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.5
His position makes him a trustee and the law disables him from
acting in self-interest.6 It is of no consequence that the new lease is
upon different terms, nor is it material that the duration of the part-
nership is fixed and definite7 and that the new lease is to commence
at a time after that fixed for its termination.8

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 privi-
lege given to him by the terms of the trust of allocating stock divi-
dends 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.1 Equitable Trust
Co. v. Prentice, 250 N. Y. 1 (1928).

Under the Federal, Massachusetts and English rule stock divi-
dends are held to be increments to capital.2 In New York, until
19263 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.4
However, a cash dividend by a going concern is income even though
paid out of surplus earned prior to the creation of the trust.5 In
respect of taxation, a stock dividend is deemed capital.6 "A stock
dividend does not distribute property but simply dilutes the shares

5Leach v. Leach, 18 Pick. (Mass.) 68, 76 (1836); Armour v. Alexander,
10 Paige 571 (1844).
7Supra Note 2 at 139.
8Ibid.
1Personal Property Law, Sec. 16.
2Gibbons v. Mahon, 136 U. S. 549 (1890); Minot v. Paine, 99 Mass. 101 ,
(1868); Barton’s Trust, L. R. 5 Eq. 238, 243 (1868).
3Laws 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.
4Matter of Osborne, 209 N. Y. 450, 103 N. E. 823 (1913); U. S. Trust
(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).
5Matter of Kernochan, 104 N. Y. 618, 11 N. E. 149 (1887).
as they existed before." 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.

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. 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. 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. 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. He may look to one or both for compensation.

7 Williams v. Western Union Tel. Co., 93 N. Y. 162, 189 (1883).
7 Personal Property, Secs. 10 and 17A.
3 Sec. 1848.
6 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).