

in the mind of a reasonable, prudent, and intelligent person, acting upon competent legal advice. . . ."

Elsewhere, as in Missouri, the doctrine is recognized that a vendee is entitled to a marketable title, but the mere opinion of a competent attorney does not determine the marketability of a title. In *Green v. Ditsch, supra*, the court said, "While there is an implied covenant in an executory contract for the sale of real estate, that the grantor has a marketable title, yet there is no implied covenant that the title will be such as the grantee will be willing to accept, or as his attorney may pronounce marketable." The case is cited in this connection in *Wiemann v. Steffer*, 186 Mo. A. 584, 172 S. W. 472. See also *Atkinson v. Taylor*, 34 Mo. A. 442, where the question is held to be for the court. The opinion left open the question of whether a court of law can pass upon the marketability as distinguished from the validity, of a title.

In *Kent v. Allen*, 24 Mo. 98, it was held that the doctrine of marketable titles is purely equitable. "Courts of law being the proper and peculiar tribunals for the decision of all legal questions, doubtful titles are not recognized by them. . . . This being a suit at law, and the validity of title arising, the question must be determined whether it is good or bad." E. K., '29.

TRUSTS—RIGHT TO STOCK DIVIDENDS AS BETWEEN LIFE TENANT AND REMAINDERMAN.—This was a suit to construe a will of one J. M. Hays, brought by his three children, life beneficiaries of a trust estate, against the testamentary trustees and remaindermen. The sole question was whether or not a stock dividend is to be considered as income or as an addition to the corpus of a trust estate. *Held*, that in the absence of an expressed intention to the contrary, stock dividends are not "income" payable to the life beneficiaries of a trust estate created by will but are accretions to the corpus of the estate. *Hayes v. St. Louis Union Trust Co.*, 298 S. W. 91. (Mo., 1927.)

The mooted point of this case presents another of those perplexing and all too frequent legal problems which bid fair never to have a uniform line of decisions governing them. There are three prevailing doctrines in the United States on the subject presented in the instant case. First, there is the so-called Massachusetts rule, which when broadly stated declares that stock dividends belong to corpus, as distinguished from cash dividends which of course are income. *Minot v. Paine*, 99 Mass. 101, 96 Am. Dec. 705; *Rand v. Hobbell*, 115 Mass. 461, 15 Am. Rep. 121; *Leland v. Hayden*, 102 Mass. 542. The theory of the rule is that in the case of stock dividends there is merely a readjustment of the corporate structure and no actual severance of corporate earnings from other corporate property as in the case of cash dividends. The act of declaring a stock dividend is evidence of the corporate intent to treat its surplus profits to that extent as part of its permanent capital, and thus such dividends should be treated as corpus. Secondly, there is the Pennsylvania rule which makes no distinction between cash and stock dividends and necessitates the determination of the period during which the earnings being distributed accrued. If such period preceded the life interest, the dividends, of whatever nature, are corpus for the purposes of the case; if accrual was subsequent to the commencement of such term, they are "income"; if the accrual period was partially before and partially after, there is to be an apportionment between the two funds. *Earp's Appeal*, 28 Pa. 368. *In re Stokes*, 240 Pa. 288, 87 Atl. 975; *Boyer's App.*, 224 Pa. 144, 73 Atl. 320. The reason behind this rule is that all those profits which have accrued prior to the commencement of the life term and which have served to increase the value of the stock are just as much part of the capital as the original capital and are to be regarded, so far as the estate is concerned, as part of the principal from which the future income is to arise; as regards profits earned dur-

ing the life term, such profits are really "income" since they represent corporate earnings of that period as severed from corporate capital. Thirdly, there is the Kentucky rule which declares that a stock dividend or any kind of dividend declared out of earnings goes to the party entitled to the income at the time of the declaration of the dividend. *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778; *Cox v. Gaulbert*, 148 Ky. 407, 147 S. W. 25. The only reason for this rule seems to be its extremely simple mode of application. See 10 St. Louis L. Rev. 75.

The authorities are almost evenly divided between the Massachusetts and Pennsylvania rules. See 14 C. J. 829 and cases there cited. The instant case, in a very well reasoned opinion, follows Massachusetts. The Kentucky rule is obviously faulty, since its application, while simple, is made to depend on a mere fortuitous circumstance, namely the time when a dividend is declared. The Pennsylvania rule, while obviously fair if correctly applied, totally disregards the nature of the dividend and is extremely difficult of application. This leaves the Massachusetts rule, the main objections to which are that it allows the action of directors to govern the courts, and that it is a mere rule of convenience designed to release the courts from the labor of making a just allotment of corporate earnings. The first objection might be answered by the query, "Why not?" and the second is answerable because a simple rule is always to be desired to eliminate labor and possible error.

E. L. W., '28.