

administration granted to a person interested in the estate, and those granted to a person not interested. Before the Judicature Act a distinction was well established to the effect that in an action brought by an administrator it was necessary that letters of administration must have been granted before action, but that in an action by an executor it was sufficient if probate were taken out at any time before the trial. The reasons given for the distinction were that the executor's title was under the will, and probate was only necessary for the purpose of proving his title, while an administrator had no title except under the letters of administration; and further that an administrator in an action at law was obliged to make oyer of the letters of administration.

The distinction did not however exist in equity. In the early case of *Fell v. Lutwidge*, Barnardiston Ch. 320, decided in 1740, upon an objection being taken that a widow, party to the suit and claiming as administratrix of her late husband, had not taken out letters of administration until after suit, Lord Hardwicke said: "It was very true that this would have been an exception in an action at law, but that it was not so to a bill brought in this Court." In the report of the same case in 2 Atk. 120, the reason why the rule is otherwise at law is stated to be because there the defendant may crave oyer of the letters of administration.

In *Humphreys v. Humphreys*, 3 P. Wms. 349 (1734), where an only daughter had taken out letters of administration, after suit brought, to the estate of her father, Lord Chancellor Talbot, "not without some warmth in respect of the delay," observed "that the mere right to have an account of the personal estate was in the plaintiff, Hellen, the daughter, as she was the next of kin to her father, Colonel Lancashire; and it was sufficient that she had now taken out letters of administration, which, when granted, related to the time of the death of the intestate, like the case where an executor before his proving the will brings a bill, yet his subsequent proving the will makes such bill a good one, though the probate be after the filing thereof." This case, it will be observed, was decided six years before *Fell v. Lutwidge*.

These cases, with many others, are referred to in the judgment of Blake, V.-C., in *Edinburgh Life Assce. Co. v. Allen*, 19 Gr. 593.

In *Trice v. Robinson*, 16 O. R. 433, it was held by Boyd, C., that since the Judicature Act the former rule in equity