governing intrastate and interstate commerce as applied to foreign corporations. A state has the power to impose conditions upon which foreign corporations may be admitted into it to engage in business. It may absolutely prohibit their entrance or may expel them once they are admitted. This is in case the foreign corporations are to engage in purely intrastate business. But, a state has no power to impose any condition whatsoever upon foreign corporations inside its borders, which are engaged in interstate commerce. This has been decided in the leading case of INTERNATIONAL TEXTBOOK CO. VS. PIGG.<sup>442</sup> In that case the state of Kansas, by statute, forbade foreign corporations from doing business inside the state until they have filed a detailed statement regarding their business and stockholders, and disabling them from suing in the state courts unless they have complied with the requirement and have gotten the corresponding certificates. For failure to comply with

441. Provided no constitutional guarantees are violated a state may impose conditions upon which foreign corporations may be admitted into it to engage in business, may prohibit their entrance absolutely, or may expel them once they are admitted. (National Council, etc. vs. State, etc., 203 U. S. 161, 51 L. Ed. 132). There are only two exceptions to a state's power to do this: (1) It cannot impose any restrictions, much less exclude corporations in the employ of the federal government (Fletcher, Cyclo. Corps. Vol. 8, sec. 5753 (1919) and cases cited); and (2) neither can it interfere with corporations engaged in interstate or foreign commerce. (Id., sec. 5762 and cases cited).

442. 217 U. S. 91, 54 L. Ed. 678.
the statute the Textbook Company, a Pennsylvania corporation, was denied access to the Kansas courts. The Federal Supreme Court, reversing the judgment of the state court, held that this requirement burdened interstate commerce and was illegal. Congress alone has the power "to regulate commerce . . . . among the several states . . . ." 443

When corporations engage in business in other states or countries conflict of laws is inevitable. As to what law or laws should be applied in a given case it is not always easy to determine. The problem is less complicated if the local statutes contain some provisions regarding the matter. But, the corporation statutes of practically all the states are silent on this point. Consequently, we are forced to resort to standard text writers and judicial decisions in our attempt to answer the question: What law or laws should be applied in cases of conflict of laws?

The early doctrine, which has been established by decisions of federal and state courts, is that a corporation is a mere creature of the state of incorporation and can have no powers beyond the territorial boundaries of said state. As was said by the Federal Supreme Court in the early case of BANK OF AUGUSTA VS. BARKLE, 444 "a corporation can have no legal existence out of the boundaries

443. Art. 1, sec. 8, par. 3, U. S. Constitution.
444. 13 Pet. (U. S.) 519, 10 L. Ed. 274.
of the sovereignty by which it is created . . . . It must dwell in the place of its creation, and cannot migrate to another sovereignty." Without minimizing the potential power especially of large and wealthy corporations to do evil (if they so desire), nevertheless, the courts have come to recognize the invaluable services which are being rendered by said corporations to society. For this reason, among others, the rigid doctrine which limits corporations to their place of creation is fast being relaxed, and, by the modern principle of conflict of laws, corporations are allowed to migrate to foreign jurisdictions and engage in business therein. 445 In the words of Fletcher, "it is now thoroughly well settled by the overwhelming weight of authority that by the law of comity 446 among nations, which prevails also as between the states, a corporation created by the laws of one state or country is permitted to do business and make contracts in another state or country, and to sue in its courts, unless there is some express statutory prohibition, or unless the recognition of the corporation by such other state or country is contrary to its public policy, as established by the general

445. Henderson calls the two doctrines the "rigid" and the "liberal" doctrines. (Henderson, cited, supra, Ch. 1).

446. This word "comity" is often misleading and has been termed "slippery". For a criticism of its use, see Goodrich, Conflict of Laws, pp. 7-8. Also Dickenson's article on "Comity", Encyclopaedia of the Social Sciences, Vol. 3, p. 678.
course of its legislation or the adjudications of its courts."

Since, as a general rule, foreign laws have no extraterritorial effect in cases where, by the modern principle of conflict of laws, reference is made to them by the state of the forum they must be proved like any other fact; otherwise, they will be presumed to be the same as the laws obtaining in the forum.

The first problem of conflict of laws which arises when a corporation migrates into a foreign jurisdiction to engage in business is with regard to its status in the latter place. Should a corporation created under the laws of one state or country be always recognized as such in the foreign jurisdiction? By the modern principle of conflict of laws just mentioned the affirmative answer seems to be the general rule. This position is reinforced when we consider the fact that the legislative body of the state or country creating the corporation is supreme; and if it has chosen to call a body of men a corporation it should be recognized as such. On the other hand, it should be borne in mind that no law, ex proprio vigore, has any effect beyond the limits of the sovereignty from which its authority is derived; and where the foreign and

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the local laws conflict the local law of the state or country, where the corporation has entered to engage in business, must prevail. This is one of the recognized exceptions to the general modern principle of conflict of laws. Thus, in the leading case of LIVERPOOL INS. CO. VS. MASSACHUSETTS, an English company created by Parliament was expressly declared not to be corporation. It was taxed by the state of Massachusetts where it qualified and engaged in business under the Massachusetts statute which imposed a tax upon "each fire, marine, and fire and marine insurance company incorporated or associated, etc." The United States Supreme Court upheld the tax on the ground that as it had all the attributes of a corporation it was a corporation.

It often happens that a foreign corporation does not possess certain powers according to the laws of the state of incorporation but is given such powers by the laws of the state or country where it qualifies to do business. In such cases the general rule is that the law of the state of creation should apply on the ground that the powers of every corporation are measured by its charter. Therefore, whatever the corporation cannot do in the state or country

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449. One may well doubt the power of a local court to determine an association, which is specifically stated not to be a corporation by the laws of the place of creation, to be a corporation especially as in the Liverpool Ins. Co. case the problem involved Anglo-American law. The Massachusetts court in this case held the unit to be an "association" and, therefore, taxable. (10 Wall. (U. S.) 566, 19 L. Ed. 1029).
wherein it is incorporated it cannot do in the foreign jurisdiction either. Conversely, it cannot do anything prohibited by the local laws although it is authorized to do so by the laws of its state of creation.

Matters regarding the incorporation and organization of foreign corporations are necessarily governed by the laws of the state of creation. Regarding the period during which they can transact business in the local jurisdiction the local laws are applicable. Although the corporate life is for a longer term than the local jurisdiction permits the corporation to do business, after the local statutory term expires, it must apply locally for an extension of such term.

In cases concerning the internal management of foreign corporations, such as the punishment or removal of their officers, forfeiture of their charters, etc., the laws of their state of creation must be applied. More than that. The settled doctrine is that local courts have no visitorial power over foreign corporations in matters affecting their internal affairs. These are to be decided by the courts of the state or country under

450. Thompson on Corporations, 3rd. Ed. Vol. 8, sec. 6582; Fletcher, Cyclopedia Corporations, Vol. 8, sec. 5730 (1919). See also the cases cited by both.
whose laws they were organized. For instance, matters regarding subscription contracts, calls, transfers of shares, etc., are governed by the laws of the state or country of incorporation. The reasons for this rule, as gleaned from the cases, are (1) the agreement between the foreign corporations and their stockholders was executed in and is governed by the laws of the state or country where they were created; and (2) the courts of the place of creation are the most competent to adjust these differences, and usually possess the most adequate machinery for the "enforcement of all decrees that justice may require."

As to the liabilities of the stockholders of foreign corporations there is a divergence of authorities. One view holds that stockholders cannot be held liable beyond their contract with the corporation. In other words, the law of the place of creation must govern. Thus, the stockholders of a corporation organized under the English Company's Act with limited liability cannot be legally compelled to make good the double liability under the law of California, where the corporation has entered to en---

gage in business. The reason advanced is that they have not agreed to be made so liable. The other view is that corporations entering a foreign state or country to do business therein subject themselves to the local laws and should not be allowed to invoke the laws of their place of creation and thus avoid the liability imposed upon them by the domestic laws. On principle it would seem that this is the more sound view, especially when the rights of innocent third parties are involved. The public dealing with the foreign corporations are not expected to refer to the corporation's charter to find out the extent of the stockholders' liability. They have a right to assume that their liability is the same as that prescribed by the local laws. However, the federal Supreme Court is committed to the doctrine that in order to make the stockholders of a foreign corporation liable according to the local law it must appear that, by the express provisions of its charter, the corporation was organized with a view to doing business in that particular jurisdiction. The theory is that the charter contract of the stockholders, by implication, incorporates into it the law of the foreign state or country where, they have agreed, the corporation is to engage in business. This view emphasizes.

456. Risdon, etc. Works vs. Furness, 1 K. B. Div. (1906) 49.
of the theory based on the contract of the stockholders, and throws the burden on the public to find out what that contract is.

The problem of conflict of laws relative to contracts entered into by the foreign corporations is rather complicated. The general rule is that the validity, construction and interpretation of personal contracts of foreign corporations are governed by the lex loci contractus, unless the parties have agreed to be governed by the lex loci solutionis or by the laws of some other place, provided there is no fraudulent intention to evade the laws of the place where said contract was actually entered into. 459 Hence, where the validity, construction or interpretation of a contract is raised in a foreign jurisdiction the courts of the forum will have to solve the question by reference to the laws of the state or country of incorporation. However, contracts made in the domestic state are governed by the laws of said state, irrespective of any stipulation that they should be governed by the laws of the

state or country of creation. 460

With regard to performance the established rule is that the manner of performance should be referred to the place of performance, provided there is no intention to evade the lex loci contractus. The remedies, however, for non-performance are governed by the laws of the forum where the performance of the contract is sought to be enforced. 461

It is an elementary principle of conflict of laws that contracts void where made are void everywhere and cannot be enforced. 462 Contracts valid where made are usually enforceable in other jurisdictions on the modern principle of conflict of laws, unless they are against morals, against public policy, against the written or unwritten law or prejudicial to the citizens of the state or country of the forum. 463

No rule is better settled in conflict of laws than that contracts affecting real property should be governed, not by the lex loci contractus nor by the lex domicilii of the parties, but by the lex loci rei sitae. This rule is the same whether the contract refers to the conveyance

460. Platt vs. Wilmot, 193 U. S. 602, 48 L. Ed.

461. International Harvester Co., etc. vs. McAdam, foot note 459, supra; Brown vs. Gates, 120 Wis. 397. See Goodrich, Conflict of Laws, Ch. VII.


463. The Kensington, 183 U. S. 263, 48 L. Ed. 190.
or to a mere incumbrance of lands. The reason is fundamental. It is useless for a court to enter a decree affecting real property in another jurisdiction for it has no power to enforce such decree. Ultimately, the control of anything, whether movable or immovable, is at the situs.

Although with regard to the creation, organization, internal management, liabilities of members and dissolution foreign corporations are governed by the laws of the place of incorporation, as has already been observed, in all other matters they are subject to the local laws, to which they have voluntarily submitted themselves, equally with domestic corporations. Thus, they cannot collect a higher rate of interest than that allowed by the domestic laws, although they are authorized to do so by their laws of creation. Neither can they receive property by will unless authorized by the local laws. Domestic laws regarding insolvency, illegal combinations in restraint of trade and monopolies, preferences of creditors in case of insolvency and the like, they must observe, although the laws of their state of creation might be otherwise. In a word, they can have no rights withheld from domestic corporations. The laws of their state of creation do not

464. Nathan vs. Lee, 152 Ind. 232; White vs. White, 7 Gill & J. (Maryland) 150. See Goodrich, Conflict of Laws, Ch. XII. Also 8 Mich. L. Rev. 145.
have any extraterritorial effect, and in case of conflict of laws concerning matters local in character the domestic laws must apply. 464

Regarding torts and crimes committed by or against foreign corporations it is settled that, although said foreign corporations have not complied with the local statute, actions can be maintained by or against them. Since torts are, as a rule, transitory in character, an action can be brought where the defendant may be found and served with summons. Crimes are triable in, and according to the laws of, the place where committed. 465

Questions affecting the dissolution of foreign corporations are to be decided by reference to the laws of creation. If a foreign corporation is dissolved in the state of creation it is dissolved everywhere. 466 The place of incorporation alone has the power to appoint a receiver. 467 As regards the assets inside the state, however, the local courts have the power to appoint a receiver. 468

The procedure to be followed by foreign corporations in withdrawing from the state or country wherein they

464. For a detailed discussion of this subject, see Fletcher, Cyclopedia Corporations, Vol. 8, sec. 5739 (1919); Thompson on Corporations, 3rd. Ed. Vol. 8, sec. 6583.
465. See Fletcher, cited supra, Vol. 8, sec. 5890 (1919) et seq.
466. Id., sec. 5808.
467. Id., sec. 5794.
468. Id., sec. 5794, supra.
have entered to engage in business is usually statutory. The statutes of practically all the states provide that an application to that effect, properly sworn to, should be filed by the president, vice-president or any other authorized officer of the corporation, with the Secretary of State. In some jurisdictions it is provided that the Board of Directors should make the application for a withdrawal. The application is usually accompanied by the certificate of authority and, among other things, it should state that the corporation has no outstanding liability and should there be any action against it the Secretary of State is authorized to receive the summons. The corporation also states in its application for withdrawal its post-office address to which summons could be sent. After the payment of the legal fees the license is cancelled and the corporation ceases to do business inside the state and cannot even maintain an action with the exception of actions already pending at the time the application for withdrawal is filed.
CHAPTER VIII

A CRITICAL SUMMARY
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A CRITICAL SUMMARY

The only justification for this chapter is the desire on the part of the author to recapitulate the conclusions he has drawn from this comparative study, to make some observations on the Philippine Corporation Law and to discuss the conflict-of-law problem suggested in the prefatory statement of this treatise.

