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## Application of the General Corporation Law to Existing Corporations

Since the adoption of the General Corporation Law in 1931, some question has been expressed as to whether its provisions are applicable to pre-existing corporations without an election on their part to bring themselves under it.<sup>1</sup> The determination of this question centers almost entirely on the interpretation to be given section 288 of the California Civil Code. In the hope of solving the difficulty that has been raised, the following observations are offered.

Section 288 of the Civil Code reads as follows:

"Corporations existing prior to *code*. No corporation formed or existing before twelve o'clock, noon, of the day upon which this *code* takes effect, is affected by the provisions of part four of division first of this *code*, unless such corporation elects to continue its existence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section."<sup>2</sup>

The real crux of the matter is the determination of the time meant by the clause, "day upon which this code takes effect," and hence the proper interpretation to be given the word, "code," as used therein. The view has been advanced that "this code" may be interpreted as meaning the General Corporation Law, and that the "day upon which this code takes effect" accordingly was August 14, 1931.<sup>3</sup> If this view be correct, section 288 excepts all corporations existing prior to August 14, 1931, and these corporations then continue under the law in force prior to August 14, 1931. On the other hand, if "code" means the entire Civil Code, then obviously section 288 excepts no corporations other than those in existence prior to January 1, 1873, and corporations formed since that date or corporations organized prior thereto which

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<sup>1</sup> See 6A CAL. JURIS. §§ 7, 98.

<sup>2</sup> Italics added.

<sup>3</sup> *Supra* note 1. A change in the tense of section 288 by modifying the phrase, "when this code takes effect," to "when this code took effect" is there suggested. See 6A CAL. JURIS. 217. Such a change would not necessarily have cleared the matter, for then section 288 in its modified form might no longer have been a continuation of the original section.

already have elected to come under the code become subject to the provisions of the present General Corporation Law without the need of an election on their part so to do. A study of section 288 in the light of its history and the obvious interpretation of the language used therein, it is believed, will establish clearly the soundness of the latter interpretation, *viz.*, that it applies only to the corporations formed prior to 1873.

The alleged ambiguity lies in the use of the word, "code." There are several compelling reasons why it should be interpreted as meaning the entire Civil Code and not the General Corporation Law alone.

In the first place section 288 originally was enacted in its present form in 1872, and became effective January 1, 1873. It then definitely applied to those corporations which were created prior to the adoption of the code, and exempted them from the code provisions unless they elected to be bound thereby.<sup>4</sup> In the absence of election, these pre-code corporations continued in existence governed by the laws in force at the time they were incorporated.<sup>5</sup> The verbatim retention of section 288 in the General Corporation Law of 1931 must, under the provisions of the enacting clause of that law, be deemed a continuation of the original section and as having been the law from the time when first enacted in its present form.<sup>6</sup> Thus construed, section 288 has reference to 1873 and not to 1931.

Secondly, there is no language in the General Corporation Law which would warrant interpreting the word, "code," as used in section 288, to mean only the corporation law of 1931. Throughout, the General Corporation Law is referred to either by its full name or as "this title,"<sup>7</sup> and it is so designated in section 277.<sup>8</sup> The word, "code," is to be found twice in the text of section 288. It is first used in the clause

<sup>4</sup> The leading case is *Murphy v. Pacific Bank* (1897) 119 Cal. 334, 341, 51 Pac. 317, 319, holding that while section 288 repealed existing corporation statutes in that new corporations could not be formed under them "so far as corporations theretofore formed under it were concerned, it remained in force, not only so far as might be necessary to sustain their existence as corporations, but to fix their character, define their powers, duties, obligations, and liabilities, except insofar as these were modified, altered, or repealed by inconsistent code provisions relating to such corporations." The earlier decisions had declared that section 288 merely continued the existence of the pre-code corporations, and had not continued the statutes fixing the various aspects of corporation organization. These were repudiated by the supreme court in the *Murphy* case.

<sup>5</sup> *Murphy v. Pacific Bank*, *supra* note 4.

<sup>6</sup> Cal. Stats. 1931, p. 1762, §1: "All parts and provisions of this new title which are the same as parts or provisions now contained in the title and sections superseded shall be considered as continuations of the latter and as having been the law from the time when the latter were enacted. . . ." Reprinted in the *Deering Civil Code*, p. 101.

