

Corporations--Constitutional Law--Charitable Institutions--Right to Vote (Matter of Mount Sinai Hospital, 250 N.Y. 103 (1928))

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would be futile. "Quorum" means a majority of all the persons described in the constitution,⁵ not merely a majority of the "six judges" designated therein. Members of the court may be either lawyers or laymen and the Constitutional Convention has not expressed a desire or intention to have a balanced representation.⁶ Disability does not extend to consideration of preliminary motions not involving the merits,⁷ nor is the right of appeal given in the Constitution.⁸ The Supreme Court has inherent power to sit *en banc*⁹ but even if this be denied no objection was made by appellant, so it cannot now complain of such action.

CORPORATIONS—CONSTITUTIONAL LAW—CHARITABLE INSTITUTIONS.—RIGHT TO VOTE.—The management of the Mount Sinai Hospital¹ was intrusted to twelve trustees, so classified that the term of office of one-fourth of their number expired annually,² their positions being filled by vote of all the members. By act of the Legislature,³ this election by popular vote was changed to selection by those trustees who continued to hold office. The constitutionality of this statute was challenged by two members of the corporation.⁴ *Held*, the statute is constitutional. Matter of Mount Sinai Hospital, 250 N. Y. 103 (1928).

The right to vote is not *per se* a vested right⁵ but the interest which a *stockholder* has by reason of his moneyed investment is,⁶ and of this right, courts will not permit him to be deprived.⁷ These two men simply paid annual dues, for the nonpayment of which they were liable to expulsion. They had no financial interest in the hospital. Extinguishment of their voting power was not, therefore, a deprivation of property without due process. The state has reserved to itself the right to amend, alter or repeal corporate charters.⁸ The change is

⁵ *Supra* Note 3 ("* * * the Chancellor, the justices of the Supreme Court, and six judges, or a major part of them").

⁶ *Supra In re* Hudson County at 172.

⁷ *Supra* Note 4, Gardner v. State; Engle v. Cromlin, 21 N. J. Law 561 (1845).

⁸ Penna. R. R. Co. v. National Docks Ry. Co., 54 N. J. Eq. 647, 35A. 433 (1896). But see the concurring opinion of White, J., in instant case at 176.

⁹ *Supra* Note 6 at 173.

¹ Incorporated in 1852 under a general act (L. 1848, Ch. 319).

² Laws 1857, Ch. 651.

³ Laws 1925, Ch. 17.

⁴ U. S. Const., 14th Amend., Sec. 1.

⁵ Matter of Morse, 247 N. Y. 290, 304, 160 N. E. 374 (1928); Metcalfe v. Union Trust Co., 181 N. Y. 39, 44, 73 N. E. 498 (1905).

⁶ Lord v. Equitable Life Assur. Soc., 194 N. Y. 212, 87 N. E. 443 (1909); Davis v. Louisville G. & E. Co., 142 Atl. Rep. 654 (1928).

⁷ *Ibid.*

⁸ N. Y. Const., Art. VIII, Sec. 1; Pratt, Inc. v. City of New York, 183 N. Y. 151, 162, 75 N. E. 1119 (1905).

not unreasonable⁹ and does not violate any limitation upon the power of the Legislature. These men consented in advance to anything thereafter accomplished by lawful exercise of that power.

CORPORATIONS—NONCUMULATIVE DIVIDENDS.—The Wabash Railway Company for more than three years applied its surplus earnings to working capital and improvements. During this period no dividends were declared on any of its three classes of stock.¹ When, subsequently, the directors decided to pay a dividend to junior stockholders, the owners of Class A stock, which was entitled to "preferential" but "noncumulative" dividends,² sought to restrain this action, claiming that they must first be paid the stipulated rate for each fiscal year in which there were moneys available for distribution. *Held*, for the plaintiff. *Barclay v. Wabash Ry Co.*, 30 F. (2d) 260 (1929).³

In the absence of bad faith, the wisdom of the directors' decision to defer declaration of dividends to improving the condition of the company cannot be questioned.⁴ But, whenever there are earnings in any fiscal year, credit accrues in favor of the non-cumulative preferred stockholders.⁵ They are entitled to receive dividends despite the fact that the profits have since assumed the form of rails, cars and other improvements. But deficiencies (in earnings) in one year cannot be made up from earnings in other years.⁶ Cumulative dividends, on the contrary, must be paid regardless of the time when earned.

CRIMES—MURDER IN FIRST DEGREE—EVIDENCE—CONFESSIONS.—Defendants were indicted and convicted of murder in the first degree, committed in an unsuccessful attempt to burglarize a drug

⁹ *Shields v. Ohio*, 95 U. S. 319, 324 (1877); *People v. O'Brien*, 111 N. Y. 1, 52 (1888); *Chicago Mil. & St. P. R. R. Co. v. Wisconsin*, 238 U. S. 491, 502, 35 Sup. Ct. 869 (1915).

¹ Preferred stock class A, preferred stock class B, and common.

² The Certificate of Incorporation states: "The preferred stock A shall be entitled to receive preferential dividends in each fiscal year up to the amount of five per cent. before any dividends shall be paid upon any other stock of this corporation, but such dividends shall be noncumulative."

³ *Rev'g*, 23 F. (2d) 691.

⁴ "When a corporation has a surplus whether a dividend share be made, and if made how much it shall be * * * rest in the fair and honest discretion of the directors uncontrollable by the courts." *Williams v. Western Union Tel. Co.*, 93 N. Y. 162 [quot. with appr. *Equitable L. Assur. Society v. Union Pac. R. Co.*, 212 N. Y. 360, 373, 106 N. E. 92, L. R. A. 1915 D 1052].

⁵ *New York, etc., R. R. v. Nickols*, 119 U. S. 296, 7 Sup. Ct. 209 (1886); *American Steel Foundries v. Lazard*, 204 Fed. 204 (C. C. A. 1913).

⁶ *Fletcher*, *Cyclopedia of The Law of Private Corporation*, Sec. 3754 (1917); *Elkins v. Camden and Atl. R. R. Co.*, 36 N. J. Eq. 233 (1882).