The procedure to be followed in the incorporation and organization of corporations, under the Philippine statute, is similar to that of the different states of the American Union. On this subject (the incorporation and organization of corporations) the Philippine statute is just as comprehensive as the corporation statutes in the United States. There are, however, certain matters that are not covered by Philippine statutory provisions. For instance, should a corporation, organized in the Philippines, decide to change its corporate name there is no express provision in the Philippine statute as to the procedure to be observed. While the statute outlines

what should be done in case a corporation wishes to increase or diminish its capital stock there are no specific provisions regarding other possible changes that a corporation may plan to make, e.g. the change in its corporate name or a change in the location of the principal office of the corporation. Should either one or both of these problems arise, however, it is believed they can be taken care of by the blanket provision 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 corporation, 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." 470

In the United States domestic and foreign corporations get their certificates of authority to engage in business in the state from the Secretary of State. There seems to be no special reason why in the Philippines this duty of issuing certificates of authority or licenses to corporations should be placed in the hands of several officials. For example, in case of domestic corporations it is the Director of the Bureau of Commerce and Industry who issues the licenses, and in case of

470. P. C. L. sec. 18.
foreign corporations it is the Chief of the Mercantile Register of said Bureau (of Commerce and Industry) who issues said licenses. To make matters more complicated the statute provides that the Chief of the above-mentioned bureau can only issue licenses upon the order of the Secretary of Finance in case of banks, savings and loan banks, trust corporations, and banking institutions of all kinds, and in case of all other kinds of corporations upon the order of the Secretary of Commerce and Communications. If this duty of issuing licenses to corporations, both domestic and foreign, were placed in the hands of only one government official (as it is in the United States) it would simplify matters and it would be much easier to locate responsibility than it is now.

The practice in the United States of filing the original of the articles of incorporation with the Secretary of State and a duplicate original or a certified copy thereof with the clerk of the county where the corporation has its principal office or place of business is one that commends itself especially to a country like the Philippines. In the Philippines there are to-day forty-eight different organized provinces many of which are separated from one another by seas and are far from the national capital where the offices of the Director of the Bureau of Commerce and Industry, the Chief of the Mercantile Register of said bureau, the Secretary of
Finance and the Secretary of Commerce and Communications are located. Many of the corporations in the Islands are not carrying on their business operations in Manila, neither do they have their principal offices in said capital; they do their business and have their main offices in the provinces. More and more this is coming to be the case. This being true, it stands to reason that there should be an official in the capital of every province (e.g. the Register of Deeds) with whom a duplicate original or a certified copy of the articles of incorporation of every corporation, having its principal office therein, could be filed. As has already been observed, if this were done it would obviate the necessity of making long and expensive trips to Manila, and those dealing with the corporation could simply go to the capital of the province, where the corporation is engaged in business, and inquire as to the financial standing of the corporation or regarding other matters that they may want to find out. If this amendment were introduced into the Philippine Corporation statute it would, indeed, be a wholesome change.

The corporate powers and liabilities of corporations organized under the Philippine statute are similar, in most respects, to those of corporations organized under the American laws. The inherent powers, now called "general powers", are exactly the same. The limitation as to
the amount of real property that they can hold obtains in both countries. There is also a limitation as to the length of time they are allowed to hold real property that they may acquire. These limitations are well taken, for they discourage possible monopolies and too much power in the corporation which might prove a menace to society.

Even a cursory perusal of the statute will reveal the fact that there is no provision empowering a domestic corporation from engaging in business outside of the Philippines. Can a corporation organized under the Philippine statute engage in business in China or Japan, for instance, assuming that the laws of these two countries permit it? This question has not been raised thus far in the Philippine courts. Should it be presented, undoubtedly, the courts will answer the question in the affirmative, basing its conclusion upon the fact that the prevailing practise in the United States is to authorize domestic corporations to engage in business in foreign jurisdictions, and that there being no express statutory prohibition in the Philippines against domestic corporations doing business in foreign jurisdictions there is no reason why such privilege should not be granted them.

The Philippine statute contains a number of prohibitions without providing for the corresponding penalties in
case of their violation. For example, corporations are prohibited from occupying private property without the owner's consent or without proper condemnation proceeding; they are not allowed to issue bills, notes, or other evidences of debt for circulation as money, etc. No penalty is imposed for the violation of these and many other similar provisions. This, however, is not really a deficiency in the statute, for the aggrieved party could maintain a civil action for the vindication of his or its rights. Then, too, it must be remembered that the government can always punish an offending corporation by withdrawing its license or cancelling its franchise or charter in case it deliberately violates any of the statutory provisions or fails to comply with any legal requirement.

Attention has been drawn to the fact that, under the Philippine laws, corporations cannot be prosecuted for crimes, like libel. 471 This was decided by the Supreme Court of the Islands in the case of WEST COAST LIFE INSURANCE CO. VS. HURD. 472 The Court did not say that a corporation cannot be held responsible for criminal libel and fined for it. It based its opinion on the fact that there is no Philippine law by which a corporation, as such, can be brought to court. The

472. 27 Phil. Rep. 401.
Philippine Code of Criminal Procedure (General Orders No. 56) just provides for an order of arrest of the accused in criminal cases. There is no authority for the issuance of any other process. In other words, there was a right without a remedy, an offense without any means of punishing it. Although this is still the law on the subject it is hard to understand why the court allowed itself to be influenced by mere technicalities. Under its inherent powers, expressly conferred upon it by the Code of Civil Procedure, it could have exercised its unquestioned jurisdiction over the corporation and should have looked for other adequate means to make that jurisdiction effective.

There are a few matters which, perhaps, should have been covered by the Philippine Corporation statute. For instance, there is no provision for changing par value stock to no-par value stock or vice versa. If holders of par value stock should wish to surrender their shares to the corporation and get in their stead no-par value shares what is the procedure to be followed? The statute being silent on this point and there being no express prohibition against changing par value to no-par value shares or vice versa, it is doubtful that the incorporators and shareholders can remedy this problem in their articles of incorporation. In like manner, rules governing lost certificates will have to be incorporated in the by-laws inasmuch as the statute does not make any provision con-
The question regarding the transfer of shares has always been a fertile source of trouble and litigation. This matter is important, indeed, in view of the many conflicting interests involved. The Philippine statute provides that the transfer of shares is binding only as between the parties but is not binding on the corporation until after the same is properly recorded on its books. If a share is sold and transferred by a stockholder to a third party who is its owner? If said share is subject to calls who should pay the assessment after the sale thereof? Should dividends be declared on said share, after it has been sold, who is entitled to receive said dividends. After its sale and transfer who should vote said share? As the law now stands the answer to these questions will depend upon many circumstances, the date when the sale and transfer were made, when it was recorded on the books of the corporation, the stipulations between the parties, etc. It is submitted that to eliminate all useless quibbles and unnecessary litigation regarding transfers of shares they (shares) should be given the elements of negotiability similar to those provided in the Uniform Stock Transfer Act. In other words, we should adopt in the Philippines the Uniform Stock Transfer Act now enforced in many jurisdictions in the United States, which makes shares transferrable by
delivery just as are negotiable instruments, provisions in the articles of incorporation or the by-laws to the contrary notwithstanding. The adoption of this Act would surely simplify matters.

Whether the stockholders should retain a large residuum of power over the affairs of the corporation or whether they should surrender the same to their duly-chosen board of directors is a matter of policy which should be decided by the Legislature. The Philippine Corporation Law seems to be rather conservative on this particular question. It gives the stockholders power to decide, not only fundamental matters, like the increase or decrease of the capital of the corporation and the like, but also even smaller details of management. Thus, as has been observed, stockholders can fix the consideration for no-par value stock in certain cases and can decide whether stock or bond dividends should be declared or not, etc. In the United States, on the other hand, due perhaps to the numerous stockholders in many of the large corporations and to the enormous amount of business which the corporations have to handle, the customary practise is to give more powers to the board of directors. In this way business can be expedited. Perhaps the time will come when this same practise will be adopted in the Philippines.

Regarding directors and other officers of the corpo-
ration, the provisions and rules affecting them are essentially the same as those in the United States. If an amendment is to be suggested at all to the Philippine Corporation Law, it is the introduction of a provision expressly authorizing the creation of an Executive Committee of the Board of Directors. For the present there may not be an immediate necessity for this change, but it is believed that as more large business corporations incorporate under the Philippine statute the need for this body will become more and more obvious. Sufficient directors for a quorum are not always available, and even if they are they cannot always be bothered with minor matters regarding business management; hence the need of such a committee to conduct the corporation's affairs in the intervals between meetings.

The rights and remedies of corporate creditors under the Philippine laws are substantially the same as those in the United States. If there is any marked difference it is in the so-called "statutory liability" to which corporate creditors are entitled. It is customary in the United States to provide in corporation statutes statutory liabilities of stockholders or directors other than those connected with the par or issued values of their shares or their duties qua directors. The Philippine Corporation Law contains no such provision. As has already been seen stockholders in the Philippines are liable
to the corporation and to corporate creditors only for the par or issued values of the shares standing on the books of the corporation in their names - and no more.

It is to be observed that the Philippine Corporation statute contains no provisions regarding merger and consolidation of corporations. Provisions concerning this matter only affect railroad corporations. 473 This is not true in the United States. Most of the American corporation statutes specifically provide for the reorganization, merger and consolidation of corporations and spell out the different duties and obligations both of the old and the new corporations. It would be wise to introduce similar provisions into the Philippine Corporation Law, not only for the proper orientation of the stockholders of all the corporations concerned, but especially for the protection of corporate creditors who, many times, are frozen out in the process of reorganization.

The statutory provisions and legal principles governing foreign corporations and conflict of laws are also similar both in the Philippines and in the United States. There are, however, certain provisions in the American statutes which are not found in the Philippine statute. For instance, the Philippine statute contains no provisions concerning books and accounts of foreign corpora-

tions. The Philippine government, it is true, exercises strict visitorial powers over foreign corporations, but said foreign corporations are not expressly required to carry books and accounts in any form.

Another omission in the Philippine statute, which might be considered a deficiency, is the provision governing withdrawals of foreign corporations. In the United States it is customary to outline in the corporation statutes the procedure to be followed by foreign corporations should they desire to withdraw from the state wherein they have entered to engage in business. In practice, however, the method for withdrawing of foreign corporations is essentially the same in the Philippines as it is in America. They have to notify the proper authority of their desire to withdraw, settle all their obligations and surrender the licenses which had been issued to them.

The problem as to what law should govern foreign corporations in case of conflict between the Philippine laws and those of the state or country of their creation is made rather simple by express statutory provisions. On strict principles of conflict of laws, foreign corporations should be governed by the local laws, for, when they enter the jurisdiction to engage in business therein they voluntarily subject themselves to the protection of its government and, reciprocally, it is their duty to obey its laws. However, some of the laws of the state
or country of their creation are given effect in the local jurisdiction, and although they are bound by general local laws just like local corporations, in matters regarding their creation, formation, organization, dissolution, capacity to contract and the like, they are governed by the laws of the state or country of their incorporation. 474

A still nicer conflict of laws question is: What law or laws should be applied in matters which are not covered by the Philippine Corporation Law? The answer to this question is two-fold. In all cases covered by the Spanish substantive laws actually in force in the Philippines there can be no question but that said laws are the ones that should be applied. A few illustrations will serve to strengthen this conclusion. The Philippine statute provides that "five or more persons, not exceeding fifteen . . . may form a private corporation . . ." 475 If one of the incorporators happens to be a minor, there being no provisions in the corporation law regarding the validity and binding force of his contract, perforce we have to fall back on the Spanish Civil Code to determine his rights and obligations arising from said contract. The Civil Code provides that contracts entered into by

474. See Chapter VII, supra, for a more detailed discussion of this subject.
minors are not absolutely void but are only voidable. They may be repudiated by him when he attains the age of majority. Hence, his incorporation contract is valid and subsisting unless he disaffirms it within a reasonable time after reaching his majority.476

Perhaps, a better illustration is the right of a married woman to be a stockholder and to dispose of her shares of stock. The corporation law is silent as to the right of a married woman to be a stockholder. Necessarily, therefore, in order to determine her capacity to contract we have to resort to the Spanish Civil Code which is the substantive law governing the case.477 In like manner, should a married woman dispose of her shares of stock, even if said shares are recorded on the books of the corporation in her own name and are her own paraphernal property, she should get the consent of her husband in order to be able to make a valid transfer of said shares.478

A rather queer development in Philippine jurisprudence should here be noted. It would naturally and logically be assumed that in the interpretation and construction of

476. Civil Code Art. 1263; Uy Soo Lim vs. Tan Un Chuan et al., 38 Phil. Rep. 552; Fisher, The Philippine Law of Stock Corporations, par. 19, p. 15. A minor, however, is liable, according to existing laws, for "necessaries"—things that he has made use of and which have redounded to his benefit.

