dent Ins. Co. v. Sheftall & Co., 53 F. (2d) 40, 41 (C.C.A. 5th 1931)), § 77B, subdivision (a) should likewise be interpreted not to include a foreclosure receivership. But the language of § 3(a) (4) speaks of a receiver's being put in charge of the insolvent's property. Those words are perhaps a stronger indication that a general liquidating receivership was contemplated than are the words of subdivision (a) of § 77B referring to a "proceeding in equity receivership." Furthermore, the necessity for forced sale attends bankruptcy proceedings quite as much as it does foreclosure proceedings. Hence, the most cogent reason for permitting a creditor to effect a transfer from a foreclosure proceeding to one under § 77B, that of avoiding a forced sale, is entirely absent in the case of ordinary bankruptcy.

[NOTE.—On February 5, 1936, after this note was set up, the Supreme Court affirmed the principal case and reversed *In re Granada Hotel Corp.*]

Corporations—Amendment of Charter—Right of Minority Stockholder to Object to Changes in Charter under Statute Subsequent to Incorporation—[Delaware].—Minority preferred stockholders of a Delaware corporation challenged the legality of an amendment to its certificate of incorporation that abolished arrearages of cumulative dividends amounting to $21.75 per share and changed each preferred share into five common shares. The amendment was adopted by the required majority of the preferred stockholders, voting as a separate class. After the amendment was adopted, the corporation declared a dividend on the common stock without providing for payment of arrears on the preferred. The statute had provided when the corporation was organized that the corporation could amend its articles by "increasing . . . . its authorized stock . . . . or by making any other change or alteration of its charter of incorporation that may be desired . . . . Provided, however, that if any such proposed amendment would alter or change the preferences given to any one or more classes of preferred stock . . . . then the holders of . . . . each class of preferred stock so affected . . . . shall be entitled to vote as a class . . . ." Del. Rev. Stat. (1915) c. 65, § 26. The corporation act contained also the so-called reserved power provision: "This chapter may be amended . . . . and this chapter and all amendments thereof shall be a part of the charter of every . . . . corporation . . . ." Del. Rev. Stat. (1915) c. 65, § 82. Prior to the adoption of the charter amendment in question § 26 of the statute had been amended in 1927 so as to authorize charter amendments "reclassifying" the shares and "changing the . . . . relative, participating . . . . or other special rights of the shares . . . . " 35 Del. Laws (1927) c. 85, § 10. The objecting preferred stockholders brought suit asking a declaration of the illegality of the amendment and for a decree ordering the payment of the arrears of dividends on their shares. On demurrer to the bill, *held*, demurrer sustained. *Keller v. Wilson & Co.*, 180 Atl. 584 (Del. Ch. 1935).

It was conceded that the charter amendment would have been unauthorized had the 1927 amendment to § 26 not been enacted. Arrearages of preferred dividends had been held something more than a "preference" and thus not subject to abolition under the prior § 26, and this apparently regardless of whether the corporation then had a surplus from which the dividends might be paid. *Morris v. Amer. Public Utilities Co.*, 14 Del. Ch. 136, 122 Atl. 696 (1923). Furthermore, as to a corporation organized after 1927, the amended § 26 has been held to authorize elimination of claims to accumulated dividends, again regardless of the corporate surplus. *Harr. v. Pioneer Mech. Corp.* 65 F. (2d) 332 (C.C.A. 2d 1933). In the principal case the court held that the same

breadth of amending power was available to corporations organized prior to 1927 by reason of the "reserved power" provision of § 82, following the decision in *Davis v. Louisville Gas & Elec. Co.*, 16 Del. Ch. 157, 142 Atl. 654 (1928), which had involved changes in dividend rights for future years but not accumulated unpaid dividends.

It was apparently clear that the 1927 amendment had been intended to apply to existing corporation. Any contention by minority stockholders of such corporations that the statute could not have this effect must be based upon the argument that to give the statute such an operation would interfere with his contractual rights. But the original statute, including § 82 as well as § 26, must be considered as having been written into any contract between the stockholders or between a stockholder and the corporation. Fletcher, Corporations § 3674 (perm. ed. 1931). The crucial question, therefore, is one of the proper construction of the "reserved power clause" in § 82. It has sometimes been suggested that the reservation should be considered as authorizing only changes in the "contract" between the corporation and the state and not changes in shareholders' contracts. *Garey v. St. Joe Min. Co.*, 32 Utah 497, 91 Pac. 369 (1907); *Avondale Land Co. v. Shook*, 170 Ala. 379, 54 So. 268 (1911). This suggestion affords no solution, however, since any change necessarily affects rights of shareholders. It has frequently been said that the reserved power does not extend to changes which affect "vested rights." *Yoakam v. Providence Biltmore Hotel Co.*, 34 F. (2d) 533 (D.C. R.I. 1929); Fletcher, Corporations § 3680 (perm. ed. 1931). Such a statement, of course, begs the question, and neither the courts nor other legal writers have been able to state with any definiteness the proper scope of the power. Dodd, Dissenting Stockholders and Amendments to Corporate Charters, 75 U. Pa. L. Rev. 585, 722 (1927); Curran, Minority Stockholders and the Amendment of Corporate Charters, 32 Mich. L. Rev. 743 (1934). In general it has been agreed that changes in which the state or the public may have an interest will more readily be found to fall within the reserved power. The stockholders may be said to have been put on notice that such changes might later be forced on the corporation or authorized by the legislature. The Delaware court in the principal case and the *Davis* case cited above has been able to find a public interest behind changes in preferred stock rights which may facilitate financing or improve corporate credit. Other courts have taken a contrary view. *Yoakam v. Providence Biltmore Hotel Co., supra; Pronick v. Spirits Distributing Co.*, 58 N.J. Eq. 97, 42 Atl. 586 (1899).

The objecting stockholders' contention becomes a constitutional one when he relies on the prohibition of state legislation impairing the obligations of contracts. On the constitutional issue, the state courts' construction of the reserved power provision as written into the stockholders' contract would not be conclusive since in applying the contract clause of the Constitution the United States Supreme Court will adopt its own construction of the contract so as to prevent nullification of its jurisdiction. *Jefferson Branch Bank v. Skelly*, 1 Black (U.S.) 436 (1861).

The principal case probably goes farther than any previous case in extending the reserved power to cover authorization of changes affecting relative rights of existing classes of shares. The trend in this direction has been noted. Berle and Means, The Modern Corporation and Private Property, 213 ff. (1934).

Corporations—Assignability of Claim against Directors for Breach of Fiduciary Duty—[Massachusetts].—Minority stockholders of X corporation brought a suit in the right of the corporation against its directors for breach of their fiduciary duty. Shortly after the bill was filed the directors, with the consent of the stockholders, sold and con-