The plaintiff did understand all about the $50 prepayment, and that she was to get semi-annual dividends upon that, at the rate of six per cent. per annum, but she did not understand, as the company understood, what was meant by the sentence "This stock is entitled to receive in addition its proportionate share of the entire profits of the company." The plaintiff did not expect to pay any more in cash.

She could have allowed her dividends to remain, instead of taking the money, but she did not. She expected that profits would flow in so that she would soon have a dividend on $100 a share, instead of on $50. Her expectations were not realised; and the question is, simply, has she now, upon the evidence, any right to the account asked for? . . .

This stock may not be preference stock, as properly defined, but it is in reality preference stock as to dividend. If there are profits sufficient, the three per cent. semi-annual dividend upon it is assured and must be paid in preference to the other stock. To use the words of the company, "this dividend is to be deducted from profits earned," the balance of the earnings being credited to the stock. When the profits (net profits) shall be sufficient to permit of a dividend in excess of six per cent. per annum, she will get the increased dividend, not in money, but by a credit to these shares until the amount so credited will amount in all to $50 for each share. . . .

The defendants admit that the business carried on by the old company down to the 27th June, 1900, and then transferred to and subsequently carried on by the defendants, has produced gross earnings in excess of the dividend at the rate of six per cent. per annum from time to time declared and paid on the capital stock of the companies from time to time outstanding.

I am not able to agree with the plaintiff's interpretation of the contract. . . .

I am not able to find any promise, express or implied, on the part of the company, that the money paid in on these shares would be kept separate, and profits made on that money appropriated and credited to these shares; no company would undertake such a task.

Even if the old company had not been merged in the new—if it had continued to do business in its own name and under the old Act—the plaintiff, upon the facts disclosed, would not be entitled to have an account for the purpose mentioned. There being nothing in the contract to compel the company to set aside a part of the gross earnings, and put the same to the credit of the plaintiff's shares, the case is governed by Bain v. Ætna Life Insurance Co., 21 O.R. 233.