standard work on Wills (p. 158). Common sense tells us that a testator would not by codicil substitute a legacy of equal amount for that given by the will; it would be a waste of writing. The law has carried the presumption further, and presumes that any legacy by a second document is intended to be in addition to what has been given by the previous one.

The case of *Wilson* v. *O'Leary*, 26 L.T. Rep. 463, L. Rep. 7 Ch. 448, is a strong instance of the application of this rule. A testator had by his will bequeathed the residue of his property to J. and H. in equal shares. He afterwards executed two codicils which bore a considerable resemblance to each other. Of the legacies to the same persons, some were of different amounts and some of the same amount in the two codicils, while a legacy to a person in the first codicil was not repeated in the second, but one of equal amount was given to another person, and in the second there was the declaration that "these shall be free of legacy duty." It was sought to put in evidence a letter by the solicitor who had prepared the will and first codicil, advising the testator to copy the first codicil, as the signature was in an inconvenient place. The Court of Appeal decided that this was clearly inadmissible, as the question was merely one of construction of the documents.

In *Re Pinney* (1902) 46 Sol. Jo. 552, evidence was proffered to shew that the codicil disposed of all the testatrix's property except 2s. 5d.; but Mr. Justice Joyce refused to allow evidence on this head, and held that the legacies were cumulative. In refusing to admit such evidence he followed the decision of the House of Lords in *Higgins* v. *Dawson*, 85 L.T. Rep. 732, (1902) A.C. 1. Lord Justice James gave the leading judgment in *Wilson* v. *O'Leary*, and, in doing so, said that "where there is a positive rule of law of construction such as exists in these cases—that is to say, that gifts by two testamentary instruments to the same individual are to be construed cumulatively—the plain rule of law and construction is not to be frittered away by a mere balance of probabilities." His Lordship referred to two cases where the contrary had been held, but stated that he could