<sup>7</sup> See, for example, the enacting clause, quoted in part, *supra* note 6.

concerning which the present difficulty arises. The second time it appears, it cannot, by its context, mean other than the entire Civil Code, for the phrase reads, in part:

"No corporation . . . is affected by the provisions of part four of division first of this code . . ."

Part four of division first of the Civil Code, ever since its original enactment in 1872, has contained the sections relating to corporations. "This code" can here mean only one thing: the entire Civil Code. The phrase, "this code," used in the earlier clause under consideration must mean the same thing, for it is a well established canon of statutory construction that where a term is used several times in the same statute or code section, a consistent interpretation must be adopted<sup>9</sup> unless such interpretation is impossible or absurd. In the instant case a consistent interpretation seems not only reasonable, but necessary if we are to avoid undesirable and well-nigh absurd results.

Thirdly, sections 287 and 288 are unquestionably related by the express reference in section 288 to section 287, and if possible, should be considered and construed together. Section 287 is strictly limited to the election to continue under the code on the part of corporations existing prior to January 1, 1873, and refers to no other corporations.<sup>10</sup> Section 288 would seem likewise limited in its scope and application; there is no provision for any other corporations to elect to continue their existence under the code.

Fourthly, the provisions of the General Corporation Law are, by its own terms, expressly made applicable to existing corporations. Section 279 provides, in part:

"The provisions of this title are applicable to every private corporation, profit or nonprofit, stock or nonstock, now existing or hereafter formed. . . ."

An interpretation of section 288 which would make that section applicable to all corporations existing prior to August 14, 1931, would, of necessity, ignore the provisions of section 279 and would render that last section a nullity. By limiting section 288 to the pre-code corpora-

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<sup>8</sup> CAL. CIV. CODE §277: "This title of the Civil Code and all amendments hereof and any section or supplement added hereto shall be known and may be cited as 'The general corporation law,' and is hereinafter referred to as 'this title'."

<sup>9</sup> *Ransome-Crummey Co. v. Woodhams* (1916) 29 Cal. App. 356, 359, 156 Pac. 62, 64: "It is a well established rule of construction that when a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts and portions of the law, and particularly of the same section thereof." See also 23 CAL. JURIS. 754, §128.

<sup>10</sup> By its opening sentence, section 287 is clearly limited to corporations existing on the first day of January, 1873. It then provides the manner in which such corporations may elect to continue under the code.

tions, both section 279 and 288 are given effect; each has an exclusive field within which it is operative without trenching upon the other. It is well recognized that when two code sections appear to conflict, and it is possible that one or more interpretations may be given either or both of them, then that interpretation should be adopted which will prevent a conflict and give effect to both sections.<sup>11</sup> That can readily be done in the instant case by limiting the application of section 288 to the pre-code corporations.

Lastly, there is still in existence at least one important pre-code corporation, a non-stock banking corporation, to which section 288 would be applicable, since that corporation has not, as yet, elected to continue under the code. Thus, although section 288 might not be desirable or constitutionally necessary<sup>12</sup> (questions with which we are not here concerned), there is a sphere within which it can be operative, and it is not, therefore, giving it a completely nugatory construction to limit its application to the pre-code corporations.

In view of the fact that the rules of statutory construction and interpretation all compel the same conclusion, it seems safe to proceed on the assumption that sections 287 and 288 will be held to apply only to the pre-code corporations formed prior to 1873, and that all corporations formed subsequent to that date are now governed by the terms and provisions of the General Corporation Law of 1931 without the need of any election or submission on their part.

In general all existing corporations are given the advantages and are subjected to the liabilities of the new law except the few surviving from prior to January 1, 1873. This is the clearly expressed view of the draftsman of the General Corporation Law.<sup>13</sup> There is thus achieved the result of putting existing corporations on an equality with new corporations, and making the law uniform as to all, regardless of the date of incorporation, under the reserve power of the legislature to alter and amend corporation laws.

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<sup>11</sup> *Gonzales v. Wasson* (1876) 51 Cal. 295, 297; *Camp v. Grider* (1882) 62 Cal. 20, 26.

<sup>12</sup> For a discussion of this, see 6A CAL. JURIS. §7.

<sup>13</sup> BALLANTINE, CALIFORNIA CORPORATION LAWS (1932) 13, 25, 26, 31, 32.