

## Trusts--Stock Dividends--Accumulations (Equitable Trust Co. v. Prentice, 250 N.Y. 1 (1928))

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matters requiring his attention and while this new contract was in a sense not a renewal, it came to him through administration of the business conducted for their joint benefit. Every advantage which he could obtain in the business must enure to the benefit of both.<sup>5</sup> His position makes him a trustee and the law disables him from acting in self-interest.<sup>6</sup> It is of no consequence that the new lease is upon different terms, nor is it material that the duration of the partnership is fixed and definite<sup>7</sup> and that the new lease is to commence at a time after that fixed for its termination.<sup>8</sup>

TRUSTS—STOCK DIVIDENDS—ACCUMULATIONS.—A deed of trust made in 1917 gave the net income of shares of stock to stated beneficiaries with remainder over. The trustee exercised the privilege given to him by the terms of the trust of allocating stock dividends received to capital, rather than income. The validity of this allocation was contested as being an unlawful accumulation of income. *Held*, such allocation is not in contravention of the statute prohibiting accumulations for other than the benefit of minors.<sup>1</sup> *Equitable Trust Co. v. Prentice*, 250 N. Y. 1 (1928).

Under the Federal, Massachusetts and English rule stock dividends are held to be increments to capital.<sup>2</sup> In New York, until 1926<sup>3</sup> it was settled that a stock dividend was regarded as either income or capital, depending upon whether the surplus out of which it was declared was earned prior to or after the creation of the trust.<sup>4</sup> However, a cash dividend by a going concern is income even though paid out of surplus earned prior to the creation of the trust.<sup>5</sup> In respect of taxation, a stock dividend is deemed capital.<sup>6</sup> "A stock dividend does not distribute property but simply dilutes the shares

<sup>5</sup> *Leach v. Leach*, 18 Pick. (Mass.) 68, 76 (1836); *Armour v. Alexander*, 10 Paige 571 (1844).

<sup>6</sup> *Terwilliger v. Brown*, 44 N. Y. 237 (1870).

<sup>7</sup> *Supra* Note 2 at 139.

<sup>8</sup> *Ibid.*

<sup>1</sup> Personal Property Law, Sec. 16.

<sup>2</sup> *Gibbons v. Mahon*, 136 U. S. 549 (1890); *Minot v. Paine*, 99 Mass. 101 (1868); *Barton's Trust*, L. R. 5 Eq. 238, 243 (1868).

<sup>3</sup> Laws of 1826 Ch. 843 amending Personal Property Law, Sec. 17A, providing that in the absence of provision to the contrary in the terms of a trust, stock dividends shall be principal and not income of such trust.

<sup>4</sup> *Matter of Osborne*, 209 N. Y. 450, 103 N. E. 823 (1913); *U. S. Trust Co. v. Heye*, 224 N. Y. 242, 120 N. E. 645 (1918); *Macy v. Ladd*, 227 N. Y. 670, 125 N. E. 829 (1920); *Bourne v. Bourne*, 240 N. Y. 172, 148 N. E. 180 (1925); *Matter of Byrd*, 241 N. Y. 184, 149 N. E. 827 (1925); *Sturgis v. Roche*, 247 N. Y. 585, 161 N. E. 192 (1928).

<sup>5</sup> *Matter of Kernochan*, 104 N. Y. 618, 11 N. E. 149 (1887).

<sup>6</sup> *People ex rel. Clark v. Gilchrist*, 243 N. Y. 173, 178, 153 N. E. 39 (1926).

as they existed before.”<sup>7</sup> The intrinsic quality of a stock dividend is that of an increment to principal, though at times in furtherance of intention,—they have been regarded as income. In the instant case the trustee was privileged to treat them as capital.

As to allocations of stock dividends under trusts created in 1922 or later there is no question, the legislature having then declared the addition of stock dividends to the principal of a trust shall not be deemed an accumulation.<sup>8</sup>

WORKMEN'S COMPENSATION—MASTER AND SERVANT—PRESERVATION OF PUBLIC PEACE.—An employee of defendant, while driving one of its cabs, was ordered by a policeman who jumped on the running-board, to chase another car. He complied and while pursuing the other car, collided with a trolley sustaining injuries resulting in his death. In an appeal by defendant from an order of the Appellate Division sustaining an award of the State Industrial Board, *Held*, order affirmed. *Matter of Babington v. Yellow Taxi Corp.*, 250 N. Y. 14 (1928).

The chauffeur could not lawfully refuse to obey the police officer's command, since to do so would be a violation of the Penal Law.<sup>1</sup> The employer itself would be bound to comply, therefore, Babington, its employee, charged with control of the car for and on its behalf had to respond. Even assuming that he was not obliged to heed the officer's authority, his use of the car was not an abandonment of his employment.<sup>2</sup> Kellogg, *J.*, dissenting, claims that in aiding the police department, he became a member of that body, subject to supervision of the officer and that he ceased to be a servant of defendant.<sup>3</sup> But the general employer is liable even though the injuries were sustained at the time he was working under the direction of a special employee.<sup>4</sup> He may look to one or both for compensation.<sup>5</sup>

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<sup>7</sup> *Williams v. Western Union Tel. Co.*, 93 N. Y. 162, 189 (1883).

<sup>8</sup> Personal Property, Secs. 10 and 17A.

<sup>1</sup> Sec. 1848.

<sup>2</sup> *Riley v. Standard Oil Co.*, 231 N. Y. 301, 132 N. E. 97 (1921).

<sup>3</sup> *Supra* 250 N. Y. 14 at p. 20 citing *Monterey County v. Rader*, 199 Cal. 221 (1926); *Village of West Salem v. Industrial Comm.*, 162 Wis. 57 (1916).

<sup>4</sup> *Matter of Dale v. Saunders Bros.*, 218 N. Y. 59, 112 N. E. 571 (1916).

<sup>5</sup> *Matter of De Noyer v. Cavanaugh*, 221 N. Y. 273, 116 N. E. 992 (1917).