

I concur with the complainant's counsel in thinking that the equality spoken of by the testator, had reference to the state of the fact as it existed at the date of the will, and that any fluctuation in the value of the property, which the testator may have previously given to his children, subsequently to that date, can have no influence upon the bequest. The testator has said, that to place his sons upon an equality with his daughters, there shall be paid to each of the former, the sum of \$13,750, to be raised by his executors, by the sale of his bank and other stocks, and I apprehend it would be an unwarrantable assumption of authority in this court to say, that because there has been a change in the value of the property previously given by him to his children, the legacies which in his judgment were necessary to produce equality shall not be paid, or shall be reduced.

If this court would be justifiable in reducing the sums to be paid the sons, because the property previously given by the testator to his children may have appreciated or depreciated in value, it is not seen why it might not *increase* these sums, if such increase should appear to be necessary with reference to the changed value of the property. If present equality is to be attained, and that can only be accomplished by increasing or decreasing the sums to be paid to the sons, it would be difficult to maintain that the court may do the one, but is prohibited from doing the other.

Neither do I think this court is at liberty, for the purpose of reducing the sum to be paid either of the sons, to take into consideration any property which the father may have given them, or either of them, in his life time, between the date of his will and his death, as it is to be presumed if such gift had altered his intention with regard to the pecuniary legacies bequeathed to his sons, he would have made the necessary alteration in his will.

It has not been contended, nor could it be successfully, that the gift of a house to the complainant, by his father in his life-time, was an ademption, *pro tanto*, of the pecuniary legacy bequeathed him by his will, one of the recognized exceptions, to presumptive ademption being where the testamentary provision