

facts are considered not merely in the light of the form in which they are carried out, but in the light of their actual and substantial nature and effect; and on the facts of this case it was reasonably clear that it was the intention of all parties to the transaction that Farrar should stand in the shoes of the first mortgagee in respect of the loan which he made to pay him off, but through the bungling of the solicitor this object was not technically carried out as it should have been.

TENANT FOR LIFE—REMAINDERMAN — TRUST TO SELL AND CONVERT—DAMAGES RECOVERED FOR BREACH OF COVENANT IN LEASE—CAPITAL OR INCOME.

*In re Pyke, Birnstingl v. Birnstingl* (1912), 1 Ch. 770, In this case, trustees held certain residuary estate under a will upon trust to sell and convert and divide proceeds; but with power to suspend conversion; and by the will it was provided that until conversion, the residue was to be treated as money and that "the rents, dividends, and other produce thereof" should be deemed the annual income. Part of the estate consisted of a freehold theatre, subject to a lease, and prior to conversion the trustees sued and recovered damages from the lessees for breach of their covenant to repair. The question Warrington, J., was called on to determine was whether these damages were to be regarded as capital or income, and he determined that they must be treated as capital.

WILL — LEGACY — SPECIFIC BEQUEST OF SHARES—RE-CONSTRUCTION OF COMPANY—SHARES IN NEW COMPANY SUBSTITUTED FOR SHARES IN OLD COMPANY—ADEMPTION.

*In re Leeming, Turner v. Leeming* (1912), 1 Ch. 828. In this case the construction of a will was in question. The testator had given his ten £4 fully paid up shares in a company to one Nelson. After the date of the will but before the testator's death the company was re-constructed, and the testator received in place of his ten £4 shares two £5 fully paid preference shares and two £5 fully paid ordinary shares in the new company for every £4 ordinary share held by him in the old company, and these substituted shares were held by him at the time of his death. It was claimed that the legacy had been redeemed; but Warrington, J., held that there had been no redemption and that the legatee was entitled to the substituted shares in the new company.