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## CORPORATIONS-POWER OF LEGISLATURE TO REVIVE CORPORATE CHARTER

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CORPORATIONS—POWER OF LEGISLATURE TO REVIVE CORPORATE CHARTER—  
Defendant, a New York corporation, was engaged in operating steamboats for sightseeing purposes below Niagara Falls. Defendant was incorporated in 1892 for a term of fifty years, the maximum then permitted by statute. Through inadvertence the charter was not renewed in 1942. The corporation continued in its regular course of business, and in 1947 when the oversight was discovered, the board of directors, with the approval of three-fourths of the shareholders, immediately revived the corporation under a statutory provision enacted in 1944.<sup>1</sup> Plaintiffs, shareholders of the corporation, claimed that application of the provision was an unconstitutional deprivation of their rights as shareholders and brought this action for dissolution of the corporation or for an

<sup>1</sup> 22 N.Y. Consol. Laws (McKinney, 1952 supp.) §49, p. 39.

appraisal of their stock.<sup>2</sup> The trial court dismissed the complaint and the Supreme Court, Appellate Division, affirmed on grounds that the reserved power of the legislature authorized the 1944 enactment. On appeal, *held*, affirmed. The power to revive a corporation whose term has expired is within the legislature's reserve power to alter or repeal corporate charters<sup>3</sup> and can be made retroactive to apply to a corporation whose charter expired prior to the enactment of the revival legislation. *Garzo v. Maid of the Mist Steamboat Co.*, 303 N.Y. 516, 104 N.E. (2d) 882 (1952).

The *Dartmouth College* case,<sup>4</sup> which declared a corporate charter to be a contract within the contracts clause of the Constitution,<sup>5</sup> resulted in state legislation reserving to the state the power to alter, amend, or repeal the charter of any corporation of its creation.<sup>6</sup> Although any legislation enacted either prior to or subsequent to the issuance of the charter becomes part of it, the reserve power is limited to the extent that the state must respect rights vested under the charter.<sup>7</sup> In this context the concept of vested rights has been termed illusory since the legislature has power to change or extinguish the charter giving rise to those rights.<sup>8</sup> In applying the concept of vested rights to legislation authorizing the revival of corporate charters, two situations arise: first, where the corporation was in *de jure* existence at the time of the revival legislation or came into existence after such enactment; secondly, when the revival legislation was enacted after the charter had expired or had been forfeited. In the former situation the cases agree that the revival statute becomes a part of the corporate charter through the doctrine of reserve powers; thus, no rights become vested.<sup>9</sup> However, in the latter group the vested rights argument becomes a compelling one unless the court can circumvent the contention that there was no existing charter to which the legislation could attach.<sup>10</sup> The principal case, which falls into this group, is in accord with the majority of decisions facing this narrow question. The court reasoned that after the termination of the corporate term defendant still had corporate powers to wind up its affairs, and, as it continued to exercise all its powers in the regular course of business, it was a *de facto* corporation subject to attack only by the

<sup>2</sup> This point is beyond the scope of this note. The court dismissed the request on grounds that fraud or bad faith must be shown since there was no special provision in the act for appraisal although the governor had so requested. See opinion of principal case in the court below, 106 N.Y.S. (2d) 4 (1951).

<sup>3</sup> N.Y. CONST., art. 10, §1; 2 N.Y. Consol. Laws (McKinney, 1939) p. 1051.

<sup>4</sup> 4 Wheat (17 U.S.) 518 (1819).

<sup>5</sup> U.S. CONST., art. I, §10.

<sup>6</sup> BALLANTINE, CORPORATIONS §275 (1946).

<sup>7</sup> *Id.*, §276.

<sup>8</sup> *Id.*, §277.

<sup>9</sup> *Drew v. Beckwith, Quinn and Co.*, 57 Wyo. 140, 114 P. (2d) 98 (1941); *Atlanta Trust Co. v. Oglethorpe University*, 187 Ga. 766, 2 S.E. (2d) 403 (1939); see also *Loeffler v. Federal Supply Co.*, 187 Okla. 373, 102 P. (2d) 862 (1940).

<sup>10</sup> See generally Jackson, "Legislative Revival of Corporate Charters," 26 MICH. S.B.J. 5 (1947).

state.<sup>11</sup> It also has been decided that since the legislature had the power to pass a revival statute originally, such curative legislation is not unconstitutional although retroactive.<sup>12</sup> However, the Supreme Court of California in *Rossi v. Caire*<sup>13</sup> held that upon forfeiture of the charter for failure to pay a tax, stockholders of the corporation immediately acquired vested rights in the corporate assets; therefore, the revival statute, retroactive in effect, was invalid. A prior California decision between the same parties<sup>14</sup> had held that upon forfeiture of its charter a corporation was incapable of holding title to property acquired by it while in de jure existence.<sup>15</sup> The inconsistent results reached by the principal case and *Rossi v. Caire* might be explained because of the difference in the underlying rules. The New York court found that a corporation retained some power over its property after its term had expired; hence, the revival legislation could attach to that remaining thread of corporate life. However, the California court found nothing to which the revival statute could attach since the corporation no longer had power over its assets. The decision reached in the principal case seems desirable when the failure to renew the charter was due to inadvertence, the corporation continuing in business exactly as before. However, a different result might ensue if the corporation had begun disposing of its property.<sup>16</sup> The principal case exemplifies the situation which the legislature intended to remedy and a court would seem warranted in limiting application of a revival statute to this type of situation.

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<sup>11</sup> See also *Stott v. Stott Realty Co.*, 288 Mich. 35, 284 N.W. 635 (1939).

<sup>12</sup> *Beeler and Campbell Supply Co. v. Warren*, 151 Kan. 755, 100 P. (2d) 700 (1940); *Stott v. Realty Co.*, supra note 11.

<sup>13</sup> 186 Cal. 544, 199 P. 1042 (1921).

<sup>14</sup> *Rossi v. Caire*, 174 Cal. 74, 161 P. 1161 (1916).

<sup>15</sup> See comment, "Corporations: Statutory Revival of Corporate Existence," 28 CALIF. L. REV. 195 (1940).

<sup>16</sup> Estoppel may be an important factor in the court's determination. In the principal case, and in *Stott v. Stott Realty Co.*, supra note 11, and *Drew v. Beckwith, Quinn and Co.*, supra note 9, the courts pointed out that the dissenting stockholders were not antagonistic at the time the term ended. In *Rossi v. Caire*, supra note 13, the court indicated that plaintiff stockholders had dissented from the outset, thereby negating any estoppel.