

to write off bad debts year by year would inevitably lead to disaster, contends that such a course must not be confounded with paying dividends out of capital. He says that what losses can be charged to capital and what to income must be left to business men to determine. All debts cannot be charged to capital, but there is no hard and fast rule on the subject. He explains what is meant by circulating capital as being the money employed in earning returns and this must first be deducted from the returns in order to ascertain profits. The result of his view is that leaving bad debts as a charge against capital and thus diminishing it yearly does not, in law, affect the question of whether profit, i.e., the excess of income over expenditure is or is not, in fact, made, and that a banking company is not bound to keep its capital intact, as such a company lends its capital and may, therefore, lose it. And in appeal as stated above, the House of Lords expressly decline to assent to all the propositions laid down by the Court of Appeal in this case.

In the case of *Bosanquet v. St. John del Rey* (1897) 77 L.T. 207, the view of the Court of Appeal was followed.

Cozens-Hardy, J., in *Re Barrow Haematite Steel Co.* (1900) 2 Ch. 846, refers to the *Neuchatel* and *Verner* cases as establishing that a trading profit may be applied in payment of dividends, notwithstanding a depreciation in the fixed capital of the company.

In *Bond v. Barrow, Haematite Co.* (1902) 1 Ch. 353 the company had bought collieries and mines and erected blast furnaces and cottages. By the surrender of certain leases the pulling down of blast furnaces and the sale of cottages, a loss had been incurred. Farwell, J., held that these assets were "circulating capital" and must be made good before dividends were paid, and illustrates his view by saying that if a company had bought out of capital the last two or three years of a valuable patent, they would, in his view, be bound to replace that capital before dividing the receipts as profits.

In *Foster v. New Trinidad* (1901) 1 Ch. 208 Byrnes, J., deals with a question said to be involved in *Lubbock v. British Bank*