

imagine circumstances in which it might operate as onerously for the assigns as the "accounting clause" in the Werderman case might have done.

Does it make any difference that, in the covenant for payment, the mortgagor does not purport to bind his assigns, but only himself, his heirs, executors, and administrators?

Words that are in common everyday use often mislead us into forgetfulness of their true significance.

Who, then, are heirs, executors, and administrators, and why should they be drawn into other people's liabilities?

The answer is at once simple and suggestive: it is because they are, in law, assignees of the testator or intestate.

Their legal position and liability may be indicated by a few brief references. The heir-at-law is liable to an action for a breach of a covenant annexed to a reversionary estate which has descended to the heir; and evidence that the defendant is heir-at-law will support a declaration charging him as assignee: *Derisley v. Custance*, 4 T.R. 75. He is also liable, in common with the personal representative, to the extent of the assets which have come to him by descent upon all contracts under seal entered into by the ancestor, in which the heir is expressly named, but not otherwise: Addison on Contracts, 9th ed., 227.

In Viner's Abridgment, under the heading "Administrator or Executor: How Considered," we read: "Executor is in law testator's assignee by the very making him executor."

Executors or administrators are answerable, *as far as they have assets*, for debts of every description due from the deceased: Williams on Executors, 9th ed., page 1594.

The executor is not only liable upon all covenants by the testator which have been broken in his lifetime, but, moreover, he is answerable for all breaches in his own time, as far as he has assets, *for the privity of contract of the testator is not determined by his death*: Williams, p. 1630.

"So, if money be payable to A. or his assigns, his executor shall take it, for he is assignee in law."

"So, if A. covenant to grant a lease to I.S. and his assigns by Christmas, and I.S. dies before that time and before the grant of the lease, it must be made to his executors *as his assigns*, or they may bring covenant": Williams, pp. 697, 768.

It thus appears that executors and administrators, whether