477. Civil Code Art. 1263, par. 3; also Arts. 1381 et seq., and Art. 1458.

Spanish statutes the courts should be guided by Spanish decisions and precedents. This, however, is not always the case. More and more it is coming to be the practise of the Philippine courts to rely on Anglo-American decisions and precedents in interpreting and construing Spanish substantive laws. Several reasons may be adduced for this anomalous situation. In the first place, there are only a few Spanish commentators and text-writers on Spanish legislation, and the few books there are are not always available. In the second place, the doctrine of "stare decisis" is unknown in Spanish legal practise. For instance, the decisions of the old Audiencia de Manila \(^{479}\) during the Spanish regime had only a persuasive effect on the different Courts of First Instance. Hence, although the Spaniards have controlled the islands for over three centuries they have not developed what we might call a Spanish case law. In the third place, most of the legal works found in libraries in the Philippines are either English or American, and, consequently, they are the ones that are most cited in courts and in judicial decisions. It is thus seen that the Philippine case law that is being developed in the Islands is materially influenced by Anglo-American decisions and precedents.

That the tendency in the Philippines is to lean to-

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\(^{479}\). The highest appellate court in the Islands during Spanish administration.
ward Anglo-American theories and doctrines is amply supported by various decisions. In the case of IN RE SHOOP, the Supreme Court of the Islands, in a most illuminating and exhaustive way, speaking through Justice Malcolm said, inter alia: "In interpreting and applying the bulk of the written laws of this jurisdiction, and in rendering its decisions in cases not covered by the letter of the written law, this court relies upon the theories and precedents of Anglo-American cases, subject to the limited exceptions of those instances where the remnants of the Spanish written law present well-defined civil law theories and of the few cases where such precedents are inconsistent with local customs and institutions."

Although the body of the common law as known in Anglo-American jurisprudence is not in force in the Philippines, nevertheless, it has influenced the courts and in their decisions they have repeatedly applied common law theories and principles. The Attorney General of the Islands has said: "... It is, therefore, reasonable to assume that the courts of the Philippine Islands in cases not controlled by statute will lay down principles in keeping with the common law, unless the habits, customs, and thoughts of the people of these Islands are deemed to be so different from the habits, customs and thoughts of the

people of England and the United States that said principles may not be applied here. 481

Spanish legislation, which had been extended to the Islands by royal decrees, is not the only source of the substantive law of the Philippines. During the thirty-three years of American occupation in the Philippines quite a number of statutes have been passed. Therefore, where the lack of provisions in the Philippine corporation statute cannot be supplemented by Spanish laws, recourse may be had to a pertinent statute passed during the American regime. For instance, Act 667 482 482 prescribes the procedure to be followed in applying to municipalities for a franchise for street electric railway, electric light and power, telephone companies, etc. Act 2772 as amended by Act 2789 483 provides for the merger and consolidation of railway corporations. Examples might be multiplied but these two serve to illustrate the point.

In the absence of Spanish substantive law and Philippine statutes passed during the American occupation it seems clear that the Philippine courts may draw from the great body of the common law. The local Supreme Court

in the rather significant case of ALZUA ET AL VS. JOHN-SON 484 (where Justice Johnson was sued by the plaintiffs for damages for his decision which was alleged to have been made in bad faith to the prejudice and damage of said plaintiffs) held: "while it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, 'nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing laws' (U.S. vs. Cuna, 12 Phil. Rep. 241); nevertheless many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of those laws can only be constructed and applied by the aid of the common law from which they are derived, and that to breathe the breath of life into many of the institutions introduced into these Islands under American sovereignty recourse must be had to the rules, principles and doctrines of the common law under whose protecting

484. 21 Phil. Rep. 308.
aegis the prototypes of these institutions had their birth. 485

It now remains to consider to what source the Philippine courts should resort in construing and interpreting the provisions of the Philippine Corporation Law (Act 1459). There can be no possible doubt as to the answer to this query. If the local courts, as has already been seen, are forced to rely on Anglo-American theories, principles and precedents, even in the application, construction and interpretation of the Spanish substantive law itself (due to the deficiency in Spanish precedents), it would be preposterous to depend on the scanty Spanish decisions and authorities in interpreting and construing the Philippine Corporation Law which is practically of American origin. Necessarily, the local courts have to look for information and guidance to American decisions and precedents. For instance, Ex-Justice Fisher of the Philippine Supreme Court, in explaining the meaning of the word "bond" as it is used in the Philippine Corporation Law, said: "The word 'bond' as used by American and English lawyers, has no exact counterpart in the substantive civil law of this country; but, as our Corporation Law is modeled upon American statutory precedents.

485. Compare with Panama Canal Railroad Co. vs. Bosse (249 U. S. Rep. 41), an interesting case which arose in the Panama Canal Zone involving the rule of respondeat superior, and in which the Federal Supreme Court discussed the application of the Civil Code and the common law in the Canal Zone.
its meaning, in case of doubt, is to be sought in the decisions of the American courts."

The Philippine Corporation Law (Act 1489), being patterned after American precedents, is practically the same as the American corporation statutes. It has been repeatedly amended to suit local conditions peculiar to the islands. As it stands today it is fairly complete and exhaustive. The Philippines, however, being still young, from the business standpoint (comparatively speaking), the fact that more business corporations, both domestic and foreign, are qualifying in the islands, and the further fact that the islands are under American rule would indicate that the corporation law is bound to undergo added changes and modifications. Without claiming any prophetic ability, it is safe to predict that, whatever may be the future political status of the Philippines, in the unfolding and development of her own laws in matters of the conflict of laws and in cases where no pertinent provisions in her Spanish substantive law can be applied to a particular legal situation, she will continue, as she has in the past, to draw from the great body of the common law which constitutes the foundation of Anglo-American jurisprudence.

487. See Appendix "A" p. 229. To the same effect is the opinion of Santos in his article, "Suggested Reforms on the Philippine Corporation Law", 8 Phil. L. Jr. p. 145.
APPENDIX "A"

THE PHILIPPINE CORPORATION LAW

THE CORPORATION LAW
Act No. 1459 as Amended

Chapter I
General Provisions as to Corporations

SHORT TITLE OF ACT, CORPORATION DEFINED AND
HOW ORGANIZED

Section 1. The short title of this Act shall be "The
Corporation Law."

Sec. 2. A corporation is an artificial being created
by operation of law, having the right of succession and
the powers, attributes, and properties expressly authoriz-
ed by law or incident to its existence.

Sec. 3. Corporations may be public or private. Pub-
lic corporations are those formed or organized for the
government of a portion of the state. Private corporations
are those formed for some private purpose, benefit, aim,
or end, as distinguished from public corporations and non-
stock corporations. Corporations which have a capital
stock divided into shares and are authorized to distribute
to the holders of such shares dividends or allotments of
the surplus profits on the basis of the shares held are
stock corporations. All other private corporations are
nonstock corporations.

Sec. 4. Corporators of a corporation are those who
compose the corporation, whether stockholders or members,
or both. Incorporators are those members or stockholders,
or both, mentioned in the articles of incorporation as
originally forming and composing the corporation.

The owners of shares in a corporation which has cap-
ital stock are called stockholders or shareholders. Cor-
porators of a corporation which has no capital stock and
corporators of a corporation who do not own capital stock
are members. (As amended by Act 3518, sec. 1).

Sec. 5. The shares of any corporation formed under
this Act may be divided into classes with such rights,
voting powers, preferences, and restrictions as may be
provided for in the Articles of Incorporation. Any or all of the shares may have a par value or have no par value, as provided in the Articles of Incorporation. Provided, however, that banks, trust companies, insurance companies, and building and loan associations shall not be permitted to issue no-par value shares of stock. Subject to the laws creating and defining the duties of the Public Service Commission, shares of capital stock without par value may be issued from time to time, (a) for such consideration as may be prescribed in the Articles of Incorporation; or (b) in the absence of fraud in the transactions, for such consideration as, from time to time, may be fixed by the board of directors pursuant to authority conferred in the Articles of Incorporation; or (c) for such consideration as shall be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the by-laws, provided the call for such meeting shall contain notice of such purpose. Any or all shares so issued shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided, however, that shares without par value may not be issued for a consideration less than the value of five pesos per share. Except as otherwise provided by the Articles of Incorporation, and stated in the certificate of stock, each share shall be in all respects equal to every other share.

Preferred shares of stock issued by any corporation the holders of which are entitled to any preference in the distribution of the assets of the corporation in case of liquidation may be issued only with a stated par value and, in all certificates for such shares of stock, the amount which the holder of each of such preferred shares shall be entitled to receive from the assets of the corporation in preference to holders of other shares shall be stated.

The entire consideration received by the corporation for its no-par value shares shall be treated as capital, and shall not be available for distribution as dividends.

(As amended by Act 3518, sec. 2)

Sec. 6. Five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippine Islands, may form a private corporation for any lawful purpose or purposes by filing with the Bureau of Commerce and Industry articles of incorporation duly executed and acknowledged before a notary public, setting forth:

(As amended by Act 3518, sec. 3)

(1) The name of the corporation;
(2) The purpose or purposes for which the corporation is formed: Provided, however, that no corporation hereafter formed for the purpose of engaging in the business
of transportation, by land or by water, or of maintaining a telephone, telegraph, or wireless communication system, shall, except as otherwise provided by law, exercise any powers other than those necessary or incidental to the accomplishment of its said purpose. The restriction here-in provided shall also apply to foreign corporations hereafter licensed to do business in the Philippine Islands. (As amended by Act 2518, sec. 3).

(3) The place where the principal office of the corporation is to be established or located, which place must be within the Philippine Islands;

(4) The term for which it is to exist, not exceeding fifty years except as hereinafter provided;

(5) The names and residences of the incorporators;

(6) Unless otherwise provided by this Act, the number of directors of the corporation, not less than five nor more than eleven. The directors named in the articles of incorporation shall be the directors until their successors are elected and qualified as provided by the by-laws; Provided, however, that at any time during the existence of the corporation the number of directors may be increased to any number not exceeding fifteen or diminished to any number not less than five in the case of a nonstock corporation by the formal assent of a majority of the members at a regular or special meeting of the membership and in the case of a stock corporation the number of directors may be increased to any number not exceeding eleven or diminished to any number not less than five by the formal assent of the stockholders of the corporation at a regular or special meeting of stockholders representing or holding a majority of the stock: And provided, further, that certificate setting out such increase or diminution in the numbers of directors of any corporation shall be duly signed and sworn to by the president, managing agent, secretary or clerk, or treasurer of such corporation and forthwith, filed in the Bureau of Commerce and Industry. (As modified by Act 2728, sec. 5-c).

(7) If it be a stock corporation, the amount of its capital stock, in lawful money of the Philippine Islands, and the number of shares into which it is divided, and if such stock be in whole or in part without par value then such fact shall be stated: Provided, however, that as to stock without par value the articles of incorporation need only state the number of shares into which said capital stock is divided. (As Amended by Act 3516, sec. 3).

(8) If it be a stock corporation, the amount of capital stock or number of shares of no par stock actually subscribed, the names and residences of the persons subscribing, the amount or number or shares of no par stock subscribed by each, and the sum paid by each on his subscription.

In addition to the foregoing facts, articles of corporation of railroad, tramway, wagon road, and telegraph and telephone companies must state:
(Not Act 667, and first proviso, Sec. 12 thereof)
(1) The starting point and terminus of the railroad, tramway, wagon road, or telegraph or telephone line, its estimated length, the provinces through which it will pass, and all of its intermediate branches and connections;

(2) In the case of railroads or tramways, the gauge of the road, the motive power to be used and the means of applying it, and the materials to be used in the construction;

(3) In the case of wagon roads, the width of the road, the method of construction, and the construction material to be used;

(4) In the case of telegraph or telephone lines, the construction material, appliances, method of construction and system to be used.

