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The Voluntary Dissolution of a Corporations with Special Reference to the New York Statute

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T H E S I S.

The Voluntary Dissolution of a Corporation with Special Reference to the New York Statute.

By

ROLLIN HUGH REID LL.B.

Cornell University.

1893.

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Introduction.

According to the present law, the actual as distinguished from the nominal dissolution of a corporation, may be accomplished in four ways.

I By Expiration of Charter.

II By the Voluntary Surrender of its Franchises.

III By a forfeiture of its Franchises.

IV By Repeal of Charter when such power has been reserved by the Legislature.

The present article deals mainly with with the first two of these provisions.

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Mr. Cook in his work on Stock and Stockholders #829, makes a more extended classification. To wit, 1 By a forfeiture of its franchises by the adjudication of a court; 2 The loss of its charter by a charter provision to that effect, in case a corporation certain things within a certain time. 3 The repeal of its charter under the reserved power of the State. 4 The voluntary surrender of its franchises by the stockhld or 5 The expiration of the time limited for its existance in the charter. Many authorities add, a failure of an essential part of the corporate organisation. It seems that divisions one and two of Mr. Cook's classification may be united, for a failure to perform a condition annexed to the charter , is a case for judicial forfeiture.

It is very important at the out set, before making a critical examination of the authorities to notice that the court use the term "dissolution" in two ways, meaning first, the actual termination of the legal existance of a corporation or the extinguishment of its franchises, and in the other or secondary sense the corporation may be "dissolved" for the purpoes of enforcing a statutory liability, though the corporate franchises may still exist.

The doctorine of "the failure of essential part" is acxredited to Chancellor Walworth 1 Pg.590. He calls our attention to a case 1 Roll. Abr.514 (I) "where the corporatio was composed of a certain number of brothers and a certain number of sisters, and all the sisters were dead, and it was ~~was~~ admited that grants and acts done by the two brothers afterwards were void; for after the sisters were dead, it wa not a perfict corporation." Such a doctrine it seems is entirely inapplicable to modern corporations having capital stock The basis of membership being in these cases the holde of shares. [illegible]

Abatement of Suits upon Dissolution.

The rule of the early common law, that all suits against a person abate at the death of such person, has been applied in many cases by analogy to suits against corporations. The rigor of the early common law was gradually modified, and at the time when the corporation law came into prominance; it was well settled that an action on contract, involving a property right, could be revived and continued against the executors and administrafors of the decedent, after proper application to the court.

Substantially this practice is applied in corporation law. At the present time all actions involvi ng property rights pending against corporations upon their dissolution; may be revived and continued against the receiver or trustee. But in some of the earlier cases this was not done. The cause of action was said to abate, they reasoned that as a dissolution deprived the corporation of its legal existance, a judgment against it would be a mere nullity, there being no person against whom to enforce it.(1)

(1) Merritt v Suffolk Bk.31 Me.57;Terry v Merchants Bk.66 Ga

On the other hand it is equally well settled that at common law a tort action dies with the death of a person. If we follow the analogy as before, we reach the conclusion that all torts abate by the dissolution of the corporation.

The question is coming up under the statutes of this State apparently for the first time, the effort to sustain a tort action is based upon #8 of 1R.S.600. The statute is as follows "Upon the dissolution of any corporation...the directors of the affairs of such corporation at the time of its dissolution, shall be trustees of the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts." By Ch. 294 #4 of the Lawsof 1832,such an action did not abate, this act was repealed by the general repealing act of 1880 Ch. 245 #10 and in its place was enacted ##755-66 of the Code of Civil Proceedure.

This question may be illustrated by the case of Hepworth v Union Ferry Co.(1) Here an action was brought against a common carrier for damages caused by an alleged assault and battery committed upon plaintiff by defendant's servants

(1) 62 Hun 295;aff.131 N.Y.645,no opinion.

while the parties were at issue the charter of the defendant company expired. A motion was made to continue the action against the trustees of the dissolved corporation.

Mr. Justice Barnard was of the opinion that the act of 1832 was declaratory merely of the common law, and that its repeal did not effect or alter the inherent power of the Court. And also that "the statute creditor embraces those persons whose claims are based on torts. The lawsmakes the directors trustees to settle the affairs of the corporation."

Justice Cullen in a similar case says (1) "The power given to the trustees is 'to settle its affairs',is a term comprehensive enough to include all liabilities." He then argues that the act should recieve a liberal construction with a view of aiding justice. Continuing he says,"It would be inequitable to deprive the plaintiff of satisfactim of his claim,by the voluntary act of the real parties in interest-the stockholders. Lastly the action should be continued under the provisions of the code, in as much as the Code is simply a revision of the former law, and a a revision is presumed not to alter the existing law.

