[Reference to In re Smith, Smith v. Lewis, [1902] 2 Ch. 667; In re Anson, [1907] 2 Ch. 425.]

I think it is a question of fact in each case: is what has taken place merely a change in the investment made by the testator inherent in the investment itself, or is the change, although a change effected by a vis major, quite apart from the volition of the holders, a substitution of something different from that which the testator invested in?

The earlier case is based upon the finding of fact that the shares in the reconstructed company were in substance the same investment. The finding in the latter case was that the distributed assets reaching the executors on the dissolution of the holding company were not an investment made by the testator.

With much deference, I agree with the finding in both cases; and the question here is, with reference to each item, under which head does it fall? . . .

The testator held certain stock. The right or option to subscribe for additional stock at a price less than the market value was given to the executors by reason of the testator's holding. The executors took up the new stock, thus converting into the stock of the company in question certain assets of the estate held as cash or invested in Government and municipal securities. In taking up this stock the executors were discharging their duty; a duty which might just as well have been discharged by selling the "rights;" but they have no right to retain the stock so taken up. It became an asset of the estate which it was their duty to convert.

With reference to the stock taken on re-organisation of several companies named, sufficient does not appear before me from the present material to enable me to pronounce upon the question of substantial identity. No doubt, in accepting the stock in the new company upon a re-organisation, the executors have exercised their best judgment, and no attack is made or suggested upon the wisdom of what has been done. But, as already said, before the stock so received could be retained as a permanent investment, there must in each case be a finding of fact as to the substantial identity of the two corporations. The testator may well have been content to invest a certain sum of money in a company carrying on a small business; and, if he made such an investment, he authorised his executors to continue it; and, if all that has been done is to re-organise that same company, even though the re-organisation involves the substitution of stock in a new concern, the case relied upon shews that this is really the same investment. But, if the re-