The predictability of extraterritorial effect provided by the *Johnson* decision does not necessarily mean immunity from attack. The decision does, however, permit states to afford further protection to out-of-state divorces.[24] States with strict divorce policies[25] are thus deprived of one of the last weapons for repelling the encroachment of liberal foreign divorce laws.[26] Strong religious and political forces press these states to retain control of their citizens' domestic relations[27]—a traditional area of state concern. But the trend has been to recognize that strict divorce laws do not solve the complex problems

the law of a state privity is imposed upon persons over whom the state has no jurisdiction, the judgment is to that extent invalid." (emphasis added).

Cf., Pennoyer v. Neff, 95 U.S. 714 (1878); N. Y. Life Ins. Co. v. Dunlevy, 241 U.S. 518 (1916).

The Court in the *Johnson* case evidently did not consider this rule controlling since no reference was made in the opinion to the *Bigelow* case. In effect, however, *Johnson* did allow Florida to "impose privity" upon the daughter who was not under the jurisdiction of the Florida court. Without the limitation of the *Johnson* rule to the "status," or in rem, aspect of the divorce decree as suggested, conflict with the *Bigelow* rule would be inescapable.

24. See p. 241 *supra*.

25. The "strictness" of a state's divorce policy is most vividly mirrored in the range of permissible grounds for divorce. Thus, adultery is the sole ground in New York whereas in Kentucky there are no less than fifteen available grounds. See 2 VERNIER, AMERICAN FAMILY LAWS *passim* (1932).

26. In the days when Haddock v. Haddock, 201 U.S. 562 (1906), was the leading case on out-of-state divorce, jurisdiction over one party who had "fled" the "matrimonial domicile" did not remove the res of marriage from the home state. The first case of Williams v. North Carolina, 317 U.S. 287 (1942) released the home state's hold on the res of marriage and freed either party to seek a divorce in any state where he wished to establish his domicile. However, states retained power to entertain challenges to the jurisdictional basis of a foreign decree. Williams v. North Carolina, 325 U.S. 226 (1945). This power is dormant until a proper challenger stirs it to action. A party who had appeared to contest the divorce could not subsequently attack. Sherrer v. Sherrer, 334 U.S. 343 (1948). Similarly, a party who had acted in reliance on the foreign decree and remarried was estopped from later challenge. *E.g.*, Drummond v. Lynch, 82 F.2d 806, 810 (5th Cir. 1936); Loftis v. Dearing, 184 Tenn. 474, 201 S.W.2d 655 (1947). Parties who acquiesced to the decree, or were guilty of fraud or collusion in procuring the decree were also estopped. *E.g.*, Newcomer v. Newcomer, 199 Iowa 290, 294, 201 N.W. 579, 581 (1925); Burton v. Burton, 176 Okla. 494, 497, 56 P.2d 385, 388 (1936). Power remained in the local court to determine the standing of the third party attacker. In many cases, this power allowed states to choose whether to exercise their right to inquire into the jurisdiction of the foreign court prior to honoring its decree. See note 8 *supra*. Thompson v. Whitman, 18 Wall. 457, 461 (U.S. 1873).

That this power has now been taken from the state where the attack is made, see Cook v. Cook, 342 U.S. 126 (1951). In that case the Supreme Court combined the doctrines of the *Sherrer, Coe,* and *Johnson* cases to make it clear that the vulnerability of the foreign decree depended entirely on the proceedings and laws of Florida, the state which had granted the divorce. This question was even given precedence over the doctrine of estoppel customarily applied to third party attackers who have colluded, acquiesced, or acted in reliance on the disputed divorce.

27. See GYNNE, HOLY MATRIMONY AND COMMON SENSE (1930).

of family disorganization.[28] And giving greater stability to divorce decrees obtained under more liberal laws seems an appropriate response to the changing role and function of the American family unit.[29] If limited to prevent undue hardship to third persons with legitimate property interests,[30] the *Johnson* decision may prove a step toward the realistic modernization of our troubled divorce law.[31]

DIVIDEND RIGHTS OF NON-CUMULATIVE PREFERRED STOCK*

ALTHOUGH directors may pay out dividends unless they impair the corporation's capital,[1] stockholders can seldom force distribution simply because earnings are legally available for dividends. Complaining shareholders, however, prevail when stock certificates or charter provisions clearly restrict directors' dividend discretion.[2] Absent such limitations, dividends may be