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(1) Grafton v Union Ferry CO.19 Sup.966.

"I do not believe, says he, that it was the intention of the Legislature to abrogate the rule, but rather to substitute the mode of proceeding for the revival of actions provided for in the Code."

The other view is ably maintained by Justices Dykman and Osborne. The gist of their argument is that a person who is injured by a tort is not a creditor until his damages become liquidated..."A cause of action for a tort is not an indebtedness, and it would be contrary to all analogies of the law to it so ..It requires a special statute to enable actions for wrongs to the property rights or interests of another to be maintained against the executor or adminis - trator of the wrong doer."

I must leave this subject unsettled in this State the General Term having reached opposite conclusions. As the cases of McCulloch v Norwood (1) and Sturges v Vanderbilt (2)went off on questions of practice. The Court of Appeals will be free to adopt either view.(3)

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(1) McCulloch v Norwood 58N.Y.562.
(2) Sturges v Vanderbilt 73 N.Y.388.
(3) See also Blake v Portsmouth R.R.39 N.H.435where the statute provided for the continuance of all actions against the corporation.

The Ways in which Dissolution may take Place.

I By Expiration of Charter.

In this country it has been almost the universal practice to charter business corporations, or corporations having a capitql stock for a limited period of years; and upon the comming of the date named in the charter for its expiration, the corporation ipso facto ceased to exist. This is well stated by Mr. Justice Story in Greeley v Smith (1), the case before him involved the construction of one of the charters of a national bank, he said, "Many of our banks are, by law limited to a term of years for their corporate existence, and if there is no saving when the term expires, the corporation is de facto dead."

And as the corporation is not in esse, no judicial determination of its dissolution is necessary. IN Sturges v Vanderbilt(2) it was argued that as to creditors a judicial determination was necessary; Justice Rapello in reply said, "All the cases cited in support of this proposition relate to a dissolution in consequence of insolvency, or non-user,

(1) Greeley v Smith 3Story 657.
(2) Sturges v Vanderbilt 73 N.Y.388.

or mis-user of the corporate franchises. The principle upon which that class of cases rests is not applicable to a dissolution by expiration of the charter, The dissolution in such a case is rendered by act of the Legislature itself. The limited time of existence has expired and no judicial determination is requisite. The corporation is de facto dead."

But when the continuance of the corporation beyomd a fixed period is made to depend upon the performance of a condition, the non-performance of the condition is a mere ground of forfeiture. The corporation still contimues to exist until declared dissolved by a proceeding to enforce the forfeiture."

II By the Voluntary Surrender of its Franchises.

1 Abandmont of Corporate Business with consent of all the Stockholders.

It is an unguestioned rule, says Mr. Cook, that all the stockholders ,by unamious consent, may effect a dissolution of the corporation by the surender of the corporate franchises ." This proposition while it seems to be fundimentally sound is difficult of application,and seems only to arise in cases where the corporation has abandoned the undertaking for which it was chartered.

The leading authority in this country is Slee vBloom (2) where the court held in an opinion by Chief Justice Spencer overuling Chancellor Kent (3) that the corporation was dissolved. The Dutcher Cotton Mfg. was a duly organised corporation existing under the laws of the State of New York. In February 1818 all the property of the corporation was sold under execution,the corporatjon had totally ceased doing business the preceeding December. Bill was filed in

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(1) Cook on Stock.#629
(2) Slee v Bloom 19 Johns.456.
(3)id 7 Johns Ch.376.

April 1819 asking for a decree declaring the corporation to be dissolved, with a view of obtaining the enforcement of the stockholders liability under the statute. The Ch. J. says, "The ground on which I place my opinion, that the corporation is dissolved is that they have done and suffered to be done acts equivalent to a direct surrender. The Chancellor, conceeds, and it does not in my judgment admit of doubt, that a corporation may be dissolved by a surrender of all their corporate property and corporate rights...Suffering an act to be done which destroys the end and object for which the corporation was instituted must be equivalent to ~~the~~ doing an act which produces the very same consequences, A surrender is an act in pais; it can, therefore be no objection in this case, that the acts which have dissolved the corporation are acts in pais."

In Nikles v Bank of Rochester (1) the corporation had ceased to do business for over a year after the recovery by the bank of a judgment and execution. The bank had been a stockholder in the "defunct" corporation. A bill was filed in equity to have the sale set aside, alleging that the

(1) Nikles v Bank of Rochester 11 Pg.118.

corporation was dissolved and praying for an accounting by the bank ,as a tenant in common of the assetts of the corporation. Upon demurrer the court said"the stockholders of a corporation are neither tenants in common of the corporation nor copartners either before or after its dissolution."

