

right to the new shares or either of them in the nature of profits resulting from the operations of the concern, to be applied therefore as income for the benefit of the life tenants of the fund, or are they an accretion to the capital of the trust to be invested for the benefit of all?

The question is one of obvious importance to the trustee as he will be personally liable to make good to any of his cestuis que trustent any loss they may sustain in consequence of his decision.

It is important firstly to distinguish a mere bonus or extra dividend from such a privilege as the right to subscribe for new shares. A special increased dividend following upon unusual prosperity whether declared simply as dividend or in the form of a bonus is in the great majority of cases a profit resulting from the original shares and has been held in most instances, as we shall see, to be income in the hands of the trustee, applicable for the benefit of the life tenant alone. Should a company, however, decide for any reason to increase its capital by the issue of more stock the right to take up the new shares is not necessarily a profit at all. It may indeed be no benefit to the original shareholders as if the new stock is issued at a price equal to the market price of the old shares, or if in consequence of the new issue the price of old shares depreciates in the market. Even, however, if the new shares are offered to the old shareholders at a less price than the market value so as to make it obviously in their interest to take them up, it is nevertheless not an easy matter to decide whether the benefit thus accruing is a profit on the original investment or an additional outlay of capital by the subscribers for new shares.

Some confusion arises moreover from the frequent practice amongst companies of issuing new shares at the same time that a bonus is declared and setting off the bonus payable to each shareholder against the price of the new shares allotted to him. It will be well therefore to take the two questions up together as the authorities in almost all cases will be found to deal with both.

The first decision to be considered is *Brander v. Brander* (1799) 4 Ves. 800, which Lord Herschell in *Bouch v. Sproule* speaks of as the earliest case on this question. The Bank of England, having paid out of its surplus funds for the public service £1,000,000, received from the Government £1,125,000 five per cent. annuities, which it directed to be distributed amongst its stockholders in