to fund arrears with interest-bearing certificates. In *Terry v. Eagle Lock Co.*[23] in denying a judgment for cash when a stock dividend was declared, the court said, "It is in effect asking the court to make a new dividend instead of enforcing the one made by the company. If the petitioner is entitled to receive anything it is stock." In none of the cases involving the exchange of prior preferred stock for arrearages was a cash judgment for accruals given to dissenters.

Perhaps the peculiar result in the instant case might have been prevented by greater care in the drafting of the amendment. Had the drafters in place of the words "*declare a dividend*" used some such phrase as "*offer and exchange*" the result might have been different. The identical words, "declare a dividend," however, were used in the *Hastings* case in which a contrary result was reached.

The decision puts a premium on dissenting in this situation, since the assenter receives a $20 dividend warrant, exchangeable for only $10 in cash, while the dissenter receives an immediate cash payment of $20. This appears inequitable from the point of view of the assenting stockholder, and it is likely to make a voluntary plan of eliminating arrearages difficult to carry through. Whether or not this case goes too far in protecting arrearages, in view of the fact that the dissenter retains his right of priority to dividends, is a question of policy.[24] It seems, however, that unless such an important feature of preferred stock as its accrued cumulative dividends is protected to some degree, the advantages of such shares will be highly illusory and investment in preferred stock will be discouraged.

Criminal Law—Abortion—Preservation of Health as a Justification—[England].—An eminent obstetric surgeon in what was evidently a test case defended his performance of an abortion on a feeble minded girl of fifteen whose pregnancy resulted from a rape, on the ground that the girl's health would have otherwise been seriously endangered. The defendant's contention was that danger to health was no less a justification for his conduct than danger to life. Although the English statute does not permit abortion even where necessary to save the woman's life, the jury was instructed that if the defendant acted in good faith "for the purpose only of preserving the life of the mother" he was entitled, and it was his duty, to perform the operation. Furthermore, if pregnancy was likely to make the mother a "physical or mental wreck" they might conclude that the operation was performed to save her life. *Held* for the defendant. The jury under these instructions and on the basis of medical evidence that unless the pregnancy was interrupted the girl would become a mental wreck acquitted the defendant. *Rex v. Bourne.*[1]

This case, which gives judicial recognition to the medical belief that the operation should be permissible where continued pregnancy would injure the mother's health,[2]

[23] 47 Conn. 141, 164 (1879). See also State of Maryland v. Baltimore and Ohio R.R., 6 Gill (Md.) 363 (1847); Bulger Block Coal Co. v. United States, 48 F. (2d) 675 (Ct. Cl. 1931); Helvering v. General Utilities and Operating Co., 74 F. (2d) 972 (C.C.A. 4th 1935).

[24] Allowing the corporation to persuade the stockholders to part with their rights is a problem of fair presentation of information to be dealt with by the Securities Exchange Commission in its control over solicitation of proxies.

[1] 186 L.T. 87 (1938).

[2] British Medical Association Committee on Medical Aspects of Abortion 24 (1936).

is likely to exert considerable influence in the interpretation of abortion statutes in this country. Conceding the justifiability of the ultimate result, the English authorities have criticized the court for relying upon words in the Preservation of Infants Act, enacted sixty-eight years after the abortion statute and referring solely to the destruction of a viable child,[3] in construing this statute.[4] It is suggested that the jury should have been directed that it was a reasonable interpretation of the words "shall unlawfully use" in the statute, that the legislature contemplated occasions when it was lawful to procure an abortion,[5] which occasions should be determined with due regard for medical opinion.[6]

A similar approach has been followed in this country in interpreting state statutes which allow no exceptions to the prohibition against abortions, but contain a limiting word such as "unlawfully" or "feloniously."[7] Although statutes differ widely, they generally permit the operation when necessary to save the life of the mother, and in three states an exception is made for the preservation of the woman's health.[8] In view of the liberal construction of these statutes, whereby it is not necessary that the peril to life be imminent or that death be otherwise certain, to justify the operation,[9] and in view of the fact that the burden of proving that it was unnecessary rests on the prosecution,[10] it is likely that an American court would also have acquitted the defendant in the instant case. This is particularly desirable where, as here, the pregnancy resulted from rape and the woman was mentally defective. It should be noted, how-

[3] 186 L.T. 154 (1938).

[4] Offenses against the Person Act § 57 (1861) ". . . . and whosoever with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever, with like intent shall be liable to be kept in penal servitude for life or for any term not less than three years, or be imprisoned for any term not exceeding two years with or without hard labor."

[5] 186 L.T. 153 (1938). "The great doubt which members of the legal and medical profession have felt ever since the year 1861, is as to what meaning should be attached to the word 'unlawfully,' but the majority of members of both professions have assumed that as the legislature used the word 'unlawfully,' then the inference is that it contemplated some occasions when the inducing of abortion is lawful."

