

as the ordinary shareholders were first placed on an equality with the preference shareholders, by having appropriated to them a dividend of the same amount as was receivable by the latter—that is to say, 10 per cent.—then all the shareholders were entitled to have all the surplus profits apportioned pro ratâ among them. But to have given effect to that contention would have necessitated overriding the interpretation that experience shews it has been the custom to place upon the old form of article of association which is commonly adopted. And the reason for it has been that preference shareholders are allowed a dividend that does not vary with the profits yielded each year by a company's transactions. Mr. Justice Sargant in *Re National Telephone Company, Limited* (ubi sup.) referred, it will be noticed from our report of his judgment, to the decision of Mr. Justice Swinfen Eady (as he then was) in *Re Espuela Land and Cattle Co.*, 101 L.T. Rep. 13, (1909), 2 Ch. 187. But his Lordship did not think that the learned judge intended to lay down any absolute canon of construction. If he did so, however, it is now completely superseded. In the earlier editions of Sir Francis Palmer's work, the article suggested as a precedent merely provided that the surplus profits (or the residue of the surplus profits) should be divided among the members in proportion to the nominal amount of the capital (or the number of shares) held by them respectively. Notwithstanding the generally accepted meaning of that provision, the learned author has recognised that it might easily be open to misconception. Accordingly, express words negating the rights of preference shareholders to participate in further profits now appear in the form in the Company Precedents, in order, as is stated in a note thereto, to preclude any question on the point. This is an infinitely superior course to pursue. For it entirely prevents any false hopes being raised in the minds of applicants for preference shares who naturally enough may be profoundly ignorant of the decision which has now been pronounced by the House of Lords. Anything to avoid the possibility of intending shareholders being misled should invariably be laid hold of as the just and proper system."