J. E. Corcoran, for Mona S. Murray and others.
E. G. McMillan, for Jeannette Hunt.

MEREDITH, C.J.C.P., in a written judgment, said that the testator's property consisted mainly of his shares in a company called "W. A. Murray & Company Limited," and in another company called "The Toronto Carpet Manufacturing Company Limited," both carrying on business in Toronto. Subject to a life interest in these shares, given to his wife, he gave them to several of his own nieces and to a niece of his wife. After the making of the will, and before the testator's death, the Murray company became amalgamated with another company, the amalgamation taking the form of a new company called "Murray-Kay Limited"—the testator merely taking shares of this company in lieu of those he had in the Murray company.

Under the terms of the amalgamation, the new company acquired the exclusive right to use the name "W. A. Murray & Company Limited," and represent that they were continuing the business of W. A. Murray & Company Limited, among other like rights; and the transaction, so far as the testator was concerned, was, in substance and effect, simply a substitution of shares of Murray-Kay Limited for those of the Murray company.

It might be contended that the will spoke as of the time of the testator's death, and that at that time he had no shares in the Murray company, and so the several gifts of such shares were gifts of nothing.

But it was not necessary to consider that question—not necessary to say whether or not, had the will been made after the amalgamation, the shares in the new company might pass under a gift of them as shares in the old company—because, as to the specific gifts, the will must be taken, in the circumstances of the case, to have reference to them as existing when the will was made.

It might be said that, even if that were so, the gifts were revoked or adeemed by the change; but the shares were substantially the same property, the same which by his will the testator gave as shares in specified numbers to three of his nieces and to a niece of his wife.

The gifts were valid gifts of the shares owned by the testator at the time of his death.

Costs to all parties represented on this motion, those of the executor as between solicitor and client, out of the shares of the two companies; so that each legatee may pay a portion of these costs in proportion to the amount she takes in them.