[6] *Id.* at 155.

[7] See the excellent note in 35 Col. L. Rev. 87, 95, note 53 (1935); State v. Rudman, 126 Me. 177, 136 Atl. 817 (1927) (necessity of saving life of mother or unborn child is a defense to charge of abortion though not expressly made so by statute).

[8] 35 Col. L. Rev. 87, 89, 90 (1935).

[9] State v. Dunklebarger, 206 Ia. 971, 221 N.W. 592 (1928) where good faith of the defendant as to necessity was sufficient. But see State v. Rudman, 126 Me. 177, 136 Atl. 817 (1927) where the only exception to criminal responsibility for abortion is necessity in fact of preserving the mother's life—good faith being immaterial.

[10] Sears and Weihofen, May's Law of Crimes § 143 (4th ed. 1938): "While usually this burden has not received careful analysis the courts apparently mean by this that the prosecution has the burden of convincing of the negative . . . . it is clear that there is a contrary view." See discussion of cases in annotation to State v. Wells, 19 Ann. Cas. 636 (1909). Also State v. Miller, 90 Kan. 230, 133 Pac. 878 (1913); State v. Powers, 155 Wash. 63, 283 Pac. 439 (1929); State v. Montifiore, 95 Vt. 508, 116 Atl. 77 (1922).

ever, that the state may prove the absence of necessity by circumstantial evidence,[11] and it has been held that the operation was unnecessary where the evidence indicated that the doctor did not ascertain whether an infection had set in before operating and the woman had been healthy prior thereto,[12] where the only evidence of indisposition was a headache and indigestion.[13] On the other hand, the good health and physical condition of the woman will not be presumed in the absence of testimony tending to show them.[14]

While Anglo-American law emphasizes the crime against society for thwarting the process of procreation, that of the Soviet Union and Germany is apparently more concerned with the interests of the mother. French law, however, since the early Napoleonic codes, has been severe. In the Soviet Union abortions were virtually legalized, prohibited only where the pregnancy is of more than three months' duration or within six months of a prior operation.[15] Although the German Code does not provide for exceptions to the general prohibition,[16] in a recent case, similar to one in the United States in which the defendant was convicted,[17] where there was danger of suicide due to pregnancy resulting from extra-marital relations, the court held that if the abortion was the indispensable means for saving the mother's life, the operation by the doctor was not unlawful.[18] The result was achieved by applying sec. 54 of the German Criminal Code relating generally to the defense of necessity to preserve life. The French Code likewise permits no exceptions,[19] but in contrast to the liberal interpretation of the German court, a conviction was recently sustained although the operation was performed for "medical purposes."[20]

It is hoped that the reforms to be suggested by the Interdepartmental Committee in England following their investigation[21] after this significant decision, will eliminate the necessity of awkward statutory constructions by courts as in the instant case, and inspire American legislatures to take similar action.

Equity—Vendor and Purchaser—Relief against Forfeiture—[England].—The plaintiff contracted to buy land in Tasmania from the defendant for £321,000, which was to be paid in instalments. The agreement expressly provided that time was of the

[11] Gammack v. State, 6 N.E. (2d) 328 (Ind. 1937); Diehl v. State, 157 Ind. 549, 62 N.E. 51 (1901); Rhodes v. State, 128 Ind. 189, 27 N.E. 866 (1891); State v. Bly, 99 Minn. 74, 108 N.W. 833 (1906); Dixon v. State, 46 Neb. 298, 64 N.W. 961 (1895); State v. Longstreth, 19 N.D. 268, 121 N.W. 1114 (1909); State v. Lee, 69 Conn. 186, 37 Atl. 75 (1897); State v. Watson, 30 Kan. 281, 1 Pac. 770 (1883); State v. Wells, 35 Utah 400, 100 Pac. 681, 19 Ann. Cas. 631 (1909).

[12] State v. Powers, 155 Wash. 63, 282 Pac. 439 (1929) "The authorities are to the effect that when it is shown that the woman was healthy and in a normal condition and medicine was administered or an operation performed on her to procure a miscarriage the evidence is sufficient to find that the miscarriage was not necessary to save the woman's life."

[13] State v. Martin, 178 Wash. 290, 34 P. (2d) 914 (1934).

[14] State v. Wells, 35 Utah 400, 100 Pac. 1081 (1909).

[15] In 1936, however, the Soviet Union completely reversed its policy and abortion is now illegal except where performed to save the mother's life or where there is an inheritable disease in the family.

[16] German Criminal Code § 218. [17] Hatchard v. State, 79 Wis. 357, 48 N.W. 380 (1891).

[18] 61 Reichsgericht 242 (March 11, 1927).

[19] Code Pénal art. 317 (1923) Petite Collection Dalloz.

[20] Taussig, Abortion Spontaneous and Induced 424 (1936). [21] 186 L.T. 87 (1938).