her. The price of the house was $17,000, and it was the testator's intention to pay it in full; but it was found to be incumbered by a mortgage for $7,200, and the mortgagees declined to accept payment before maturity. The transaction was closed by a conveyance to the daughter, subject to this mortgage, which was stated to form part of the consideration, and which the grantee (the daughter) agreed to assume and pay. The testator in his lifetime paid three gales of interest and small instalments of principal which fell due upon the mortgage; and his executors had paid the full balance.

The learned Judge said that upon the material before him he had no doubt that it was the intention of the testator that his children should be treated on an equal footing—had he lived, he would doubtless have made a similar provision for each child upon forisfamiliation. There was nothing to shew that he intended the gift of this house to interfere with the provisions made by his will; and, in the absence of something to shew such an intention, in the existing circumstances, it should not be presumed that what this daughter received was so much in the nature of a double portion as to justify the learned Judge in holding that the conveyance of the house operated as an ademtion of any part of the benefits provided by the will.

There were two considerations of paramount importance: (1) the provision made by the will differed totally in kind from the property conveyed; (2) the provision made by the will was in favour of the issue of the daughter, subject to her life-estate, while the house was given to her absolutely.

The daughter had no claim upon the estate for payment of the amount due upon the mortgage; no doubt, her father intended to pay off this mortgage and thus to give her the amount of the mortgage-debt, but the gift never was completed, and there was no liability upon the part of his estate.

Drew v. Martin (1864), 2 H. & M. 130, referred to.

The testator, at the time of his death, held shares in two companies. Recently shares were issued by these companies in lieu of dividends that would ordinarily have been paid as cash upon the shares held by the testator. The question whether the shares recently issued were to be treated as income or corpus was a question of fact: Bouch v. Sproule (1887), 12 App. Cas. 385. Here the new shares in truth represented a dividend declared upon the old, and were therefore income: In re Malam, [1894] 3 Ch. 578; Re Colvile (1918), 144 L.T.J. 327.

Order declaring accordingly; costs of all parties to be paid out of the corpus of the estate.