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CORPORATIONS—CHANGE IN THE BASIS OF SHARING PROFITS AS AN IMPAIRMENT OF THE OBLIGATION OF CONTRACTS—Plaintiff, a stockholder in defendant corporation, sought to enjoin distribution of dividends on a patronage basis. Defendant corporation was organized under the laws of Nebraska for the purpose of buying and selling grain, hay, and other agricultural products with a general reservation in the charter of the right to change, alter, and amend. The articles of incorporation were amended so as to convert the cor-

poration into a co-operative organization distributing profits on the basis of the amount of business done with the corporation. *Held*, a general reservation of power to amend the articles did not confer on the corporation the right to make changes which would impair the contract rights of the members. This amendment constituted a fundamental change in the nature and purpose of the corporation and impaired the contractual right of the plaintiff to share in the profits. *Hueftle v. Farmers Elevator*, (Neb. 1944) 16 N.W. (2d) 855.

There is a wide divergence of opinion on the question of the extent to which a reservation of power to amend articles of incorporation may be applied to changing the rights of the shareholders inter se.¹ The standard most frequently applied is that a corporation may not amend its articles by less than a unanimous vote so as to ". . . defeat or substantially impair the object of the grant or any right vested under the grant. . . ." ² The effect on vested rights as a measure of validity has become increasingly more important than the fundamental change concept, and in the principal case the contemplated change does not seem to defeat the object of the grant, the buying and selling of farm products, so much as it alters the rights of the stockholders by creating a new basis for the distribution of dividends. Until recent years there have not been many instances of tampering with dividend rights, but in the last twenty years there has developed a line of cases upholding the right of the majority to alter preferred stockholders' share in the profits.³ It is also the rule that a shareholder has no vested right to undeclared dividends.⁴ However, a stockholder does have a right to an expectation of dividends and may bring an action in equity to compel the declaration of a dividend where the profits warrant.⁵ The right to share in deciding corporate policies through voting is held to be

¹ For a discussion of the conflict see Curran, "Minority Stockholders and the Amendment of Corporate Charters," 32 MICH. L. REV. 743 (1934); 77 UNIV. PA. L. REV. 256 (1928).

² *Looker v. Maynard*, 179 U.S. 46, 21 S. Ct. 21 (1900).

³ *McQuillen v. National Cash Register Co.*, (D.C. Md. 1939) 27 F. Supp. 639, permitting the removal of accrued preferred dividends under the specific wording of the Maryland statute, Md. Ann. Code (Bagby, 1924) Art. 23, § 28. *Davis v. Louisville Gas & Electric Co.*, 16 Del. Ch. 157, 142 A. 654 (1928); *Peters v. United States Mortgage Co.*, 13 Del. Ch. 11, 114 A. 598 (1921), where the court held that amendments divesting future preferential dividends were valid, but that accrued dividends could not be removed. *Contra*, *Pronick v. Spirits Distributing Co.*, 58 N.J. Eq. 97, 42 A. 586 (1899), where the court, holding invalid a direct reduction in dividends said that the contract cannot be altered unless there is an express reservation of power to amend the particular agreement. The decisions allowing changes in dividend rates rely on the theory that the public benefit derived outweighs the damage done by divesting private rights. In the principal case, no public benefit is derived from the change.

⁴ *Anderson v. Bean*, 272 Mass. 432, 172 N.E. 647 (1930); *State ex rel. Sorensen v. Nebraska State Bank of O'Neil*, 123 Neb. 289, 242 N.W. 613 (1932); See also *Yoakum v. Providence Biltmore Hotel Co.*, (D.C. R.I. 1929) 34 F. (2d) 533. The court says that the contractual obligation to set up a sinking fund "more fully answers the requirements of a vested property right than does an expectancy of future payment of undeclared dividends."

⁵ *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919); *Stevens v.*

a vested right.⁶ Even more than the right to vote,⁷ the primary basis of the relationship between the shareholders in a corporation organized for profit is the anticipation of a share in the profits.⁸ There is no doubt that the apportioning of dividends on a patronage basis may result in a complete nullification of any right to share in the profits which the stockholder may have acquired when he purchased his stock. The usual conception of a vested right may not include the expectation of dividends,⁹ but the right to share in the profits is so fundamental to the relationship between the shareholder and the corporation that the doctrine of the Delaware cases¹⁰ should be limited to situations where the public interest is involved and even in such cases should not be extended to permit the total abrogation of dividends.

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United States Steel Corp., 68 N.J. Eq. 373, 59 A. 905 (1905); Channon v. H. Channon Co., 218 Ill. App. 397 (1920).

⁶ Lord v. Equitable Life Assurance Co., 194 N.Y. 212, 87 N.E. 443 (1909); Talbot J. Taylor & Co. v. Southern Pacific Co., (C.C. Ky. 1903) 122 F. 147.

⁷ Obviously the real reason the right to vote is valuable is that it enables the stockholder to protect his investment and assure himself of continuing profits.

⁸ Intermountain Building & Loan Assoc. v. Gallegos, (C.C.A. 9th, 1935) 78 F. (2d) 972, in which the court says, at 980, "The right to share in the profits of the corporation is one of the badges of a stockholder." Jackson v. Newark Plankroad Co., 31 N.J.L. 277 at 278 (1865), where the court says, ". . . a person holding, as owner, the stock of a corporation, becomes thereby entitled to a proportionate share in the profits of the company. . . ." See also Nichols v. Olympia Veneer Co., 139 Wash. 305, 246 P. 941 (1926), where the court in holding that a non-working shareholder was entitled to a share in the profits which were being distributed as wages, said, at 311, "As a stockholder, she is entitled to a just proportion of all the earnings of the corporation that may justly be classed as a division of the profits, whatever may be the form adopted for their distribution."

⁹ In 11 AM. JUR., § 370, p. 1199, a vested right is defined as "an immediate or fixed right of present or future enjoyment" and one that does not depend upon an event that is uncertain.

¹⁰ See note 3, supra, and Keller v. Wilson & Co., Inc., 21 Del. Ch. 13, 391, 180 A. 584, 190 A. 115 (1935).