Sec. 7. Articles of incorporation of stock corporations, unless otherwise provided, shall be sufficient if they comply substantially with the following form:

(Refer to Act itself)

Sec. 8. The Director of the Bureau of Commerce and Industry shall be entitled to collect and receive for the filing of articles of incorporation, filed in accordance with the provisions of this Act fees according to the amount of the capital stock of each such corporation as follows:

Less than fifty thousand pesos, twenty-five pesos.
Fifty thousand pesos but less than one hundred thousand pesos, fifty pesos.
One hundred thousand pesos but less than two hundred thousand pesos, seventy-five pesos.
Two hundred thousand pesos but less than three hundred thousand pesos, one hundred pesos.
Three hundred thousand pesos but less than four hundred thousand pesos, one hundred and twenty-five pesos.
Four hundred thousand pesos but less than five hundred thousand pesos, one hundred and fifty pesos.
Five hundred thousand pesos but less than one million pesos, two hundred pesos.
Two million pesos or more, three hundred pesos.

Provided, however, That if the shares of stock of the corporation are without par value, then for the purposes of fixing the fees prescribed in this section such shares shall be taken to be of the par value of one hundred pesos each: And provided, further, That the Director of the Bureau of Commerce and Industry shall collect and receive a fee of twenty-five pesos from every nonstock corporation filing articles of incorporation under the provisions of this Act: And provided, further, That all collections of fees heretofore made by said Director for the said purpose from nonstock corporations are hereby ratified and approved. (As amended by Act 2135, by Act 2452, sec. 1, modified
subsequently by Act 2728, sec. 3-c, and as further amended by Act 3518, sec. 5).

Sec. 9. The Director of the Bureau of Commerce and Industry shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of a treasurer elected by the subscribers showing that at least twenty per centum of the entire number of authorized shares of capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been paid to him in actual cash for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription: Provided, That it shall be the duty of the Director of the Bureau of Commerce and Industry, immediately after the filing of the articles of incorporation of a corporation, to publish, at the expense of said corporation, the assets and liabilities of the same once in a newspaper of general circulation in the locality where the corporation is domiciled, if any, or in default thereof in a newspaper of general circulation in the City of Manila. (As amended by Act 1834, sec. 2, Act 2792, sec. 1, and as further amended by Act 3518, sec. 6).

Sec. 9 1/2. The Director of the Bureau of Commerce and Industry shall not hereafter file the articles of incorporation of any bank, banking institution, or building and loan association, unless accompanied by a certificate of authority issued by the Bank Commissioner, under his official seal, certifying that such concern is authorized under the laws of the Philippine Islands to engage in the business for which it is proposed to be incorporated. And it shall be the duty of the Bank Commissioner to issue such certificate within thirty days from the receipt of the application therefor, unless he has evidence to show that the establishment of the proposed institution will be prejudicial to the interests of the public, in which case he shall state in writing his reasons for refusing to issue the certificate: Provided, however, That in case of the refusal of the Bank Commissioner to issue such certificate, if the parties applying therefor shall deem themselves aggrieved by reason of the refusal of the Bank Commissioner as aforesaid, they may appeal within thirty days after such refusal, to the Secretary of Finance, as provided by section one hundred ninety and six-sevenths hereof. (As inserted by Act 3610, sec. 1).

Sec. 10. A copy of any articles of incorporation filed with the said Bureau of Commerce and Industry in pursuance of this Act and duly certified by the Director of the said Bureau shall be received in the courts and
all other places as prima facie evidence of the facts therein stated. (As modified by Act 2728, Sec. 3-c).

Sec. 11. The Director of the Bureau of Commerce and Industry, on the filing of articles of incorporation provided by this Act to be filed, shall issue to the incorporators a certificate, under the seal of his office, setting forth that such articles of incorporation have been duly filed in his office in accordance with law, and thereupon the persons signing the articles of incorporation and their associates and successors shall constitute a body politic and corporate, under the name stated in the certificate, for the term specified in the articles of incorporation, not exceeding fifty years, unless sooner legally dissolved or unless otherwise provided in this Act. (As modified by Act 2728, Sec. 3-c).

Sec. 12. No corporation shall occupy or use any private property without the consent of the owners or prior condemnation proceedings and paying or tendering just compensation therefor, and no corporation shall occupy or use any public lands, places, roads, highways, streets, avenues, lanes, alleys, sidewalks, bridges, or any other public property whatsoever without first securing a franchise for such use or occupancy from the Government of the Philippine Islands: Provided, however, that street railways, tramways, electric light, power, or telephone corporations may, in the manner prescribed in Act Numbered Six hundred and sixty-seven, secure a franchise to occupy or use any public lands, places, roads, highways, streets, avenues, lanes, alleys, sidewalks, bridges, or any other public property necessary for the transaction of its business: And provided further, That street-railway, tramway, telephone, telegraph, electric power or light corporations for the purpose of doing business in the city of Manila, and railroad corporations for the purpose of doing business in the Philippine Islands, may form and organize as corporations under this Act. (Note Act 667).

GENERAL POWERS OF CORPORATIONS

Sec. 13. Every corporation has the power:
(1) Of succession by its corporate name for the period of time limited in the articles of incorporation and not exceeding the time prescribed by law;
(2) To sue and be sued in any court;
(3) To transact the business for which it was lawfully organized, and to exercise such powers and to perform such acts as may be reasonably necessary to accomplish the purpose for which the corporation was formed;
(4) To make and use a common seal, and to alter the
same at pleasure;

(5) To purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property as the purposes for which the corporation was formed may permit, and the transaction of the lawful business of the corporation may reasonably and necessarily require unless otherwise prescribed in this Act: Provided, That no corporation shall be authorized to conduct the business of buying and selling public lands or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created, and every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed one thousand and twenty-four hectares of land; and it shall be unlawful for any corporation organized for the purpose of engaging in agriculture or in mining to be in anywise interested in any other corporation organized for the purpose of engaging in agriculture or in mining; 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; it shall be unlawful for any corporation to own in excess of fifteen 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; any stockholder of more than one corporation organized for the purpose of engaging in agriculture or in mining may hold his stock in such corporations 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 provisions 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 bringing about or attempting to bring about a combination to exercise control of such corporation, or to directly or indirectly violate any of the provisions of the Public Land Law. Corporations, however, may loan funds upon real estate security and purchase real estate when necessary for the collection of loans but they shall dispose of real estate so obtained within five years after receiving the title. (As amended by Act 3618, Sec. 7).

(6) To appoint and dismiss such subordinate officers or agents as the business or welfare of the corporation may demand, and to allow such subordinate officers and agents suitable compensation;

(7) To make by-laws, not inconsistent with any existing law, for the fixing or changing of the number
of its officers and directors within the limits prescribed by law, and for the transferring of its stock, the administration of its corporate affairs, the management of its business, and the care, control, and disposition of its property:

(8) To admit members to the corporation; if it be a stock corporation, to issue stock to stockholders and to sell stock or shares of stockholders for the payment of any indebtedness of the stockholders to the corporation;

(9) To enter into any obligation or contract essential to the proper administration of its corporate affairs or necessary for the proper transaction of the business or accomplishment of the purpose for which the corporation was organized.

(10) Except as in this section otherwise provided, and in order to accomplish its purpose or purposes as stated in the articles of incorporation, to acquire, hold, mortgage, pledge or dispose of shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation. (As inserted by Act 3616, Sec. 8).

Sec. 14. No corporation created under this Act shall possess or exercise any corporate powers except those conferred by this Act and except such as are necessary to the exercise of the powers so conferred.

Sec. 15. No corporation doing business in the Philippine Islands or receiving any grant, franchise, or concession from the Government of the Philippine Islands shall use, employ, or contract for the labor of persons claimed or alleged to be held in involuntary servitude, and any corporation violating the provisions of this section shall forfeit all charters, grants, franchises, and concessions for doing business in said Islands, and in addition shall be deemed guilty of an offense and shall be punished by a fine of twenty thousand pesos.

Sec. 16. No corporation organized under this Act shall create or issue bills, notes, or other evidence of debt for circulation as money, and no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for: (1) property actually received by it at a fair valuation equal to the par or issued value of the stock or bonds so issued; and in case of disagreement as to their value, the same shall be presumed to be the assessed value or the value appearing in invoices or other commercial documents, as the case may be; and the burden of proof that the real present value of the property is greater than the assessed value or value appearing in invoices or other commercial documents, as the case may be, shall be upon
the corporation, or for (2) profits earned by it, but not
distributed among its stockholders or members: Provided, however, That no stock or bond dividend shall be issued
without the approval of stockholders representing not less
than two-thirds of all stock then outstanding and enti-
tled to vote at a general meeting of the corporation or
at a special meeting duly called for the purpose.

Any officer of any corporation consenting to the is-
suance 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 dis-
approval in writing, shall be severally and jointly lia-
table to the corporation and its creditors for the differ-
ence between 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.

No corporation shall make or declare any dividend
except from the surplus profits 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: Pro-
vided, That banking, savings and loan, and trust corpo-
rations may receive deposits and issue certificates of
deposit, checks, drafts, and bills of exchange and the
like in the transaction of the ordinary business of
banking, savings and loan, and trust corporations. (As
amended by Act 2792, Sec. 2, and as further amended by
Act 3518, Sec. 9).

Sec. 17. No corporation shall increase or diminish
its capital stock, or incur, create, or increase any
bonded indebtedness unless, at a stockholders' meeting
regularly called for the purpose, two-thirds of the en-
tire corporate capital stock subscribed shall favor the
increase or diminution of the capital stock, or a ma-

majority of the subscribed capital stock shall favor the
increasing, creating, or increasing of any bonded indebt-
edness. Written or printed notice of the proposed in-
crease or diminution of the capital stock or of the in-
curring, creating, or increasing of any bonded indebt-
edness and of the time and place of the stockholders' meet-
ing at which the proposed increase or diminution of
the capital stock or the incurring, creating, or in-
creasing of any bonded indebtedness is to be addressed
to each stockholder at his place of residence as shown
by the books of the corporation and registered and de-
posited so addressed in the post-office with postage
prepaid.

A certificate in duplicate must be signed by a ma-

majority of the directors of the corporation and counter-
signed by the chairman and secretary of the stockhold-
ers' meeting, setting forth:

(a) That the requirements of this section have been complied with.

(b) The amount of the increase or diminution of the capital stock.

(c) If an increase of the capital stock, the amount of capital stock or number of shares of no par stock thereof actually subscribed, the names and residences of the persons subscribing, the amount of capital stock or number of shares of no par stock, subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital stock or number of shares of no par stock allotted to each stockholder if such increase is for the purpose of making effective a stock dividend theretofore authorized. (As amended by Act 3618, Sec. 10).

(d) Any bonded indebtedness to be created, incurred, or increased.

(e) The actual indebtedness of the corporation on the day of the meeting.

(f) The amount of stock represented at the meeting.

(g) The vote authorizing the increasing or diminishing of the capital stock, or the incurring, creating, or increasing of any bonded indebtedness.

One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed in the office of the Director of the Bureau of Commerce and Industry and attached by him to the original articles of incorporation. From and after the filing of the duplicate certificate with the Director of the said Bureau the capital stock shall stand increased or diminished and the incurring, creating, or increasing of any bonded indebtedness authorized as the certificate may declare.

The Director of the said Bureau of Commerce and Industry shall be entitled to collect and receive for filing such duplicate certificate or increase of capital stock fees according to the amount of the increase of capital stock at the same rate as is collected for the filing of the original articles of incorporation, as provided in above section eight. Provided, however, That if the said duplicate certificate increases the amount of capital stock, the Director of the said Bureau of Commerce and Industry shall not file such certificate unless accompanied by the sworn statement of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty per centum of such increased capital stock has been subscribed and that at least twenty-five per centum of the amount subscribed has been either paid in actual cash to the corporation or that there has been transferred to the corporation property, the fair valuation of which is equal to twenty-five per centum of
subscription. (As amended by Act 1744, Sec. 1, Act 1885, Sec. 1, Act 2135, Sec. 2, and as subsequently modified by Act 2728, Sec. 2-c).

Sec. 18. 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 nonstock corporation, 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: Provided, however, 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 for his shares. If, after such a demand by a stockholder, the corporation and the stockholder cannot agree upon the value of his share or shares at the time such corporate action was authorized, such value shall be ascertained by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the corporation within thirty days after it is made, it may be recovered in an action by the stockholder against the corporation. Upon payment by the corporation to the stockholder of the agreed or awarded price of his share or shares, the stockholder shall forthwith transfer and assign the share or shares held by him as directed by the corporation: Provided, however, That their own shares of stock purchased or otherwise acquired by banks, trust companies, and insurance companies should be disposed of within six months after acquiring title thereto.

