

doer who has seized or converted the goods of the intestate after his death in an action of trespass or trover." In fact at law he represented the deceased as from the day of his death, notwithstanding there might have been a prolonged interval between the death and the grant of administration. This being so, the common law rule which denied the relation back of letters obtained pendente lite seems to have been somewhat inconsistent. In *Doyle v. Diamond Flint Glass Co.*, 7 O.L.R. 747, an action under the Fatal Accidents Act, Idington, J., held that the rule laid down in *Trice v. Robinson* did not apply to causes of action vested in the administrator qua administrator, but which did not constitute any part of the deceased person's estate. He says "the doctrine of relation back to the death of the intestate is applicable to what concerns his estate and the transmission thereof. That is not the case here. The rights sought to be enforced here never were the rights of the deceased. They formed no part of his property or estate. They are the creation of statutes that gave them directly to the widow and the mother under such circumstances as have arisen here. The duty is cast on the administrator to bring for them the action. It might well have been provided by the statute that any other officer as trustee should do so. The right and the duty thus created have nothing to do with the estate of the deceased." Moreover in that case the learned judge further held that the doctrine of relation back could not be invoked by the plaintiff in that case, because in his view he was not rightfully entitled to the grant of administration.

*Trice v. Robinson*, supra, was an action brought under the Liquor License Act for supplying the deceased with drink while in a state of intoxication, but the learned judge points out that the damages recovered under that Act form part of the deceased person's estate, but it may be doubted whether the mere fact of the statutory destination of the damages recoverable in either case ought to make any difference. It is to the personal representative of the deceased in both cases that the right of action is given, and it seems to be introducing a needless and unjustifiable exception into the general rule laid down in *Trice v. Robinson* to say that in such cases the doctrine of the relation back of letters obtained pendente lite does not apply.

The material question in such an action is whether or not a duly appointed personal representative is before the Court, and