

had depreciated and that it should be first restored. The facts of the case were that the defendants, capital consisted of £105,000, of which £80,000 had been raised on the security of debentures. The defendant company had leased its whole undertaking to another company for which it received £5,575 per annum. This sum it applied in paying the interest on the debentures and the surplus was applied in payment of dividends. The assets of the company had depreciated in value below the £105,000 and the plaintiff (whose debentures were not in arrear), claimed that the equilibrium between the assets and the capital should be first restored out of the annual rental before any part was applied to the payment of dividends. Eve, J., who tried the action, held that the plaintiff was not entitled to the relief claimed; and that the dividends, in the circumstances, could not be held to be paid out of capital.

TRADE MARK—INFRINGEMENT—RECTIFICATION OF REGISTER—SEVEN YEARS REGISTRATION OF MARK THAT SHOULD NOT HAVE BEEN REGISTERED—"REGIMENTAL" AS TRADE MARK—TRADE MARKS ACT, 1905 (5 EDW. VII. c. 15) ss. 11, 35, 41—(R.S.C. c. 71, s. 42).

*Imperial Tobacco Co v. Pasquali* (1918) 1 Ch. 207. This was a proceeding to remove a trade mark from the register on the ground that it should never have been registered. The trade mark in question was the word "Regimental" as applied to cigarettes. It had been registered over seven years. Astbury, J., who heard the application, ordered its removal; but the Court of Appeal (Eady, Warrington, and Duke, L.JJ.) reversed his order on the ground that a trade mark which had been registered upwards of seven years is, unless open to the objection that it is calculated to deceive, or is otherwise disentitled to the protection of the Court, or is contrary to law or morality or is scandalous, is irremovable under s. 41 of the English Trade Mark Act, 1905. Under the Canadian Trade Mark Act, (R.S.C. c. 71.) s. 42, it is possible that the opposite conclusion might be reached. The Court of Appeal held that the mere fact that the mark registered ought not to have been registered, was not alone sufficient to disentitle it to the protection of the Court.