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.

A stockholder shall not be entitled to payment for his shares under the provisions of this section 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.

A copy of the articles of incorporation as amended, duly certified to be correct by the president and the
secretary of the corporation and a majority of the board of Directors or trustees, shall be filed in the office of the Director of the Bureau of Commerce and Industry who shall attach the same to the original articles of incorporation, on file in his office. From the time of filing such copy of the amended articles of incorporation, the corporation shall have the same powers and it and the members or stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation: Provided, however, That the life of said corporation shall not be extended by said amendment beyond the time fixed in the original articles; Provided, Further, That the original articles and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation: And provided, further, That nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock or so as to affect any rights or actions which accrued to others between the time of filing the original articles of incorporation and the filing of the amended articles.

The Director of the Bureau of Commerce and Industry shall be entitled to collect and receive the sum of ten pesos for filing said copy of the amended articles of incorporation. (Amended by Act 2012, Sec. 1, subsequently modified by Act 2728, Sec. 3-c, and as further modified by Act 3618, Sec. 11).

The Director of the Bureau of Commerce and Industry shall not hereafter file any amendment to the articles of incorporation of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Bank Commissioner to the effect that such amendment is in accordance with law. (As further added by Act 3610, Sec. 2).

Sec. 19. If a 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, its corporate powers cease. The due incorporation of any corporation claiming in good faith to be a corporation under this Act and its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which the corporation may be a party, but such inquiry may be had at the suit of the Insular Government or information of the Attorney-General.

BY-LAWS

Sec. 20. Every corporation formed under this Act, must within one month after the filing of articles of in-
corporation with the Bureau of Commerce and Industry, adopt a code of by-laws for its government not inconsistent with this Act or any Act of Congress having force and effect in the Philippine Islands. For the adoption of any by-law or by-laws by the corporation the affirmative vote of the stockholders representing a majority or all of the subscribed capital stock, whether paid or unpaid, or of a majority of the members if there be no capital stock is necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours, and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary of the corporation, shall be filed with the Director of the said Bureau of Commerce and Industry, who shall attach the same to the original articles of incorporation and collect and receive a fee of two pesos for the filing thereof.

The Director of the Bureau of Commerce and Industry shall not hereafter file the by-laws of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Bank Commissioner to the effect that such by-laws are in accordance with law. (As modified by Act 2728, Sec. 3-c, and as further modified by Act 3610, Sec. 2).

Sec. 21. A corporation may, unless otherwise prescribed by this Act, provide in its by-laws for the time, place, and manner of calling and conducting regular or special meetings of its directors, and the time and manner of calling and conducting regular or special meetings of stockholders or members; the number of stockholders or members necessary to constitute a quorum for the transaction of business at meetings of stockholders or members; the conditions upon which members of nonstock corporations shall be entitled to vote; the mode of securing proxies of stockholders or members and voting them; the qualifications, duties, and compensation of directors, officers, and employees; the time for holding the annual election of directors and the mode and manner of giving notice thereof; the manner of election and the term of office of all officers other than directors and those elected by the directors or trustees; the penalties for violation of by-laws, not exceeding in any case the sum of two hundred pesos; in the case of stock corporations, the manner of issuing stock certificates or shares of stock; and such other matters not otherwise provided for by this Act as may be necessary for the proper or convenient transaction of the business of the corporation.

Sec. 22. The owners of the majority of the subscribed capital stock, or a majority of the members if
there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any by-law or adopt new by-laws. The owners of two-thirds of the subscribed capital stock, or two-thirds of the members if there be no capital stock, may delegate to the board of directors the power to amend or repeal any by-law or to adopt new by-laws: Provided, however, That any power delegated to the board of directors to amend or repeal any by-law or to adopt new by-laws shall be considered as revoked whenever a majority of the stockholders or of the members of the corporation shall so vote at a regular or special meeting: And provided, further, That the Director of the Bureau of Commerce and Industry shall not hereafter file any amendment to the by-laws of any bank, banking institution, or building and loan association, unless accompanied by a certificate of the Bank Commissioner to the effect that such amendments are in accordance with law. (As modified by Act 3610, Sec. 4).

Sec. 23. Whenever any amendment or new by-law is adopted such amendment or by-law shall be attached to the original by-laws in the office of the corporation and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary or clerk of the corporation, shall be filed with the Director of the Bureau of Commerce and Industry, who shall attach the same to the original articles of incorporation and original by-laws on file in his office and collect and receive the sum of two pesos for the service. (As modified by Act 2728, Sec. 3-c).

MEETINGS

Sec. 24. The meetings of the members or stockholders of a corporation shall be held at the place where the principal office of the corporation is established or located and where practicable in the office of the corporation. Directors' meetings may be held at the place fixed in the by-laws.

Sec. 25. The proceedings had and the business transacted at any meeting of the stockholders or members of a corporation, if within the powers of the corporation, shall be valid even if the meeting be improperly held or called: Provided, That all the stockholders of members of the corporation are present or represented at the meeting. At any such meeting the stockholders or members of the corporation may elect directors and fill vacancies then existing, and may transact such other business of the corporation as might lawfully be transacted at a regular meeting thereof. (As amended by Act 3516, Sec. 12)
Sec. 26. Whenever, from any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, any judge of a Court of First Instance, on the showing of good cause therefor, may issue an order to any stockholder or member of a corporation directing him to call a meeting of the corporation by giving proper notice required by this Act or the by-laws; and if there be no person legally authorized to preside at such meeting, the judge of the Court of First Instance may direct the person calling the meeting to preside at the same until a majority of the members or stockholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purposes of the meeting.

Sec. 27. Executors, administrators, guardians, or other persons in a position of trust and legally authorized may vote as stockholders upon stock held in their representative capacity.

DIRECTORS OF CORPORATIONS - THEIR POWERS, DUTIES, ELECTION AND ORGANIZATION

Sec. 28. Unless otherwise provided in this Act, the corporate powers of all corporations formed under this Act shall be exercised, all business 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.

Sec. 28 1/2. A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, stocks, bonds, or other instruments for the payment of money or other property or considerations, as its board of directors deem expedient, when and as authorized by the affirmative vote of shareholders holding shares in the corporation entitling them to exercise at least two-thirds of the voting power on such a proposal at shareholders' meeting called for that purpose. Notice of such meeting shall be given to all of the shareholders of record of the corporation whether or not they shall be entitled to vote thereat: Provided, however, that any stockholder who did not vote to authorize the action of the board of directors may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares. If, after such a demand by a stockholder, the
corporation and the stockholders cannot agree upon the
value of his share or shares at the time such corporate
action was authorized, such value shall be ascertained
by three disinterested persons, one of whom shall be
named by the stockholder, another by the corporation and
the third by the two thus chosen. The finding of the ap-
praisers shall be final and if their award is not paid
by the corporation within thirty days after it is made, it
may be recovered in an action by the stockholder against
the corporation. Upon payment by the corporation to the
stockholder of the agreed or awarded price of his share
or shares, the stockholder shall forthwith transfer and as-
sign the share or shares held by him as directed by the
Corporation.

Unless and until such sale, lease, or exchange shall
be abandoned the stockholder making such demand in writ-
ing ceases to be a stockholder and shall have no rights
with respect to such shares except the right to receive
payment therefor as aforesaid.

A stockholder shall not be entitled to payment for
his shares under the provisions of this section unless
the value of the corporate assets which would remain af-
fter such payment would be at least equal to the aggregate
amount of its debts and liabilities exclusive of capital
stock.

Nothing in this section is intended to restrict the
power of any corporation, without the authorization there-
of by the shareholders, to sell, lease, exchange, or
otherwise dispose of, any of its property if thereby the
corporate business be not substantially limited, or if
the proceeds of such property be appropriated to the con-
duct or development of its remaining business. (As insert-
ed by Act 2618, Sec. 13).

Sec. 29. At the meeting for the adoption of the
original by-laws, or at such subsequent meeting as may be
then determined, directors shall be elected to hold their
offices for one year and until their successors are elect-
ed and qualified. Thereafter the directors of the cor-
poration shall be elected annually by the stockholders if
it be a stock corporation or by the members if it be a
nonstock corporation, and if no provision is made in the
by-laws for the time of election the same shall be held
on the first Tuesday after the first Monday in January.
Unless otherwise provided in the by-laws, two weeks' no-
tice of the election of directors must be given by publica-
tion in some newspaper of general circulation devoted
to the publication of general news at the place where the
principal office of the corporation is established or
located, and by written notice deposited in the post-of-
cice, postage prepaid, addressed to each stockholder, or,
if there be no stockholders, then to each member, at his
last known place of residence. If there be no newspaper published at the place where the principal office of the corporation is established or located, a notice of the election of directors shall be posted for a period of three weeks immediately preceding the election in at least three public places, in the place where the principal office of the corporation is established or located.

Sec. 30. Every director must own in his own right at least one share of the capital stock of the stock corporation of which he is a director, which stock shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one share of the capital stock of a stock corporation of which he is a director shall thereby cease to be a director. Directors of all other corporations must be members thereof and at least two of the directors of all corporations organized under this Act must be residents of the Philippine Islands.

Sec. 31. At all elections of directors there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the subscribed capital stock entitled to vote, or, if there be no capital stock, then a majority of the members entitled to vote. The elections must be by ballots, and every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing at the time fixed in the by-laws in his own name on the stock books of the corporation, and said stockholder may vote such number of shares for as many persons as there are directors or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, That the whole number of votes cast by him shall not exceed the number of shares owned by him as shown by the books of the corporation multiplied by the whole number of directors to be elected: And provided, That no stock declared delinquent by the board of directors for unpaid subscriptions shall be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of corporation which have no capital stock may cast as many votes as there are directors to be elected but may not cast more than one vote for one candidate. Directors receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time if for any reason no election is had or if there are not present or represented by a proxy, at the meeting the owners of a majority of
the subscribed capital stock entitled to vote or if there
be no capital stock, a majority of the members entitled to
vote. (As amended by Act 3518, Sec. 14).

Sec. 32. If for any cause no meeting is held on
the day fixed and appointed by law or by the by-laws of
the corporation for holding the election of directors, a
meeting may be called for that purpose either by the di-
rectors or as provided in section twenty-six; and at the
meeting held in pursuance of such call the election may
be had with the same effect as if it had taken place on
the day fixed by law or by the by-laws of the corporation.

Sec. 33. Immediately after election the directors
of a corporation must organize by the election of a pres-
ident, who must be one of their number, a secretary or
clerk who shall be a resident of the Philippine Islands
or of the United States, and such other officers as may
be provided for in the by-laws. The directors and of-
icers so elected shall perform the duties enjoined on
them by law and by the by-laws of the corporation. A ma-
jority of the directors shall constitute a quorum for
the transaction of corporate business, and every decision
of a majority of the quorum duly assembled as a board
shall be valid as a corporate act.

Sec. 34. Directors of a corporation may be removed
from office by a vote of two-thirds of the members enti-
tled to vote, or if the corporation be a stock corpora-
tion, by a vote of the stockholders holding or represent-
ing two-thirds of the subscribed capital stock entitled
to vote: Provided, however, That such removal shall take
place either at a regular meeting of the corporation or at
a special meeting called for the purpose, and in either
case, after previous notice to stockholders or members of
the intention to propose such removal at the meeting. A
special meeting of the stockholders or members of a cor-
poration for the purpose of removal of directors, or any
of them, must be called by the secretary or clerk on or-
der of the president or on the written demand of a majori-
ity of the members entitled to vote, or, if it be a stock
corporation, on the written demand of the stockholders
representing or holding at least one-half of the shares
entitled to be voted. Should the secretary or clerk
fail or refuse to call the special meeting, demanded or
fail or refuse to give the notice, or if there is no
secretary or clerk, the call for the meeting may be ad-
dressed directly to the members or stockholders by any
member or stockholder of the corporation signing the de-
mand. Notice of the time and place of any such meeting, as well
as of the intention to propose such removal, must be giv-
en publication or by written notice as prescribed by sec-
tion twenty-nine. In case of removal on the vote of the stockholders or the members, as the case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by section twenty-nine.

STOCKS AND STOCKHOLDERS

Sec. 35. The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation.

Sec. 36. One or more stockholders of any corporation organized under this Act may, pursuant to an agreement in writing, transfer their shares to any person or persons, or to a corporation having authority to act as trustee, for the purpose of vesting in such person or persons, or corporation, as trustee or trustees, voting or other rights pertaining to such shares for a period not exceeding five years, and upon the terms and conditions stated in the agreement: Provided, however, That no such agreement shall be entered into for the purpose of placing two or more corporations organized for the purpose of engaging in agriculture or in mining, or which by reason of their corporate purposes cannot be organized as one corporation in accordance with this Act, under the control or management of the same trustee or trustees, or for the purpose of lessening competition or creating a monopoly of any line of commerce.