28. In considering the problem of marital instability, social scientists have emphasized patterns of interpersonal adjustment, influenced by social and economic forces. Analysis in these terms has led many to believe that in most cases the process of marital dissolution occurs independently of the law of divorce. For a dramatic presentation of the breakdown of the marital relationship, see MOWRER, FAMILY DISORGANIZATION, 230-63 (2d ed. 1939). See also Beamer, *The Doctrine of Recrimination in Divorce Proceedings,* 10 U. OF KAN. CITY L. REV. 213, 249 (1941-1942). For a discussion of the social and psychological factors behind marriage and divorce, see also Llewellyn, *Behind the Divorce Law,* 32 COL. L. REV. 1281 (1932), 33 COL. L. REV. 249 (1933). See also Harper, *The Myth of the Void Divorce,* note 2 *supra. But see,* Evans v. Evans, 1 Hagg. Con. 35, 36-7 (England 1790).

29. The law of divorce was born in ecclesiastical doctrines and nurtured in the legal concepts of fault. Today, neither of these justifications provides a realistic basis for the legal severing of the marriage bond. The changed position of women, the role and function of the family unit, and the increased mobility of its members demand a new conception of divorce. See NIMKOFF, MARRIAGE AND THE FAMILY (1947). On the changing functions of the American family resulting in a more loosely integrated unit, see *id.* at 87-131. On divorce, see *id.* at 623-68.

30. Of course there may be cases in which the third party attacker is merely a "straw man" for one of the immediate parties who is herself estopped from further contest of the adjudicated matter. See Farah v. Farah, 92 N.Y.S.2d 187, 196 Misc. 460 (Sup. Ct. 1949).

31. See Roscoe Pound's foreword to *A Symposium on the Law of Divorce,* 28 IOWA L. REV. 179 (1943).

*Guttmann v. Illinois Central R.R. Co., 189 F.2d 927 (2d Cir. 1951), *cert. denied,* 342 U.S. 867 (1951).

1. "Considerable confusion in corporate law is occasioned by the chameleon-like nature of the word capital." SCHAPIRO & WIENSHIENK, CASES & MATERIALS ON LAW & ACCOUNTING 238 n.26 (1949). For discussion of various dividend restriction concepts, see *id.* at 238-74; STEVENS, CORPORATIONS 446-54 (1949); BALLANTINE, CORPORATIONS 570-91 (1946); KEHL, CORPORATE DIVIDENDS 14-82 (1941).

2. "For a contract to compel directors to declare and pay dividends, the general rule is that it must be intelligent, explicit and unambiguous." 39 ILL. L. REV. 90, 92-3 (1944), noting Crocker v. Waltham Watch Co., 315 Mass. 397, 53 N.E.2d 230 (1944); Note,

extracted if directors have withheld earnings fraudulently or in bad faith.[3] And since equity will enjoin arbitrary or unreasonable withholding of dividends,[4] stockholders may successfully prove that retention of earnings has violated the vague standard of "reasonable business judgment."[5] But because courts deem management best qualified to know and evaluate the facts underlying informed dividend decision, directors are left with broadest discretion to withhold corporate earnings from stockholders.[6]

Corporate retention of annual earnings may hit non-cumulative preferred stock hardest. While common stockholders are deprived of present investment returns,[7] their aliquot property interest in the corporation appreciates corre-

Minority Shareholder Suits to Compel Declaration of Dividends, 64 HARV. L. REV. 299, 302-3 (1950). But occasionally ambiguous provisions in a stock contract are construed to limit the drafting corporation's dividend discretion. *E.g.*, New England Trust Co. v. Penobscot Chemical Fibre Co., 142 Me. 286, 50 A.2d 188 (1946).

3. Kassel v. Empire Tinware Co., 178 App. Div. 176, 164 N.Y. Supp. 1033 (2d Dep't 1917) (directors withheld earnings while fulfilling installment contract to buy plaintiff's stock); Crichton v. Webb Press Co., 113 La. 167, 36 So. 926 (1904) (majority of directors used corporate surplus to buy patent rights from themselves at inflated prices). And *see* Gibbons v. Mahon, 136 U.S. 549, 558 (1890).

