replevin in Walsh's case, and Herson, who swore that he had tried to keep possession of the goods for the banks, then told the bank's officers that they might take the goods themselves, which, sometime afterwards, they did.

Herson was examined as to the validity of the warehouse receipts; and, if his evidence is to be credited, he and Monteith were guilty of a misdemeanor, one in giving and the other in obtaining money on, false warehouse receipts., His evidence, therefore, is that of an accomplice in a criminal act; and although I held that he was not estopped from giving evidence that these warehouse receipts were false and fraudulent, my experience in conducting criminal prosecutions induces me to recognize the applicability of the directions usually given to juries by judges of Assize, viz.: to regard with distrust the admissions of an accomplice, and not to give effect to them unless materially confirmed by other evidence. That salutary rule of experience is, I think, specially applicable to a civil case where the party, whose title under those statutory securities is attacked, was in no way, direct or indirect, a party to the criminal act of the criminal parties. Herson claimed no protection before giving his evidence; his evidence is unsupported, and is negatived by his various warehouse receipts and by his declarations and acts in the presence of the bank's officers; and is also negatived by the written and parol declarations made by Monteith in his lifetime.

The Evidence Act R. S. O. c. 62 s. 10 provides that in a suit against the assigns of a deceased person an opposite party shall not obtain a decision in respect to any matter occuring before the death of the deceased person, unless his evidence is corroborated by some material evidence.

The spirit, if not the letter of this act, applies to this case, and therefore on both grounds I decline to give effect to Herson's evidence.

Even if these warehouse receipts were invalid, I could not on the evidence find that the banks had made themselves executors *de son tort*. Applying the cases to what occurred immediately after the death of Monteith, it would be more reasonable to hold that Herson had placed himself under that liability. He and his solicitor went to the warehouse before the bank officials, and when the latter arrived Herson claimed by parol and in writing to be in possession of the goods as warehouseman, and subsequently told the banks to take them.

"If a man give or sell the goods of an intestate to A. this does not make A. an executor *de son tort*; or if he claim a property in the goods as a gift of the intestate:" Comyn's Dig. Adm. c. 2. This rule was applied in *Paull* v. *Simpson*, 9 Q. B. 365. A lessee died intestate during the term of the lease; his widow without taking out administration entered, and paid rent to the landlord; and then with her concurrence her son-in-law took the premises and continued to the end of the term. It was held that although she might be, A was not, executor *de son tort*. WIGHTMAN, J. said: "The passages from Comyn's Digest are express authorities on this point. If this were not so there would be no end to the number of persons who might be charged." PATTESON, J. added: "If one takes the goods of the deceased and hands them to another, this shall charge only the giver as executor *de son tort*.

So where a person sets up a colorable title to the possession of the goods of a testator, though he may not be able to establish a completely strict and legal title, such title is sufficient to exempt him from being charged as executor *de son tort*: *Femings* v. *Jarrat* 1 Esp. 335. In that case Lord KENYON, C. J., observed: "If the defendant came to the possession by color of a legal title though he had not made out such title completely in every respect, he should not be deemed an executor *de son tort*.

The reason for the rule is stated in the case of an executor thus: "If an executor takes the testator's goods on a claim of property in them himself, although it afterwards appears that he had no right, since such claim is expressive of a different purpose from that of administration as executor, he is not liable:" Toller on Executors 43.

The cases in the United States Courts are to the same effect.

In *King* v. *Lyman*, 1 Root (S. C.) 104, where goods had been taken under a bill of sale, evidence was tendered to show that the bill of sale was fraudulent. But the evidence was rejected; and it was held that the holding and disposing of goods and chattels conveyed by a deceased in his lifetime would not make the party taking an executor *de son tort*. Although the bill of sale might be frandulent as to creditors it was good and valid between the parties.

Debesse v. *Napier*, 1 McCord (S. C.) 106, was a case when deceased had goods in the hands of a factor for sale. The factor had a lien on them for his commission and charges. Deceased drew an order on the factor for the whole proceeds of the goods after satisfying his charges, which order the factor accepted. After deceased's death the factor sold and applied the proceeds as directed, and it was held that he had the right to do so.

If a person sets up in himself a colorable title to the goods of a deceased; as when he claims a lien on them, though he may not be able to make