Further illustrations are the cases of More v Whiticomb and Penman v Briggs. In the former the court held that a failure to hold annual meetings together with an abandonment of a railroad for seven years, constituted a virtual dissolution of the corporation. In the latter the court formulated the rule thus: If a corporation suffer acts to be done which destroy the end and object for which it was instituted, it is equivolent to a surrender of its rights."

Moore v Whiticomb 48 Mo.543 and Penman v Briggs 1 Hop.Ch/ 300;S.C.on appl.8 Cow.387.

State must Accept Surrender of Franchises.

On principle it would seem that although the corporation has abandoned its enterprise and is de facto dead, yet it still remains a corporation de jure in esse until the acceptance of its franchise by the State. For it has been held in the Darthmouth College case that a charter of a corporation is a contract between the State and the corporation, and if so, then it is a term of that contract that the corporators will undertake to carry on the business for which it was organised until the expiration of its charter, or an acceptance by the State of its corporate franchises relieving it from so doing. The Massachusetts Courts were the first to recognise this principle, Justice Morton says(1) Charters are in many respects compacts between the Government and the corporators and as the former cannot deprive the latter of their franchises in violation of the compact without the consent of the former...The surrender of a franchise can only be made by some formal solemn act of the corporation

(1) Boston Glass Co. v Langdon 24 Pick.49.

and will be of no avail until accepted by the State . There must be the same agreement to dissolve, that ther was to form the compact. It is the acceptance which gives efficacy to the surrender."

A late case in the United States Supreme Court shows the extent to which the court will carry this doctarine; Mr. Justice Jackson speaking for the court says, (1) "The averments that said corporation paid all other debts and thereafter distributed their remaining assets among their stockholders and have since no use of their franchises, and have no agents or officers upon whom process has been served, and no assets out of which any judgment against tham could be satisfied, fall far short of a dissolution such as would prevent a suit against the corporation or their trustees."

"A corporation is not dissolved by ceasing to exercise its powers, nor because its stockholders amd directors may consider it to be 'defunct'." (2).

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(1) Swan Land Co. v Frank et al 15 Sup. Ct.R. 691.
(2) Rollins v Clary 33 Me.136.

But no one will deny that as private corporations either of these companies may abandon its charter and dissolve itself, except so far as its creditors may have a right to object, and so far as its public duties as conservators of a highway may tend to limit its powers in this respect: and the Legislature may, at pleasure, release it from the limitation." (1)

. "It does not follow that a corporation is dissolved by the sale of its visible and tangeable property, for the payment of debts, and by the temporary suspention of business, so long as it has the moral and legal capacity to increase its subscriptions, call in more capital and re-assume its business." (2).

Where the Legislature provides that when certain corporations become insolvent, or where they cease to do business for a certain time, a proceeding may be commenced to forfeit their charters. Under these statutes it seems that a voluntary surrender by a corporation of its franchises under such circumstances works a dissolution of their corporate existence. And says the Vermont court (3) "It is quite probable

(1) Lauman v Lebanon Valley R?R? 30 Pa.St.42.
(2) Brunkichoff v Brown 7 Johns. Ch.217.
(3) Brandon Iron Co. v Gleason 24 Vt 228.

that a legal surrender may be presumed where for a sufficent length of time there has existed an entire non-user of corpe orate franchises."

Many of the courts insist that the surrender of the franchises of a corporation mustbe judicially determined in an action brought for this purpose, and that until so determined the corporation is de jure in esse. "A corporation may by virtue of proceedings against it, or by reason of its pecuniary conditions, cease to exist for all practical purposes, for which it was created or for whichv a corporation may exist, but it cannot be held to be actually dissolved till so adjudged and determined either by judicial sentence or by the soverign power...It may be dormant , its vitality suspended - as perhaps the exercise of corporate powers, but it may nevertheless be liable to be proceeded against by action, for any purpose for which an action is available to any one having a right to sue."(1) This is equally true of religeous and charitable corporations having no capital stock. As decided by the court in Magee v The Genesee Academy (2) The corporate legal existance

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(1) Kincaid v Divinelle 59 N.Y.551.
(2) Magee v Genesee Acad. 17 N.Y.St.R.223.

continues although it has ceased to exist for all educational purposes, and no longer exercises the powers conferred by its charter . Acorporation cant be held to be dissolved until so adjudged . (1). But a stockholder may be estopped from denying the corporate existance, by actually participating in the distribution of the corporate assets.
It seems that the contra, is the Alabama rule, the court held that proceedings under the statute were unnecessary, saying that the corporation could waive a statutory proceeding enacted for its benefit. (2).

