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CORPORATIONS — AMENDMENT OF CHARTER — POWER OF LEGISLATURE TO AUTHORIZE — Remington Rand, Inc., by amendments to its charter authorized by laws passed subsequent to its incorporation, reclassified its stock so as to extinguish \$26.25 dividends cumulated on the first preferred stock. The complainant was owner of some of the first preferred stock. He filed a bill in equity to invalidate the reclassification, to compel restoration of the original capital structure, and to compel the payment of the cumulated dividend so extinguished. *Held*, complainant cannot succeed as to his demand for invalidation of reclassification and restoration of the capital structure because of laches. He cannot force the payment of dividends because he acquiesced by trading in his old stock for some of the new. *Trounstine v. Remington Rand, Inc.*, (Del. Ch. 1937) 194 A. 95.

The laches which were complainant's undoing were caused by the Delaware chancellor's decision in the case of *Keller v. Wilson & Co., Inc.*¹ That case was exactly in point and held against the complainant, who was in exactly the same position as is complainant here. The decision in that case has been

¹ (Del. Ch. 1935) 180 A. 584.

commented upon previously in this review.² It of course convinced counsel for complainant here that a bill in equity could not be successfully prosecuted. However, the reversal of that holding³ meant just the opposite was true and complainant then brought this action, but he had waited too long. Previous to the *Keller* case the courts were divided into two groups as to the effect to be given the reserved power.⁴ The majority⁵ were inclined to be quite liberal, while the minority⁶ believed such power should be restricted to the contract between the state and the corporation. This latter view ignores the fact that the rights of the parties to the other contracts involved, the shareholders inter se, and the shareholders and the corporation, were to be found in the same contract, namely the charter. The recent decisions on the point indicate that the majority courts have not changed as a result of the first *Keller* case,⁷ although one of them seems to be leaning that way.⁸ The principal case is the first in Delaware since the supreme court's decision in the *Keller* case. In a more recent case the Delaware chancellor has held that the section of the statute providing for amendments does not authorize a corporation organized after such section became effective to destroy accumulated dividends.⁹ Thus the chancellor has accepted completely the supreme court's position in the *Keller* case. These cases continue the fulfillment of a prophecy as to the result of the Delaware statutes of 1927 and 1929. "Either such powers are the subject of equitable control, which means concisely, danger of litigation acceptable neither to the investor nor to the management; or else they are uncontrolled—in which case the interests of any one who purchases or contracts in respect of shares of a Delaware corporation is so hazardous from a legal point of view that no well informed person would care to run the risk."¹⁰ But we have had and continue

² 34 MICH. L. REV. 859 (1936).

³ (Del. 1936) 190 A. 115; 35 MICH. L. REV. 620 (1937).

⁴ Dodd, "Dissenting Stockholders and Amendments to Corporate Charters," 75 UNIV. PA. L. REV. 723 (1927).

⁵ *Ibid.*, p. 725, note 69; *Hinchley v. Schwarzschild & Sulzberger Co.*, 107 App. Div. 470, 95 N. Y. S. 357 (1904); *Durfee v. Old Colony & F. R. R.*, 5 Allen (87 Mass.) 230 (1862). See 35 MICH. L. REV. 620 at 621, note 11 (1937), citing all recent articles wherein the cases are collected.

⁶ 2 COOK, CORPORATIONS, 8th ed., § 501 (1923); Dodd, "Dissenting Stockholders and Amendments to Corporate Charters," 75 UNIV. PA. L. REV. 723 at 725, note 70 (1927); *Zabriskie v. Hackensack & N. Y. R. R.*, 18 N. J. Eq. 178, 90 Am. Dec. 617 (1867); *Einstein v. Raritan Woolen Mills*, 74 N. J. Eq. 624, 70 A. 295 (1908).

⁷ *Breslav v. New York & Queens Electric Light & Power Co.*, 249 App. Div. 181, 291 N. Y. S. 932 (1936), affirmed 273 N. Y. 593, 7 N. E. (2d) 708 (1937); *Heller Inv. Co. v. Southern Title & Trust Co.*, 17 Cal. App. (2d) 202, 61 P. (2d) 807 (1936); *Keetch v. Corder*, (Utah 1936) 62 P. (2d) 273; *Wm. Warnock Co. v. H. D. Hudson Mfg. Co.*, (Minn. 1937) 273 N. W. 710. For recent litigation prior to the *Keller* case, see 35 MICH. L. REV. 620 at 621, note 6 (1937).

⁸ *Heller Inv. Co. v. Southern Title & Trust Co.*, 17 Cal. App. (2d) 202, 61 P. (2d) 807 (1936).

⁹ *Johnson v. Consolidated Film Industries, Inc.*, (Del. Ch. 1937) 194 A. 844.

¹⁰ Berle, "Investors and the Revised Delaware Corporation Act," 29 COL. L. REV. 563 (1929).

to have litigation on the subject in states that do not have the Delaware statutes. Perhaps it is not what is done under the reserved power, but the indefinite quality of the power itself that causes litigation. We could have at least avoided that part of the litigation which arose out of the contract analogy by basing the state's right to control the corporation openly upon the police power.¹¹

¹¹ *Hackler v. Farm & Home Savings & Loan Assn.*, (D. C. Mo. 1934) 6 F. Supp. 610, appeal dismissed, (C. C. A. 8th, 1934) 73 F. (2d) 999; Curran, "Minority Stockholders and the Amendment of Corporate Charters," 32 MICH. L. REV. 743 (1934).