

out the written consent of such surety or sureties, or an order of a court or a judge thereof, made on such notice to such surety or sureties as the court or judge may direct.

1904, art. 93, sec. 39. 1888, art. 93, sec. 40. 1860, art. 93, sec. 40. 1798, ch. 101, sub-ch. 3, sec. 12.

40. Every administrator shall take the oath herein prescribed for an executor before administration shall be granted to him.

This section referred to in construing section 10—see notes thereto. *Smith v. Michael*. 113 Md. 21.

Cited but not construed in *Georgetown College v. Browne*, 34 Md. 455.

Where a trust company is administrator, no oath is now required—art. 11, sec. 49.

#### Administration by an Executor.

*Ibid.* sec. 40. 1888, art. 93, sec. 41. 1860, art. 93, sec. 41. 1798, ch. 101, sub-ch. 3, sec. 1. 1888, ch. 365. 1910, ch. 580 (p. 322).

41. Whenever any will or codicil shall have been authenticated or proved as herein directed before the register of wills or orphans' court, letters testamentary may forthwith be committed to the executor or executors named in said will or codicil; provided, the said executor or each of the executors shall execute a bond to the State of Maryland, with two sureties approved by the register or court in such penalty as the said register or court may require, or with a surety corporation authorized by the laws of this State to qualify upon such bonds, and whenever the surety upon such bond is a corporation so authorized to qualify as such, the amount of the penalty of such bond shall be fixed by the court or register in an amount not exceeding the probable value of the property and assets of the estate for which said executor or executors should account for and be liable according to law, and nothing herein shall prevent the court or register from increasing the penalty of any bond to such an amount as they or he may see proper, for sufficient cause shown; and said bond shall be conditioned for the faithful performance of the trust reposed in him as executor, to be lodged and recorded in said register's office, and subject to be put in suit as hereinafter mentioned; but whenever an executor is excused by the testator from giving bond, then only such bond shall be given in an amount as the court or register shall consider sufficient to secure the payment of the debts, taxes, assessments due by the deceased; and the said bond shall be conditioned accordingly; provided, that whenever any heir, distributee, legatee or devisee named in the will shall make it appear to the court that any executor who has given bond only as is last mentioned, is wasting the assets of the estate in his hands or that the said assets are in danger of being lost, wasted or misappropriated, then, in that case, the court shall require the said executor to increase the penalty of his bond to such an amount as the court shall think proper, and on his failure to increase the penalty of his bond as required by the court within a time