But for the purpose of aiding creditors in their effort to obtain satisfaction of their debts the corporation may be considered dissolved. In Agriculteral Association v Ins. Co. (3)the corporation was insolvent the court said "for all practical purposes, as to creditors it was dissolvd within the meaning of the statute. Any other doctrine would be unreasonable, and would render the the statute, and the liability it imposes, incapable of affording the creditor of the corporation the benefit and security intended." "The courts of this State consider that for

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(1) Applied in Pradt v Benedict 17 N.Y.93.
(2) Savage v Walse 26 Ala.619. See also Mobile R.R. v State 29 Ala.573,6 Coal CO v R.R. 4G&J.(md.) 1 p/121-2.
(3) Agr. Ass. v Ins.CO/ 70 Ala.120.

the remedy against the individual member, and in favor of creditors a virtual surrender of the corporate rights, and a dissolution of the corporation may be presumed from a transfer of all its assets, and other circumstances which would not ordinarily create a dissolution per se."(1).

Two other cases illustrate the application of this rule, Hollingshead v Woodard (2) and Farmer Bank v Gallaher.(3) in the former the court said that the statute of limitation began to run from the date of the abandonment. And in the latter the creditor was allowed to proceed against a stockholder of the "defunct" corporation; the stock was issued at an overvaluation. No dissolution had taken place in either case." (4)

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(1) Kelhor v Lodeman 11 Mo.Appl.550. Other illustrations are Slee v BlooM, Penman v Briggs, and Brunkichoff v Benedict all cited supra.
(2) Hollingshead v Woodard 107 N.Y.96.
(3) Farmer Bk. v Gallaher 53 Mo. Appl.482.
(4)See also Bk.of Poughpei pee v Oboston 24 Wend.479; Wait on Insolv. Corp. #345.

Failure to File Annual Reports.

When an abandonment takes place and the corporation has no assets. The tendency of the modern cases is to hold that the corporation is so far dissolved as to relieve the trustees from the statutory liability of filing annual reports. The reason being thet the statute is penal in its operation and should be strictly construed. (1) So where a receiver has been appointed and the property is in the possession of the Court. (2)

But where there are still assets, and the trustees are in active possession of the assets of the company they are bound to account. (3)

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(1) Bruce v Platt 80 N.Y.379; and Van Amburgh v Baker 81 N.Y.46.
(2) Huguenot v Sthdwelle 74 N.Y.621.
(3) Sanborn v Lefferts 58 N.Y.621.

II By Acts of the Majority Stockholders.

The solution of the question presented, whether the majority of the stockholders of a corporation can declare and enforce a dissolution of the corporation in the absence of statute; takes us back to the fundimental principles of corporation law. On the one hand it is argued that a corporation is essentially a co-partnership organised under special laws, for the purpose of getting a limited shareholders liability. That its members delegate their power to act to agents appointed by them, and that within the scope of their business the act of the majority stockholders acting in good faith are binding upon the minority; as a single member of a co-partnership can terminate the corporate relation so the majority of the stockholders can terminate the corporate relation, save only when prevented by the statute.

Upon the other hand it is argued that a corporation is not in its nature like a partnership, but is an artificial person recognised by the law and created by statute for the

purpose of accomplishing certain things, and that its stockholders are only a means to aid this creature of the law in carrying out the object for which the law incorporatd it. While it is true that the will of the majority express es the will of the corporation, this will is intended to aid and further the corporate being, and can not be extended to destroy the being it is desined to aid .

Having now a general idea of the thoery upon which the argument proceeds: I will take up the cases, examing those first which hold that the majority of the stockholders have such power.

The earliest case to treat of this subject is Ward v The Society of Attorneys. (1) The question was presented by an application to the court for an injunction restraining the majority of the members of the society from surrendering their charter to the King with a view of obtaining another allowing them to accumulate a library. The court refused to grant the injjction, but saying that they would reserve the merits until a final hearing.

(1) Ward v The Society of Attys. 1 Coll. (Eng.) 370.

This case is followed by Treadwell v Salisbury Mfg.Co.(1) where the court after deciding the case on a jurisdictionel question say, "But we entertain no doubt of the right of a corporation, established solely for trading and manufacturing purposes, by a vote of the majority of their stockholders , to wind up their business, if in the exercise of a sound business discretion they deem it expedient so to do. ..If this be not so,we do not see that any limit could be put to the business of a trading corporation short of the entire loss or destruction of the corporate property. The stockholders would be compelled to carry it on until it came to actual insolvency. Such a doctorine is without any support in reason or authority."

