

placed before profits are paid. But in all cases circulating capital must be made good and in the opinion of some of the most eminent judges fixed capital must also be made up. The extreme difficulty of laying down any rule may be seen by comparing the definitions of "circulating capital." John Stuart Mill and Prof. Marshall distinguish "circulating capital," which fulfils the whole of its office in the production in which it is engaged by a single use, from fixed capital which exists in a durable shape and the return from which is spread over a period of corresponding duration. Buckley defines circulating capital as property acquired or produced with a view to resale or sale at a profit, and Lord Lindley considers it equivalent to any money employed in earning returns.

In Canada it may be said that some of the reasoning in the cases referred to is not applicable. The words in the Canada Companies Act and in the Ontario Companies Act are not the same as those in the English Companies Act. By the latter dividends must not be paid out of profits. Hence the question has continually arisen, what are "profits"? In this country no dividend can be paid "which renders the company insolvent or impairs the capital stock thereof" (Canada), and no dividend can be paid "which renders the company insolvent or diminishes the capital thereof" (Ontario). It seems reasonably clear that if by any loss of fixed capital the company would be rendered insolvent, unless enough were carried from revenue account to replace it, no dividend could be paid till the capital was restored sufficiently to make the company solvent. But it is also obvious that if fixed capital be lost but the company is not insolvent, the payment of a dividend out of profits on the year's business will not impair or diminish the capital stock. But in the case of circulating capital, unless that is made good, a payment may render the company insolvent or may diminish its capital.

Insolvency or impairment of capital are made the tests, not the actuality of realized profits, and it would seem that the line of cases beginning with *Lubbock v. British Bank of South America*, 1892, 2 Ch. 198, in which the position of accretions to