

The intention of the company was thus made the crucial test in all cases where such company is authorized to increase its capital. Taking this as the criterion in this case the Court held that looking at all the circumstances the real nature of the transaction was that the company did not pay or intend to pay any sum as dividend but intended to and did appropriate the undivided profits as an increase of the capital stock, that the bonus dividend was therefore capital of the testator's estate and that the life tenant was not entitled to the bonus or the new shares. *Irvine v. Houstoun* and the cases which follow it are therefore now limited to companies which have no power to increase their capital, and the profits of such companies if accumulated and used as capital become for this purpose at least part of the capital of the concern and a subsequent division of them as a bonus or otherwise is not sufficient to make them income. The simple case of the issue of new shares uncomplicated by the contemporaneous declaration of a bonus cannot of course arise in the case of companies not authorized to increase their capital and to which the decision of *Irvine v. Houstoun* applies.

In the case of companies authorized to increase their capital, however, we have still to consider whether new shares issued without reference to any bonus are capital or income. This point had been dealt with many years before in *Rowley v. Unwin* (1855) reported shortly in 2 K. & J. at p. 138. New shares were allotted to trustees of a marriage settlement in respect of their former holding, the calls upon which were paid by the trustees out of the income of the life tenant. The trustees then sold the new shares and invested the proceeds. Vice Chancellor Sir W. Page Wood held that the new shares were capital of the trust and that the tenant for life had only a charge on the proceeds for the amount of the calls paid out of her income. He compared the case to that of a tenant for life renewing leasehold property and advancing money for the fine due on the renewal.

The last decision for consideration is that of *Re Malam* (1894) 3 Ch. 578 where *Bouch v. Sproule* and *Rowley v. Unwin* were followed and the rules of law laid down in these cases quoted and approved. The company whose shares were in question was a most prosperous one and had been paying the astonishing dividend of 50 per cent. as appears by the report. In 1893 this dividend was increased to 100 per cent. The directors at the same time decided to issue new shares to raise a fund for certain capital expenditures,