"Becoming incorporated for a specified object without any specified time for its continuance of the business is no contract to continue it for ever, any more than articles of partnership without stipulation as to time. There is no reason why it should be construed into such a contract; such is not implied by the charter, and a doctorine that all the stockholders but one may be compelled to continue a

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(1) Treadwell v Salisbury Mfg. Co.7 Grey 393,404.

business which they find undesirable and unprofitable, and wish to abandon, is so unreasonable and unjust that it is not held to rise by implication, unless that implication is a mecessaryvone." (1) In this case, "The majority of the corporators undertake a charter which specifies no definate time for its continuance, have a right to abandon the undertaking, and dispose of and divide the property, the proceeding in this case is valid as against the complainents as a lawful way of accomplishing that end as to them." (1) Or to say the same thing in another way, "It is within the power of the stockholders to make the sale of the assets of the corporation doing an unsuccessful and unprofitable business." (2 and 3).

The New York Rule.

The comtrary doctorine is held in New York, Lousianna and West Virginia. In Abbott v The American Rubber Co. (4)

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(1) Black v Del. Canal Co.22 N.J.Eq.405-15.
(2) Bery v Broach (SO. (Miss.)117.
(3) See also Wilson v Central Bridge Co.9R.I.379,3: Peo. v College of Cal. 38 Cal.166,where this doctorine was extended to religeous and charitable corps. In Hands v Holdbrook 9 Fed.351 similar transfer held valid.
(4) Abbott v Rubber Co.33 Barb.578. In La. Curien v Sentini 16 La.An.27;Polar Star v P.S. 16 id.76. Hurst v Cox 3 S.E.Rep. (W.Va.) 564.

Justice Southerland delivered the opinion of the court; "I do not think the directors, even with the consent of a majority of the stockholders, had a right as against stockholders not consenting, to discontinue its existance and defeat the object of the organisation. I cannot presume that the directors or a majority of the stockholders of this corporation had a right by the laws of Connecticuit by a voluntary sale, to discontinue its existance, wind up and defeat the purpose, object and business for which the corporation was organised, even with the consent of a majority of the stockholders, so as to bind the minority not consenting, would be in effect depriving them of their property without their consent."

In Ward v Sae Ins. Co. (1) the court denied the right of the stockholders to dissolve the corporation saying, "Neither were the directors of the corporation even with the assent of the stockholders, authorised to discontinue their corporate business and wind up the affairs of the corporatin or to distribute the capital of the concern among the stockholders unless by authority of a special statute, or

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(1) Ward v Sea Insurance Co. 7 Pg.244.

under the decree of the Court declaring a dissolution." In this case the Court siezed upon their failure to elect officers, and upon this ground declared a forfeiture and appointed a receiver of their property.

Under the New York Statute.

The law in New York has since been changed by the Code of Civil Proceedure ##2419-21, providing that when a majority of the directors discover that the property of the corporation is not sufficent to pay its debts or "if for any reason they deem it beneficial to the interests of the stockholders that the corporation should be dissolved, they may present a petition" to the Court praying for a dissolution.

This statute has been liberally construed towards the furtherance of justice. In a late case in the Court of Appeals, Second Divison.(1) Justice Vannholding that right of granting a dissolution is discretionary with the Court, assuming of coarse thatstatutory proceeding has been followed(2)

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(1) Hitch v Hawley 132 N.Y.212.
(2) Ontario Bk. vOnondaga Bk.7 Hun 549; Re Pyrolusite Co. 29 Hun 429; Re Boynton Saw Co.34 Hun 369; Junes v Leadville Bk. 17 Pac.272.

Assignment for Benefit of Creditors.

It seems to be well settled that at Common Law a corporation can make an assignment for the benefit of creditors. A private person acting in good faith is allowed to pay his creditors in any way he pleases so long as he devotes his entire property to the payment of his creditors. A corporation should be allowed to do the same. The management of the business is vested in the directors, who while acting in good faith and within the scope of the business, have entire control of the management of the corporation. The payment of debts is but an incident of the business, any doctorine which restricts this right, interfers with the directors power to manage its business. An assignment for benefit of creditors is a mode of marshalling the corporate assets for the payment of debts, and on principle should be allowed.(1) Arecent case in the Court of Appeals takes this view, they say (2) "Regarding the transaction...as a simple preference of one creditor of the corporation, we do not

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(1) Nyman v Berry 3 Wash St. 734; Haxtum v Bishop 3 Wend.13
(2) Coats v Donell 94N.Y.168,78.

understand that such preference is unlawful. The right of a failing debtor to prefer one creditor to another in the distribution of his property, while it is often regretted, is recognised both in law and equity. A corporation in this respect stands the same right as an individual. Tt may execute a mortgage or give a lien which shall operate as a preferance, unlessed restrained by statute." The rule applies equally well to a religeous or charitable corporation. (1)

Under the New York Statute.

