

istration shall operate as a revocation of such administration *durante minoritate*, or *pendente lite*. And upon such revocation, it shall be the duty of every administrator *durante minoritate*, or *pendente lite*, to exhibit to the orphans' court his accounts without delay, and to deliver to the executor or administrator, on demand, all the goods, chattels and personal estate in his possession belonging to the decedent; and on failure, his bond shall be liable to be put in suit by the executor or administrator; but all suits pending by or against any such administrator may be prosecuted or defended by the executor or administrator appointed to succeed him, in the same manner as hereinbefore provided where letters of administration have been revoked by the production of a will, and the grant of letters testamentary.

This section referred to in construing section 68—see notes thereto. *Baldwin v. Mitchell*, 86 Md. 380.

See notes to sec. 68.

### Administration de bonis non.

1904. art. 93. sec. 69. 1888, art. 93, sec. 70. 1860, art. 93, sec. 70. 1798, ch. 101, sub-chs. 5, 14, secs. 2, 6.

70. If an executor or administrator shall die before administration is completed, letters *de bonis non* or *de bonis non cum testamento annexo* may be granted at the discretion of the court, giving preference, however, to the person entitled if he shall actually apply for the same; and the form of the letters shall be as hereinbefore directed, except that the words "not already administered" shall be added in their proper place; and the authority conferred thereby shall be to administer all things herein described as assets, not converted into money and not distributed and delivered or retained by the executor or former administrator, under the court's direction.

#### When administrator d. b. n. will be appointed.

Since distributees can only get title through an administration, an administrator *d. b. n.* will be appointed although the estate has been entirely closed except to distribute. *Smith v. Dennis*, 33 Md. 449.

As to when letters *d. b. n.* will be granted, see also. *Woelfel v. Evans*, 74 Md. 350; *Myers v. Forbes*, 74 Md. 362; *Smith v. Dennis*, 33 Md. 449; *Scott v. Fox*, 14 Md. 388; *Alexander v. Stewart*, 8 G. & J. 226. *Cf. Myers v. Safe Deposit Co.*, 73 Md. 424.

#### Powers of administrator d. b. n.

To the administrator *d. b. n.* is committed only the administration of property which remains *in specie*. He has nothing to do with assets wasted, misapplied or converted, and hence, can not sue for a *devastavit*. *Morrow v. Fidelity Co.*, 100 Md. 262; *Sibley v. Williams*, 3 G. & J. 63; *Neale v. Hagthorp*, 3 Bl. 563; *Hagthorp v. Neale*, 7 G. & J. 13; *Hagthorp v. Hook*, 1 G. & J. 274; *United States v. Walker*, 109 U. S. 258. And see *Ingle v. Jones*, 9 Wall, 486.

Where a will confers a power to sell real estate upon an executor, an administrator *d. b. n. c. t. a.* succeeds to the power of sale under section 291; *contra*, however, if the executor dies before the testator, and hence, the power of sale never vests. If nothing remains to be done to complete the administration, letters *d. b. n.* are nugatory. *Wilcoxon v. Reese*, 63 Md. 545.