of executor, and was an answer to his claim to an allowance for his care, pains, and trouble, and time expended as executor, under R. S. O. ch. 129, sec. 40. The learned Chief Justice held that the appellant's faults in the execution of his trust were sufficient to disentitle him to any compensation, and that it was not necessary to determine whether the devise was made to him in his quality of executor.

I have examined the numerous cases on this subject, and I am of opinion that on this point the Master came to a wrong conclusion.

The appellant was the testatrix's brother, and the first disposing paragraph of the will is the one in question:—"I give and devise all and singular these certain parcels or tracts of land (describing them) unto my brother G. W. Perkins, his heirs and assigns absolutely, for his and their sole and only use forever, free from all incumbrances, and I hereby direct that the mortgage at present on said lands, or any other incumbrances that may be on said lands at the time of my death, shall be paid out of my personal estate, and the payment of the said incumbrance shall be a first claim on my said personal estate." She then proceeds to dispose of the residue of her real estate and her personal estate, in a number of subsequent paragraphs, for the benefit of her nephews and nieces and other objects. She next appoints "the said G W. Perkins sole executor" of her will, and then follows the usual clause enabling "the said trustee hereby appointed or any trustee or trustees to be appointed as hereinafter provided," in case of vacancy in the office, to appoint a successor or successors in the trust, and afterwards she gives the appellant three portraits.

Now, taking this will as a whole, I think the presumption that the devise was intended as compensation to the executor is rebutted. [Compton v. Bloxam, 2 Coll. 201, and In re Appleton, 29 Ch. D. 893, referred to.] Here, the gift is to "my brother G. W. Perkins," and I think that is an indication of the testatrix's motive for her gift, sufficient, having regard to the other parts of the will, to rebut the general presumption. See also cases cited in Theobald on Wills, 5th ed., p. 318; Williams on Executors, 9th ed., p. 1147.

I therefore think that the question of compensation to the appellant as executor of Mrs. McGillivray is not excluded by the devise contained in the will.

The next question is that of compensation. The Master allowed the appellant compensation to the amount of $1,900 out of the estate of Mrs. Hinton, but allowed nothing out of Mrs. McGillivray's estate, for the reason already mentioned.