ing his own debt in priority to all others of equal degree (*Ellworthy* v. *Sandford*, 12 W. R. 1008, 3 Hurls. & Colt. 330). However, abstracted from the personal liability of an executor *de son tort* as against the lawful executor, it seems that rightful acts of the executor *de son tort*—as *e. g.*, payment for delivery of goods in a due course of administration, if he be really acting as executor, and the party dealing with him has fair reason to suppose he has authority to act as such—will bind the property of the deceased (*Mountford* v *Gibson*, 4 East, 441; *Thompson* v *Harding*, 2 Ell. & B. 630).

One of the consequences of an executor *de son tort* being fixed with all the liabilities of an executor is that he is guilty of a *devastavit* by reason of misapplication of any of the assets of the deceased; but by the operation of that ancient maxim of our law, *actio personalis moritur cum personâ*, the liability, in this case, being in the nature of a tort, terminated (as it also did in the case of a rightful executor, at least, unless his own representatives, by becoming the personal representives of the original testator, continued the privity of contract) with the life of the wrong-doer. To remedy this it was enacted by Statute 30, Car. 2, c. 7, s. 2 (made perpetual and enlarged by 4 & 5 W. & M., c. 24, s. 12), that executors and administrators of executors of their own wrong, or administrators who have wasted or converted the assets of the deceased to their own use, shall be chargeable in the same manner as their testator or intestate would have been if living. Doubts have arisen on the preceding clause, whether it extended to executors and administrators of any executor of *right* who, for want of privity, were not answerable for debts due from their first testator or intestate, although such executor or administrator of right had been guilty of a *devastavit* or conversion, it was enacted by Statute 4 & 5 W. & M., c. 24, s. 12, that the executors and administrators of such executor or administrator of right who shall waste or convert to his own use the estate of his testator or intestate, shall be chargeable in the same manner as their testator or intestate would have been.

In pleading the liability of an executor *de son tort*, the same form must be observed as in the case of a rightful executor, because there is no other form in the register, and a long course of practice has given this the sanction of law (*Wood* v. *Kerry*, 2 Com. B. 515; the defendant, if he seek to take advantage of the fact, must show, by pleading, that the imputed character of executor, in the given case, was not lawfully assumed.

In cases where privity of contract is preserved by the chain of representation being duly continued, it is clearly shown by the case of *Wells* v. *Fydell* (10 East, 315) that a contract is enforceable against the executors of the executor of the contractor, without any averment of a *devastavit*, and that the liability cannot be successfully avoided by the defendant pleading merely that he has not any goods or chattels *of the original testator* in his hands to be administered, but he must also plead either that the first executor fully administered, or that he, the defendant, has no assets of the first executor out of which he can satisfy any *devastavit* committed by the first executor. "In such a case as this the plaintiff is entitled to recover his debt in either of two events: if the defendants have received assets of the first executor, and the first executor had received assets of *his* testator and not duly applied them." The form of a plea of *plene administravit* by an executor of an executor will be found in Bullen & Leake's Practice of Pleading, p. 580.

With regard to an executor *de son tort* of a rightful executor, in which case there is of course, no chain of representation, and therefor no privity of contract between the original testator and the executor *de son tort* it has, however been held that such an executor *de son tort* may be made answerable for the debts of the original testator upon the principle that the rightful executor must be taken to have possessed himself of all the assets of the original testator; and the defendant, the executor *de son tort*, being estopped from saying he is not the executor of the rightful executor, must be taken to have had the assets of the original testator, if any, which his executor left unadministered, transmitted to him; for the defendant, in his assumed character of executor, must be taken to have possessed himself of such assets of the original testator. But if in fact, as was said, "there were none such transmitted, and the executor of the original testator committed no *devastavit*, and the defendant have duly administered all the assets of the rightful executor, he will have a good defence to the action." "The plaintiffs ought not, if there be assets of the original testator, either independent of *or* in consequence of any *devastavit* of *his* executor, to be deprived of their remedy against those assets because no one thinks proper to take out administration *de bonis non* to the original testator; nor ought they to be driven to take out such administration themselves, when another person the (defendant) professing to be the executrix of the rightful executor, has possessed herself of those assets" (*Meyrick* v. *Anderson*, 14 Q. B. p. 272).

On the other hand, in the somewhat converse case of a rightful executor to an executor *de son tort*, it has been held in a recent case by the Court of Exchequer (*Wilson* v. *Hodgson*, 20 W. R. 438) that unless there be an averment of a *devastavit* by the executor *de son tort* so as to bring into play the beforementioned statute of Car. 2, the rightful executor of an executor *de son tort* will not be liable to answer the contract of the original intestate or *quasi*-testator, and in such a case it will, it seems, be a sufficient