sum so ascertained shall be levied of the goods of the deceased or of the proper goods of the defendant, and the residue of the debt or damages shall be levied of the goods of the deceased which may thereafter come to the hands of the defendant to be administered, with interest, or of the proper goods of the defendant; and by sec. 23,[47] if such goods shall thereafter come to the hands of the defendant as administrator, or into the hands of any other person who may have authority to administer the goods of the deceased, the plaintiff may issue a *scire facias* on the judgment, suggesting the coming of such assets to the hands of the administrator, liable to the payment of his debt, upon which if the defendant contests the same there shall be a trial by jury as provided in sec. 20. (See Seighman v. Marshall *supra.*)

In Meyrick v. Anderson, 19 L. J. Q. B. 231, it was decided that if one be sued as executor of an executor for a debt of the testator, it is no answer that he is only executor *de son tort* to the original rightful executor. The plaintiff, said the Court, ought not, if there be assets of the testator independent or in consequence of the *devastavit* of the first executor, to be deprived of any remedy against them, because no one takes out administration *de bonis non* to the testator, nor ought he to be driven to take out such administration himself, when another professing to be executor of the first executor has possessed himself of those assets. In Hammond v. Gatliffe, Andr. 252, there was an executor *de son tort* of an executor *de son tort,* and the Court inclined to think that the second wrongful executor was not liable at common law or under the Statute of Charles, as an executor *de son tort* is not named in the first part of the Act.[48] But Patteson J. in Meyrick v. Anderson *supra* thought the decision questionable.

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[47] Code 1911, Art. 26, sec. 29.

[48] See Wilson v. Hodson, L. R. 7 Ex. 84.