A duplicate copy of such agreement shall be filed in the principal office of the corporation and shall be open daily during business hours to the inspection of any stockholder or any depositor under said agreement, or the attorney of any such stockholder or depositor.

Any other stockholder may transfer his shares to the same trustee or trustees upon the terms and conditions stated in said agreement, and thereupon shall be bound
by all the provisions of said agreement.

The certificates of stock so transferred shall be surrendered and cancelled, and new certificates therefor issued to such person or persons, or corporation, as such trustee or trustees, in which new certificates it shall appear that they are issued pursuant to said agreement.

In the entry of transfer on the books of the corporation it shall be noted that the transfer is made pursuant to said agreement.

The trustee or trustees shall execute and deliver to the transferors voting trust certificates. Such voting trust certificates shall be transferable in the same manner and with the same effect as certificates of stock under the provisions of this Act.

The trustee or trustees shall possess all voting and other rights pertaining to the shares so transferred and registered in his or their names subject to the terms and conditions of and for the period specified in said agreement.

Unless otherwise provided in said agreement, the trustee may vote in person or by proxy. (As enacted by Act 2518, Sec. 15).

Sec. 37. Subscribers for stock shall pay to the corporation quarterly on all unpaid subscription interest, from the date of subscription, at the rate of six per centum per annum unless otherwise provided in the by-laws. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in case of no par stock, has been paid by him to the corporation. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent. (As reenacted by Act 2518, Sec. 16).

CALLS FOR UNPAID SUBSCRIPTIONS AND ASSESSMENT OF STOCK

Sec. 38. The board of directors or trustees of any stock corporation formed, organized, or existing under this Act may, at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscription as it may deem necessary.

The order of the board of directors declaring payable any unpaid subscription to the capital stock shall state what percentage of the unpaid subscription is due and payable, when, where, and to whom payable, the date of delinquency, which must be subsequent to the full terms of publication of the notice of call for unpaid subscriptions and not less than thirty days nor more than sixty days
from the date of the order of the board calling for the payment of unpaid subscriptions, and the date on which the delinquent stock will be sold, which must not be less than fifteen days nor more than sixty days from the date the stock becomes delinquent.

Notice of the order declaring unpaid subscriptions to the capital stock due and payable shall be given by the secretary or clerk of the corporation substantially in the following form:

(Refer to Act itself)
(As modified by Act 3518, Sec. 17).

Sec. 39. If the whole or any part of the subscription on unpaid capital stock with interest accrued is unpaid on the date of delinquency, such unpaid stock becomes subject to sale, and the secretary or clerk, unless otherwise ordered by the board of directors, must give notice of delinquency and sale substantially in the following form:

(Refer to Act itself)

Sec. 40. Notice of call for unpaid subscriptions must be either personally served upon each stockholder or deposited in the post-office, postage prepaid, addressed to him at his place of residence, if known, and if not known, addressed to the place where the principal office of the corporation is situated. The notice must also be published once a week for four successive weeks in some newspaper of general circulation devoted to the publication of general news published at the place where the principal office of the corporation is established or located, and posted in some prominent place at the works of the corporation if any such there be. If there be no newspaper published at the place where the principal office of the corporation is established or located, then such notice may be published in any newspaper of general circulation devoted to the publication of general news in the Islands.

Sec. 41. Notices of delinquency and sale of stock for unpaid subscriptions must be published in the newspapers specified in the section immediately preceding, and, when published in a daily newspaper, must be published in ten successive issues of said newspaper previous to the day of sale, and, when published in a weekly newspaper, must be published two weeks previous to the sale and the first publication must be fifteen days prior to the day of sale.

Sec. 42. From and after the publication of the notices of delinquency and sale of stock for unpaid subscriptions the corporation acquires jurisdiction to sell
and convey all of the stock described in the notices of sale, but the corporation must sell no more of the stock mentioned in the notices than is necessary to pay the amount of the subscription due, with interest accrued, and the expenses of advertising and the costs of sale.

Sec. 43. On the day and at the place and hour of sale specified in the notices of delinquency and sale of stock for unpaid subscriptions the secretary or clerk shall, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder, for cash, so many shares of the stock described in the notice as may be necessary to pay the amount due on the subscription, with interest accrued, expenses of advertising, and cost of sale.

Sec. 44. The person offering at such sale to pay the unpaid subscription, with interest accrued, together with expenses of advertising and costs of sale, for the smallest number of shares or fraction of a share, shall be the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the amount due on the unpaid subscription, together with the expense of advertising and costs of sale.

If, at the sale of the stock for unpaid subscription, no bidder offers to pay the amount due with expenses of advertising and costs of sale, the same may be bid in by the corporation, through the secretary or clerk or president or any shareholder thereof, and the amount of subscription due, together with the expenses of advertising and costs of sale, shall be credited as paid in full on the books of the corporation and entry of the transfer of the stock to the corporation made.

Sec. 45. The legal title to all stock purchased by the corporation at sales of stock for unpaid subscription is vested in the corporation, and the stock so purchased may be disposed of by the stockholders in accordance with law and the by-laws of the corporation by a majority vote of all the remaining shares.

Sec. 46. The dates fixed in any call for unpaid subscription or in any notice of delinquency and sale of stock for unpaid subscription, published according to the provisions of this article, may be extended from time to time, for a period of not more than thirty days, by order of the board of directors entered upon the records of the corporation, but no order extending the time for the performance of any act specified in such notice is effectual unless the notice of such extension or postponement is appended to the notice to which the order relates, and is
therefore published with the notice.

Sec. 47. No action can be sustained to recover stock sold for delinquent unpaid subscription upon the ground of irregularity or defect in the calls for such unpaid subscription, or irregularity or defect in the notice of delinquency and sale, or in the sale itself of stock for unpaid subscription, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, together with all subsequent calls which may have been paid upon the stock so sold, with interest from the date of payment at the rate of seven per centum per annum, and no such action shall be maintained unless it is commenced by the filing of a complaint and the issuance of summons within six months from date of sale.

Sec. 48. The posting of the notices or call for unpaid subscriptions may be proved prima facie by affidavit of the secretary or clerk or other officer of the corporation, and the publication of such notices may be proved to the same extent by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the notices were published. The time and place of sale of the stock, the quantity of the stock sold, its particular description, the person to whom the stock was sold, the price for which it was sold, and the amount of the purchase money paid may be proved prima facie by the affidavit of the auctioneer or the secretary or clerk or of the treasurer of the corporation.

The affidavits mentioned in this section must be filed in the office of the corporation, and copies thereof certified to be true and correct by the secretary of the corporation, may be received by the courts, and others, as prima facie evidence of the facts therein stated.

Sec. 49. Nothing in this act shall prevent the directors from collecting, by action in any court of proper jurisdiction, the amount due on any unpaid subscription, together with accrued interest and costs and expenses incurred.

Sec. 50. No stock delinquent for unpaid subscription shall be voted or entitled to a vote or representation at any stockholders' or directors' meeting, or for any corporate purpose whatever.

CORPORATE BOOKS AND RECORDS, REPORTS OF CORPORATION, AND GOVERNMENT EXAMINATION AND INSPECTION OF CORPORATIONS

Sec. 51. All business corporations shall keep and
carefully preserve a record of all business transactions, and a minute of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member, or stockholder, the time when any director, member or stockholder entered or left the meeting must be noted on the minutes, and on a similar demand, the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member, or stockholder on any action or proposed action must be recorded in full on his demand.

The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours. (Note Act 2972).

Sec. 52. Business corporations must also keep a book to be known as the "Stock and transfer book," in which must be kept a record of all stock, the names of the stockholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer books shall be open to the inspection of any director, stockholders, or member of the corporation at reasonable hours.

Sec. 55. Repealed by Act 2362, Sec. 22.

Sec. 54. The Governor-General may, at any time, order the Attorney-General, the Insular Auditor, the Insular Treasurer, or any other officer of the government to make an examination into the business affairs, administration, and condition of any corporation transacting business in the Philippines Islands, and thereupon it shall be the duty of the Attorney General, the Insular Auditor, the Insular Treasurer, or any other officer designated, to make such examination; and for the purposes thereof the Attorney General, the Insular Auditor, the Insular Treasurer, or other official designated shall have the authority to administer oaths to the directors, officers, stockholders, or members of any corporation or to other persons, and to examine under oath or otherwise such directors, officers, stockholders, members, or other persons in relation to the business transacted by said corporation, the administration of its affairs and the condition thereof. For the purposes of such examination
the books, papers, letters, and documents belonging to such corporation or pertaining to its business administration or condition shall be open to the inspection of the Attorney-General, the Insular Auditor, the Insular Treasurer, or other officer designated, and upon the application of either of them to any Court of First Instance, or to any judge of the Supreme Court, a subpoena may be issued directing any person in the Philippine Islands to appear as a witness and produce the inspection of the Attorney-General, the Insular Auditor, the Insular Treasurer, or other officer designated, any books, papers, documents, letters, or other records in his possession. Any witness failing to obey such subpoena shall be liable to punishment by the Supreme Court or the Court of First Instance, as the case may be, in the same manner and to the same extent as if he had disobeyed a subpoena issued out of the Supreme Court or the Court of First Instance in a matter pending before either of said courts.

The Attorney-General, the Insular Auditor, the Insular Treasurer, or other officers designated, as the case may be, shall make a full and complete report to the Governor-General of the examination made by him, together with his recommendations, and the Governor-General, if he deems proper, shall direct the Attorney-General to take such proceedings as the report may seem to justify and the state of the case require.

Sec. 55. The Attorney-General, the Insular Auditor, the Insular Treasurer, or other officer designated by the Governor-General to make the examination shall not disclose to anyone other than the Governor-General the details or results of the examination or investigation, and if the officer designated to make the examination discloses to any person other than the Governor-General the details or results of the examination or investigation, he shall be punished by imprisonment for not less than one year nor more than five years or by a fine of not less than five hundred pesos nor more than two thousand pesos, or both such fine and imprisonment, in the discretion of the court.

FORCED SALE OF FRANCHISES

Sec. 56. Any franchise granted to a corporation to collect tolls or to occupy, enjoy, or use public property or any portion of the public domain or any right of way over public property or the public domain, and any rights and privileges acquired under such franchise may be levied upon and sold under execution, together with the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of such franchise or
right of way, in the same manner and with like effect as any other property to satisfy any judgment against the corporation: Provided, That the sale of the franchise or right of way and the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of said franchise or right of way is especially decreed and ordered in the judgment: And provided further, that the sale shall not become effective until confirmed by the court after due notice.

Sec. 57. The officer selling any franchise under execution shall after confirmation by the court, issue a certificate of purchase to the purchaser of the franchise and shall place such purchaser in peaceful possession of all property described in the judgment as necessary for the enjoyment of the franchise or right of way, the exercise of its powers, or the receipt of its proceeds.

Sec. 58. From and after issuance of the certificate of purchase of the franchise or right of way, the purchaser shall exercise all the powers and privileges and enjoy all the rights and be subjected to all the liabilities of the franchise or grant of right of way to the same extent as would have been the corporation had the sale not taken place.

Sec. 59. The purchaser of the franchise or his assignee shall be entitled to recover any penalties or damages recoverable by the corporation and imposed or allowed by law for an injury to the franchise, or any property necessary for the enjoyment of the franchise or right of way, or of the privileges of either, occurring during the time he holds the franchise or right of way. Said purchaser or his assignee may use the name of the corporation in any action necessary to recover the penalties and damages named in this section, and the recovery of such penalties or damages shall be a bar to any subsequent action to cover the same by or on behalf of the corporation.

Sec. 60. The corporation whose franchise or right of way is sold as provided in section fifty-six hereof, except as to the rights and powers acquired by the purchaser and the duties, obligations, penalties, and forfeitures imposed on the purchaser of the franchise or right of way, retains the same powers, is bound to discharge the same duties, and is liable to the same obligations, penalties, and forfeitures as before such sale. The rights acquired by the purchaser of the franchise shall be subject to the prior rights of mortgagees and lien holders.
Sec. 61. The sale of any franchise and right of way under execution shall be made in the place in which the corporation has its principal office.

