

Penn, 2 Bro. C. C. 280; *Jacobs v. Foodman*, 2 Cox, 282; *Lee v. Alston*, 1 Ves. Jun. 82; *Milbourn v. Fisher*, 5 Ves. 685, note; *Sutton v. Scarborough*, 9 Ves. 75; *Baker v. Mellish*, 10 Ves. 553; *Corporation of Carlisle v. Wilson*, 13 Ves. 276; *Rowe v. Tweed*, 15 Ves. 377; *Drew v. Drew*, 2 Ves. & B. 161; *Jones v. Jones*, 3 Meri. 163; *Williams v. Steward*, 3 Meri. 502; *Attorney-General v. Brown*, 1 Swan. 294; *Holloway v. Millard*, 1 Mad. Rep. 421; *Lorimer v. Lorimer*, 5 Mad. 363; *Sanders v. King*, 6 Mad. 63; *Mendizabel v. Machado*, 2 Cond. Cha. Rep. 40; *Moses v. Lewis*, 5 Exch. Rep. 388; *Mellish v. Richardson*, 5 Exch. Rep. 404; *Townshend v. Duncan*, 2 Bland, 49.

I shall therefore in the first place, endeavor to obtain a clear view of the plaintiff's case; and thereupon consider and determine the nature of the relief to which he is entitled; and then give directions as to the accounts necessary to be taken for the purpose of ascertaining the extent of that relief.

According to the law of England, an administrator *de bonis non* cannot call the representatives of the previous deceased administrator of his testator to account for any property of the intestate, that such predecessor may have converted or wasted. Nor can he claim or recover any thing but those goods, chattels, and credits of his intestate, which remains in specie and are capable of being clearly and distinctly designated and distinguished as the property of his intestate. *Bac. Abr. tit. Executors and Administrators, B. 2.* An executor or administrator, who is here considered as a trustee for the creditors, legatees, and next of kin, is expected and required to preserve the property of the deceased apart from his own, and to give it, as it were, an ear-mark, that it may be known and readily traced to any one into whose hands it may happen to fall. And if he does so, the Court will do every thing that can be done to protect and assist him. *Wankford v. Wankford*, 1 Salk. 306; *Freeman v. Frailie*, 3 Meriv. 39.

According to our Provincial testamentary system, an administrator *de bonis non* might, under certain circumstances, have had *his predecessor cited before the commissary and compelled to account. 1715, ch. 39, s. 3; *Dep. Com. Gu.* 55, 57. But **563** at present, the remedy against an administrator or his representatives, for any waste or misapplication of the effects of the deceased, is by an action at law upon his administration bond by any one interested. For it is expressly declared, that the authority conferred by letters of administration *de bonis non*, shall be to administer all things described in the Acts as assets not converted into money and not distributed, or delivered, or retained by the former executor or administrator, under the direction of the Orphans' Court. 1798, ch. 101, sub-ch. 14, s. 2; 1820, ch. 174, s. 3; *Wankford v. Wankford*, 1 Salk. 306; *Sibley v. Williams*, 3 G. & J. 52.

Hence this plaintiff is incompetent to demand; in the representative character in which he sues, anything but those goods, chat-