

child, who is regarded as a then living, though unborn distributee. And therefore, should a distributee die before 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. (*j*)

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. (*k*) 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. (*l*) 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. (*m*)

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 dishonour of the deceased, and deceit of the living; for prevention whereof as well as of frequent tedious suits for the detecting such concealments, it was enacted, that the court might in a summary way, cite such persons before it and examine and decide on the matter. (*n*) Here the distributees having a right to the administration are specially designated, and it is expressly declared, that they shall not retain or hold any of the personal estate of the deceased; and if they do conceal any of it, they are made liable in a summary way, as wrong-doers.

If the law were otherwise; and if each creditor and every one next of kin were allowed to help himself to what he thought his due; to seize upon and in any manner by his own act alone acquire a legal right to the personal property of an intestate, the greatest confusion would ensue, and the most monstrous frauds might be perpetrated. No letters of administration would be taken out in any case; but, on the death of every one who had left any

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(*j*) Dep. Com. Gu. 114; *Edwards v. Freeman*, 2 P. Will. 446; 1798, ch. 101, sub ch. 11, s. 14.—(*k*) *Elibank v. Montolieu*, 5 Ves. 742; *Conway v. Green*, 1 H. & J. 151.—(*l*) *Webster v. Webster*, 10 Ves. 93.—(*m*) *Boteler v. Allington*, 3 Atk. 459; *Fishwick v. Sewell*, 4 H. & J. 394.—(*n*) 1719, ch. 14, s. 7.