

sections are to be organized, one of vegetarians who are abstainers, and the other of vegetarians who do indulge in alcoholic stimulation. The former class will apparently receive no more benefits than ordinary "flesh-eating" abstainers. The other class will have the usual premium but the profits on the trading will be fenced off, and should the members of this section show an exceptionally favourable mortality experience they will receive the extra profit.

The United States Equitable British branch gave a banquet at the Hotel Cecil last week, and James H. Hyde and George T. Wilson came over specially from the States to be present at the function. It is thirty-two years since this giant institution first entered Great Britain.

RECENT LEGAL DECISIONS.

The Liability of Bank Directors.

The English Court of Appeal has reversed the judgment for £54,000 recovered by the liquidator of the National Bank of Wales, against one of the former directors, Mr. John Cory; and holds, that the payment of dividends out of annual profits, when no allowance is made for numerous and increasing bad debts, does not amount to payment of dividends out of capital.

The English Appellate Court takes a more moderate view of the responsibility and obligations, which rest upon a director who is not an officer, than did the trial Judge. In the course of a long and interesting judgment, delivered by the Master of the Rolls, Mr. Justice Lindley, for the Court, the following statements are made:—

The question raised is, whether the funds of the bank have been misapplied in payment of dividends, and, if they have, whether Mr. Cory is liable as a director for that misapplication? The weekly statements and quarterly returns were always in the board room for reference in case of need, but, unless attention was called to them, the directors did not think it necessary to examine them. No director, other than the chairman, attended to any details not brought before the board by the chairman or general manager. The trial Judge regarded Mr. Cory's conduct as a total abnegation of the use of his faculties, and an entire neglect of his duties. We cannot go so far. The evidence shows, that he only attended to whatever his attention was called to, and that, having no suspicion that aught was wrong, he made no special enquiry to ascertain that all was right. There can be no doubt that the shareholders were grievously deceived by the reports and balance sheets laid before them, and no one can be surprised with their anger at the directors, and especially with the chairman and general manager, both of whom have been criminally prosecuted.

Mr. Cory's answer is, that he was as much deceived as the shareholders by the chairman and manager, and that he was not guilty of any breach of his duty in not making special investigation, when he had no reason to suppose that aught was wrong. The trial Judge came to the conclusion that Mr. Cory was not only negligent, but was guilty of misconduct equivalent to fraud, because in their reports the directors unjustifiably stated that they had made provision for bad and doubtful debts, whereas they had not. There is nothing to justify the inference that he knew that these sums were insufficient, or that he did not honestly believe them to be sufficient. It may be that he

ought to have been more vigilant, and that he should not have trusted the chairman and manager so much as he did. But negligence is one thing, fraud is another, and we are unable to adopt the view that he acted fraudulently.

The liquidator took the further view, that the dividends declared and paid were all paid out of capital. When the evidence is examined it is plain that the dividends were not paid out of any part of the money forming the paid-up capital, but were paid, notwithstanding the loss of the capital, and without making it good. The balance of the receipts in each year, over the out-goings in the same year (after some deduction for bad debts), were treated as the profits of that year, and were divided as dividends. Losses written off in one year were not brought forward the next, so as to diminish the profits of that year, but were simply ignored, a fresh start being made each year. The effect was to throw all bad debts written off and not provided for by an increase of reserve fund, on the capital, and to diminish the paid-up capital year by year, and, nevertheless, to keep paying dividends out of the excess of the annual receipts over the annual expenses. Such a mode of dealing with the assets, however reprehensible, must not be confounded with paying dividends out of the capital. Paid-up capital cannot lawfully be returned to shareholders under the guise of dividends; and paid-up capital which is lost can no more be applied in paying dividends, than in paying debts. Its loss renders any subsequent application impossible. It is not possible for the court to say that the law prohibits a banking company, or any other company, from paying dividends, unless its paid-up capital is intact. Suppose a heavy unexpected loss is sustained, it must be met, if there are assets to meet it. Such an application of capital is a perfectly legitimate use of it. There is no law which prevents the payment of all future dividends until all the capital so expended is made good. Many honest and prudent men of business would replace a large loss of capital by degrees, and reduce the dividends, but not stop them entirely, until the whole loss was made good. No law compels them to pay none at all.

We are not prepared, however, to sanction the motion, that all debts incurred in carrying on a business can be properly charged to capital, and that the excess of receipts over out-goings can be afterwards properly charged as profit, as if there had been no previous loss. It may be safely said, that what losses can be properly charged to capital, and what to income, is a matter for business men to determine, and is often a matter on which opinions of honest and competent men differ. There is no hard and fast legal rule on the subject. If expenses or payments are obviously improperly charged to capital, and are so charged simply to swell the apparent profits, and to make it appear that dividends may properly be declared, dividends declared and paid under such circumstances cannot be treated as legitimately paid out of profits, and can no more be justified than if they were paid out of capital. If the returns do not exceed the money spent in procuring them, there can be no profits, and no ingenious process of book-keeping can alter the fact.

It is easy to be wise after the event, and there is danger in treating a director as knowing years ago what now appears to be the fact. But it is the duty of the Court to examine the state of things as they appeared to the director when the dividends were declared, and to determine whether he was justified in what he did, by what he knew and ought to have