

assets regardless of the debts and liabilities of the company. He then cites three instances of improper payments, (1) out of receipts without deducting expenses, (2) out of borrowed money, and (3) out of the income produced by the consumption of what he calls "circulating capital." Kay, L.J., alludes to the difference between a company making its profits on the purchase and sale of stocks, etc., and a company such as the one he was dealing with which had merely the right to invest and whose profit was only the interest on such investments.

In the one case the capital must be kept intact before profit can be shown, in the other it may be lost by depreciation in the investments, which, however, may yield a yearly profit, distributable in dividends.

In *Wilmer v. McNamara* (1895) 2 Ch. 245 Stirling, J., followed the *Neuchatel and Verner* cases in the case of a company carrying on business of a carrier, the loss of capital not having occurred from the company receiving a price less than it originally gave for a portion of its assets. Depreciation of good will is treated by the learned judge as a loss of fixed capital. In *Re London and General Bank*, No. 2 (1895) 2 Ch. 673, dividends paid out of borrowed money were held to be improperly paid.

Vaughan Williams, J., in *Re Kingston Cotton Mill Co.*, No. 2 (1896) 1 Ch. 331, follows the *Neuchatel and Verner* cases and holds that a trading company as well as an investment company and a company formed to work a necessarily wasting property, may lawfully pay a dividend out of current profits without setting aside a sum sufficient to cover depreciation in the value of fixed capital.

*Re National Bank of Wales, Limited* (1899) 2 Ch. 629 is an interesting case upon the charging up of bad debts of successive years. Wright, J., considers that as bad debts had wiped out the paid-up capital, leaving a deficiency of £41,000, he was justified in holding that the dividends in question were paid out of capital. His view, however, was not adopted by the Court of Appeal. Lindley, M.R., while admitting the fact that omitting