

LIABILITIES OF EXECUTORS—LORD WESTBURY.

the use for her life of half his estate, and appointed her guardian of his children; that administration with the will annexed had been granted to the defendant, who was 'the only legal representative, and also heir of the undisposed of moveables and immoveables,' and that she had received and entered into possession of all the real and personal estate of the deceased. Plea, that if the defendant was not, or never had been, administratrix with will annexed, or legal representative of the deceased. Held, that if the defendant was not administratrix she was administratrix *de son tort*, and the bill could be sustained." In *Coote v. Whittington* the defendant was the widow of the intestate, and had not taken out administration, but had possessed herself of some of the estate. The case came from the County Court, where a preliminary objection was taken to the plaint, on the ground that a personal representative of the deceased was not a party to the suit, which was for administration, and before the Vice-Chancellor it was contended that a bill was not sustainable against an executor *de son tort* in the absence of the personal representatives of the deceased. From this doctrine the Vice-Chancellor expressed his emphatic dissent, and it is curious to observe the terms in which Lord Romilly and the Vice-Chancellor came to opposite conclusions. The former said: "You cannot administer the personal estate of a testator in Chancery unless you have his legal representative before the court; if you were able to do so you would work great injustice." The Vice-Chancellor expressed the opinion that it was of the highest importance to the administration of justice that an executor *de son tort* should be liable. At present the Vice-Chancellor has the best of the argument, as *Cary v. Hills* was decided by Lord Romilly without giving reasons or citing cases. The Vice-Chancellor is fortified by authority. "From the Statute of Elizabeth," he said, "down to the case before the Master of the Rolls, the doctrine of the court has been uniform, that where a person had possessed himself of the assets of a deceased person, and had not properly clothed himself with the office of executor or administrator, he was liable to be sued as administrator *de son tort*. The maxim was that a person could not take advantage of his own

wrong. A man could not say he was not an executor when he had acted as such." If the equitable doctrine was otherwise, law would provide a remedy where none existed in equity, for at law an executor *de son tort* may be sued.—*Law Times*..

LORD WESTBURY.

It is with much regret that we have to record the death of Lord Westbury. Although he had arrived at the ripe age of seventy-three years, and had for exactly half a century been in the law and of the law, his talents can at this moment be as ill-spared to the country as at any part of his long and useful career. His experience and authority would have been of great value in carrying the administration of the law over the transition period of 1874 and in starting the work of the new Court of Appeal; while in the single matter of the European Arbitration, his death will cause much obstruction of business, and may give rise to more than one difficulty. The profession also takes a just pride in the ex-Lord Chancellors. They are the mighty and venerable oaks of the legal *academus*. The position is surrounded with so much of honour, of respect, and of power in law and politics; they so completely represent the ideal and the actual height to which professional success under the constitution can carry the barrister of fortune, that the fall of one of them appears to be a loss to every disciple of the law. Not the less does this feeling affect us, when we reflect that the old is passing away, that all things are becoming new, and that ex-Lord Chancellors are no longer to occupy the same position which they have hitherto enjoyed and adorned, but are to be put back to work in the Court of Appeal, as though they had risen directly from the ranks, and had never sat on the Woolsack or had been custodians of the Great Seal.

The epithet 'clever' has been so much perverted from its proper sense that we scarcely like to apply it in eulogy. But the word exactly represents what Lord Westbury was. To matriculate at the age of fourteen years, to win a scholarship at college at the age of fifteen, and to obtain a first class in the classical and a second class in the mathematical schools at the age of eighteen, are peculiarly the