

BENGUET CONSOLIDATED MINING CO., PETITIONER, VS. PINEDA, IN HIS CAPACITY AS SECURITIES AND EXCHANGE COMMISSIONER, RESPONDENT. CONSOLIDATED MINES, INC., INTERVENOR,*G.R. No. L-7231. March 28, 1956*

Ponente: REYES, J.B.L., J.

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Appeal under Rule 43 from a decision of the Securities and Exchange Commissioner, denying the right of, a sociedad anonima, to extend its corporate existence by amendment of its original articles of association, or alternatively, to reform and continue existing under the Corporation Law (Act 1459) beyond the original period.

The petitioner, the Benguet Consolidated Mining Co. (hereafter termed "Benguet" for short), was organized on June 24, 1903, as a sociedad anonima regulated by Articles 151 et seq, of the Spanish Code of Commerce of 1886, then in force in the Philippines. The articles of association expressly provided that it was organized for a term of fifty (50) years. In 1906, the governing Philippine Commission enacted Act 1469, commonly known as the Corporation Law, establishing in the islands the American type of juridical entities known as corporation, to take effect on April 1, 1906. of its enactment, this Court said in its decision in *Harden vs. Benguet Consolidated Mining Co.*, 58 Phil., 141, at pp. 145-146, and 147:

"When the Philippine Islands passed to the sovereignty of the United States, the attention of the Philippine Commission was early drawn to the fact there is no entity in Spanish law exactly corresponding to the motion of the corporation in English' and American law; and in the Philippine Bill, approved July 1, 1906, the Congress of the United States inserted certain provisions, under the head of Franchises, which "were intended to control the Lawmaking power in the Philippine Islands in the matter of granting of franchises, privileges and concessions. These provisions are found in sections 74 and 75 of the Act, The provisions of section 74 have been superseded' by section 28 of the Act of Congress of August 29, 1916, but in section 75 others is a provision referring to mining corporations, which still remains the law, as amended. This provision, in its original form, reads as follows: * * * it shall be unlawful, for any member of a corporation engaged in agriculture or mining; and for any corporation organized for any purpose except irrigation to be in any wise interested in any other corporation engaged in agriculture or in mining.

Under the guidance of this and certain other provisions thus enacted by Congress, the Philippine Commission entered upon the enactment of a general law authorizing the creation of corporations ' in the Philippine Islands. This rather elaborate piece of legislation is embodied in what is called-our Corporation Law (Act No. 1459 of the Philippine Commission). The evident purpose of the commission was to introduce the American corporation into the Philippine Islands as the standard commercial entity and to hasten the day when the sociedad anonima of the Spanish law would be obsolete. That statute is a sort of codification of American corporate law."

"As it was the intention of our lawmakers to stimulate the introduction of the American corporation into the Philippine law in the place . of the sociedad anonima, it was necessary to make certain adjustment resulting from the continued co-existence, for a time, of the two forms of commercial entities. Accordingly, in section

75 of the Corporation Law, a provision is found making the sociedad anonima subject to the provisions of the Corporation Law 'so far as such provisions may be applicable and giving to the sociedades anonimas previously created in the Islands the option to continue business as such or to reform and organize under the provisions of the Corporation Law. Again, in section 191 of the Corporation Law, the Code of Commerce is repealed in so far as it relates to sociedades anonimas. The purpose of the commission in repealing this part of the Code of Commerce was :to compel commercial entities thereafter organized to incorporate under the Corporation Law, unless they should prefer to adopt some form or other of the partnership. To this provision was added" another to . the effect that existing sociedades anonimas, which elected to continue their business as such, instead of reforming and reorganizing under the Corporation Law, should 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 and public officials shall be governed by the provisions of this Act."

Specifically, the two sections of Act No. 1459 referring to sociedades anonimas then already existing, provide as follows:

"Sec, 75, Any corporation or a sociedad anonima formed, organized, and existing under the laws of the Philippines 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. 191. The Code of Commerce, in so far as it relates to corporation 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 Philippines, and for reports by their officers as amended, and Act Numbered 'Six hundred 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 contract and operate street railway, electric light and power and telephone lines, the conditions upon which the same maybe granted, certain powers of the grantee 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 participation, as to which association 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 and public officials.' shall be governed by the provisions of this Act."

As the expiration of its original- 50 year term of existence approached, the Board of Directors of Benguet adopted in 1946 a resolution to extend its life for another 50 years from July 3, 1946 and submitted it for registration.to the respondent Securities and Exchange Commissioner. Upon advice of the Secretary of Justice (Op. No, 45, Ser. 1947) that such, extension was contrary to law, the registration was denied. The matter was dropped, allegedly because the stockholders of Benguet did not approve of the Directors' action.

Some six years later in 1953, the shareholders of Benguet adopted a resolution empowering the Director to "effectuate the. extension of the Company's business life for not less than 20 and not more than 50 years, and this by either (1) an amendment to the Articles of Association or Charter of this Company or (2) by reforming and reorganizing the Company as a Philippine Corporation, or (3) by both or (4) -by any other means." Accordingly,

the , Board of Directors .on May 27, 1953, adopted a resolution to the following effect—

"Be It

Resolved, that the Company be reformed, reorganized and organized under the provisions of section 75 and other provisions of the Philippine Corporation Law as a Philippine corporation with a corporate life and corporate powers as set forth in the Articles of Incorporation attached hereto as Schedule 'I' and made a part hereof by this reference; and

"Be It

'FURTHER RESOLVED, that any five, or more of the following share-holders of the Company be and they hereby are authorized as instructed to act for and in behalf of the share holders of the Company and of the Company as Incorporators in the reformation, reorganization and organization of the Company under and in accordance with the provisions aforesaid of said Philippine Corporation Law, and in such capacity, they are hereby authorized and instructed to execute the aforesaid . Articles of Incorporation attached to these Minutes as Schedule T. hereof, with such amendments, deletion and additions thereto as any five or more of those so acting shall deem necessary, proper, advisable or convenient to effect prompt registration of said Articles under Philippine Law; and five or more of said Incorporators are hereby further authorized and directed to do all things necessary, proper, advisable or convenient to effect such registration."

