

# Corporations--Duty of Directors to Declare Dividends (Lindgrove v. Schluter & Co., 256 N.Y. 439 (1931))

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point of the instant case is a decision of the Supreme Court relative to the finality of determination as to value of commissioners in a condemnation proceeding: " \* \* \* there is no denial of due process in making the findings of fact by the triers of fact, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings."<sup>5</sup>

The requirements of due process in connection with fixing rates to be charged by a Public Service Corporation are to be distinguished. Rate fixing has been held to be legislative in nature and, consequently, is subject to review by the courts when claimed to be an illegal taking of the property.<sup>6</sup> Considerable criticism has been directed against so characterizing rate fixing<sup>7</sup> but the weight of authority is to that effect and if theory falls before the onslaught, at least necessity, due to complications in determining the question of fair return, may warrant the conclusion. On the other hand, the question of determining the status of an injured workman embracing such matters as the employment, the wages, the accident, the injury, etc., involves events that have passed which readily submit to oral proof so as to make the process of finding them of a judicial nature.

The decision is eminently sound and the only apparent basis for the appellant's contention lies in an attempt to apply the questionable rules of rate-making procedure.

E. P. W.

#### CORPORATIONS—DUTY OF DIRECTORS TO DECLARE DIVIDENDS.—

Plaintiff entered into a contract with the defendant which provided for the employment of the plaintiff and also for the purchase by him of a large number of shares of stock of the defendant corporation. The stock was to be held by the defendant until payment of the full purchase price. It was also agreed that the dividends from the stock should belong to the employee but might be applied by the corporation upon any unpaid balance of the purchase price, though the plaintiff should be entitled to receive up to fifty per cent of the dividends, not exceeding a stated sum. Plaintiff was subsequently legally discharged by the defendant. No dividends had been declared during the period of his employment, and no cash had been advanced by the plaintiff toward the purchase price of the stock. Upon his discharge,

<sup>5</sup> Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 695, 17 Sup. Ct. 718, 722 (1897).

<sup>6</sup> Bluefield Water Works & Improvement Co. v. Public Service Comm., 262 U. S. 679, 43 Sup. Ct. 675 (1923); Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 40 Sup. Ct. 527 (1920).

<sup>7</sup> See (1921) 30 YALE L. J. 681, 781; (1921) 34 HARV. L. REV. 862.

no part of the stock having been paid for, he lost his right thereto. Plaintiff claims that a contractual obligation to declare dividends rested on the defendants. *Held*, the defendant corporation was under no legal obligation to declare dividends. Such obligation cannot be inferred from the provisions of the contract to sell stock to the employee. *Lindgrove v. Schluter & Co.*, 256 N. Y. 439, 176 N. E. 832 (1931).

The plaintiff employee alleges that the defendant corporation earned large profits and that the proportion of such profits which accrued to the shares owned by the plaintiff amounted to upwards of \$118,000 or more than the full amount of the purchase price thereof, yet the defendant corporation made no declaration of dividends. The mere fact that a corporation has a large amount of surplus or net profits does not entitle the stockholders to the payment of dividends.<sup>1</sup> The directors of a corporation owe a duty to their stockholders to exercise an impartial judgment in reference to the declaration of dividends, and to declare them only when, under the existing circumstances, a declaration will seem best to serve the corporate interests; and no contract, engaging them unrestrictedly to declare dividends can have any legal force.<sup>2</sup> What is true of contracts by directors is true of contracts by corporations, which may act only through its directors.<sup>3</sup> Consequently, the plaintiff has no contractual right to have dividends declared.

H. F. S.

DECEDENT'S ESTATE—ADEMPTION—EFFECT OF CHANGE IN NATURE OF BEQUEATHED PROPERTY.—The testator had bequeathed fifty-six shares of stock to the legatee in a will made in 1926. Subsequently the testator became mentally incompetent and a committee was appointed of his person and estate. The committee, needing money to support the incompetent, sold the stock and used the proceeds for his maintenance until his death. The account of the committee was judicially settled and the balance of the amount received from the sale of the stock was paid over to the executor of the estate by order of the court. The legatee under the will brought an action to recover the proceeds of the sale in lieu of the specific property

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<sup>1</sup> *Williams v. Western Union*, 93 N. Y. 162 (1883); *Beveridge v. N. Y. El. R. R. Co.*, 112 N. Y. 1, 19 N. E. 489 (1889); *Burden v. Burden*, 159 N. Y. 287, 54 N. E. 17 (1899); *Greeff v. Equitable Life Insurance Co.*, 160 N. Y. 19, 54 N. E. 712 (1899).

<sup>2</sup> *West v. Camden*, 135 U. S. 507, 10 Sup. Ct. 838 (1889); *Flaherty v. Cary*, 62 App. Div. 116, 70 N. Y. Supp. 951 (1st Dept. 1901), *aff'd*, 174 N. Y. 550, 67 N. E. 1082 (1903).

<sup>3</sup> 6 FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS (1919) §3659.