

L.J., points out three conclusions from a consideration of the Companies Act. First, that capital is not required to be made up if lost, second, that it is not provided that a company shall be wound up if the capital is lost, because if the debts are paid the company may go on and divide profits if the shareholders are satisfied, and third, that there is nothing in the Companies Act defining what must be considered as capital and what as profits. Of course if the charter requires provision for reparation or depreciation (as in *Davison v. Gillies* (1879) 16 C.D. 347 n.) or that the dividends are to come out of the profits of the year (as in *Dent v. London Tramways Co.* (1880) 16 C.D. 344), then those are proper charges to be made and must be made before profits can be ascertained for division. It must be observed, however, that in the latter case, which the Lords Justices say was decided solely upon the articles of Association, Jessel, M.R., expressly decides that "profits for the year" mean the surplus in receipts, after paying expenses and "restoring the capital to the position it was in on the 1st of January of that year."

This case forms the starting point for a line of cases referred to below, which are criticised in Palmer's Company Law, 4th ed., p. 178, as laying down conclusions which the author considers remarkable. And in *Dovey v. Cory* (1901) A.C. 477, Lord Halsbury (pp. 482. 486), Lord Macnaghten (p. 487), and Lord Davey (pp. 493-4), expressly reserve their opinion upon the reasoning of the Court of Appeal in regard to the method of arriving at profits until a concrete case came before them for their decision.

And in a case noted below, *Bond v. Barrow Haematite Co.* (1902) 1 Ch. 353, Farwell, J., considers the decision of *Lee v. Neuchatel Asphalte Co.* as confined to some and not all companies having wasting assets.

*Bolton v. Natal Land Company* (1892) 2 Ch. 124 is authority for the proposition that if profits are made in any one year, then, notwithstanding the depreciation of the company's assets and consequent loss of part of its share capital, those profits may be divided without providing for depreciation even although