

profits, though some of the ships were lost—(the company was formed to run the blockade during the Civil War in the United States)—and the assets shewn depended for their value upon possible realization in an extremely hazardous business. In fact the Courts assert that if they laid down the rule that there must be actually cash in hand or at the bankers of the company to the full amount of the dividend declared, that rule would be inconsistent with the custom of the companies, and at variance with mercantile usage. The principle accepted is that in the absence of fraudulent intent the Court ought not to be astute in searching out minute errors in calculation in accounts honestly made out and openly declared.

In *Rance's case* (1870) L.R. 6 Ch. 104 the Court of Appeal, Sir Wm. James and Sir Geo. Mellish, L.JJ., discuss the duties of directors in declaring a dividend. In the first place a balance sheet is necessary, and if that is made out accurately and submitted, or even if the directors arrive at their conclusion by placing unfounded reliance upon the representations of their servants or actuaries, "the Court will not sit as a Court of appeal upon that conclusion, although it might afterwards be satisfactorily proved that there were a great many errors in the accounts which would not have occurred if they had been made out with greater strictness, or with more scrutinising care."

In the view of the Court no proper balance sheet was made out, in that no proper provision was made for risks (in the insurance sense) in regard to money received from another company for whom they had guaranteed certain policies.

In *re Oxford Benefit Building & Investment Society* (1886) L.R. 35 C.D. 502, the directors never submitted an account of income or expenditure nor any profit or loss account. But they paid dividends out of estimated profits and out of whatever money they happened to have in hand, without attempting to form a reserve fund or to provide for possible bad debts, losses or expenses and without ascertaining what profits were actually realized or out of what fund the dividends were actually paid.

The company were only entitled to pay dividends out of