Because of the great practical importance of the right of a corporation in the State of New York to make an assignment for the benefit of creditors, I will give a brief hisrory of the statutory law in this State.

The first statute requiring attention is Ch.325 of the Laws of 1825;1 R/S.603,#4 prohibited assignments by corporations actually insolvent, or in contemplation of insolvency to any officer or stockholder of said company either directly or indirectlv. But #4 did "not apply to any incorporated

(1) De Ryter v St. Peters Church 3 N.Y.239.

library or religious society; nor to any monied corporation which shall have been created ,or whose charter shall have been renewed after the first of January 1828." (1)

In 1882 the above section was repealed by Ch.402 #39 nd #187 of Ch.409 was put in its place. This section prohibitd assignments to officers and stockholders,and prohibited the giving of preferences by monied corporations. But #39 of the Laws of 1882 was in turn amended by Ch. 434 of the Laws of 1884. Thus restoring it to its origenal standing as givn above.

To sumerise, at common law corporations could make general assignments. Under the law of 1825, all domestic (2) corporations except monied or religious and charitable, were prohibited from making assignments to officers or stockholders. From 1882-1884 the former provision was made applicable to monied corporations and removed as to all others.
In 1884 the origenal provision was restored leaving unaltered the inhibition against monied corporations.
This remained the law down to 1890 when all former provisions were repealed. The present law may be found in #48 of

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(1) Vol.I R.S. #11 star pg. 605.
(2) Coats v Donell 94 N.Y.p.178.

the Stock Corporation law.(1) Under this section transfers by corporations when insolvent to any of its officers or stockholders are prohibited. But assignments may be made to third persons provided no preferences are in any way created. (2) But when made by any corporation subject to the banking law the transfer must be authorised by a previously passed resolution of its Board of Directors, providing the property transferred exceeds in value $1000.

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(1) L.'92 Ch.688;5N.Y.R.S. (8ed.) 4102.
(2) In Crompton v Miller 19 Sup.691 the attention of the court was not called to the late statutory changes.

III By act of the Legislature Declaring Corporation Dissolved.

Ordinarily the repeal of the charter of a corporation by the Legislature is an involuntary dissolution so far as the directors and stockholders of the corporation are concerned, but it is possible that the directors and stockholders may petition the Legislature to dissolve the corporation. A repeal of a charter brought about in this way would be within the domain of this thesis.

Since the decision of the United States Supreme Court in the Darthmouth College case the Legislatures of the various States have been careful to reserve the right to repeal or modify all charters granted to corporations. So that in the cases we are to discuss, the contract obligation between the State and the corporation is not involved.

"A repeal of a charter, says Mr. Justice Blatchford, (1) does not of itself violate or impair the validity of any contract which the corporation has entered into. But the Legislature cannot establish such rules in regard to the management and disposition of the assets of the corp-

(1) Lathrop vStedman 13 Blatch. 143.

oration, that the avails shall be diverted from, or divided unfairly or unequally among, the creditors, and thus impair the obligation of contracts, or that the portion of the avails which belong to the stockholders shall be sequestrated and diverted from the owners, and thus injure vested rights. The Legislature has the right, as an administrative measure, to appoint a trustee, to take the assets and manage the affairs of a corporation whose charter has been repealed."

Upon the repeal of a charter by the Legislature acting within the limits of its constitutional authority, the corporation ceases to exist, and no judgment can be rendered against it in an action at law. (Because there is no person in esse against whom the judgment could be enforced). Such a repeal does not impair the obligation of contracts made by the corporation with other parties during its existence." (1) For while it is true that"if several men enter into a valid contract, it cannot be altered fundimentally but by the unanimous consent." (2) Yet "A corporation

(1) Thorton v Marginal Freight Co.123 Mass.32.
(2) Mervery v Ind. R.R. 4 Piss.78.

by the very terms and nature of its political existance is subject to dissolution." "Every creditor must be presumed to understand the nature and incidents of such a body politic , and to contract with reference to them. (1) It can make no difference that those dealing with it could not forsee"its future dissolution.(2)

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(1)Williams v Potomac R.R. 8 Pet.282, p.287.
(2)Mobile Ry. v Peo.29 Ala.573,36; See also Revere v Boston Copper Co. 15 Pic.351.

IV Dissolution Authorised by Legislative Enactment.