In pursuance of such resolution, Benguet submitted in June, 1953, to the Securities and Exchange Commissioner, for alternative registration, two documents: (1) Certification as to the Modification of (the articles of association of) the Benguet Consolidated Mining Company, extending the term of its existence to another fifty years from June 15, 1953; and (2) articles of incorporation, covering its reformation or reorganization as a corporation in accordance with section 75 of the Philippine Corporation Law.

Relying mainly upon the adverse opinion of the Secretary of Justice (Op. No. 180, s. 1953), the Securities and Exchange Commissioner denied the registration and ruled:

(1) That the Benguet, as sociedad anonima, had no right to extend the original term of corporate existence stated in its Articles of Association, by subsequent amendment thereof adopted after enactment of the Corporation Law (Act No. 1459); and

(2) That Benguet, by its conduct, had chosen to continue as sociedad anomina, under section 75 of Act No. 1459, and could no longer exercise the option to reform into a corporation, specially since it would, indirectly produce the effect of extending its life.

This ruling is the subject of the present appeal.

Petitioner Benguet contends:

(1) That the proviso of section 18 of the Corporation Law to the effect—

"that the life of said corporation shall not be extended by amendment beyond the lime fixed in the original articles."

does not apply to sociedades anomimas already in existence at the passage of the law, like petitioner herein;

(2) That to apply the said Restriction imposed by section 18 of the Corporation Law to sociedades anonimas already functioning when the said law was enacted would be in violation of constitutional inhibitions;

(3) That even assuming that said restriction was applicable to it, Benguet could still exercise the option of reforming and reorganizing under section 75 of the Corporation Law, thereby prolonging its corporate existence,

since the law is silent as to the time when such option may be exercised or availed of.

The first issue arises because the Code of Commerce of 1886 under which Benguet was organized, contains no prohibition (to extend the period of corporate existence), equivalent to that set forth in section 18 of the Corporation Law. Neither does it expressly authorize the extension. But the text of Article 223, reading:

"ART. 223. After the termination of the period for which commercial associations are constituted, it shall not be understood as extended by the implied or presumed will of the members; and if the members desire to continue in association, they shall draw up new articles, subject to all the formalities prescribed for their creation as provided in Article 119." (Code of Commerce.)

would seem to imply that the period of existence of the sociedad anonimas (or of any other commercial association for that matter) may be extended if the partners or members so agree before the expiration of the original period.,

While the Code of Commerce, in so far as sociedades anonimas are concerned, was repealed by Act No. 1459, Benguet claims that article 223 is still operative in its favor under the last proviso of section 191 of the Corporation law (ante, p. 4 to the effect that existing sociedades anonimas would continue to be governed by the law in force before Act 1459,

"in relation to their organization and method of transacting business and to the rights of members among themselves, but their relations to the public and public officials shall be governed by the provisions of this Act."

Benguet contends that the period of corporate life relates to its organization and the rights of its members inter se,' and not to its relations to the, public or public officials.

We find this contention untenable.

The term of existence of association (partnership or sociedad anomima) is coterminous with their possession of an independent legal personality, distinct from that of their component members. When the period expires, the sociedad anomima loses the power to deal and enter into further legal relations with other persons; it is no longer possible for it to acquire new rights or incur new obligations, have only as may be required by the process of liquidating and winding up its affairs. By the same token, its officers and agents can no longer represent it after the expiration of the life term prescribed, save for settling its business. Necessarily, therefore, third persons or strangers have an interest in knowing the duration of the juridical personality of the sociedad anonima,, .since the latter can not be dealt with after that period; wherefore its prolongation or cessation is a matter directly involving the company's relations to the public at large.

On the importance of the term of existence set in the articles of association of commercial companies under the Spanish Code of Commerce, D. Lorenzo Benito y Endar, professor of mercantile law in the Universidad Central de Madrid, has this to say:

"La duration de la Sociedad.—La necesidad de' consignar este requisito en el cotitrato social tiene mi valor analogo al qua dijinius tenia el mismo al tratar de las compafias colectivas, aun cuando respecto de las anonimas no haya de tenerse en cuenta para nada lo que dijimos entonces acerca da" la trascendencia quo ello tiene para los socios; porque no existiendo en las minimas la serie de responsabilidades de caracter personal ;que afectan a los socios coleetivos, es claro que la duraci6n de la soeiedad iraporta conocerla a los socios y los terceros, porque ella marca el limite natural del desenvolvimiento de la empresa constituida y el comienzo de la liquidacion de la sociedad." (3 Benito, Dereclio Mercantil, 292-293.)

