

J., decided that it was not, and that the transaction amounted to a novation, and the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) affirmed his decision.

COMPANY—DIVIDENDS—CAPITAL, DEPRECIATION OF.

*Verner v. General and Commercial Investment Trust*, (1894) 2 Ch. 239; 7 R. May, 76, was a suit by a shareholder to determine whether the directors of the defendant company were authorized to declare a dividend under the following circumstances: The company was formed for the purpose of investing its capital in stocks, funds, shares, and securities of various kinds, and the receipts from such investments were applicable to the payment of dividends. By reason of the depreciation of the securities in which part of the capital was invested, the company had, in effect, lost about £70,000 of its capital, but the income from its other investments yielded about £23,000, which left a considerable surplus after payment of the expenses of the company, and the question raised by the plaintiff was whether the directors could properly pay a dividend out of the £23,000, or were bound to apply the surplus towards restoring the capital which had been lost. It was contended, on the part of the plaintiff, that the payment of a dividend before the restoration of the lost capital was, in effect, to pay the dividend out of capital; but Stirling, J., held, and the Court of Appeal (Lindley, Smith, and Kay, L.JJ.) agreed with him, that there was no law to prevent the payment of the dividend, and that there was no obligation to restore the capital which had been lost, and that the payment of a dividend under the circumstances could not be regarded as a payment out of capital. Lindley, L.J., observes (p. 266): "The law is much more accurately expressed by saying that dividends cannot be paid out of capital than by saying they can only be paid out of profits. The last expression leads to the inference that the capital must always be kept up, and be represented by assets which, if sold, would produce it; and this is more than is required by law," and he goes on to say "that fixed capital may be sunk and lost, and yet that the excess of current receipts over current payments may be divided, but floating or circulating capital must be kept, as otherwise it will enter into and form part of such excess, in which case to divide such excess without deducting the capital which forms part of it will be contrary