CORPORATIONS

DIVIDENDS — TO WHOM PAYABLE WHEN RECORD DATE IS GIVEN

X was the life beneficiary of a trust created by the will of her husband. Included in the trust estate were a number of shares of stock in the A Corporation. The A Corporation declared a dividend on January 31, 1939, payable in four quarterly instalments to shareholders of record on four different dates. X died after the payment of the first instalment, but before the record date for the second instalment. The Supreme Court unanimously affirmed the decision of the Court of Appeals and held that the remainderman of the trust was entitled to the dividends instead of the estate of the life beneficiary. The court relied on the so-called *Connecticut rule* and said that where a dividend is declared payable to stockholders of record on a stated future date it is the property of the owner of the stock on that date.[1]

Dividends are declared in several ways. The directors may simply declare a dividend with no mention of a date for payment,[2] or they may include not only a date for payment, but a record date. Before the record date problem arose the courts with very few exceptions held that dividends belonged to the owner of the stock on the date the dividend was declared.[3] However the practice of most corporations today is to declare the dividend to be payable to shareholders on a date of record between the declaration date and the date set for payment.[4] The original purpose of such a practice was undoubtedly to protect the corporation, so that when it paid a dividend to the person registered on the books on the record date no liability would fall on the corporation if such person were not the actual owner on that date. However many courts have held that the record date is the effective date of the dividend and the actual owner on the date of record is entitled to the dividend even though he may not be the owner registered on the books of the corporation.[5] Some courts have not accepted this view and retain the

[1] In re Wuichet, 138 Ohio St. 97, — N.E. (2d) — (1941).

[2] Northwestern Marble & Tile Co. v. Carlson, 116 Minn. 438, 133 N.W. 1014, Ann. Cas. 1913B, 552 (1912); Wallin v. Johnson City Lumber & Mfg. Co., 136 Tenn. 124, 188 S.W. 577, L.R.A. 1917B, 323 (1916).

[3] Bright v. Lord, 51 Ind. 272, 19 Am. Rep. 732 (1875); Lobacco Co. v. Chaffin, 193 Ky. 225, 235 S.W. 675 (1921); Hopper v. Sage, 112 N.Y. 530, 20 N.E. 350, 8 Am. St. Rep. 771 (1889). Annotation: 60 A.L.R. 703.

[4] CONYNGTON, CORPORATION PROCEDURE (Rev. Ed. 1927), 894; 38 HARV. L. REV. 245 (1924). The practice of making the record date antedate the declaration date was held improper in *Lunt* v. *Genesee Valley Trust Co.*, 162 N.Y. Misc. 859 (1937).

[5] Smith v. Taecker, 133 Calif. App. 351, 24 Pac. (2d) 182 (1933); Richter & Co. v. Light, 97 Conn. 364, 116 Atl. 600 (1922); Buchanan v. National Savings & Trust

rule that title vests on the date of the declaration.[6] The numerical majority follows the reasoning of the Connecticut Supreme Court in *Richter & Co.* v. *Light*,[7] whereas the minority in number is led by New Jersey. The departure from the general rule has been attributed to the Connecticut court, although the doctrine had its foundations in several previous cases.[8] The court in the *Richter* case said that where by the terms of the resolution the dividend is made payable as of a record date the dividends are not to vest until that date, and it makes no difference that the owner is not actually on the books of the corporation as the owner. As long as he has title to the stock on the record date he is entitled to the dividend. The principle of the Connecticut rule is generally recognized in stock transactions and is embodied in the rules of the New York Stock Exchange,[9] the New York Curb Exchange,[10] and the Chicago Stock Exchange.[11] When stock is sold on these exchanges any dividend declared as of a record date goes with the stock until that date.

The New York rule has resulted from a refusal to depart from the general rule regarding vesting of dividends which rule was formed before the use of record dates became prevalent. For several reasons the general rule was the most practical under the then existing circumstances, but the courts following the New York rule do not recognize that the situation now is inherently different. Several years ago a note ably presented the arguments for the rule.[12] The writer stated several objections to the Connecticut rule which he said were not present in the New York rule,[13] but it seems from the gist of that note and other

---

Co., 23 Fed. (2d) 994 (1928); Ford v. Ford Mfg. Co., 222 Ill. App. 76 (1921); Nutter v. Andrews, 246 Mass. 224, 142 N.E. 67 (1923); Burroughs v. North Carolina R. Co., 67 N.Car. 366 (1872); In re Wuichet, 138 Ohio St. 97, — N.E. (2d) — (1941). FLETCHER CYC. CORP. (Perm. Ed.) sec. 5380.