"Interesa, pues, la fijacion de la vida de la compaia, desevol-viendose con normalidad y regularidad, tanto a

los asociados como a los terceros. A aquellos, porque su libertad economica, en cierto modo limitada por la existencia del contrato de compania, se recobra despues de realizada, mas 6 menos cumplidamente, la finalidad comun perseguida; y a los terceros, porque les advierte el momento en que, extinguida la compania, no cabe y a la creation con ella de nuevas relaciones juridicas, de que hazcan reciprocamente derechos y obligaciones, sino solo la liquidacion de los negocios hasta; entonces convenidos, sin otra excepcion que la que luego mas adelante habremos de sefalar". (3 Benito, Derecho Mercantil, p. 245.)

The State and its officers also have an obvious interest in the term of life of associations, since the conferment of juridical capacity upon them during such period is a privilege that is derived from statute. It is obvious that no agreement between associates can result in giving rise to a new and distinct personality, possessing independent rights and obligations, unless the law itself shall decree such result. And; the State is naturally interested that this privilege be enjoyed only under the conditions and not beyond the period that it sees fit to grant; and, particularly, that it be not abused in fraud and to the detriment of other parties; and for this reason it has been ruled that "the limitation (of corporate existence) to a definite period is an exercise of control in the interest of the public" (Smith vs. Eastwood Wire Manufacturing Co., 43 Atl. 568).

We can not assent to the thesis of Benguet that its period of corporate existence has relation to its "organization". The latter term is defined in Webster's International Dictionary as:

"The executive structure of a business; the personnel of management, with its several duties and places in administration; the various persons who conduct a business, considered as a unit."

The legal definitions of the term "organization" are concordant with that given above:

"Organize or 'organization, as used in Reference to corporations, has, a well-understood meaning, which is the election of officers, providing for the subscription and payment of the capital stock, the adoption of by-laws, and such other steps as are necessary to endow the legal entity with the capacity to transact the legitimate business for which it was created- Waltson vs. Oliver, 172, 173, 49 Kan. 107, 33 Am. St. Rep. 355; Topeka Bridge Co. vs. Cummings, 3 Kan. 55, 77; limit vs. Kansas & M. Bridge Co., 11 Kan. 412, 439; Aspen Water & Light Co., to. City of Aspen, 37 P. 728, 730, 5 Colo. App. 12; Nemaha Coal & Mining Co., vs. Settle 38 P. 453, 484, 54 Kan. 424.

Under a statute providing that, until articles of incorporation should be recorded, the corporation should transact no business except its own organization, it is held that the term "organization" means simply the process of forming and arranging into suitable disposition the parties who are to act together in, and denning the objects of, the compound body, and that this process, even when complete in all its parts, does not confer a franchise either valid or defective, but, on the contrary, it is only the act of the individuals, and something else must be done to secure the corporate franchise. Abbott vs. Omaha Smelting & Refining Co. 4 Neb. 416, 421." (30 Words and Phrases, p. 282.)

It is apparent from the foregoing definitions that the term "organization" relates merely to the systematization and orderly arrangement of the internal and managerial affairs and organs of the petitioner Benguet, and has nothing to do with the prorogation of its corporate life.

From the double fact that the duration of its corporate life (and juridical personality) has evident connection with the petitioner's relations to the public, and that it bears none to the petitioner's organization and method of transacting business, we derive the conclusion that the prohibition contained in section 18 of the Corporation Law (Act No. 1459) against extension of corporate life by amendment of the original articles was designed and intended to apply to "companias anonimas" that, like petitioner Benguet, were already existing at the passage of said law. This conclusion is reinforced by the avowed policy of the law to hasten the day when companias anonimas would, be extinct, and replace them with the American type of corporation (Harden vs. Behguet

Consolidated Mining Co., supra), for the indefinite prorogation of the corporation life of *sodades anonimas* would maintain the unnecessary duality of organizational types, instead of reducing them to a "single one; and what is more, it would confer upon these *sodades anonimas*, whose obsolescence was sought, the advantageous privilege of perpetual existence that the new corporation could not possess.

Of course, the retroactive application of the limitations on the terms of corporate existence could not be made in violation of constitutional inhibitions specially those securing equal protection of the laws and prohibiting impairment of the obligation of contracts. It needs no argument to show that if Act No. 1459 allowed existing *compañias anonimas* to be governed by the old law in respect to their organization, methods of transacting business and the rights of the members among themselves, it was precisely in deference to the vested rights already acquired by the entity and its members at the time the Corporation Law was enacted. But we do not agree with petitioner Benguet (and here lies the second issue in this appeal) that the possibility to extend its corporate life under the Code of Commerce constituted a right already vested when Act No. 1459 was adopted. At that time, Benguet's existence was well within the 50 years period set in its articles of association; and its members had not entered into any agreement that such period should be extended. It is safe to say that none of the members of Benguet anticipated in 1906 any need to reach an agreement to increase the term of its corporate life, barely three years after it had started. The prorogation was purely speculative; a mere possibility that could not be taken for granted. It was as yet conditional, depending upon the ultimate decision of the members and directors. They might agree to extend Benguet's existence beyond the original 50 years; or again they might not. It must be remembered that in 1906, the success, of Benguet in its mining ventures was by no means so certain as to warrant continuation of its operations beyond the 50 years set in its articles. The records of this Court show that Benguet ran into financial difficulties in the early part of its existence, to the extent that, as late as 1913, ten years after it was found, 301,100 shares of its capital stock (with a par value of \$1 per share) were being offered for sale at 25 centavos per share in order to raise the sum of P75,000 that was heeded to rehabilitate the company (*Hanlon vs. Hausermann and Beam*, 40 Phil., 790). Certainly the prolongation of the corporate existence of Benguet in 1906 was merely a possibility in futuro, a contingency that did not fulfill the requirements of a vested right entitled to constitutional protection, defined by this Court in *Balboa vs. Farrales*, 51 Phil., 498, 502, as follows:

"Vested right is 'some right or interest in the property which has become fixed and established, and is no longer open to doubt or controversy,'"

"A 'vested' right is defined to be an immediate fixed right of present or future enjoyment, and rights are 'vested' in .contradistinction to being expectant or contingent" (*Pearsall vs. Great Northern R. Co.*, 161 IT. S. 646, 40 L. Ed. 838).

