

stand in unequal degrees, representation is necessary. *Nichols v. Shepard*, 63 N. H. 391. The brothers and sisters of the intestate all being dead, their representatives in equal degree, to wit, their children, become themselves principals, and stand next in degree to the intestate in their own right, and not by right of representation. 2 Blk. Com. 217, 218. They take by inheritance from the intestate, the remoter ancestor. They inherit nothing from the nearer ancestors, the brothers and sisters of the intestate, because the estate never became theirs. *Sedgwick v. Minot*, 6 Allen 171, 174. If the mother of the grandniece were living, she, with the eleven nephews and nieces who survived the intestate, being next in degree to the intestate, and all standing in equal degree, would take the estate *per capita*. So if there were no nearer kin than grandnephews and grandnieces, they being all related to the intestate in the same degree, the distribution would be *per capita*. But the mother of the grandniece having died before the intestate, her daughter takes as her representative. The estate, therefore, is distributed *per stirpes*, the eleven surviving nephews and nieces and the deceased niece being the roots or principals. The surviving nephews and nieces take each one twelfth part of the estate, and the grandniece, as the representative of her mother, takes the other twelfth. The result in this case is the same as if the estate were distributed *per capita*, but the stirpital mode of distribution is the correct mode, as would readily be seen if there had been more than one child of the deceased niece living at the time of the death of the intestate.

Doane v. Freeman, 45 Me. 113, was decided under c. 295, Laws Me. of 1852, which, except so far as it is embodied in the revision of 1857 (Rev. Sts. Me., c. 75, s. 1), has been repealed. *Davis v. Stinson*, 53 Me. 493. If the decision in that case is in conflict with the result we have reached in this case, we are unable to follow it.

Appeal dismissed.

ALLEN, J., did not sit: the others concurred.

TOWNE v. MARSHALL.

A horse required for actual use by the owner in his business of selling goods by sample, as a commercial traveller, is exempt from attachment.

TROVER, for a horse. Facts found by the court. The horse was taken by the defendant, a deputy sheriff, on a writ of attachment against the plaintiff, and sold. It was required for actual

use by the plaintiff in his business of selling goods by sample, as a commercial traveller, although it had never been so used, and was but four years old. The court held that the animal was exempt from attachment, and the defendant excepted.

Barnes, for the plaintiff.

C. W. Hoitt, for the defendant.

SMITH, J. The horse was exempt from attachment, if required for farming or teaming purposes, or other actual use. G. L., c. 224, s. 2. This was a question of fact, which has been determined at the trial term in favor of the plaintiff. *Somers v. Emerson*, 58 N. H. 48; *Parshley v. Green*, 58 N. H. 271; *Rice v. Wadsworth*, 59 N. H. 100; *Richards v. Hubbard*, 59 N. H. 158; *George v. Fellows*, 59 N. H. 206; *Cutting v. Tappan*, 59 N. H. 562; *Hall v. Nelson*, 59 N. H. 573; *George v. Fellows*, 60 N. H. 398; *Jaquith v. Scott*, 63 N. H. 5. The evidence was sufficient to justify the finding.

Exception overruled.

ALLEN, J., did not sit: the others concurred.

PRESTON v. CUTTER, *Ex'r, & a.*
 PRESTON, *Adm'r, v. CUTTER, Ex'r, Ap't.*
 PRESTON, *Adm'r, v. MUNROE & a., Ap't.*
 CUTTER, *Ex'r, Ap't, v. PRESTON.*

64	461
68	413
68	563
64	461
69	69
64	461
70	596
64	461
72	570
72	571

An indorsement of a promissory note belonging to a bank, made by the cashier, to himself, is voidable only, and operates to pass the legal title until avoided by the bank.

A new promise by an executor or administrator is sufficient to avoid the general six years statute of limitations; but he cannot waive the special statute which limits the time within which suit may be brought to three years after the original grant of administration.

The appointment of a creditor, as administrator of the estate of his debtor, suspends his right of action against the estate, and operates as a suspension of the statute of limitations with respect to his personal claim.

An administrator can maintain a bill in equity for the discovery of assets and the recovery of property conveyed by the deceased in fraud of his creditors, of whom he is one, so far as it is needed to pay the debts.