Analysis

Here we have the same stockholders owning the old and the new company. We have the same assets. We have the same liabilities except for the scaled down demands of common creditors. And even as to these the new corporation agreed that if it failed to pay the installment parts of their respective debts the common creditors were free to advance claims for the full amounts owing should there be a subsequent bankruptcy. The changes made were insignificant.

Rule

"Although the exact function and scope of the (F) reorganization in the scheme of tax deferred transactions described in Section 368(a) (1) have never been clearly defined, it is apparent from language of subparagraph (F) that it is distinguishable from the five preceding types of reorganizations as encompassing only the simplest and least significant of corporate changes. The (F) type reorganization presumes that the surviving corporation is the same corporation as the predecessor in every respect except for minor or technical differences * * *

Analysis

It seems clear that the only difference between Harry's Department Store, Inc. and the later Harry's of Alabama, Inc. was that common creditors of the old company accepted 22½% cash and 17½% in notes for the obligations owing them.

There were no other changes at all.

Rule

"A Section 368(a) (1) (F) reorganization is defined as 'a mere change in identity, form, or place of organization, however effected.' * * * In the past, type (F) reorganizations have overlapped with type (A), (C) and (D) reorganizations. For this reason this provision has received almost no administrative or judicial attention. It is true that a substantial shift in the proprietary interest in a corporation accomplishing a reorganization can hardly be characterized as a mere change in identity or form * * * The term `mere change in identity [or] form' obviously refers to a situation where it represents a mere change in form as opposed to a change in substance. Whatever the outer limits of Section 368(a) (1) (F), it can clearly be applied where the corporate enterprise continues uninterrupted, except for a distribution of 931*931 some liquidated assets or cash. Under such circumstances, there is a change of corporate vehicles but not a change in substance."

Conclusion

The Court finds that the arrangement was clearly an "F" reorganization within the meaning of Section 368(a) (1) (F). There was a change of vehicle but not of substance.

Conclusion

The plaintiff is entitled to judgment.