In *Corpus Juris Secundum* we find:

"Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, .complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on. are not vested." (16 C. J, S. 214-215.)

Since there was no agreement as yet to extend the period of Benguet's corporate existence (beyond the original 50 years) when the Corporation Law was adopted in 1906, neither Benguet nor its members had any actual or vested right to such extension at that time. Therefore, when the Corporation Law, by section 18, forbade extensions of corporate life, neither Benguet nor its members were deprived of any actual or fixed right constitutionally protected.

To hold, as petitioner Benguet asks, that the legislative power could not deprive Benguet or its members of the

impossibility to enter at some indefinite future time into an agreement to extend Benguet's corporate life, solely because such 'agreements were authorized by the Code of Commerce, would be tantamount to saying that the said Code was irrevocable on that point. It is a well settled rule that no person has a vested interest in any rule of law entitling him to insist that it shall, remain unchanged for his benefit. (New York C. R. Co. vs. White, 61 L. Ed (U.S.) 667; Mondou vs. New York N. H. & H. E. Co., 56 L. Ed. 327; Rainey vs. V. S., 58 L. Ed. 617; Lilly Co. vs. Saunders, 125 ALR. 1308; Shea vs. Olson, 111 ALR. 998).

"There can be no vested right in the continued existence of a statute or rule of the common law which precludes its change or repeal, nor in any omission to legislate on a particular matter or subject. Any right conferred by statute may be taken away by statute before it has become vested, but after a right has vested, repeal of the statute or ordinance which created the right does not and cannot affect much right." (160 U. S. 222-228.) It is a general rule of constitutional law that a person has no vested right in statutory privileges and exemptions" (Brearly School vs. Ward, 201 NY. 558, 40 LRA NS. 1215; also, Coolidge, Constitutional Limitations, 7th ed., p. 546).

It is not amiss to recall here that after Act No. 1459 the Legislature found it advisable to impress further restrictions upon the power of corporations to 'deal in public lands, or to hold real estate beyond a maximum area; and to prohibit any corporation from endeavouring to control or hold more than 15 per cent of the voting stock of an agricultural or mining corporation (Act No. 3518). These prohibitions are so closely integrated with our public policy that Commonwealth Act No. 219 sought to extend such restrictions to associations of all kinds. It would be subversive of that policy to enable Benguet to prolong its peculiar status of sociedad anonima, and enable it to cast doubt and uncertainty on whether it is, or not, subject to those restrictions on corporate power, as it once endeavoured to do in the previous case of Harden vs. Benguet Mining Corp. 58 Phil., 149.

Stress has been laid upon the fact that the Compania Maritima (like Benguet, a sociedad anonima established before the enactment of the Corporation Law) has been twice permitted to extend its corporate existence by amendment of its articles of association, without objection from the officers of the defunct Bureau of Commerce and Industry, then in charge of the enforcement of the Corporation Laws, although the exact question was never raised then. Be that as it may, it is a well established rule in this jurisdiction that the government is never estopped by mistake or error on the part of its agents" (Pineda vs. Court of First Instance of Tayabas, 52 Phil., 803, 807), and that estopped can not give validity to an act that is prohibited by law or is against public policy (Eugenio vs. Perdido, 97 Phil., 41, May 19, 1955; 19 Am. Jur. 802); so that the respondent, Securities and Exchange Commissioner, was not bound by the rulings of his predecessor if they be inconsistent with law. Much less could erroneous decisions of executive officers bind this Court and induce it to sanction an unwarranted interpretation or application of legal principles.

We now turn to the third and last issue of this appeal, concerning the exercise of the option granted by section 75 of the Corporation Law to every sociedad anonima. "formed, organized and existing under the laws of the Philippines on the date of the passage of this Act" to either continue business as such sociedad anonima or to reform and organize under the provisions of the Corporation Law. Petitioner-appellant Benguet contends that as the law does not determine the period within which such option may be exercised, Benguet may exercise it at any time during its corporate existence; and that in fact on June 22, 1953, it chose to reform itself into a corporation for a period of 50 years from that date, filing the corresponding papers

The petitioner's argument proceeds from the unexpressed assumption that Benguet, as sociedad anonima, had not exercised the option given by section 75 of the Corporation Law until 1953. This we find to be incorrect. Under that section, by continuing to do business as sociedad anonima, Benguet in fact rejected the alternative to reform as a corporation under Act No. 1459. It will be noted from the text of section 75 (quoted earlier in this opinion)

that no special act or manifestation is required by the law from the existing sociedades anonimas that prefer to remain and continue as such. It is when they choose to reform and organize under the Corporation Law that they must in the words of the section, "transfer all corporate interests to the new corporation". Hence if they do not so transfer, the sociedades amdnimas affected are to be understood to have elected the alternative "to continue business as such corporation" (sociedad amnima)[2].

