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## CORPORATIONS - RIGHT OF PREFERRED STOCK TO STOCK DIVIDEND AFTER PAYMENT OF PREFERENTIAL DIVIDEND

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CORPORATIONS — RIGHT OF PREFERRED STOCK TO STOCK DIVIDEND AFTER PAYMENT OF PREFERENTIAL DIVIDEND — Plaintiff held 500 shares of the common stock of an Illinois corporation, organized by plaintiff and defendant with a capital stock of \$160,000, divided into 2000 shares of common and 30,000 shares of preferred stock, each with a par value of \$5.00 per share. The statutes of Illinois provided that the capital stock might be divided into classes but that this classification and the rights and duties thereunder must be stated in the articles of incorporation and on the stock certificates. The articles

and certificates gave the preferred shares a preference on dissolution, and to dividends to the extent of seven per cent. Under the constitution of Illinois each share, common or preferred, entitled the holder thereof to one vote. In 1929 the board voted a stock dividend of common stock, one share for each common and preferred share outstanding. The stock was issued, and subsequently a cash dividend was paid on all the common stock. The court *granted* plaintiff's prayer for the cancellation of the stock dividend and for the repayment of the cash dividend. *Tennant v. Epstein*, 356 Ill. 26, 189 N. E. 864 (1934).

A preferred stockholder's right to a preference in dividends is always specifically provided. His right to any further participation is usually found in the statutes of the state, the articles of incorporation, the stock certificates, and sometimes the by-laws.<sup>1</sup> The cases are not in agreement when the right to further dividends is not so defined. Some courts hold that the preferred stockholder is entitled to participate with the common in any dividend declared after the common stockholder has been paid an amount equal to the preferred stockholder's preference, on the theory that all stock enjoys the same rights except as specifically otherwise provided.<sup>2</sup> Others assert that the designation of a preference on the preferred stock impliedly negatives any right to further participation.<sup>3</sup> As a general rule the courts and textbook writers have not differentiated between a cash dividend and a stock dividend.<sup>4</sup> The additional advantages which either the preferred or common receive to future dividends, to voting and to participation on dissolution cannot be answered by a consideration of cash dividends alone. In a Virginia case where the preferred stockholders had equal voting rights but were preferred as to dividends, the court held that the preferred stockholders could protect their voting rights and their proportionate share in the assets on dissolution either by an injunction, if the stock dividend to the common stockholders alone had not been issued, or by an action for damages if the stock had been issued.<sup>5</sup> The decision in the principal case can be

<sup>1</sup> *Gordon's Ex'rs. v. Richmond F. & P. R. R.*, 78 Va. 501 (1884); *Star Pub. Co. v. Ball*, 192 Ind. 158, 134 N. E. 285 (1922); *Whitney v. Puro Filter Corp. of America*, (C. C. A. 2d, 1933) 63 F. (2d) 811; *Powers Foundry Co. v. Miller et al.*, (Md. 1934) 171 Atl. 842; *Lyman v. Southern R. R.*, 149 Va. 274, 141 S. E. 240 (1928).

<sup>2</sup> *Fidelity Trust Co. v. Lehigh Valley R. R.*, 215 Pa. 610, 64 Atl. 829 (1906); *Sternbergh v. Brock*, 225 Pa. 279, 74 Atl. 166 (1909); *Sterling v. Watson Co.*, 241 Pa. 105, 88 Atl. 297 (1913); *Englander v. Osborne et al.*, 261 Pa. 366, 104 Atl. 614 (1918), 6 A. L. R. 800, 3 MINN. L. REV. 65-67 (1918).

<sup>3</sup> *Scott v. Baltimore & Ohio R. R.*, 93 Md. 475, 49 Atl. 327 (1901); *Equitable Life Assur. Soc. v. Union Pac. R. R.*, 212 N. Y. 360, 106 N. E. 92 (1914), *aff'd* 162 App. Div. 81, 147 N. Y. S. 382 (1914); *Will v. United Lankat Plantations Co.*, 30 T. L. R. 37 (1913); *Hatch v. Newark Telephone Co.*, 34 Ohio App. 361, 170 N. E. 371 (1930); 11 CORN. L. Q. 234 (1926).

<sup>4</sup> "And where they are entitled to share in any further dividend, they are entitled to share in a stock or scrip dividend. . . ." 12 FLETCHER, CYCLOPEDIA CORPORATIONS, sec. 5448 (1932).

<sup>5</sup> *Riverside & Dan River Cotton Mills v. Thomas Branch & Co.*, 147 Va. 509, 137 S. E. 620 (1927). *Contra*: *Niles v. Ludlow Valve Mfg. Co.*, (C. C. A. 2d, 1913) 202 Fed. 141, on much the same facts except that the preferred stockholders were preferred on dissolution and as to dividends and even though the issuance of the stock dividend to the common stockholders alone shifted the voting control of the

justified inasmuch as neither the preferred stockholder's rights on dissolution nor his voting rights are injured. The purpose of the stock dividend was to create a right to additional cash dividends in the holders of preferred stock even though there was no specific right given to any more than the seven per cent cash dividend.

E. W. A.

corporation from the preferred to the common stockholders. See also *Stone v. United States Envelope Co.*, 119 Me. 394, 111 Atl. 536 (1920); *Borg v. International Silver Co.*, (D. C. S. D. N. Y. 1924) 2 F. (2d) 910, 20 ILL. L. REV. 288 (1925).