

Our Statute of Distributions, like that of England, *Bac. Abr. tit. Executors and Administrators, I*, directs the goods, chattels, and credits of those who die intestate, to be committed to an administrator whose powers and duties are prescribed. He has a vested interest in the personal estate of the deceased, *Blackborough v. Davis*, 1 *P. Will.* 42, and is directed to collect and take the whole of it into his possession; which, or the proceeds of the sales thereof, he is, in the first place, to apply to the satisfaction of all the debts due from the intestate; and then he is to distribute the surplus among the next of kin of the deceased. Although the creditors of the deceased are to be first provided for under this statute, yet the next of kin, among whom the surplus is to be distributed, take an interest which vests in them, by operation of law immediately. It is considered as a species of *chose in action* of an indefinite value; in nature of a present debt, payable at a future day. *Brown v. Shore*, 1 *Show.* 2 and 25; *Palmer v. Allicock*, 2 *Show.* 407; *S. C.* 3 *Mod.* 59; *Squib v. Wyn*, 1 *P. Will.* 380; *Palmer v. Garrard*, *Prece. Chan.* 21; *Doran v. Simpson*, 4 *Ves.* 665. This interest vests in those who are the next of kin of the deceased at the time of his death; not, however, in exclusion of a posthumous * child, who is regarded as a then living, though unborn distributee. And therefore, should a distributee die before **565** the distribution of the surplus is actually made, his share will not sink into the estate of the intestate; but go to his own legal representatives in like manner as his other personal property. *Dep. Com. Gu.* 114; *Edwards v. Freeman*, 2 *P. Will.* 446; 1798, ch. 101, sub-ch. 11, s. 14.

Hence it is clear, that, in no case can a next of kin make title to a distributive share otherwise than through an administrator; who, in equity, is regarded as a trustee for the creditors and next of kin; and as such may, in Chancery, be called to account by all or any of them. *Elibank v. Montolieu*, 5 *Ves.* 742; *Conway v. Green*, 1 *H. & J.* 151. And every one who takes possession of the personal property of an intestate, after his decease, may be sued at law or in equity by a creditor as an executor *de son tort*, and charged accordingly. *Webster v. Webster*, 10 *Ves.* 93. And, in equity, he will be considered as a trustee, and held accountable to the administrator, no matter how long he may have had possession before the administration was granted. *Boteler v. Allington*, 3 *Atk.* 459; *Fishwick v. Sewell*, 4 *H. & J.* 394.

It has been declared, that many widows or others, having the deceased's effects in their hands, and right to the administration thereof, designedly suffer other persons to administer, whose mouths are easily stopped with part of the estate's being delivered them, and bring only such part of the appraisement, to the great dishonor of the deceased, and deceit of the living; for prevention whereof as well as of frequent tedious suits for the detecting such