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CORPORATIONS - AMENDMENT OF CHARTER - RIGHT TO REDEMPTION OF PREFERRED STOCK.

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CORPORATIONS — AMENDMENT OF CHARTER — RIGHT TO REDEMPTION OF PREFERRED STOCK — Plaintiff owned 100 shares of preferred stock of defendant corporation, the certificates for which, and the articles of incorporation, provided for redemption on a given date. Subsequent to plaintiff's becoming a stockholder but prior to the redemption date of his stock, a statute was passed allowing the majority of voting shareholders of a corporation to amend its articles "without limitation." [1] Pursuant thereto the date for redemption of plaintiff's stock was postponed twenty-five years. Under the amended articles defendant refused plaintiff's tender of the stock and demand of payment on the original redemption date. In an action against the corporation, *held* saving clauses [2] of the act prevented destruction of plaintiff's rights; the provision for redemption was a contract right which the majority could not impair. Plaintiff recovered the redemption price and interest. *Sutton v. Globe Knitting Works*, 276 Mich. 200, 267 N. W. 815 (1936).

Whether an amendment of the articles of a corporation, under a reserved power, can be effected against dissent by a minority may present two major

[1] Mich. Pub. Acts (1931), No. 327, § 43: "Any corporation formed or existing under this act may . . . amend its articles without limitation so long as the articles as amended would have been authorized by this act as original articles, by the vote of the holders of the majority of its shares entitled to vote: *Provided*, That if any such amendment shall change the rights, privileges or preferences of the holders of shares of any class, such amendment shall be approved by the vote of the holders of a majority of the shares of each class of shares entitled to vote and a majority of shares of each class whose rights, privileges or preferences are so changed."

[2] Mich. Pub. Acts (1931), No. 327, § 59: "The liability of any corporation or of the shareholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale of any of the assets thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation or merger of two or more corporations or by any change or amendment in the articles of such corporations."

Sec. 192: "This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed."

problems, or either of them. What is the extent of the power reserved to the legislature? If that is broad enough to cover the desired change, has the legislature authorized the corporation to amend as is proposed? The opinion in the present case contains a discussion of the former, but turns principally on the latter issue. The terms of the section authorizing amendments to articles [3] is broad enough, taken alone, to cover any amendment the legislature could authorize. But the act includes two saving clauses. Both are advanced by the court as protecting the rights of the plaintiff. Section 59 [4] follows, in the Corporation Act, sections on consolidation or merger. The ambit of this section is set by its reference to "the liability of any corporation or of the shareholders or officers thereof or the rights or remedies of the creditors thereof. . . ." It is submitted that it is not the rights of shareholders, but rather those of creditors against the corporation and its members, which are saved by this section. As to section 192,[5] different considerations arise. It purports to save any "right accruing, accrued, or acquired." It preserves, among other rights, those which the minority of stockholders had against the majority before the act became effective. The opposing rights of the majority to force changes on dissenters may be exercised, under section 43, to the same extent, but only so, as under the analogous section of the preceeding act (Section 9993).[6] That act permitted a corporation to amend its articles "by a vote of a majority in interest of its outstanding capital stock . . . including a change in name and location of its principal office. . . ." No case of importance has arisen under this section. The statute effective before the enactment of the 1931 act provided that preferred stock might be issued and "if preferred as to principal, [shall] be redeemed . . . at par at a certain time to be fixed in the articles and to be expressed in the certificates therefor. . . ." [7] Interpretation of section 9993 agrees with this clear provision. In *Attorney General v. Looker*,[8] the court early applied the "vested rights" test to an alteration under the reserved power. As that test must be applied to any statute, section 9993 must at least leave vested rights unharmed. Authority generally, though no case is precisely in point,[9] agrees that the amendment attempted in the present case involved an impairment of such rights.[10]

[3] See note 1, supra.

[4] See note 2, supra.

[5] See note 2, supra.

[6] Mich. Comp. Laws (1929), § 9993.

[7] Mich. Comp. Laws (1929), § 10,000.

[8] 111 Mich. 498, 69 N. W. 929 (1897). Other Michigan cases: Joy v. Jackson and Michigan Plank Road Co., 11 Mich. 155 (1863). Here a mortgage authorized by a special statute, which had been accepted by the corporation's board of directors, was held valid. The amendment did not "effect a fundamental change." 11 Mich. 155 at 171. See also, Mason v. Perkins, 73 Mich. 303 at 318, 41 N. W. 426 (1889).

[9] Unless Davis v. Louisville Gas & Electric Co., 16 Del. Ch. 157, 142 A. 654 (1928), and Keller v. Wilson & Co., (Del. Ch. 1935) 180 A. 584, are so considered, they go beyond the point of the present case. But see note 10, infra.

[10] In Yoakum v. Providence Biltmore Hotel Co., (D. C. R. I. 1929) 34 F. (2d) 533, it was held that cancellation of a sinking fund obligation was invalid as an interference with a vested right. The same decision, however, permitted a change in the priorities of accrued dividends (with a limitation imposed as to funds presently

available for payment of accrued dividends). In Bond v. Atlantic Terra Cotta Co., 137 App. Div. 671 at 680, 122 N. Y. S. 425 (1910), the court said in re a change in the system of voting for directors, "We think this is not a vested *property* right. . . ." (Italics ours.)

But *contra*, Davis v. Louisville Gas & Electric Co., 16 Del. Ch. 157, 142 A. 654 (1928), permitted a change in the proportions of dividends payable on two classes of stock. Keller v. Wilson & Co., (Del. Ch. 1935) 180 A. 584 (1935), allowed destruction of an obligation to pay accrued dividends. These cases were under the same statute as the Yoakum Case, supra. The Delaware court has gone further than that of any other state in impairing stockholders' rights, and has practically abandoned, in the Keller case, any limitation on the power of amendment by the majority. See also, Fornataro v. Atlantic Coast Bldg. & Loan Assn., 10 N. J. Misc. 1248 at 1259, 163 A. 240 (1932), permitting the date for withdrawals from a building and loan association to be postponed. This was justified as an exercise of police power in the financial crisis.