4. *E.g.*, W. Q. O'Neall Co. v. O'Neall, 108 Ind. App. 116, 25 N.E.2d 656 (1940); Hiscock v. Lacy, 9 Misc. 578, 30 N.Y. Supp. 860 (Sup. Ct. 1894).

5. Only a few extreme retentions of earnings have stimulated judicial correction. Channon v. H. Channon Co., 218 Ill. App. 397 (1920) (dominating stockholder publicly stated he would declare no further dividends while he lived); Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (1919) (Ford not permitted to subsidize the car purchasing public with corporate funds). By and large, the management of the corporation can offer some plausible justification for the retention. Schmitt v. Eagle Roller Mill Co., 199 Minn. 382, 272 N.W. 277 (1937) (surplus aided the efficient running of milling business); Tefft v. Schaefer, 136 Wash. 302, 239 Pac. 837 (1925) (ice and fuel business needed new machinery to manufacture ice).

6. City Bank Farmers Trust Co. v. Hewitt Realty Co., 257 N.Y. 62, 177 N.E. 309 (1931) (refusal to distribute dividends despite large earnings and surplus, seven year absence of dividends, management's hostility toward plaintiffs); Gehrt v. Collins Plow Co., 156 Ill. App. 98 (1910) (refusal to order distribution from surplus over twice capital stock after two decades without dividends).

"Judges are aware of their own lack of expertness as business administrators, and are reluctant to treat managerial acts as abuses of discretion and violations of fiduciary duty unless the evidence to that effect is clear and convincing." Dodd, *The Modern Corporation, Private Property, and Recent Federal Legislation*, 54 HARV. L. REV. 917, 925 (1941).

For expressions of this judicial reluctance, see Barrows v. J. N. Fauver Co., 280 Mich. 553, 559, 274 N.W. 325, 328 (1937) ("[A court] is loath to act, unless it is clearly made to appear that the discretion is, in bad faith, abused"); Hopkins v. Union Canvas Goods Co., 104 Pa. Super. 264, 268, 158 Atl. 301, 302 (1932) ("The Court cannot usurp [the directors'] function unless they are charged with impropriety and proven to have been guilty of it."). Moreover, courts may erect a presumption of directors' good faith. Anderson v. Bean, 272 Mass. 432, 444, 172 N.E. 647, 652 (1930) ("[R]ational presumptions will be indulged in favor of the honest decision of such officers.").

7. Particularly in closely held corporations, the retention of earnings may be part of a scheme to oppress minority stockholders. *E.g.*, Keough v. St. Paul Milk Co., 205 Minn. 96, 285 N.W. 809 (1939) ($131,000 of $147,000 surplus ordered disbursed among stock-

spondingly. And though this investment gain is subject to continuing business risk, they theoretically can realize their capital appreciation by sale of some shares at enhanced market prices.[8] Cumulative preferred stockholders, entitled to an annual fixed percentage return on investment regardless of corporate earnings, probably fare worse. Retention of earnings permits corporate use of back dividends without payment of an additional return to the preferred stock.[9] Moreover, accruals are often threatened with elimination by corporate action[10] and thus might not bloat market quotations. But since arrearages at least block dividends to common stock, they exert some pressure toward distribution. Non-cumulative preferred stock, however, may not even receive accrual rights when annual earnings are retained.

Two conflicting theories govern the accrual rights of non-cumulative preferred stock. One rule, developed by New Jersey courts, interprets the non-cumulative feature to bar accruals only for years without corporate earnings.[11] Under this theory, retained earnings build up a dividend credit for non-cumulative stockholders which must be satisfied before common stock can

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holders). The minority stockholders' need for cash may result in forced sale of securities to management at an unduly low price. *Cf.* Hotchkiss v. Fischer, 136 Kan. 530, 16 P.2d 531 (1932) (needy widow sold shares to president of company at $1.25 a share three days before a cash dividend of $1 a share was declared).

8. If common stockholders do realize a return by selling enough shares to keep their investment market value constant, they of course lose voting power proportionately. In actual fact, the market price may not reflect the asset increase caused by retention of earnings. Investors may be reluctant to bid up the price of stock on which dividends are being passed though net earnings exist from which dividends could be paid.

9. Whether or not arrearages stem from retention of earnings or absence of earnings, the cumulative preferred stock receives no return on its arrearages. It receives no "interest on interest." *Cf.* Note, 42 Harv. L. Rev. 805, 808 (1929) (advocating addition of retained earnings to par value of stock for dividend calculation).

