

of *South America* (ante), which dealt with the distribution, as profits, of a balance on the sale of part of the bank's assets after deducting the capital and expenses.

The Jefeñdants, in this case, bought out the assets of an old company and unexpectedly realized upon one which was considered valueless. Byrne, J., while expressing the view that it was capital, as being part of the capital assets of the old company (a result which, by the way, does not seem to follow when it is being dealt with as purchased asset of the new, and not as a capital asset of the old company) did not finally determine the point. His view was that as an appreciation in the total value of capital assets, if realized by sale or getting in of some portion of such assets, may in a proper case be treated as available for the purpose of dividend, this windfall might be taken into the accounts for the year, but could not be treated as available for dividend without reference to the whole accounts, fairly taken, capital as well as profit and loss.

But since the House of Lords, in that case, reserved its opinion upon the question of the replacement of capital before profits are divided the reasoning in some of the cases given above has been canvassed.

The authors of *Lindsay on Companies*, 6th ed. (1902) p. 600, regard the question as one on which it is at present impossible to lay down any general principle which will apply to all cases. They regard the expressions of opinion in the *Verner case* as requiring caution in their application and as needing, possibly, modification where a definite portion of the company's fixed capital has been lost.

In the *Encyclopedia of the Laws of England*, p. 201, it is said that while a company is not bound to carry on business in perpetuity, yet the so-called profits in case of a company working wasting property are profits only in a conventional sense, that is, are agreed between the shareholders to be treated as such, and are not profits in the ordinary sense, and that it is difficult to see why dividends out of such conventional profits are not really a return of capital to the shareholders. It is to be ob-