

and the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) were of opinion that although an improper payment of dividends out of capital might be prevented, yet that there was no law requiring a company to keep its capital intact, or which prevents its paying a dividend, notwithstanding its capital has been sunk or lost: and though a payment of dividends might be restrained if no profits had in fact been realized, yet there was nothing to prevent a company dividing the profits actually realized over and above its working expenses, notwithstanding that owing to the wasting character of the property of the Company, the value of its capital was being yearly diminished.

THIRD PARTY—JURISDICTION TO GRANT RELIEF AGAINST THIRD PARTY—LIABILITY OF THIRD PARTY WHO DEFENDS, TO COSTS.

*Edison v. Holland*, 41 Chy.D. 28, is a case which throws some light on the effect of the somewhat curious procedure introduced, perhaps we might more properly say revived, by the Judicature Act in regard to third parties. The action was for the infringement of a patent. The defendant claimed indemnity from a third party, who was duly notified and obtained leave to appear, and defend the action. But the third party was not made a defendant and filed no pleadings, but appeared at the trial. The Court gave judgment at the trial, partly in favour of the plaintiffs and partly in favour of the defendant, but made no special order as to the third party. The plaintiffs appealed, and after judgment allowing their appeal with costs against the defendant, applied for an injunction and costs against the third party, and if necessary, to amend by adding the third party as a defendant. The injunction was refused by the Court of Appeal (Cotton and Lindley, L.JJ.), Cotton, L.J., holding that there was no jurisdiction to give a judgment against the third party as if he was a defendant, and that it would be wrong, after judgment in appeal, to allow the third party to be added as a defendant by amendment, so as to enable the plaintiffs to ask relief against him, which was not asked at the trial, and Lindley, L.J., though of opinion that the Court had jurisdiction to grant the liberty to amend, agreed that it was not proper to grant it in the present case. But the Court was unanimous that the third party, as well as the defendant, should be ordered to pay both the costs of the appeal, and the costs below, as the third party had in reality fought the plaintiffs throughout and failed.

TRADE MARK—INJUNCTION—FRAUD.

*Thompson v. Montgomery*, 41 Chy.D. 35, was an action to restrain the use of a trade mark. The plaintiff and his predecessors had for one hundred years carried on a brewery at a place called Stone, and their ale had become known as "Stone Ale," and they had registered several trade-marks which contained the words "Stone Ale" alone. The defendant built a brewery at Stone, over which he placed the words, 'Stone Brewery,' and when that was objected to by the plaintiffs, he altered it to "Montgomery's Stone Brewery," with a device containing the words, "Stone Ale," and a monogram somewhat resembling the plaintiff's. The