There is in most States four methods prescribed by the Legislature for the voluntary dissolution of corporations. During the present winter the Legislature of the State of Ne New York, added a fifth. Iwill very briefly outline these proceedings in the following order.

I By Statutory Proceeding in Court.

II By a Re-organisation.

III by Re-incorporation.

IV By Consolidation.

V By the Sale of Entire Busimess to AnotherCorporation.

I By Statutory Procedings in Court.

n The Code of Civil Procedaure ##2419-2431 provides that if a majority of the directors having having in charge the management of a corporation created by or under the laws of the State discover that the corporation is insolvent; or if for any reason they deem it beneficial to the interists of the stockholders that the corporation be dissolved they may present a verified petition to the court praying for a dissolution under the order of the court.

Upon the receipt of the petition, the court makes an order requiring all persons interested in the corporation to show cause before a referee, why the corporation should not be dissolved. If the corporation be insolvent, the court may upon notice to the Atty.Gen. appoint a temporary receiver, who takes charge of all the assets . Upon the final hearing the court may or may not in its discretion make a final order dissolving the corporation. The receiver then will collect and distribute its effects pro rata, among the creditors, and the balance, if any, pro rata among the stockholders.

II By Re-incorporation.

By §32 of the General Corporation Law it is provided that any domestic corporation, at any time within three years before its expiration thereof, may extend the term of its existance beyond the time specified in its original certificate of incorporation, by the consent of the stockholders owning two-thirds of its capital stock, or if not a corporation having capital stock, by the consent of two thirds of its members...Upon filing and recording such certificate the corporation will be revived and extended, for a term not exceding the term of which it was incorporated in the first instance.

II By Re-organization

When the property and franchises of a domestic corporation are sold by virtue of a mortgage or deed of trust, pursuant to the judgment of a court, the purchaser may associate with with him any number of persons, not less than the number required by law for the incorporation of such corporations, a majority of whom shall be citizens of the State, may become a corporation, and take and possess the property and franchises thus sold, upon filing a certificate of incorporation. (1)

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(1) Stock Corporation Law #3.

IV By Consolidation.

The best illustration of the effect of consolidation of corporations is to be found in what are termed railroads. We have here to deal with the legal status of the corporation before and after consolidation, and the relation of the consolidated company to the creditors of the old company. Substantially the same phenomina is presented here , as in all other cases of combination, so I will treat it but once.

Mr. Justice Strong in delivering the opinion of the Supreme Court in Railroad Co. v Georgia (1) said "The effect of consolidation, as distinguished from a union by merger of one company into another, is to work a dissolution of the companies consolidating, and to create a new corporation out of the former one." In each case before it took place , the original companies existed and were independant of each other,. It could not occur without their consent. The consolidated company then had no legal existance. It could have none while the original corporation subsisted All the old and the new could not co-exist. It was a con-

Ry. Co. v Georgia 98 U.S. p. 363.

dition precedent to the existance of the new corporation that the old one should first surrender their validity and submit to dissolution ...When the consolidation was completed, the old companies were destroyed, a new one was created and its powers were granted to it." It has new powers, new franchises and new stockholders."(L)

As far as the creditors of one of the original companies is concerned, the consolidated company is the successor of the old company, it is a new and independent company, and such creditor has no claim against it upon their original contract; but only by virtue of its assumption of the obligations of the old companies."(2)

(L) Pulman Car Co. v Mo. Pacific Co. 115 U.S.94.
(2) Boardman v Lake Shore 84 N.Y.181.

V By Sale of Franchises and Property.

Any stock corporation (except a railroad corporation) may sell with the consent of 2/3 of its stockholders, its entire property, and franchises, or any part thereof to any domestic corporation engaged in the same business of the same general character. Such sale shall shall vest the rights and franchises thereby conferred in the corporation to which they were conveyed. (1)

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(1) Stock Corporation Law #33; as amended L.'93 Ch.638.

The Effect of Dissolution Upon the Corporate Prop'ty

I As to Realty.

Under the common law, all the real estate owned by the corporation at the date of the dissolution, and undisposed of - reverted to the grantor and his heirs. In the words of Chancellor Kent, (1) "According to the well settled law of the land, where there is no special statute providing to the contrary, upon the civil death of a corporation, all its real estate, remaining unsold, reverts to the original grantor and his heirs." "For the reversion, in such an event, is a condition annexed by law, in as much as the cause of the grant has failed." (2)

Equity; however, views the matter in quite a different light. In equity the corporation is regarded as a trustee holding the corporate property for the benefit of its creditors and stockholders, which, upon its dissolution or civil death, a court of Chancery will lay hold of as a trust

(1) 2 Kent Com. 307.
(2) Ang. & Am. on Corp. #770.

fund, and distr b[illegible] f[illegible] h[illegible] b n fit." (1) The common law rule is recognised in New York as late as 1849 in the case of Bringham v Weidereaux . (2) This doctrine received its death blow at the hands of Justice Rapello in the case of Heath v Barmore 50 N.Y.305 where he holds that the common law rule does not prevail in respect to stock corporations. At the present time it seems fair to say that the rule has either been changed by statute, or by judicial construction in most if not all the states, so far as it applies to business corporations having capital stock.

