

is to prevail as opposed to the rule at law, that letters of administration, when obtained, relate back to the death, and that it is sufficient if a plaintiff suing as administrator qualifies before trial.

In all the cases to which reference has been made, down to and including *Trice v. Robinson*, it appears to have been the case that the persons appointed administrators after suit or action were persons interested in the estate, and in many of the cases that circumstance is mentioned, but I do not read any of them as turning upon that point, or as suggesting that a different rule would have prevailed had the administrator not been interested. It is treated as a matter of course that the letters of administration have been granted to the person entitled to them, and that person in ordinary cases is one of the next of kin.

In *Chard v. Rae*, 18 O. R. 371, the question seems to have been first raised as to whether administration granted after action was sufficient to entitle a plaintiff to maintain an action brought by him as administrator at a time when the person entitled in priority to him as administrator had not renounced. I read the judgment of Boyd, C., in that case as rather suggesting the point now under discussion, and as deciding the case upon the ground that there could at all events be no relation back of the letters of administration to the date of the commencement of the action where the effect would be to prevent the bar of the Statute of Limitations.

The next case seems to be *Doyle v. Diamond Flint Glass Co.*, 3 O. W. R. 510, in which Idington, J., seems to have treated the distinction as an established one, and he has adopted the same view in his judgment in the present case.

In my opinion, the unqualified language of Lord Hardwicke in *Fell v. Lutwidge* expresses the rule which should be followed, viz., that letters of administration taken out after action and before the trial, when the plaintiff brings his action as administrator, are sufficient to support the action. It is contrary to authority to divide administrators into two classes, those who have rightly obtained administration and those who have not, because the grant of letters of administration by the proper Court is conclusive while unrevoked upon the question of the right to them, and no other Court can permit it to be gainsaid: *Attorney-General v. Pontingdon*, 3 H. & C. 193, at 204; *Re Ivory*, 10 Ch. D. 372; *Eades v. Maxwell*, 17 U. C. R. 173, 180; *Book v. Book*, 15 O. R. 119.