The election of Benguet to remain a sociedad anonima after the enactment of the Corporation Law is evidence, not only by its failure, from 1906 to 1953, to adopt the alternative to transfer its corporate interests to a new corporation, as required by section 75; it also appears from positive acts. Thus around 1933, Benguet claimed and defended in court its acquisition of shares of the capital stock of the Balatoc Mining Company, on the ground that as a sociedad anonima it (Benguet) was not a corporation. within the purview of the laws prohibiting a mining corporation from becoming interested in another mining corporation (Harden vs. Benguet Mining Corp., 58 Phi)., p. 1.49); Even in the present proceedings, Benguet hag urged its right to amend its original articles of association as " sociedad anonima" and extend its life as such under the provisions of the Spanish Code of Commerce. Such appeals to privileges as " sociedad anonima" under the Code of 1886 necessarily imply that Benguet has rejected the alternative of reforming under the Corporation Law. As respondent Commissioner's order, now under appeal, has stated—

"A sociedad anonima could not claim the benefit of both, but must have to choose one and discard the other. If it elected to become a corporation it could not continue as a sociedad anonima; and if it choose to remain as a sociedad anonima it could not become a corporation."

Having thus made its choice, Benguet.may not now go back and seek to change its position and adppt the reformation that it had formerly repudiated. The election of one of several alternatives, is irrevocable once made (as now expressly recognized in article 940 of the new Civil Code of the Philippines) : such rule is inherent in the nature of the choice, its purpose being to clarify and render definite the rights of the one exercising the option, so that other persons may act in consequence. While successive choices may be provided there' is nothing in section 75 of the Corporation Law to show or hint that a sociedad anonima may make more than one choice thereunder, since only one option is provided for.

While no express period of time is fixed by the law within which sociedades wnonimas may elect under section 75 of Act No, 1459 either to reform or to retain their status quo, there are powerful reasons to conclude that the legislature, intended such choice to be made within a reasonable time from the effectivity of the Act. To enable a sociedad amonitna to choose reformation when its stipulated period of existence is nearly ended, would be to allow it to enjoy a term of existence far longer than that granted to corporations organized under the Corporation Law; in Ben- guet's case, 50 years as sociedad ammdma, and another 50 years as an American type of corporation under Act 1459; a result incompatible with .the avowed purpose of the Act to hasten the disappearance of the sociedades anonimas. Moreover, such belated election, if permitted, would enable sociedades anonimas to reap the full advantage of both' types of organization. Finally, it would permit sociedades awonimas to prolong their corporate existence indirectly by belated reformation into corporations under Act No. 1459, when they could not do so directly by amending their articles of association.

Much stress is laid upon allegedly improper motives on the part of the intervenor, Consolidated Mines, Inc., in supporting the orders appealed from, on the ground that intervenor,seeks to terminate Benguet's operating contract and appropriate the profits that are the result of Benguet's efforts in developing the mines of the intervenor. Suffice it to say that whatever such motives should be, they are wholly irrelevant to the issues in this appeal, that exclusively concern the legal soundness of the order of the respondent Securities and Exchange Commissioner rejecting the claims of the Benguet Consolidated Mining Company to extend its corporate life.

Neither are we impressed by the prophecies of economic chaos that would allegedly ensure with the cessation of Benguet's activities. If its mining properties are really susceptible of profitable operation, inexorable economic laws will ensure their exploitation; if, on the other hand, they can no longer be worked at a profit, then catastrophe becomes inevitable, whether or not petitioner Benguet retains corporate existence. Sustaining the opinions of the respondent Securities and Exchange Commissioner and of the Secretary of Justice, we rule that:

- (1) The prohibition contained in section 18 of Act No. 1459, against extending the period of corporate existence by amendment of the original articles, was intended to apply, and does apply, to sociedades andnimas already formed, organized and existing at the time of the eff ectivity of the Corporation Law (Act No. 1459) in 1906;
- (2) The statutory prohibition is valid and impairs no vested rights or constitutional inhibition where no agreement to extend the original period of corporate life was perfected before the enactment of the Corporation Law;
- (3) A soeiedad (minima, existing before the Corporation Law, that continues to do business as such for a reasonable time after its enactments, is deemed to have made its election and may not subsequently claim to reform into a corporation under section 75 of Act No. 1459.

In view of the foregoing, the order appealed from is affirmed. Costs against petitioner-appellant Benguet Consolidated Mining Company.

Padilla, Montemayor, Reyes, A. Labrador, Concepcion and Endencia, JJ., concur.

[2] It must be remembered that sections 75 and 191 of the Corporation Law use the phrase "corporation or sociedad tmonim" thus employing "corporation" as the equivalent legal designation in English of the Spanish term "sociedad anonima", in designating the same entity; See *Harden vs. Benguet Cons. Mining Co.*, 58 Phil., p. 146.

DISSENTING:

PARAS, C. J.,

The petitioner, Benguet Consolidated Mining Company, was organized as a sociedad anonima on June 24, 1903, under the provisions of the Code of Commerce, and its term as fixed in the articles of association was fifty years. It has been a leading enterprise, long and widely reputed to have pioneered in and boosted the mining industry, distributed profits among its shareholders, and given employment to thousands. To be more approximately exact, the petitioner has kept on its payrolls over four thousand Filipino employees, who have about twenty thousand dependents. The taxes and other dues paid by it to the Government have been in enormous amounts. It has always been subject to such supervision and control of Government officials as are prescribed by law.

