

in former years the company has charged depreciation of assets against profits.

This case is noted by Lindley, L.J., in *Verner v. General, etc. Trust* (1894) 2 Ch. at p. 267, as depending upon the fact that there is no law which compels limited companies in all cases to recoup losses shewn by capital account out of the receipts shewn in the profit and loss account.

In *Lubbock v. British Bank of South America* (1892) 2 Ch. 198, Chitty, J., held that a sum of £205,000 profit remaining after a sale of part of its business in Brazil by a banking company, after deducting the paid-up capital and other incidental expenses was profits on capital and not capital. His argument was that where a company was a trading company everything made by the sale of its stock in trade was, after deducting the share capital, clear profit and that the capital to be regarded is the capital according to the Companies Act and not the things for the time being representing the capital in the sense of being things in which the capital has been laid out. He distinguishes *Lee v. Neuchatel Asphalte Co.* in that that company was formed to work a wasting property and hence was, apparently, not bound to keep up the value of its share capital before dividing profits.

In *Verner v. General and Commercial Investment Trust* (1894) 2 Ch. 239, one of the abstract questions discussed in *Lee v. Neuchatel Asphalte Company* (1889) 41 C.D. 1, came up in concrete form before Stirling, J., and the Court of Appeal. The case is put thus very tersely by Stirling, J., (at p. 245): "There being a loss in respect of capital of not less than £75,000 and a gain in respect of receipts over expenditure of £23,000, can a dividend be declared?" Lindley, L.J., having stated that capital means, in contrast to dividends or profits, money subscribed pursuant to the memorandum of Association or what is represented by that money, asserts (p. 266) that although there is nothing in the statutes requiring even a limited company to keep up its capital, and there is no prohibition against payment of dividends out of any other of the company's assets, it does not follow that dividends may be lawfully paid out of other