Corporations—Amendment of Charter—Right of Minority Stockholder to Object to Changes in Charter—[Michigan].—The defendant corporation was incorporated under the laws of Michigan. The Michigan constitution provides that all corporation laws, and rights, privileges, and franchises conferred thereby, are subject to amendment. Mich. Const. art. 12, § 1 (1908); Mich. Comp. L. 1929, § 237. Subsequent to the creation of the defendant corporation, the legislature enacted a law providing: (1) that the majority of stockholders may amend the charter "without limitation," with a proviso for class voting on any amendments changing the rights, privileges, or preferences of any class,—section 43; (2) that the liability of the corporation should not be lessened by an amendment,—section 59. A general saving clause provided that the act should not affect accrued rights or liabilities,—section 192. Mich. Pub. Acts 1931, no. 327. A majority of preferred stockholders voted to postpone the redemption date of the preferred stock. From a judgment denying him the right to redemption as of the original date, the plaintiff, a dissenting stockholder, appealed. *Held*, reversed. The right to redemption is a vested right; section 59 and the saving clause prohibited an interference with the vested rights of stockholders. *Sutton v. Globe Knitting Works*, 267 N.W. 815 (Mich. 1936).

Under statutes authorizing amendments, changes in substantial rights of stockholders have been sanctioned by courts. See Berle and Means, Modern Corporations and Private Property 212 (1934). Amendments creating an issue of stock to have preference over the rights of a complaining stockholder have been sustained. *Hinckley v. Schwarzschild-Sulzberger Co.*, 107 App. Div. 470, 95 N.Y.S. 357 (1905); *Salt Lake Automobile Co. v. Keith O'Brien Co.*, 45 Utah 218, 143 Pac. 1015 (1914). Changes in participation in dividends have been upheld. *Davis v. Louisville Gas & Elec. Co.*, 16 Del. Ch. 157, 142 Atl. 654 (1928); *contra, Pronick v. Spirits Distributing Co.*, 58 N.J. Eq. 97, 42 Atl. 586 (1899). A majority has been permitted to subject to further assessment stock sold as fully paid and non-assessable. *Somerville v. St. Louis Min. and Mill. Co.*, 46 Mont. 268, 127 Pac. 464 (1912); *cf. Garey v. St. Joe Mining Co.*, 32 Utah 497, 91 Pac. 369 (1907). Frequently, however, courts have by construction narrowed the scope of statutes authorizing amendments when a literal construction would permit modification of important rights of dissenting stockholders. See *Garey v. St. Joe Mining Co.*, 32 Utah 497, 91 Pac. 369 (1907); *Pronick v. Spirits Distributing Co.*, 58 N.J. Eq. 97, 42 Atl. 586 (1899). Although courts do not so articulate, validity seems to depend on a balancing of the importance of the stockholder's right against the need for corporate action. See Curran, Amendment of Corporate Charters, 32 Mich. L. Rev. 743, 748 (1934). Amendments depriving preferred stockholders of accrued but unpaid dividends have been invalidated. *Morris v. American Pub. Util. Co.*, 14 Del. Ch. 136, 122 Atl. 696 (1923). In a situation analogous to the instant case it has been held that a statute permitting changes in "preferences and special rights," if constitutional, would have authorized an amendment abolishing a sinking fund safeguarding redemption rights. *Yoakum v. Providence Biltmore Hotel Co.*, 34 F. (2d) 533 (D.C.R.I. 1929). On the analogy of the *Yoakum* case, it is clear that section 43 of the Michigan statute would authorize the amendment in the instant case. The court agrees that section 43 was broad enough when read alone, but urges that it must yield to the apparently inconsistent provisions in section 59 and in the saving clause. Inconsistency might have properly been avoided if the court had interpreted the saving clause and section 59 as applying only to the rights of strangers. But assuming that inconsistency was present, the specific authorization of amendments affecting stockholder rights should have pre-

vailed over the general language in section 59. Similarly, the purview should have prevailed over the saving clause. Black, Construction and Interpretation of Laws § 112 (1896).

Had the court in the instant case found that the statute authorized the amendment, there would have remained the question of whether the statute was a constitutional exercise of the reserve power. Statutory and constitutional provisions reserving the power to amend corporation laws have been held to be written into the corporate charter at the time of incorporation. 1 Thompson, Corporations § 429 (3d ed. 1927). The charter constitutes a contract between the stockholders *inter sese* and between the corporation and the state. *Dow v. Northern R.R.*, 67 N.H. 1, 36 Atl. 510 (1887); 7 Fletcher, Cyclopedia Corporations § 3657 (1931). Legislation not within the scope of the reserve power constitutes an unconstitutional impairment of contract. Ballantine, Corporations § 272 (1927). But the question of what legislation is authorized under the reserve power has caused difficulty. Curran, Minority Stockholders and the Amendment of Corporate Charters, 32 Mich. L. Rev. 743, 750 (1934). Although the reservations are couched in general terms, courts have by construction restricted their scope. Thus it has been held that under the reserve power the rights of the stockholders *inter sese* may not be affected. *Matter of Election of Directors of Newark Library Ass'n*, 64 N.J.L. 217, 43 Atl. 435 (1899); *Avondale Land Co. v. Shook*, 170 Ala. 379, 54 So. 268 (1911). See Stern, The Limitations of the Power of a State under a Reserved Right to Amend or Repeal Charters of Incorporation, 53 Am. L. Reg. (44 n.s.) 73, 85 (1905). The application of this standard would invalidate the statute in the instant case. But the distinction between intra- and extra-corporate rights is hard to draw and may unduly restrict future legislation. Thus most courts have not followed this rule. *Farbstein v. Pacific Oil Tool Co.*, 127 Cal. App. 157, 15 P. (2d) 766 (1932); *Lord v. Equitable Life Assurance Society*, 194 N.Y. 212, 87 N.E. 443 (1909); 7 Fletcher, Cyclopedia Corporations §§ 3695–98 (1931). Confusion has been enriched by the question-begging slogan that the reserve power cannot be constitutionally exercised to deprive a stockholder of vested rights. Clearly, whether or not a right is vested depends upon whether the state has reserved the power to change it. One court, however, has made the surprising suggestion that, without regard to the language of the reservation clause, statutes authorizing changes in what courts consider vested rights are unconstitutional. *Yoakum v. Providence Biltmore Hotel Co.*, 34 F. (2d) 533, 545 (D.C.R.I. 1929). There is no apparent constitutional basis for invalidating statutes that admittedly come within the scope of the reserve power, and this suggestion is illustrative of a desire to strike down, without regard to the terms of the reservation, amendments which constitute an unreasonable deprivation of the rights of dissenting stockholders. Since the reservation is a part of the corporate "contract," impairment of contract cannot be the constitutional basis for invalidating amendments authorized by statutes admittedly within the scope of the reserve power. But by an extension of notions of due process, a court might strike down unnecessarily broad reservations as unconstitutional conditions. Although this would involve a radical limitation of the states' power over the corporations they create, it would make possible a more effective protection of the reasonable expectations of stockholders.

Corporations—Ultra Vires—Capacity of a Fraternal Beneficiary Society to Contract for Old Age Benefits—[Illinois].—The plaintiff became a member of the de-