But when dealing with corporations having no stockholders organised other than for pecuniary bfnefit, we must follow and apply the commom law. The Supreme Court of Illinois in the case of Mott v Dansville Seminary (3) took this view,; they say that "The rule of the common law has been modified and changed in modern times by courts of equity and Legislative enactments. Such modifications and changes have grown up, in favor of corporations organised for pecuniary

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(1) Bringham v Weidereaux 1 N.Y.509.
(2) Life Ins .Co. v Basset 102 Ill.323; See also How v Robinson 20 Fla.352.
(3) Mott v Dansville Sem. 129 Ill.403.

profit. In regard to the latter the shareholders are themselves the original donors of the corporate property each member contributing his share of the capital for the common benefit of all; and the corporation so long as it is solvent, holds the property given it merely as trustee for its shareholders... In England the doctrine that the real estate owned by a corporation reverts to the original owner upon dissolution, was first applied in case of ecclesiastical and municipal corporations. The main reason for such was that in those cases, there was no shareholders, and ordinarily no creditors, so that the property was really without an owner after the particular use, for which it had been given, had come to an end by a dissolution of the corporate body.

These reasons, which gave rise to the doctrine, and originally justified its application, existed in the case of the Dansville Seminary at the time when its dissolution took place. It is the equity in favor of creditors and shareholders, which prevents the enforsement of the rule, when it is not followed. No such equity exists in this case...By terms of the charter there were to be no stock-

holders, and it was evidently contemplated, that the institution of learning herein provided for would be organised and supported by gifts and donations. /.. In the absence of statutory regulations to the contrary, the doctrine of reverter to the original or his heirs in case of corporate dissolution is applicable, at this day, to public and eleemosynary corporations, even in the view of a court of equity."

In order to determine the law of thie State a detailed examination of the statutes is necessary. But in general it may be said, the statutes have provided that the property of all churches and religeous societies shall upon the extinction or abandonment of the same, vest in the trustees of said corporation, and after the payment of all existing debts, the balance, if any, shall be turned over to the governing board of the demonination to which the extinct church belonged. (1)

It is provided by statute that the property of all educational corporations shall be distributed by the

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(1) See N.Y.R.S. 1906-8,1918-19 and #73 of proposed Religeous Corp. Law; Report of Stat.Rev.Com.'90 p1881-1921.

Regents of the University of the State of New York in such ways as they deem just and equitable.(1)

So far as I have carried my investigation, I have been unable to find general laws applicable to hospitals, Volunteer Fire Depts. and other similar non-membership corporations. In which case, (no special charter provision to the contrary), it would follow that the real estate would revert to the grantor and the personalty to the State.

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(1) Laws of '92 Ch.378 #30; 5 R.S.(8ed.)3540.

II As to Personalty.

As to personalty, the rules of the common law provided that upon the corporate dissolution the property reverts to the State. And under the circumstances, as given above, the personalty of a dissolved corporation will revert to the State.

Two recent cases have arisen involving the distribution of the property of Mutual Insurance companies, they are , Titcomb v Kennebank vMutual Ins. Co. (1) and The Traders Ins. Co. (2) In the former the Supreme Court of Maine ordered the assets turned over to the treasurer of the State; on the following reasoning "It is said that in this class of cases the corporation named in the act of incorporation should be regarded as stockholders. They are not stockholders, and to hold that they are would be a fiction, there is no equity in favor of thecorporators of a mutual insurance company. They contribute nothing towards its

(1) Titcomb v Kennebick Mutual Ins. 79 Me.315.
(1) Traders Ins .Co. v Brown 142 Mass.408.

its assets, and we think that it would be contrary to public policy to allow them to have a pecuniary interest in them.. We think there is a much stronger equity in favor of the former policy holders, whose money contributed to produce assets. But as they cant be regarded as stockholders after their policies have expired and their previous notes been cancelled and given up. They have received the benefits in full for which they contracted and are no longer before members of the company."

In the later case, the Massachusetts coutr after a careful examination of their statute, held that in as much as the promoters of the company had invested their capital as a guaranty fund, which fund was liable for the company, they should be allowed to share the profits and so ordered the property to be distribted.