10. Reorganizations, mergers, and charter amendments may scale down arrearages. *E.g.*, Barrett v. Denver Tramway Corp., 53 F.Supp. 198, *aff'd*, 146 F.2d 701 (3d Cir. 1944) (arrearages eliminated in exchange for increased liquidation claims). See generally Becht, *Alterations of Accrued Dividends*, 49 Mich. L. Rev. 363 and 565 (1951); Dodd, *Accrued Dividends in Delaware Corporations—From Vested Rights to Mirage*, 57 Harv. L. Rev. 894 (1944). And appraisal statutes may not adequately protect shareholders affected. Note, *Appraisal of Corporate Dissenters' Shares*, 60 Yale L.J. 337 (1951).

11. New Jersey's solicitude for non-cumulative stockholders reached this peak in Day v. U.S. Cast Iron Pipe & Foundry Co., 96 N.J.Eq. 736, 126 Atl. 302 (1924). For the early New Jersey cases, see Lattin, *Is Non-Cumulative Preferred Stock In Fact Preferred?*, 25 Ill. L. Rev. 148, 158 n.22 (1930). Interpretation of these cases varies. *Compare* Note, 4 Rutgers L. Rev. 510, 512 (1950): "[T]he commonly accepted view in this state of the difference between cumulative and non-cumulative preferred stock [is that] the former has priority over common stock as to dividends legally declared out of any funds of the corporation so long as the preferred stockholder has failed to receive the maximum dividend to which he may have been entitled in any year, whereas the latter gives the preferred stockholder such priority only as to those years in which net earnings were sufficient to pay such dividends": *with* Ballantine, Corporations 523 (1946); "The New Jersey cases do not hold that the bare word 'non-cumulative' means that the dividends are cumulative to the extent earned in each fiscal year."

receive dividends.[12] New Jersey courts themselves,[13] however, are apparently shifting toward the dominant *Wabash* rule, promulgated by a unanimous Supreme Court over twenty years ago.[14] That rule wipes out non-cumulative stockholders' claims for earned but retained dividends unless the directors' retentions were arbitrary or unreasonable.[15]

A recent Second Circuit decision not only adopts but expands the *Wabash* rule. In *Guttmann v. Illinois Central R.R. Co.*,[16] plaintiff non-cumulative preferred stockholder[17] demanded that his dividends for 1942 through 1947 be

12. The New Jersey cases spoke in terms of retained earnings creating a "dividend credit." But the factual situations with which the New Jersey courts dealt did not result in full judicial development of the dividend credit concept. The effect upon the dividend credit of subsequent corporate losses was not settled. Nor did these early cases concern retained earnings that had been plowed back into the business. Retained earnings had been allocated to a readily identifiable, highly liquid "reserve for additional working capital." Commentators have offered different interpretations of the dividend credit. *Compare* Frey, *The Distribution of Corporate Dividends,* 89 U. OF PA. L. REV. 735, 758 (1940) (dividend credit treated as an arrearage: corporate losses may eliminate the fund legally available for dividends without wiping out dividend credit), *with* Berle, *Non-Cumulative Preferred Stock,* 23 COL. L. REV. 358, 360 (1923) (dividend credit viewed as an earmarking of earned surplus, disappearing when operating losses eliminate earned surplus).

13. In Lich v. U.S. Rubber Co., 39 F.Supp. 675 (D. N.J. 1941), *aff'd per curiam,* 123 F.2d 145 (3d Cir. 1941), the tide turned against the non-cumulative stockholder. The court, applying New Jersey law, refused to find that defendant corporation had unreasonably delayed recapitalization. It held that a deficit which existed before recapitalization precluded payment of dividends, since there were no "net profits or surplus"—a prerequisite to dividends under N.J.S.A. 14:8-19. Therefore, non-cumulative stock had no claim to annual earnings in the years immediately preceding the recapitalization. In dicta, the court interpreted the earlier New Jersey holdings to mean that the dividend credit attached only to surplus never used for legitimate corporate purposes. And legitimate corporate purposes were equated with ordinary business requirements.

