profits of the business and the private estate of the testator, been received by W. D. B. and converted to his own use.

The plaintiff did not come of age till July, 1879, soon after which he asked W. D. B. for a statement of the amount and payment or settlement. On Nov. 16th, 1880, according to arrangement, the plaintiff went to the office of W. D. B., his father, and was offered a document to sign, and did sign it, and received from his father a cheque for $8,000. This purported to be a receipt of the $8,000 in full of all claims on the estate of D. B.

The plaintiff now brought this action against W. D. B. and L., asking to have this document or receipt declared void, an account from the defendants, or one of them, of the estate of D. B., and an account of the partnership estate of the firm of Burns & Co. come to the hands of the defendants, and to have the said partnership estate wound up, and be paid the share of the profits to which he was entitled; and to have administration by the Court of the personal estate of D. B.

Held, that as to the alleged settlement of Nov. 16th, 1880, the plaintiff and his father, W. D. B., could not be said to have been on equal terms. The plaintiff was not in possession of such knowledge as enabled him to make a rational settlement in respect of the estate of which he was really the owner. It was clearly the duty of his father, before making any settlement with him, to give him the fullest possible information regarding his estate and his dealings with it, even if then, under the circumstances, a settlement binding on the plaintiff could have been made. There appeared, also, to have been parental influence operating on the plaintiff's mind. Therefore the document in question was not binding on the plaintiff.

W. D. B. amongst other things contended that this action was wrongfully brought against him by the plaintiff for want of privity between them; and that he, W. D. B., was liable and ready to account to L., and to him only.

Held, that the suit in its present shape was maintainable, for though the general rule is that persons who have possessed themselves of the property of the deceased, or are debtors to the estate generally, cannot be made parties to a suit against the executor; yet this rule is relaxed in the case of surviving partners of the deceased, whom it is allowed to make parties with the executor in order that the plaintiff may have an account of the personal estate entire. At all events such an action may be supported in all cases where the relationship between the executors and the surviving partners is such as to present a substantial impediment in the prosecution by the executors of the rights of the parties interested in the estate against the surviving partners, as seemed the case here; although it did not appear that there had been actual collusion between L. and W. D. B.

As corroborative evidence of the alleged transfer of 100 shares by the testator in his lifetime to him, the defendant, W. D. B., proved the transfer of the stock to him, and a re-transfer afterward on Jan. 30th, 1873, which re-transfer, he said, was to prevent the surplus of the savings bank appearing to be less, and also produced the printed statement of the savings bank of Dec. 31st, 1872, showing this stock.

Held, that this was not such corroborative evidence of the gift as satisfied the statute, R.S.O. c. 62, s. 10.

Held, on the whole case, that the plaintiff was entitled to the account asked, and that as regards the increase or profits in the dealings with the capital of the estate, these should be apportioned in accordance with the amount of such capital owned respectively by the testator and the defendant, W. D. B., and the defendant, W. D. B. should be allowed a liberal remuneration for his exertions, care, time and trouble in the management of the estate.

Osler, Q.C., and *T. S. Plumb*, for the plaintiff.

C. Moss, Q.C., for the defendant, W. D. Burns.

Boyd, C.] [March 26.

RE SHAVER.

Will—Evidence—Error in description—Quieting Title Proceedings—Infant heir-at-law—Jurisdiction of Referee.

A testator by his will devised as follows:—"I devise the south-west quarter of lot 5, con. 2 of Westminster, containing fifty acres more or less, to H. P. S., his heirs and assigns, in fee simple."