VOLUNTARY DISSOLUTIONS OF CORPORATIONS

Sec. 62. A corporation may be dissolved at any time by the Court of First Instance for the province where the principal office of the corporation is situated upon the voluntary application of a majority of the members or of the stockholders holding at least two-thirds of all shares of stock issued or subscribed. Provided, however, That in case the dissolution of a corporation does not affect the rights of any creditor having a claim against such corporation, then such dissolution may be effected by a resolution duly adopted by the affirmative vote of two-thirds of the members or of the stockholders owning at least two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors after publishing notice of the time, place and object of the meeting, for six consecutive weeks in some newspaper published in the place where the said corporation is located, and if no newspaper is published in the place, then in some newspaper of general circulation in the Philippines, and after sending such notice to each stockholder of record by registered mail at least thirty days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the Board of Directors and countersigned by the secretary or clerk of said corporation and filed in the Bureau of Commerce and Industry. The Director of the Bureau of Commerce and Industry shall thereupon record the fact of such dissolution and shall collect for such service the sum of twenty-five pesos, Philippine currency. (As amended by Act 3518, Sec. 18).

Sec. 63. The application for dissolution must be in writing and shall set forth all claims and demands against the corporation, and that, at a meeting of the members or stockholders of the corporation called for that purpose, the dissolution of the corporation was resolved upon by a majority of the members or, if a stock corporation, by the affirmative vote of the stockholder holding or representing two-thirds of all shares of stock issued or subscribed.

Sec. 64. The application for dissolution must be signed by a majority of the board of directors or other officers having the management of the affairs of the corporation and must be verified by the president or secretary or clerk or some director of the corporation.
Sec. 65. Notice of the application for dissolution must be given by the clerk of the court upon order of the court by publication for not less than thirty days nor more than sixty days in some newspaper of general circulation devoted to the publication of general news published at the place where the principal office of the corporation is established or located, or, if there be no such newspaper, then in some newspaper of general circulation in the Islands devoted to the publication of general news. The notice must also be posted in at least three public places at the place where the principal office of the corporation is established or located. The date on which the right of objection to the application expires must be set out in the notice and must be subsequent to the period prescribed for the publication of such notice.

Sec. 66. On or before the date on which the right of objection expires as declared in the notice, any person may file objections to the dissolution of the corporation. The issue made by the application and the objection thereto shall be tried by the court upon five days' notice to the applicants and to the persons who have filed objections, and shall be determined by the court as justice and right may require. Should no objections to the application be filed on or before the date prescribed for filing the same, the court shall proceed to hear the application, and if the application is sufficient and all the material statements made therein are shown to be true, the court may appoint receivers to collect and take charge of the assets of the corporation and shall declare the corporation dissolved and decree such disposition of its assets and property remaining as the law may permit and justice may require.

Sec. 67. The application, notices thereof and proof of publication and posting of notices, the objections filed to the dissolution, if any there be, the declaration of dissolution, and the evidence and proofs taken of dissolution shall constitute the record in the case, and an appeal from the judgment may be taken to the Supreme Court as from other judgments of Courts of First Instance.

FOREIGN CORPORATIONS

Sec. 68. No foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the Chief of the Mercantile Register of the Bureau of
Commerce and Industry, upon order of the Secretary of Finance in case of banks, savings and loan banks, trust corporations, and banking institutions of all kinds, and upon order of the Secretary of Commerce and Communications in case of all other foreign corporations. No order for a license shall be issued by either of said secretaries except upon a statement under oath of the managing agent of the corporation, showing to the satisfaction of the proper secretary that the corporation is solvent and in sound financial condition, and setting forth the resources and liabilities of the corporation within a reasonable number of days to be fixed by the Secretary of Finance, or the Secretary of Commerce and Communications, as the case may be, prior to the date of presenting the statement, as follows:

(1) The name of the corporation;
(2) The purpose for which it was organized;
(3) The location of its principal or home office;
(4) The capital stock of the corporation and the amount thereof actually subscribed and paid into the treasury on the ....... ........................................

(Here insert date, month, year)

(5) The net assets of the corporation over and above all debts, liabilities, obligations, and claims outstanding against it on the ................. ........................................

(Date, month, year)

(6) The name of an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation: Provided, however, That the Secretary of Finance or the Secretary of Commerce and Communications, as the case may be, before ordering that a license be issued in the case of any particular corporation, may require further evidence of the solvency and fair dealing of the corporation if in his judgment such further information is essential.

The Secretary of Finance may, in his discretion, order the issuance to any foreign banking corporation of a license to transact business in the Philippine Islands, upon the recommendation of the Bank Commissioner. It shall be the duty of the Bank Commissioner to verify the information contained in the statement of the managing agent or representative of such foreign banking corporation, as well as to make any other or further investigation as to the persons, conditions and circumstances surrounding or in any manner affecting such banking corporation, and if said Bank Commissioner is satisfied that the issuance to such corporation of a license to transact
business in the Philippine Islands will promote the public interest and convenience, then he shall recommend that such license be issued. Provided, That hereafter no foreign banking corporation shall open a branch or branches in the Philippine Islands without first having obtained the written approval of the Bank Commissioner, which shall be given by him unless he has evidence to show that the establishment of such branch or branches will be prejudicial to the interest of the public, in which case he shall state in writing his reasons for refusing to give the approval. In case of the refusal of the Bank Commissioner to give such approval, the parties applying therefor may appeal to the Secretary of Finance as provided in section one hundred ninety and six-sevenths of Act Numbered Fourteen hundred and fifty-nine as amended by this Act. (As inserted by Act 3610, Sec. 5) See Act 3520, Appendix "D").

Upon filing in the Mercantile Register of the Bureau of Commerce and Industry the said statement, a certified copy of its charter and the order of the Secretary of Finance or of the Secretary of Commerce and Communications, as the case may be, for the issuance of a license, the chief of said register shall issue to the foreign corporation as directed in the order a license to do business in the Philippine Islands, and for the issuance of said license the chief of the said register shall collect a fee in proportion to the corporate capital of each corporation, to be fixed in accordance with the schedule established in section eight of this Act. (As amended by Act 1506, Sec. 1 and Act 2900) See Act 2975.

Sec. 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, director, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court.

Sec. 70. Every foreign corporation and every corporation not formed, organized, or existing under the laws of the Philippine Islands but transacting business in the Islands at the time of the passage of this Act shall be allowed seventeen months from its passage in which to
secure the license, present the statement, and make the deposits required. (As amended by Act 1506, Sec. 2, Act 1565, Sec. 1 and Act 1630, sec. 1. See also note under sec. 68).

Sec. 71. The Secretary of Finance or the Secretary of Commerce and Communications, as the case may be, by and with the approval of the Governor-General, may revoke the license to transact business in the Philippine Islands of any corporation not formed, organized, or existing under the laws of the Philippine Islands, should such Secretary and the Governor-General find the condition of the corporation to be one of insolvency or that its continuance in business will involve probable loss to those transacting business with it. and after such revocation it shall be unlawful for any such corporation to transact business in the Philippine Islands unless its license is renewed or reissued. In case of revocation of license the Attorney-General shall take such proceedings as may be proper to protect creditors and the public. (As modified by Administrative Code (1917), Sec. 75, 83 and 86. See also note under Sec. 68).

Sec. 72. Summons and legal process served the agent designated to accept service thereof in the statement required to be filed by section sixty-eight of this Act shall give jurisdiction to the courts over the corporation filing said statement, and service of notices on such agent shall be as binding upon the corporation which he represents as if made upon the corporation itself.

Should the authority of such agent to accept service of summons and legal process on the corporation or notice to it be revoked, or should such agent become mentally incompetent or otherwise unable to accept service while exercising such authority, it shall be the duty of the corporation to promptly name and designate another agent upon whom service of summons and process in legal proceedings against the corporation and of notices affecting the corporation may be made and to file with the Director of the Bureau of Commerce and Industry a duly authenticated nomination of such agent.

Should there be no person authorized by the corporation upon whom service of summons, process, and all legal notices may be made, service of summons, process and legal notices may be made upon the Secretary of Finance in the case of banks, savings and loan banks, trust corporations, and other banking institutions, and upon the Secretary of Commerce and Communications in the case of all other foreign corporations and such service shall be as effective as if made upon the corporation or upon its duly authorized agent. In case of
service for the corporation upon the Secretary of Finance or Secretary of Commerce and Communications as the case may be, the proper Secretary shall register and transmit by mail to the president or the secretary or clerk of the corporation at its home office or principal office a copy, duly certified by him, of the summons; process, or notice. The sending of such copy of the summons, process, or notice shall be a necessary part of the service and shall complete the service. The registry receipt of mailing shall be conclusive evidence of the sending. All costs necessarily incurred by the proper Secretary for the making and the mailing and sending of a copy of the summons, process, or notice to the president or the secretary or clerk of the corporation at its home office or principal office shall be paid in advance by the party at whose instance the service is made. (As modified by Administrative Code (1917), Secs. 75, 83 and 86).

Sec. 73. Any foreign corporation or corporation not formed, organized, or existing under the laws of the Philippine Islands and lawfully doing business in the islands shall be bound by all laws, rules, and regulations applicable to domestic corporations of the same class, save and except such only as provided for the creation, formation, organization or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of members, stockholders, or officers of corporations to each other or to the corporation: Provided, however, That nothing in this section contained shall be construed or deemed to impair any rights that are secured or protected by the Treaty of Peace between the United States and Spain, signed at the city of Paris on December tenth, eighteen hundred and ninety-eight.

MISCELLANEOUS PROVISIONS

Sec. 74. The misnomer of a corporation in any written instrument does not invalidate the instrument if it can be ascertained from it with reasonable certainty what corporation was intended.

Sec. 75. 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.

Sec. 76. 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.

Sec. 77. Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

Sec. 78. At any time during said three years said corporation is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested. From and after any such conveyance by the corporation of its property in trust for the benefit of its members, stockholders, creditors, and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the members, stockholders, creditors, or other persons in interest.

Sec. 79. No private property shall be taken by any corporation under any franchise for any purpose without proper condemnation proceedings and without just compensation paid or tendered therefor, and any authority to take and occupy land shall not authorize the taking, use or occupation of any land except such as is required for the actual and necessary purposes for which the franchise is granted; and no franchise, privilege, or concession shall be granted to any corporation except under the conditions that it shall be subject to amendment, altera-
tion, or repeal by the Congress of the United States, and in case of public-service corporations that the charges made by reason of the exercise of the franchise shall be subject to regulation from time to time by the Government of the Philippine Islands; and such corporations shall pay annually to the Insular Treasurer such percentage of its gross earnings as may be required by general or special laws, and that lands or rights of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and concession under which they were granted or upon their revocation or repeal.

Sec. 80. The provisions of this chapter are applicable to every corporation formed or organized under this Act unless such corporation is excepted from its operation or unless some special provision is made in Chapter II in relation thereto inconsistent with the provisions of this chapter, in which case the special provision shall prevail.

Chapter II

SPECIAL PROVISIONS

Railroad Corporations
(Secs. 81-102)

Savings and Mortgage Banks
(Secs. 103-115)

Commercial Banking Corporations
(Secs. 116-130)

Trust Corporations
(Secs. 131-146)

Domestic Insurance Corporations
(Secs. 147-153 - repealed by Act 2427, Sec. 204)

Religious Corporations
(Secs. 154-164)
Colleges and Institutions of Learning  
(Secs. 155-170)

Building and Loan Associations  
(Secs. 171-190 1/7)

Provisions Affecting Banking Institutions  
In General  
(190 2/7-190 6/7)

Sec. 190 (A). Penalties. - The violation of any of the provisions of this Act and its amendments not otherwise penalized therein, shall be punished by a fine of not more than five thousand pesos and by imprisonment for not more than five years, in the discretion of the court. If the violation is committed by a corporation, the same shall, upon such violation being proved, be dissolved by quo warranto proceedings instituted by the Attorney-General or by any provincial fiscal by order of said Attorney-General: Provided, That nothing in this section shall be construed to repeal the other causes for the dissolution of corporations prescribed by existing law, and the remedy that in this section shall be considered as additional to the remedies already existing. (As amended by Act 2792, Sec. 3 by inserting the above section, and as further amended by Act 3610, Sec. 21).

REPEALING PROVISIONS

Sec. 191. The Code of Commerce, in so far as it relates to corporations or sociedades anonimas, and all other Acts or parts of Acts in conflict or inconsistent with this Act, are hereby repealed, with the exception of Act Numbered Fifty-two, entitled "An Act providing for examinations of banking institutions in the Philippine Islands, and for reports by their officers," as amended, and Act Numbered Six hundred and sixty-seven, entitled "An Act prescribing the method of applying to governments of municipalities, except the city of Manila, and of provinces for franchises to construct and operate street railway, electric light and power, and telephone lines, the conditions upon which the same may be granted, certain powers of the grantees of said franchises, and of grantees of similar franchises under special Act of the Commission, and for other purposes:" Provided, however, That nothing in this Act contained shall be deemed to repeal the existing law relating to those classes of associations which are termed sociedades colectivas, and
sociedades de cuentas en particapiación, as to which associations the existing law shall be deemed to be still in force: And provided further, 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 officials shall be governed by the provisions of this Act.

