

to be answered according to the circumstances of each particular case, the nature of the company, and the evidence of competent witnesses ; and that while circulating capital, i.e., capital necessary for the actual carrying on of the undertaking, must be kept, yet there may be a loss of fixed capital and still profits distributable as dividends without first making good such losses.

RAILWAY COMPANY—TOLLS—UNDUE PREFERENCE—ULTRA VIRES—RAILWAY CLAUSES ACT, 1845 (8 & 9 VICT. C. 20), S. 90—RAILWAY AND CANAL TRAFFIC ACT, 1854 (17 & 18 VICT. C. 31), S. 2—(DOMINION RAILWAY ACT (51 VICT. C. 29), S. 224).

Anderson v. Midland Ry. Co. (1902) 1 Ch. 369. This was an action by a shareholder of the defendant company against the company and a customer of the company to whom it was alleged the company had given an undue preference by carrying goods for him at a lower rate than that charged to other customers ; to restrain the company from continuing such transactions, and to compel the customer to account for the extra freight he should have paid. The case came before Buckley, J., on the point of law whether the plaintiff had any cause of action, and he decided that though the transaction complained of was an undue preference which might give the plaintiff a right to complain before the railway commissioners as a breach of the Railway Acts above referred to, the transaction was nevertheless not ultra vires of the company, and gave the plaintiff (an individual shareholder) no right of action.

LANDLORD AND TENANT—LEASE—RENEWAL "AT COSTS OF LESSEE"—ARBITRATION AS TO AMOUNT OF FINE—COSTS

In *Mostyn v. Fitzsimmons* (1902) 1 K B. 512, a simple question of construction is involved. An agreement between landlord and tenant provided that a renewal of the lease should be "at the costs of the lessee" on payment of a fine to be determined by the landlord's surveyor, or, at the option of the lessee, by two arbitrators and an umpire. The lessee elected to have the fine fixed by arbitration, and the question was whether the costs of the reference were part of the costs he was bound to pay. Wright, J., held that the costs referred to in the agreement were only the ordinary conveyancing costs, such as the costs of drawing, settling and completing the new lease, but that they did not include the costs of the reference, which were in the discretion of the umpire who had made the award.