January 1928

Trusts—Right to Stock Dividends As Between Life Tenant and Remainderman

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview

Part of the Law Commons

Recommended Citation
Trusts—Right to Stock Dividends As Between Life Tenant and Remainderman, 13 St. Louis L. Rev. 223 (1928).
Available at: http://openscholarship.wustl.edu/law_lawreview/vol13/iss3/17

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.
in the mind of a reasonable, prudent, and intelligent person, acting upon com-
peotent legal advice. . . ."
Elsewhere, as in Missouri, the doctrine is recognized that a vendee is entitled

to a marketable title, but the mere opinion of a competent attorney does not de-
termine the marketability of a title. In Green v. Ditsch, supra, the court said,
"While there is an implied covenant in an executory contract for the sale of
real estate, that the grantor has a marketable title, yet there is no implied cove-
nant that the title will be such as the grantee will be willing to accept, or as his
attorney may pronounce marketable." The case is cited in this connection in
Wiemann v. Steffer, 186 Mo. A. 584, 172 S. W. 472. See also Atkinson v.
Taylor, 34 Mo. A. 442, where the question is held to be for the court. The
opinion left open the question of whether a court of law can pass upon the
marketability as distinguished from the validity, of a title.

In Kent v. Allen, 24 Mo. 98, it was held that the doctrine of marketable titles
is purely equitable. "Courts of law being the proper and peculiar tribunals for
the decision of all legal questions, doubtful titles are not recognized by them.
. . . This being a suit at law, and the validity of title arising, the question
must be determined whether it is good or bad." E. K., '29.

TRUSTS—RIGHT TO STOCK DIVIDENDS AS BETWEEN LIFE TENANT AND RE-
MAINDERMAN.—This was a suit to construe a will of one J. M. Hays, brought

by his three children, life beneficiaries of a trust estate, against the testamentary
trustees and remaindermen. The sole question was whether or not a stock divi-
dend is to be considered as income or as an addition to the corpus of a trust
estate. Held, that in the absence of an expressed intention to the contrary,
stock dividends are not "income" payable to the life beneficiaries of a trust estate
created by will but are accretions to the corpus of the estate. Hayes v. St. Louis
Union Trust Co., 298 S. W. 91. (Mo., 1927.)

The mooted point of this case presents another of those perplexing and all
too frequent legal problems which bid fair never to have a uniform line of
decisions governing them. There are three prevailing doctrines in the United
States on the subject presented in the instant case. First, there is the so-called
Massachusetts rule, which when broadly stated declares that stock dividends be-
long to corpus, as distinguished from cash dividends which of course are income.
is that in the case of stock dividends there is merely a readjustment of the cor-
porate structure and no actual severance of corporate earnings from other cor-
porate property as in the case of cash dividends. The act of declaring a stock
dividend is evidence of the corporate intent to treat its surplus profits to that
extent as part of its permanent capital, and thus such dividends should be treated
as corpus. Secondly, there is the Pennsylvania rule which makes no distinction
between cash and stock dividends and necessitates the determination of the
period during which the earnings being distributed accrued. If such period
preceded the life interest, the dividends, of whatever nature, are corpus for the
purposes of the case; if accrual was subsequent to the commencement of such
term, they are "income"; if the accrual period was partially before and partially
after, there is to be an apportionment between the two funds. Earp's Appeal,
144, 73 Atl. 320. The reason behind this rule is that all those profits which have
accrued prior to the commencement of the life term and which have served to
increase the value of the stock are just as much part of the capital as the original
capital and are to be regarded, so far as the estate is concerned, as part of the
principal from which the future income is to arise; as regards profits earned dur-
ing the life term, such profits are really "income" since they represent corporate earnings of that period as severed from corporate capital. Thirdly, there is the Kentucky rule which declares that a stock dividend or any kind of dividend declared out of earnings goes to the party entitled to the income at the time of the declaration of the dividend. *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778; *Cox v. Gaulbert*, 148 Ky. 407, 147 S. W. 25. The only reason for this rule seems to be its extremely simple mode of application. See 10 St. Louis L. Rev. 75.

The authorities are almost evenly divided between the Massachusetts and Pennsylvania rules. See 14 C. J. 829 and cases there cited. The instant case, in a very well reasoned opinion, follows Massachusetts. The Kentucky rule is obviously faulty, since its application, while simple, is made to depend on a mere fortuitous circumstance, namely the time when a dividend is declared. The Pennsylvania rule, while obviously fair if correctly applied, totally disregards the nature of the dividend and is extremely difficult of application. This leaves the Massachusetts rule, the main objections to which are that it allows the action of directors to govern the courts, and that it is a mere rule of convenience designed to release the courts from the labor of making a just allotment of corporate earnings. The first objection might be answered by the query, "Why not?" and the second is answerable because a simple rule is always to be desired to eliminate labor and possible error.

E. L. W., '28.