

was exactly what happened in the next case for consideration which was decided in the same year: *Barclay v. Wainewright*, 14 Ves. 66. Here the dividend had been increased gradually from  $2\frac{3}{4}$  per cent. to  $3\frac{1}{2}$  per cent. at which rate it continued till 1807 with variations by occasional bonuses making it sometimes as much as  $8\frac{1}{2}$  per cent. In that year the regular dividend was suddenly increased to 5 per cent. no part thereof being declared to be bonus or special dividend. Lord Eldon gave the whole to the tenant for life leaving it open, however, apparently, to any one interested to shew by affirmative evidence that any part of it was paid out of the accumulated capital of the bank and was for this reason to be itself treated as capital. The view favouring the life tenant was carried one step further in *Preston v. Melville* (1848) 16 Sim. 163, where a bank declared its ordinary and also a bonus dividend "out of interest and profits" but included both dividends in one dividend warrant. On the authority of *Barclay v. Wainewright* the whole was given to the life tenant.

In *re E. Barton's Trust* (1868) L.R. 5 Eq. 238, a new aspect was given to the question. In this case a company directed that of "the net earnings during the half-year" a portion should be applied to necessary works and new shares issued to represent the money so applied and that the balance of the earnings should be paid out as dividend. Vice-Chancellor Sir W. Page Wood determined that the company had the right to say whether their profits should be paid out as income or go in augmentation of capital, and held that the new shares in this case being a capitalization of profits by the company were themselves capital. He says: "The dividend to which a tenant for life is entitled is the dividend which the company chooses to declare."

We now come to what may be called the leading case on this question, *Bouch v. Sproule* (1887) 12 A.C. 385, where all the prior authorities are reviewed. The company whose transactions were here in question had power to increase its capital, and had also power before declaring a dividend to set apart out of profits a sum sufficient to meet contingencies, repairs, etc. Having created a large reserve fund under this provision they divided it amongst the shareholders as a bonus dividend. At the same time it was resolved "that the company's operations render it desirable to raise an amount (equal to the gross amount of the bonus) as capital account" and it was proposed to issue new shares to each