Sec. 192. This Act (1459) shall take effect on April first, nineteen hundred and six.

The following sections of Act 3518 are a part of the Philippine Corporation Law (Act 1459) but the Philippine Legislature has not provided for their corresponding sections in said Corporation Law:

Sec. 20. No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Sec. 22. Nothing in this Act contained shall be construed either to modify, amend, or repeal any of the provisions of Act Numbered Thirty-two hundred and forty-seven, entitled "An Act to prohibit monopolies and combinations in restraint of trade," or of Act Numbered Twenty-eight hundred and seventy-four, entitled "An Act to amend and compile the laws relative to lands of the public domain, and for other purposes."
Sec. 23. All the provisions of this Act which do not conflict with any of the provisions of the Act of Congress of July 1, 1902, entitled "The Philippine Bill - An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," of the Act of Congress approved on August 29, 1916, entitled "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those Islands," or any other Act of Congress, shall take effect upon approval of this Act by the Governor-General, and the remainder thereof shall take effect upon its approval, by the Congress of the United States, and upon such approval the provisions of this Act shall be applicable to all corporations now or hereafter organized under the Corporation Law, and to all franchises, rights, and privileges heretofore granted by the Philippine Legislature.
APPENDIX "B"

THE BLUE SKY LAW

AN ACT TO REGULATE THE SALE OF CERTAIN CORPORATION SHARES, STOCKS, BONDS AND OTHER SECURITIES

(Act 2581)

Section 1. Terms defined. - The term "securities" as used in this Act shall be taken to mean stock certificates, shares, bonds, debentures, certificates of participation, contracts, contracts or bonds for the sale and conveyance of lands or deferred payments or on the installment plan, or other instruments in the nature thereof, by whatsoever name known or called. The term "speculative securities" as used in this Act shall be deemed to mean and include:

(a) All securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised;

(b) All securities the value of which materially depend upon proposed or promised future promotion or development rather than on present tangible assets and conditions;

(c) All securities for promoting the sale of which at commission of more than five per cent is offered or paid;

(d) The securities of any enterprise or corporation which has included, or proposes to include in its assets as a material part thereof patents, formulae, good-will, promotion or other intangible assets, or which has issued or proposes to issue a material part of its securities in payment for patents, formulae, good-will, promotion or other intangible assets.

Sec. 2. Sale of securities, when permitted. - It shall be unlawful for any person, partnership, association or corporation, either himself or through brokers or agents, directly or indirectly, to sell or cause to sell, offer for sale, take subscriptions or negotiate for the sale, in any manner whatsoever except as herein provided, of any speculative securities in the Philippine Islands other than those expressly exempted without a written permit from the Treasurer of the Philippine Islands as hereinafter provided.

Exclusive of the securities specifically excepted in section three of this Act, every person, partnership, association, or corporation attempting to offer to sell in the Philippines speculative securities of any kind of character whatever, shall be under obligation to file previously with the Insular Treasurer, paying to the
same the tax of twenty pesos:
(a) A statement showing in detail the plan on which the proposed business or enterprise is to be conducted;
(b) A copy of all contracts, bonds or other instruments which it is proposed to make with or sell to contributors;
(c) A statement which will show the name and location of the person, partnership, association or corporation;
(d) An itemized account of the actual financial condition and the amount of property, debts and liabilities of the person, partnership, association or corporation, and any and all other information that may be desired by the said Treasurer of the Philippine Islands. Said statements shall be verified by the oath of a member of the partnership, association or corporation or by the oath of a duly authorized officer, if it be a corporation, or by a duly authorized agent of said person, partnership, association or corporation.

Sec. 3. Certain securities exempted.—The provisions of this Act shall not apply to:
(a) Securities of the United States or of any foreign government, or of any State or territory thereof, or of any province, city, municipality, township or other public taxing subdivision of the United States, of the Philippine Islands or of a foreign government.
(b) Securities of public or quasi-public corporations the issue of which is regulated by the Board of Public Utility Commissioners or other similar authority.
(c) Securities of banks, trust companies, mortgage companies dealing exclusively in bona fide mortgages on farm and city real estate, or insurance companies authorized to do business in the Philippine Islands.

Sec. 4. Circulat~/s, and so forth, filing of.—While any such person, partnership, association or corporation is engaged in business in the Philippine Islands by authority of a certificate or permit issued hereunder, such person, partnership, association or corporation shall file copies of all its circulars, prospectus and other advertisements with the said Treasurer.

Sec. 5. Examination.—It shall be the duty of the Treasurer of the Philippine Islands to examine the statements and documents filed, and if said Treasurer shall deem it advisable he shall make or have made a detailed examination of the affairs of any person, partnership, association or corporation desiring to engage in business in the Philippine Islands under this Act. The expenses of such examination, not to exceed twenty pesos per day with actual and necessary expenses, shall be paid by such person, partnership, association or corporation.
Whenever the said Treasurer of the Philippine Islands is satisfied, either with or without the examination herein provided, that any person, partnership, association or corporation is entitled to the right to offer its securities as above defined and provided for sale in the Philippine Islands, he shall issue to such person, partnership, association or corporation a certificate or permit reciting that such person, partnership, association or corporation has complied with the provisions of this Act, and that such person, partnership, association or corporation, its brokers or agents are entitled to offer the securities named in said certificate or permit for sale. After the issuance of such certificate or permit, the said Treasurer of the Philippine Islands shall have authority at any time to examine the affairs of such person, partnership, association or corporation as to the manner in which they are transacting business under such certificate or permit, and said Treasurer shall furthermore have authority, whenever in his judgment it is in the public interest, to cancel said certificate or permit. An appeal from the decision of the Insular Treasurer may be had within the period of thirty days to the Secretary of Finance.

It shall furthermore be the duty of said Insular Treasurer to examine the condition of the business of any corporation, partnership or association engaged in business in the Philippine Islands, whether or not the same have applied for the permit provided for in section two hereof, whenever he has reasonable grounds to believe that the securities being sold or offered for sale are of a speculative character, and if such be the case, to require the submission to him of the statements required by said section two, for which purpose he may summon witnesses and examine them under oath and request the production of such documents as may be necessary.

Sec. 6. Service of summons.- Before any person, partnership, association or corporation being a non-resident of the Philippine Islands, shall sell or offer for sale any securities hereunder, such person, partnership, association or corporation shall file in the office of the Auditor of the Philippine Islands a power of attorney irrevocable, authorizing such Auditor to accept service of summons or other legal process on behalf of such person, partnership, association or corporation, said service to be binding in every case as personal service on such person, partnership, association or corporation.

Sec. 7. False statements.- Any person who shall knowingly make or file, or cause to be made or filed with
said treasurer of the Philippine Islands any statement, document, circular, advertisement or prospectus required by this Act or by the said Treasurer to be made or filed which is false in any material respect or manner; or who shall offer for sale or sell any of the securities by this Act prohibited without the certificate or license herein provided, shall be punished by fine of not more than ten thousand pesos or by imprisonment for not more than five years or by both such fine and imprisonment.

Sec. 8. This Act shall not apply to the holder of any speculative security who is not the issuer thereof, nor to the person who has acquired the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this Act, unless such possession is in good faith. Repeated and successive sales of any such speculative securities shall be prima facie evidence that the claim of ownership is not bona fide, but is a mere shift, device or plot to evade the provisions of this Act. Such speculators shall incur the penalty provided for in section seven of this Act.

Sec. 9. Fees.—All fees herein provided shall be collected by the Treasurer of the Philippine Islands and by him turned into the Treasury of the Philippine Islands.

Sec. 10. Acts not affected.—Nothing in this Act shall be construed to repeal any portion of the provisions of Act Numbered Fourteen hundred and fifty-nine and of Act Numbered Twenty-three hundred and thirty-three.

Sec. 11. This Act shall take effect as of January first, nineteen hundred and sixteen.

Enacted, February 4, 1916.
APPENDIX "C"

THE MONOPOLIES AND ILLEGAL COMBINATIONS LAW

(ACT 3247, P. I. PUB. LAWS, VOL. 21, P. 195)
ACT PROHIBITING MONOPOLIES AND COMBINATIONS
IN RESTRAINT OF TRADE
(Act 3247)

Section 1. Every agreement, contract, conspiracy or combination in the form of trust or otherwise, in restraint of trade or commerce or intended to prevent or preventing by artificial means free competition in the market, is hereby declared to be illegal, and any person who shall make any such contract or engage in any such combination or conspiracy shall be punished by fine not exceeding five thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize by artificial means restraining free competition in the market, any part of trade or commerce, shall be punished by fine not exceeding five thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Sec. 3. Every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons either of whom, as agent or principal, is engaged in importing any article from any foreign country into the Philippine Islands, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the Philippine Islands of any article or articles imported or intended to be imported into the Philippine Islands, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this Act, or who shall combine or conspire with another to violate the same, shall be punished by fine not exceeding five thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.
Sec. 4. The Supreme Court or the Courts of First Instance shall have concurrent jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the Attorney-General, the Fiscal of the City of Manila and the provincial fiscal, or whoever may act in their stead, to institute proceedings to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 5. Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in sections one and three of this Act, shall be forfeited to the Government of the Philippine Islands.

Sec. 6. Any person who shall be injured in his business or property by any other person by reason of anything forbidden or declared to be unlawful by this Act, shall recover treble the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 7. The word "person," or "persons," whenever used in this Act shall be deemed to include corporations and associations.

Sec. 8. This Act shall take effect on its approval.

Approved, December 1, 1925.
APPENDIX "D"

THE FOREIGN BANKING CORPORATIONS LAW

Section 1. No foreign banking corporation which accepts deposits payable in the Philippine Islands shall be permitted to do business in the Philippine Islands unless it has at all times within the Philippine Islands or on deposit outside the Philippine Islands, with a trustee to be designated by the Bank Commissioner, an amount of assets equal to at least ninety per cent of its deposits payable within the Philippine Islands. However, in order to permit the temporary investment abroad of idle funds for which there is no safe investment outlet in the Philippine Islands, the Bank Commissioner may, with the approval of the Secretary of Finance, suspend for limited periods the operation of the foregoing provisions of this section. Residents and citizens of the Philippine Islands who are creditors of a foreign banking corporation doing business in the Philippine Islands shall have preferential rights to the assets which such banking corporation has in the Philippine Islands or on deposit with a trustee as hereinabove provided.

Sec. 2. The total liabilities to a branch of a foreign banking corporation doing business in the Philippine Islands of any person, or of any company, corporation or firm for money borrowed, including in the liabilities of the company or firm the liabilities of the several members thereof, shall not exceed an amount to be determined as follows:

Five per cent of its average deposits payable within the Philippine Islands during the preceding calendar year, plus fifteen per cent of the amount due by such branch to the home office and branches outside the Philippine Islands, after deducting from such amount sums due such branch from the home office and outside branches: Provided, however, That additional liabilities may be incurred by a borrower up to five per cent of the said average deposits and fifteen per cent of the said net amount due to the home office and branches outside the Philippine Islands, provided such additional liabilities are secured by shipping documents, warehouse receipts, or other similar documents, transferring or securing title covering readily marketable, non-perishable staples, when such staples are fully covered by insurance, and
when such staples have a market value equal to at least one hundred twenty-five per cent of such additional liabilities. The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial and business paper actually owned by the person negotiating the same, shall not be considered as money borrowed within the meaning of this section.

The net amount due the home office and branches outside the Philippine Islands shall not be reduced during the life of any loan if by such reduction such loan would become illegal.

Noting in this Act shall be considered as restricting in any manner loans made by a branch of a foreign banking corporation operating within the Philippine Islands for account of its home office or branches outside the Islands.

During the first year of the existence of a branch of a foreign banking corporation commencing business in the Philippine Islands after the date when this Act shall take effect, the Bank Commissioner, with the approval of the Secretary of Finance, shall determine the maximum amount which may be loaned to any one borrower.

Sec. 3. In the case of a foreign banking corporation having more than one branch or agency in the Philippine Islands, the Bank Commissioner shall proceed as follows in order to ascertain whether the provisions of this law are being complied with:

The accounts of all such branches or agencies shall be consolidated and treated as though they were the accounts of a single branch. If it is then found that no loan exceeds the limitation prescribed in this Act, and that the said branches and agencies thus treated as a whole are observing the other restrictions and provisions of this law, the Bank Commissioner shall consider this law as having been complied with as fully as though each branch or agency were individually complying with it in every respect.

Sec. 4. Only such foreign banking corporations as receive deposits payable in the Philippine Islands shall be subject to the provisions of this Act.

Sec. 5. All acts or parts of acts inconsistent with the provisions of this Act are hereby repealed.

Sec. 6. This Act shall become effective on August first, nineteen hundred and thirty.

Approved, February 20, 1929.