think, only be read as showing a probability of Herson's evidence being correct, rather than as corroborative of the facts stated by him. One witness, Chapman, proves that Herson was at the warehouse "around there every day," and that he and Monteith "had business together," which would be consistent with the fact of Herson having some right of possession to the warehouse when the goods were stored from Monteith. There is, however, a great difference between evidence of the probability, and evidence corroborative of, a fact. Evidence proving the probability of a transaction, but not going into the transaction or act itself, is not corroborative evidence: *Simonds* v. *Simonds*, 11 Jur. 830: *Reg.* v. *Birkett*, 8 C. & P. 732: *Whittaker* v. *Whittaker*, 21 Chy. Div. 657.

The parol evidence given by Herson on the former reference impeached his truthfulness: upon his oath he asserted that to be false which he had, in the written documents signed by him, attested to be true.

The further evidence on this reference weakens his credibility; while it establishes that Monteith was in every way reliable and trustworthy. It also places beyond question, that Monteith on every occasion represented to the banks that Herson had leased the cellar of his warehouse, which representations the warehouse receipts signed by Herson himself confirmed; and which fact was so found by Rose, J., in *Monteith* v. *Merchants' Bank* (10 Pr. R. 469).

While there are these strong reasons for not giving Herson's evidence the credit contended for it, there are others illustrated in the cases next referred to, which must also influence the disposal of this case. In *Re Browne*, 2 Gr. 590, it was held, that in cases where parol evidence is admissable to control the legal operation of a written document, no effect should be given to such evidence if its accuracy was involved in doubt. Blake, C. said: "It must be admitted, that, in determining the intention of these parties, their solemn deed upon the subject would be very cogent evidence, under any circumstance. To assume those parties to have had an intention different from that expressed in the deed, upon the parol evidence laid before us, would be, in my opinion, quite unwarrantable."

So in *Cameron* v. *Barshart*, 14 Gr. 661, where the evidence was contradictory, it was held that the presumption in a case of doubt must be in favour of fair dealing, and not of forfeiture.

And where the conflict of evidence related to a deposit of title deeds with a bank as security for advances; as alleged by the plaintiffs it would be lawful, but as alleged by the defendant it would be unlawful. The Court in view of these contingencies decreed in favour of the lawful act, and rejected the evidence of the defendant: *Royal Canadian Bank* v. *Cummer*, 15 Gr. 627.

Apply these to this case: The parol evidence of Herson throws doubt upon the validity of the written documents signed by him; upon the truthfulness of the representations made by Monteith in his lifetime, and of the written and parol declarations of Herson, immediately prior to, or at the time of, Monteith's death. The decision in such a case of doubt should be in favour of the written documents; of fair dealing instead of forfeiture; and of the lawful, rather than the unlawful act.

Any one of the grounds commented upon would justify my not giving effect to Herson's evidence. Indeed after the parties had heard my former judgment, counsel for the unsecured creditors asked me to find as to Herson's credibility, and I then stated in effect, that if I had so to find, I would have great difficulty in crediting his evidence. Further consideration rather confirms this difficulty; and, therefore, for the reasons stated, I must disregard Herson's evidence, as utterly unsafe to warrant a finding against the validity of these warehouse receipts: *Cotter* v. *Cotter*, 21 Gr. 159, *Grant* v. *Brown* 13 Gr. 256.

I had ruled on the former reference, that if those warehouse receipts were fraudulent or void, the defendant Pritchard, as administrator of Monteith, could not impeach their validity on that ground. The cases there cited, and the following, support that view.

A fraudulent instrument is only void against creditors, but not against the party himself, or his executors or administrators; for against them it remains valid: *Hawes* v. *Leader*, Cro. Jac. 270. An executor or administrator shall not avoid a fradulent bill of sale as such executor or administrator, but only when he is a principal creditor: *per* Holt C. J., 13 Vin. Abr. 516.

"The fradulent alienation," says May, "is good against the rightful executor or administrator, for he is not a creditor, nor does he represent creditors; and, therefore, it is no devastavit for him to deliver the goods to a fradulent grantee, who can be sued for them by creditors, but not by any other person"; May on Fraud. Conv., 60.

An action arising out of the fraud of a testator lies against, and is transmitted to, his executors, they being liable to make good the damage sustained by the misconduct of those whom they represent so far as they have assets: *Per* Lord Brougham, in *Davidson* v. *Tulloch*, 6 Jur. N. S. 543.

I dispose only of the question referred to in the Chancellor's judgment, and re-affirm my former findings. I give no costs. If the cases above re-