[6] Ford v. Snook, 205 App. Div. 194, 194 N.Y. Supp. 630 (1923); *In re* Booth's Estate, 139 N.Y. Misc. 253, 248 N.Y. Supp. 264 (1931); *In re* Wolf's Estate, 155 N.Y. Misc. 190, 279 N.Y. Supp. 605 (1935); Western Securities Co. v. Silver King Consolidated Mining Co., 57 Utah 88, 192 Pac. 664 (1920); Beattie v. Gedney, 99 N.J. Eq. 207, 132 Atl. 652 (1926). The case of *Union & New Haven Trust Co.* v. *Watrous*, 109 Conn. 268 (1929) supports the New York rule, but only because a New York corporation was involved.

[7] 97 Conn. 364, 116 Atl. 600 (1922).

[8] Burroughs v. North Carolina R. Co., 67 N.Car. 366 (1872); Ford v. Ford Mfg. Co., 222 Ill. App. 76 (1921).

[9] New York Exchange: Rules, Chapt. VI, sec. 2.

[10] New York Curb Exchange: Rules, Chapt. VI. sec. 2.

[11] Chicago Stock Exchange: By-Laws, Article VII, secs. 1 and 2.

[12] 27 GEO. L.J. 74 (1938).

[13] Briefly his objections to the Connecticut rule are that: 1. It is erroneously grounded upon custom rather than established legal principles. 2. It results in a conflict of laws in the jurisdictions that follow it. 3. It is merely a minority exception to the general rules. 4. It confuses business practices, corporate reporting, and stock transactions.

authorities on the subject that the foundation of the rule is *stare decisis.* The rule is not supported by present business practices.

While it is probable that the real intent on the part of the board of directors in making dividends payable on a record date is to protect the corporation, there is no reason why the record date cannot also be adopted as the date upon which the title to a dividend will vest. The rules of all the leading stock exchanges in this country are in accord with such a construction, which would seem to indicate a customary business practice which courts should consider in the dividend cases.

Due to the importance of the stock exchange rules in New York, the legislature of that state passed section 62 of their Stock Corporations Act which in effect accords sanction to the exchange rule on dividends. The statute in very definite terms states that the directors can provide for a record date and that only the stockholders of record on that date shall be entitled to receive the dividend. Whether this statute meant to go further than the exchange rule and require that only the record owner shall be entitled to the dividend is not clear because there have been no cases on this point under the statute, but it is clear that the record date is the effective date instead of the declaration date. Since the passage of this law there have been only three decisions on the point in New York. One was in the courts prior to the passage of the law,[14] another involved a foreign corporation and therefore the statute did not apply,[15] and the third case involved a declaration of a dividend as of a date of record prior to the declaration date.[16] Thus there have been no cases actually in point since the statute was enacted seeming to indicate that it has been accepted as the law in New York. If this is correct the support of New York has been taken away from the New York rule leaving only New Jersey and Utah following the rule. Since the *Richter* case in 1922 but one decision has been handed down outside of New York upholding the New York rule,[17] whereas there have been five jurisdictions adopting the view of the Connecticut court.[18] It would seem clear that the majority of states, both in number and importance, favors the Connecticut rule, and that the trend is increasingly in that direction.

G. O. A.

[14] *In re* Booth's Estate, 139 N.Y. Misc. 253, 248 N.Y. Supp. 630 (1923).
[15] *In re* Wolf's Estate, 155 N.Y. Misc. 190, 279 N.Y. Supp. 605 (1935).
[16] Lunt v. Genessee Valley Trust Co., 162 N.Y. Misc. 859 (1937); *supra* note 4.
[17] Beattie v. Gedney, 99 N.J. Eq. 207, 132 Atl. 652 (1926); *supra* note 6.
[18] California, Illinois, Massachusetts, Ohio, and the District of Columbia.