When, therefore, the petitioner on June 3, 1953, presented all necessary documents to the respondent, the Securities and Exchange Commissioner, with a view to the extension of its term as a sociedad anonima for a period of fifty years from June 15, 1953; when on June 22, 1953, it filed with said respondent the necessary articles of incorporation and other documents, with a view to reforming itself as a corporation under the Corporation Law for a period of fifty years from June 22, 1953, followed by the filing on July 22, 1953, of the corresponding by-laws; and when on October 27, 1953, the respondent issued an order denying the registration of the instruments as well for extension as for reformation^ petitioner's corporate life was being snapped out with such lightning abruptness as undoubtedly to spell damage and prejudice not so much to its shareholders as to its beneficiaries—thousands of employees and their dependents—and even to the Government which stands to lose a

good source of revenue.

The petitioner contends (1) that the respondent had the ministerial duty of registering the documents presented either for extension of petitioner's term as a sociedad anonima or for its reformation under the Corporation Law, in the absence (as in this case) of any pretense that said documents are formally defective or that petitioner's purposes are unlawful; and (2). that as the petitioner had organized as a sociedad anonima under the Code of Commerce> it has acquired a vested right which cannot subsequently be affected or taken away by the Corporation Law enacted on April 1, 1906. I would not dwell upon these contentions, because I hold that, even under the provisions of the Corporation Law, the petitioner may either extend its life as a sociedad anonima or reform as a corporation.

Section 75 of the Corporation Law provides:

"Any corporation or 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."

Upon the other hand, section 191 reads as follows

"The Code of Commerce, in so far as it relates to corporations or sociedades anonimas, and all other or parts of Acts in conflict or inconsistent with this Act, are hereby repealed * * * And provided, further, That existing corporations or sociedad anonima 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 and public officials shall be governed by the provisions of this Act."

It is noteworthy that section 75 has not limited the optional continuance of a sociedad anonima to its unexpired term, and section 191 expressly allots a sociedad anonima which has elected to continue its business as such to be governed by the laws in force prior to the enactment of the Corporation Law in relation to its organization and method of transacting business and to the rights of members as between themselves. It is admitted that the Code of Commerce, while containing no express provision allowing it, does not prohibit a sociedad anonima from extending its term; and commentators Gay de Monteila (*Tratado Practico de Sociedad Mercantiles—Companias Anonimas*, Tomo II, p. 285) and Cesar Vivante (*Tratado de Derecho Mercantil*, pp. 254, 258) have observed that a sociedad anonima may prolong its corporate duration by amendment of its articles of association before the expiration of the term.

When a business or commercial association is organized, the members are naturally interested in knowing not only their rights and obligations but also the duration of their legal relations. While "organization" in a strict sense may refer to formalities like election of officers, adoption of by-laws, and subscription and payment of capital stock, it cannot be spoken of or conceived in a wider sense without necessarily involving the specification of the term of the entity formed. Extension of corporation life is thus essentially an incident of "organization" and, in any event, a matter directly affecting or in relation to the rights of the shareholders as; between themselves, within the contemplation of section 191, and should accordingly be governed by the Code of Commerce. As pointed out by the Supreme Court of Wyoming in the case of *Drew vs. Beckwith*, (114 P. 2d. 98), extension "merely involves an additional privilege to carry out the business of enterprise undertaken by the corporation," and is "but an

enlargement of the enterprise undertaken by the corporation." It is true that the duration of a sociedad anonima is of some concern to the public and public officials who ought to know the time when it will cease to exist and its business will be wound up. Notice to the world is however served by the registration of petitioner's articles, of association as a sociedad andnima or articles of incorporation as a reformed corporation with the Securities and Exchange Commission.

When section 191 mentions "relations to the public and public officials" as 'being governed by the provisions of the Corporation Law, the idea is obviously more to enable the Government to enforce its powers of supervision, inspection and investigation, than to restrict the freedom of the corporate entity as to organizational or substantive rights of members as between themselves. In one of the public hearings conducted by the Philippine Commission before the enactment of the Corporation Law, Commissioner We pertinently expressed, "Of course, whether they (sociedades) come under the new law or not they would be subject to inspection, regulations, and examination for the purpose of protecting the community.." The Attorney General in turn held that sodedades anonimas, although governed by the Code of Commerce, are subject to the examination provided in section 54 of the Corporation Law (5 Op. Atty. Gen. 442). In this' connection, the petitioner has admittedly subjected itself to the provisions of the Corporation Law.

In *Harden vs. Benguet Consolidated Mining Co.*, 58 Phil., 141, it was remarked: "The purpose of the commission in repealing this part of the Code of Commerce was to compel commercial entities thereafter organized to incorporate under the Corporation Law, unless they should prefer to adopt some form or other of the partnership." This Court already indicated that the commercial entities compelled to incorporate under the Corporation Law were those organized after its enactment.

Section 6, subsection 4, of the Corporation Law provides that the term for which corporations shall exist shall not exceed fifty years; section 18 provides that the life of a corporation shall not be extended by amendment beyond the time fixed in the original articles; and section 11 provides that upon the issuance by the Securities and Exchange Commissioner of the certificate of incorporation, the persons organizing the corporation shall constitute a body politic and corporate for the term specified in the articles of incorporation, not exceeding fifty years. The corporations contemplated are those defined in section 22—corporations organized under the Corporation Law. They cannot be sodedades an&trimas formed under the Code of Commerce and licensed to continue as such in virtue of sections 75 and 191. Otherwise the words "or sociedad anonima" would have been added to the term "corporation" in section 18, as was done in sections 75 and 191. A similar observation was made in *Harden vs. Benguet Consolidated Mining Co.*, supra: "But when the word corporation is used in the sense of sodedad anonima and close discrimination is necessary, it should be associated with the Spanish expression sodedad andnima either in parenthesis or connected by the word 'or'. This latter device was adopted. in sections 75 and 191 of the Corporation Law."

