

served that in some of the later cases the question is treated as if the judges were not wholly persuaded by the authority which they were bound to follow. For example, Vaughan Williams, J., in *Re Kingston Cotton Mills Co.*, No. 2 (ante) does not profess to express an opinion upon the principle of the *Neuchatel* and *Verner* cases, and Farwell and Stirling, JJ., cannot be said to have fully accepted it.

In Buckley on Joint Stock Companies, 8th ed., 1902, p. 584, et seq., the two leading cases and others are analysed and explained. The author emphasizes the fact that all the cases are reconcilable upon the principle that approval or disapproval depended upon the provisions of the articles of Association.

If companies are authorized by their charter to acquire and work a wasting property, then if they sink their capital in that class of property and make other property by working it, the depreciation being incident to the exercise of their powers is not necessarily a charge on revenue account, but may by their charter be thrown on capital. The destruction of the company's capital is within its objects and is therefore legitimate. If the company is authorized to make investments, which it does, and these depreciate, the same rule applies. If this be the real test the cases of *Bolton v. Natal Land Co.* (1892) 2 Ch. 124; *Wilmer v. McNamara* (1895) 2 Ch. 245, *Re Kingston Cotton Mills Co.*, No. 2 (1896) 1 Ch. 331, and *Re Barrow Hematite Steel Co.* (1900) 2 Ch. 846 may be said to be consistent with it. The difficulty is apparent, however, if the capital is not fixed but is circulating, because that capital must be first secured before any profit can be said to be earned.

If a bank lend its capital and lose it, is it fixed or circulating capital? Depreciation is a deduction from the value of property remaining in use and is properly applied to fixed capital. But how does it differ in principle from losses on investments or losses on circulating capital?

It must be admitted as Lord Halsbury says in *Dovey v. Cory*, that the question of what is capital and what are profits is difficult and perhaps insoluble. To be quite safe capital should be re-