

If an executor *de son tort* sell goods⁷ to A., to whom letters of administration are afterwards granted, the latter may then recover against the former for their conversion, *Glenn v. Smith*, 2 G. & J. 493; such a case not being within the principle of *Whitehall v. Squire*, Carth. 104, where the plaintiff, having received a horse belonging to the intestate from the defendant in remuneration of services performed at the defendant's request about the funeral, afterwards administered, and brought trover against the defendant for the value of the horse so received by him before he became administrator, for there the plaintiff was *particeps criminis*.

There are acts of intermeddling,⁸ such as locking up the goods of a deceased person for safe keeping, which will not charge a man as executor of his own wrong, but the taking the goods of an intestate by a stranger and using or selling them, and, in general, any intermeddling with them, will, as respects creditors, make him an executor *de son tort*, and chargeable with the debts of the deceased so far as assets come into his hands. But as against creditors he is justified in paying the debts of the deceased, and if sued by a creditor he may plead *plene administravit*, and will be allowed all payments made of just debts to any other creditors in equal or superior degree, or in due course of administration, though he cannot in any case (see *infra*) retain any part of the goods of the deceased in satisfaction of a debt due to himself. There is, however, a difference between a suit by a creditor against an executor *de son tort*, and one by a rightful executor or administrator. If the action by the latter be *trover* for the goods of the deceased, the defendant cannot plead payment of debts to the value, or that he has given the goods in satisfaction of the debts. But on

was held that he should be treated as an executor *de son tort* and required to account as such.

The executor of an executor *de son tort* is not liable for a breach of contract committed by the person with whose property the executor *de son tort* has intermeddled. *Wilson v. Hodson*, L. R. 7 Ex. 84.

⁷ In this state title to personal property of a decedent can be transmitted only through the instrumentality of letters of administration, "except in certain exceptional cases by an executor *de son tort*." *Biemuller v. Schneider*, 62 Md. 558; *Rockwell v. Young*, 60 Md. 563; *Schaub v. Griffin*, 84 Md. 567. But an executor *de son tort* cannot deal with or dispose of the estate of a decedent in a mode expressly forbidden to a lawfully appointed executor or administrator. He cannot therefore sell the chattels of a decedent and pass a good title to the purchaser as against a subsequently appointed lawful administrator, such purchaser not being a creditor of the estate and not taking the property in discharge of any debt due him by the decedent. *Rockwell v. Young*, 60 Md. 563.

⁸ In *New York Breweries Co. v. Atty. Gen.*, (1899) A. C. 62; (1898) 1 Q. B. 205, an English company was held liable as an executor *de son tort* in respect of probate duty on certain of its shares owned by the estate of decedent, who had been a foreign subject domiciled in America, and whose executor the company had transferred the shares, when it knew that the executor had not obtained and did not intend to obtain probate in England.