

63. We have already mentioned that dry shares are on the increase in the industry and it is this increase which has mainly focused attention on the Articles. A Supreme Court decision, *Geary v. Melrose Co-op. Dairy Co., Ltd. (1930)*, has made it clear that any alteration to the Articles purporting to reduce or abolish a compulsory dividend can, on the action of any non-assenting shareholder, be declared to be null and void. Thus, even if a company is able to obtain the requisite three-fourths majority of those present at a properly convened meeting, it is no further ahead towards an amendment in its constitution, however desirable that amendment might be, should it deprive any non-assenting shareholder of his contractual right.

64. Cases have come to the knowledge of the Committee where some companies did obtain special resolutions purporting to reduce or wipe out such a compulsory dividend and that those companies have proceeded thereafter as if such resolutions were binding upon the non-assenting shareholders. It seems to be clear that any action by those shareholders not actively approving might result in those companies having to find sometime in the future large sums for dividends wrongfully not paid in the past.

65. It is safe to say that actions by very many dairy companies over the past years have often been at variance with the requirements of their Articles of Association, but as many of the dry shareholders have taken little interest in the affairs of the company, and as what has been done has in the main met with the approval of the active suppliers, the companies' actions, so *ultra vires*, have not yet been noticed.

66. Another result of the growing number of dry shares is the alteration it has effected or can bring about in the voting trends in companies. At the present by far the largest number of the companies provide that all shareholders may vote, generally on the basis of one vote for so-many shares, with an additional vote for every additional block of shares up to a maximum of five or ten votes. *A few companies do limit voting only to their wet shareholders.*

67. Wet shareholders are predominantly concerned with the final payout for butterfat by the company; the dry shareholders in the best possible return on their capital. If our statement of the functions of a truly co-operative dairy company is sound (and it did have the unanimous support of the delegates of all companies attending our meetings), then it follows that the control of such a company should be solely in the hands of the members supplying the produce thereto, a principle also supported unanimously by the delegates.

68. *We therefore suggest that voting within a co-operative dairy company should be confined solely to the supplying members,* and if our recommendations for the elimination of dry shares are given effect to no injustice will be done.

The immediate effect of such a voting restriction will, we think, be the elimination of the compulsory dividend where one is compulsory, but, as we again repeat, if provision is made for the buying-out of the dry shareholders, no injustice will be done.

69. What should be the relationship of wet shareholders *as between themselves*? Should a dissenting minority be bound by the decision of the majority, even if it does affect the contractual rights of that minority? In other words, should power be given to a three-fourths majority of the votes cast at a properly constituted meeting to alter the Articles of Association of a company so as to bind *all* members, irrespective of the contractual aspect of the Articles so altered?

70. Before we look at that problem, let us review the present position. Articles of companies vary greatly in their provisions, particularly as to the earlier-formed companies. Many of them are functioning under Table A of the Companies Act, 1908, or even of the 1882 Act that table being designed for companies whose aims should be principally