

was brought by a shareholder of a limited company against directors thereof, for alleged misfeasance in paying dividends out of capital. The facts were, that a part of the subscribed capital of the company had been lost, and subsequently the company made profits, and the directors set off the losses against a subsequent appreciation of the company's assets ascertained by valuation made by two of their number who were not expert valuers, and approved by the company in general meeting and paid dividends out of subsequent net profits without any further provision for replacing the losses. Depreciation of buildings and plant had been charged to revenue account to an amount exceeding the losses. Peterson, J., who tried the action, held that for the purpose of determining whether or not the dividends were paid out of capital the sums charged for depreciation could be written back to capital, and that the valuation being bona fide and approved by the general meeting the appreciation in value of the assets could properly be set off against the losses, and that there was no objection in law to such a revaluation or to such treatment of the appreciation in the value ascertained thereby; and he also held that, even if such revaluation were inadmissible the dividends were in the circumstances not paid out of capital but out of current profits, and with this conclusion the Court of Appeal (Eady, Warrington, and Scrutton, L.JJ.) agreed. Eady, L.J., in his judgment, defines what is meant by fixed and floating capital. The former he defines as the assets which the company retains and on which capital has been extended, and which assets either themselves produce increase independent of any further action, or are made use of to produce income. The floating or circulating capital is that portion of the subscribed capital which is intended to be used by being temporarily parted with and circulated in business in the form of using goods or other assets which, or the proceeds of which, are intended to return to the company with an increment and so to be used again and again in like manner, and always return with accretion. Where circulating capital is expended in buying goods to be sold at a profit or in buying raw materials from which goods are manufactured and sold at a profit, the amount of capital so expended must be deducted from the receipts before any profit can be ascertained. It may also be noted that the Court also holds that the Companies Act does not, nor does the general law, prohibit a company from distributing the clear net profits of its trading in any year unless its paid-up capital is intact, or until it has first made good all trading losses incurred in previous years.