The citation from 3 Benito, *Derecho Mercantil*, p. 245, invoked in the majority decision, to the effect that the duration of a sodedad anonima is of interest both to its members and to third persons, is clearly an authority for our conclusions that the extension of petitioner's term is in relation "to the rights of members thereof as between themselves." Section 191 does not say that a sociedad anonima shall be governed by the provisions of the Corporation Law when the matter involved affects not only "the rights of members thereof as between themselves" but also "the public and public officials."

We are also of the opinion that alternatively, under section 75, the petitioner may elect to reform and organize under the Corporation Law, transferring all its corporate interests to the new corporation. Contrary to the ruling of the respondent, we are convinced that, as no period was fixed within which it should exercise the option either of continuing as a sodedad anonima or reforming and organizing under the Corporation Law, the petitioner was

entitled to have its articles of incorporation and by-laws presented respectively on June 22 and July 22, 1953, registered by the respondent. Section 75 did not take away petitioner's right to exhaust its term as a *sociedad comandita*, already vested before the enactment of the Corporation Law, but merely granted it the choice to organize as a regular corporation, instead of extending its life as a *sociedad anonima*. The only limitation imposed is that prescribed in section 191, namely, that if a *sociedad anonima* elects to continue its business as such, it shall be governed by the prior law in relation to its organization and method of transacting business and to the rights of its members as between themselves, and by the provisions of the Corporation Law as to its relations to the public and public officials. If the intention were to fix a period for reformation, the law would have expressly so provided, in the same way that section 19 fixes two years during which a corporation should formally organize and commence the transaction of its business, otherwise its corporate powers would cease; section 77 fixes three years from the dissolution of a corporation within which it may clear and settle its affairs; and section 78 fixes the same period of three years within which a corporation may convey its properties to a trustee for the benefit of its stockholders and other interested persons.

It is not correct to argue that the petitioner is not entitled to elect to continue as a *sociedad anonima* and at the same time reform and organize as a regular corporation, because when it continued as a *sociedad anonima* after the passage of the Corporation Law and during its full term of fifty years, it merely exercised a right it theretofore had; and the petitioner can be said properly to have availed itself of the other option only when in June 1953 it filed the necessary papers of incorporation under the Corporation Law. It is likewise not accurate to contend that, as the respondent ruled, the petitioner could reform as and be a regular corporation at most only for the remainder of its term as a *sociedad anonima*. Section 75, in allowing a *sociedad anonima* to reform and organize under the Corporation Law, also authorizes the transfer of its corporate interests to the new corporation. This "new" corporation should have the advantage of the prescribed maximum duration, regardless of the original term of the old or substituted entity. There is no basis for the criticism that, if the petitioner were allowed to exhaust its full term as a *sociedad anonima*, and afterwards to reform as a regular corporation for another fifty years, it would have a span of life twice as long as that granted to corporations organized under the Corporation Law. The simple reason is that the petitioner was already a corporate entity before the enactment of the Corporation Law, with a fixed duration under its original articles of association. It was clearly not in parity with any corporation organized under and coming into existence after the effectivity of the Corporation Law which has no choice on the matter and can therefore have only the prerogative granted by said law,—no more no less.

The respondent has suggested that the petitioner, if desirous of continuing its business, may organize a new corporation—a suggestion which need not be made because no one would probably think of denying it that right. But we cannot see any cogent reason or practical purpose for the suggestion. In the first place, the filing of petitioner's articles of incorporation and by-laws in July, 1953, in effect amounted to the formation of a new corporation. To require more is to give greater importance to form than to substance. In the second place, the public and public officials may not as a matter of fact be adversely affected by allowing the petitioner to reform, instead of requiring it technically to form a new corporation. It will acquire no greater rights or obligations by simple reformation than by newly organizing another corporation. Conversely, the public and public officials will acquire no greater benefit or control by requiring the petitioner to form a new corporation, than by allowing it to reform. And as already stated, whatever interest the public and public officials may have in determining the duration of a *sociedad anonima* or any corporation for that matter, is amply protected by registration in the Securities and Exchange Commission.

The respondent and the intervenor, Consolidated Mines, Inc., have tried to show that the petitioner holds or owns interests in eight mining companies, in violation of section 13, subsection 5 of the Corporation Law, in that it has operating contracts with the intervenor and seven other mining companies, besides owning the majority shares in

Balatoc Mining Co. This matter has not merited any attention or favorable comment in the majority decision, and rightly of course. Even so, we may observe that the alleged violation was not the subject of any finding by the respondent, nor relied upon in his order of denial; that the petitioner has denied the charge; that the holding by the petitioner of shares of stock in Balatoc Mining Co., if really illegal, may look into only in a quo warranto proceeding instituted by the Government; that at any rate the petitioner has always been ready and willing to dispose of said shares and, in a proper proceeding, it should be given reasonable time to do so, as this Court gave the Philippine Sugar Estates a period of six months after final decision within which to "liquidate, dissolve and separate absolutely in every respect and in all of its relations, complained of in the petition, with the Tayabas Land Company" (Government vs. Philippine Sugar Estates Co., 38 Phil., 15).

