an annuity alleged to be due to plaintiff under the will of her deceased father, George E. Tuckett. The defendants are the executors and trustees. The testator bequeathed annuities of $6,000 each to his two daughters. Subsequently, having transferred to one of the daughters securities producing $1,200 a year, he (by codicil) reduced, for that expressed reason, her annuity to $4,800. A few months later he assigned securities of similar value to the plaintiff, the other daughter, and, by private memorandum, intimated that there was to be a corresponding deduction from her share of his estate. Evidence was adduced of his having instructed his solicitor to alter the will accordingly, but he died almost immediately after giving such instructions, without having made the alteration. Ferguson, J., held that the evidence was admissible to shew, and did shew, that the assignment of the securities to plaintiff was intended to operate as an ademption *pro tanto* of the legacy to her.

E. Martin, K.C., and A. B. Aylesworth, K.C., for appellant.

G. F. Shepley, K.C., and E. H. Ambrose, Hamilton, for defendants.

THE COURT (ARMOUR, C.J.O., OSLER, MOSS, JJ.A.) held that the judgment was right.

MOSS, J.A.—The act of the testator in transferring the securities was an act of bounty as much as the provision in the will, and it was of the same nature. It must be held to fall within the rule stated by Kay, L.J., in In re Lacon, [1891] 2 Ch. at p. 501. It was urged that there was a substantial difference in the nature of the two gifts, sufficient, in the absence of evidence of intention, to rebut the presumption. The difference is, that as regards the sum producing the $1,200 the plaintiff has the absolute power of disposing of it at any time, and, if she chooses to disregard the testator's earnest wish to the contrary, she may deprive herself of the enjoyment of the income during the remainder of her life. But the circumstance that the limitations of the portions differ is not sufficient to prevent the application of the principle of ademption: Earl of Durham v Wharton, 3 Cl. & Fin. 146; Twining v. Powell, 2 Coll. 261. The oral evidence, so far from rebutting the presumption, fortifies the intrinsic evidence derived from the nature of the two provisions, and aids the view that the testator intended that the provision made in his lifetime should go in part satisfaction of the provision made by the will. Appeal dismissed with costs.

Mewburn & Ambrose, Hamilton, solicitors for plaintiff.

Martin & Martin, Hamilton, solicitors for defendants.