New Jersey state courts have picked up the *Lich* dicta. Agnew v. American Ice Co., 2 N.J. 291 66 A.2d 330 (1949) (dividend credit held to come only from net annual earnings, not net earnings plus other accretions to surplus during year); Dohme v. Pacific Coast Co., 5 N.J. Super. 477, 68 A.2d 490 (Ch. 1949) (surplus created by capital reduction and by bond repurchase at discount held not to enter into calculation of dividend credit).

For comment on recent New Jersey developments, see Ashley, *The Future of the Law of Non-Cumulative Stock in New Jersey,* 5 RUTGERS L. REV. 358 (1951); Notes: 24 TEMP. L.Q. 69 (1950); 17 U. OF CHI. L. REV. 740 (1950); 11 U. OF PITT. L. REV. 301 (1950).

14. Wabash Railway v. Barclay, 280 U.S. 197 (1930).

15. *Ibid.* The *Wabash* rule has been accepted by several state courts. *E.g.,* Gallagher v. New York Dock Co., 19 N.Y.S.2d 789 (Sup. Ct. 1940); Joslin v. Boston & Maine R. Co., 274 Mass. 551, 175 N.E. 156 (1931). *Cf.* Bailey v. Tubize Rayon Corp., 56 F.Supp. 418 (D. Del. 1944) (under Delaware law, non-cumulative stockholders' rights to surplus held valueless).

16. 189 F.2d 927 (2d Cir. 1951), *cert. denied,* 342 U.S. 867 (1951).

17. Guttmann's stock contract provided that "the said issue . . . shall be entitled to receive out of the surplus or net profits of the Company in each fiscal year from June 26, 1922 dividends at the rate of six per cent. per annum payable semi-annually on March

paid before a 1950 dividend could be distributed to common stock.[18] Large wartime earnings had been retained primarily for a bond repurchase program, contingent liabilities, and rehabilitation of the railroad's physical plant.[19] The court held *Wabash*[20] to mean that a board of directors could defeat non-cumulative stockholders' dividend claims by retaining annual earnings for *any* appropriate corporate purpose.[21] Contentions that only capital improvement expenditures qualified under the *Wabash* rule were summarily rejected.[22] But more significantly, the court went on to hold that once non-cumulative preferred dividends had been reasonably retained, directors had no power to distribute them to the preferred stockholders in a later year.[23] As a result,

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1st and September 1st, which shall be paid or provided for before any dividend shall be paid upon the common stock, but such dividends shall be non-cumulative. . . ." Brief for Appellant, appended Tabular Comparison, Guttmann v. Illinois Central R.R. Co., 189 F.2d 927 (2d Cir. 1951) (comparing the contract terms involved in the *Guttmann* case, the *Wabash* case, and Collins v. Portland Electric Power Co., 12 F.2d 671 (9th Cir. 1926)).

Illinois Central stressed the statement in the issuance resolution adopted by the stockholders in 1922 and in the preferred stock certificates: "[N]o dividends shall be paid, declared or set apart for payment on the common stock of the Company in any fiscal year unless the full dividend on the preferred stock *for such year* shall have been paid or provided for." Brief for Appellee, p. 43, Guttmann v. Illinois Central R.R. Co., *supra.* Briefs cited hereinafter refer to this case unless otherwise indicated.

18. Though Guttmann initially alleged arbitrary control of Illinois Central by Union Pacific, he later stipulated that the Union Pacific exercised no such control, doubtless because the Union Pacific owned over 50% of the non-cumulative preferred as well as its 25% of the common stock. *Id.* at pp. 4-5.

19. See Brief for Appellant, pp. 27-32, Table A; Brief for Appellee, pp. 24, 30.

20. There was no controlling Illinois state law. The requirements of Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) were apparently satisfied by previous state use of the *Wabash* rule, note 15 *supra,* though the Court did not cite specific state decisions.

21. The Court viewed "appropriate corporate purpose" broadly, including repurchase of bonds at discounts. *Contra:* Dohme v. Pacific Coast Co., 5 N.J.Super. 477, 68 A.2d 490 (Ch. 1949) (bond repurchase at discounts held not "ordinary business requirement").

22. Plaintiff based his tangible-intangible distinction on language used in the *Wabash* case: "[I]f those profits are justifiably applied by the directors to capital improvements . . ., the claim for that year is gone." 280 U.S. 197, 203 (1930). Brief for Appellant, pp. 35-42, relying on Diamond v. Davis, 38 N.Y.S.2d 103, (Sup. Ct. 1942), *aff'd*, 292 N.Y. 554 (1944); Joslin v. Boston & Maine R. Co., 274 Mass. 551, 175 N.E. 156 (1931).