With special reference to the intervenor, it may be of some moment to know the antecedents and nature of business relations existing between it and the petitioner, at least to demonstrate the righteousness of the position of one or the other, even from a factual point of view. The following excerpts from "Petitioner's Reply to a portion of Intervenor's Brief" are in point:

"What has happened in our case is that prior to the execution of the Operating Agreement of July 9, 1934, the stockholders, directors, and officers of the intervenor, Consolidated Mines, Inc., did not want to risk one centavo of their own funds for the development of their chrome ore mining claims in Zambales province, and proposed to the petitioner herein, Benguet Consolidated Mining Company, to explore, develop and operate their mining claims, Benguet to furnish all the funds that might be necessary, and to explore, develop, mine and concentrate and market 'all the pay. ore found on or within paid claims or properties', the intervenor, Consolidated Mines, Inc., and the petitioner, Benguet Consolidated Mining Company, after the latter had reimbursed itself for all its advances, to divide half and half the excess of receipts over disbursements. Benguet agreed to it, and advanced approximately three million pesos, one-half thereof before the war, and the other half after the war (the Intervenor's properties having been destroyed during the war). Paragraph XII of the intervenor's complaint in the civil action 'instituted by it against Benguet in the Court of First Instance of Manila, No. 18938, and to which counsel for the intervenor, refer in page 5 of their brief, makes mention of the large sums of money that Benguet advanced, as follows:

'Initial advances amounting to approximately P1,500,000) made by defendant during the first phases of said Operating Agreement which had been fully reimbursed to it before the war, and of the, amounts likewise . advanced by it (Benguet) for rehabilitation amounting to close P1,500,000.00.

"While Benguet risked and poured approximately three million pesos (P3,000,000) into the venture, and while Benguet was looking for, and establishing, a market for intervenor's chrome ore, the intervenor, Consolidated Mines, Inc., considered the said Operating Agreement of July 9, 1934, as valid. Now that Benguet's efforts have been crowned with success, and Benguet has established a market for intervenor's chrome ore, the intervenor. claims that its said Operating Agreement of July 9, 1934, with the petitioner, Benguet, is contrary, to. law because Benguet has become interested in intervenor's chrome ore mining claims (although the agreement expressly states that Benguet has no interest therein), and .objects to the registration of the documents which Benguet filed with the respondent Securities and Exchange Commissioner, extending its life as a sociedad anonima, and reforming itself as a corporation, in accordance with, the provisions of section 75 of the Corporation Law.

"Under the foregoing facts, the intervenor, Consolidated Mines, . Inc., can not be heard to complain against Benguet. No court can give now a helping hand to the intervenor which claims that Benguet no longer lives, and wants to keep for itself all the products of Benguet's 'efforts after the latter risked into the venture approximately three million pesos (P3,000,000)."

The foregoing considerations may not constitute a legal justification for ruling that the petitioner should be allowed either to extend its life as a sociedad anonima or to reform and organize under the provisions of the

Corporation Law, but they may aid in resolving in petitioner's favor, and doubt as to the clarity or definiteness of sections 75 and 191 of the Corporation Law regarding its right to exercise either option in the manner claimed by it.

The same result may be arrived at, in addition, we bear in mind the possible economic harm that may be brought about by the affirmance of the order complained of. This aspect is adequately touched in petitioner's brief, as follows:

"1.

A loss of employment in the Baguio district by about 4,000 Filipino and a loss of direct living from the Benguet operation supplied to 20,000, that is the 1,000 employed and their dependents.

"(a)

This "would be calamity to the district of the highest depression which could react all over the Philippine Islands.

"2.

Losses of direct and indirect taxes to the Philippine Government in an extremely large yearly amount.

"3.

No one would be able to continue the Benguet and Balatoc mines in operation should a liquidation of Benguet take place because the net profits after labor and material costs and taxes for the last two years or more from the gold mining operations have not warranted their continued operation as independent units. The profits in 1953 certainly do not warrant it. It is merely a case of taking gold out of the ground in order to pay for labor, materials and taxes with very little return to the stockholders and on the huge investment made in the reconstruction since 1946.

"(a)

The relief provided by the elimination of the 17 per cent Excise Tax, the 7 per cent Compensation Tax and the lowering of the Extraction Tax, when counter-balanced against consistently increasing costs from month to month up to this very month, is now nothing but an offsetting item against constantly increasing costs."

For whatever persuasive effect it may have, we cannot help calling attention to the fact that there are only about nine sociedades anonimas in the country, foremost among them being Compañia Maritima, which have existed for years and along with the petitioner figured prominently in our economic development. Compania Maritima, in particular, has been twice allowed to extend its life by amendment of its articles of incorporation. It may be argued that if there was an official mistake in acceding to the extension of the term of Compania Maritima, the same should not warrant the commission of another mistake. But it will go to show that sections 75 and 191 of the Corporation Law are, on the points herein involved, of doubtful construction; and it is for this reason that we had to advert hereinabove to the somewhat unequitable position of the intervenor and to the possible adverse effect on Philippine economy of the abrupt termination of petitioner's corporate existence.

By and large, it is my considered opinion that the respondent's order of denial dated October 27, 1953, should be reversed and the respondent ordered to register at least the documents presented by the petitioner, reforming and organizing itself as a corporation under the provisions of the Corporation Law. This would be in line with the policy of doing away with sociedad anonimas, at the same time saving "the goose that lays the golden egg."

Jugo and Bautista Angelo, JJ., concur.

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