The Second Circuit considered the attempted distinction artificial. It saw no difference between earnings retained to buy land that may later be sold, and earnings retained for any appropriate corporate purpose. It refused to hold that non-cumulative stock lost its claim if there was a need for present capital investment, but not if there was a contingent need that never materialized. 189 F.2d 927, 929-30 (1951).

23. The *Guttmann* court purported to follow, not expand, *Wabash.* "[The *Wabash* case] held that the contract with the preferred meant that 'if those profits are justifiably applied by the directors to capital improvements and no dividend is declared within the year, the claim for that year is gone and cannot be asserted at a later date.' *We take that as a ruling that the directors were left with no discretion ever to pay any such dividend.* For if they had had that discretion, it would surely have been an 'abuse' to

retained non-cumulative preferred dividends are forever lost, even though directors at a later date might deem it reasonable to compensate non-cumulative stock for earlier withholdings.

Guttmann bars the subsequent discretion of directors that *Wabash* left open. Nothing in *Wabash* expressly precluded a board of directors that had decided to withhold dividends for reasons of conservative financial management sound at the time from reexamining and revising its policy in the light of later events.[24] Dividends not paid out to non-cumulative preferred stockholders when earned could be distributed to them in the board's discretion at a later date. The *Guttmann* rule, on the other hand, precludes non-cumulative preferred stock from benefiting by any corporate reexamination of an overly conservative dividend policy.[25] Though non-cumulative stockholders must show at least a board's abuse of discretion to overturn a board dividend withholding decision, common stockholders can now automatically enjoin any board attempt to compensate non-cumulative preferred stock when the board's earlier pessimism has proved unjustified. As a consequence, a board may well pay dividends when retention is advisable, since it is now or never for non-cumulative preferred.

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pay dividends on the common while disregarding the asserted claim of the non-cumulative preferred to back dividends." 189 F.2d 927, 929 (2d Cir. 1951) (emphasis added).

But this logic is ineluctable only if non-cumulative preferred stockholders have a legally recognized right to demand "back dividends." With such a right, they might have enjoined Wabash's directors from abusing their discretionary power in not paying "back dividends." But *Wabash* expressly denied this right. Thus, there could be no question of abuse of discretion in the *Wabash* case, and voluntary payment of "back dividends" was left open. Moreover, even if non-cumulative preferred stockholders *had* a legal right to challenge directors' discretion in the *Wabash* case, the payments to the common stock that *Wabash* permitted need not necessarily have been an abuse. Only if payment of a common dividend inevitably and forever barred subsequent voluntary payment of the earned but undistributed dividends to non-cumulative stock would abuse be clear. But the *Guttmann* court's conclusion, not its premise from the *Wabash* case, establishes the "barred forever" rule.

Moreover, the right of directors to pay subsequently to non-cumulative stockholders earned but undistributed dividends has been upheld, even subsequent to the *Wabash* case. Diamond v. Davis, 38 N.Y.S.2d 103 (Sup. Ct. 1942), *aff'd*, 292 N.Y. 554 (1944). And *Wabash* did not distinguish or mention several prior decisions reaching the result of the *Diamond* case. *E.g.*, Morse v. Boston & Maine R. Co., 263 Mass. 308, 160 N.E. 894 (1928); Collins v. Portland Electric Power Co., 12 F.2d 671 (9th Cir. 1926).

24. *Cf.* Diamond v. Davis, 38 N.Y.S.2d 103 (Sup. Ct. 1942), *aff'd*, 292 N.Y. 554 (1944) (directors permitted to pay previously earned dividend to non-cumulative stock). See Stevens, *Rights of Non-Cumulative Preferred Stockholders*, 34 COL. L. REV. 1439, 1446-7 (1934); and see note 23 *supra*.

25. "It is undoubtedly true that despite their opportunities for using their positions for personal gain, the majority of corporate officials have remained loyal to what they have conceived to be the interests of the shareholders. It is equally true that a situation in which the shareholder has to depend rather on the conscience of the management than on his own legal rights is a dangerous one." Dodd, *The Modern Corporation, Private Property, and Recent Federal Legislation*, 54 HARV. L. REV. 917, 927 (1941).