

party applying for or taking such letters of administration to show that letters testamentary have not been obtained in some other county upon the copy aforesaid; but such letters of administration shall not be granted if it shall be proved to the court, by affidavit or certificate under the seal of office, or if they shall have reason to believe that such letters testamentary have been granted in a county proper for granting them.

This section referred to in deciding that the court would apply the same rules in the matter of the time within which an application is made to revoke letters, as in an application for letters. *Edwards v. Bruce*, 8 Md. 397. *Cf. Stocksdale v. Conaway*, 14 Md. 107.

This section referred to in construing section 33—see notes thereto. *Georgetown College v. Browne*, 34 Md. 457.

See notes to sec. 44.

1904, art. 93, sec. 43. 1888, art. 93, sec. 44. 1860, art. 93, sec. 44. 1798, ch. 101, sub-ch. 3, sec. 4.

44. In case the said executor shall not have been present at the authentication or probate, but shall have been within this State, a summons may issue against him, either at the instance of a person interested, or *ex officio* by the orphans' court, or in their recess by the register of wills of the county wherein the will was authenticated or proved, returnable not less than twenty nor more than sixty days from date; and if the summons shall be returned "summoned," and the executor shall not appear accordingly, or appearing, shall not within twenty days thereafter file a bond as aforesaid, or if two such summonses shall be returned "*non est*," and the party shall not appear according to the tenor of the second summons, or appearing, shall not within twenty days thereafter file a bond as aforesaid, letters of administration may be granted as aforesaid; provided, nevertheless, that in case of sickness of, or accident to such executor, or reasonable excuse made in his behalf, the court may at discretion allow a further time, not exceeding forty days after such return or appearance, for filing such bond.

Where there is no evidence that the executrix was present at the probate, or was summoned, or was out of the state, or had been declared a lunatic, letters are improperly granted to another. *Wheeler v. Stifter*, 82 Md. 648.

This section referred to in deciding that the court would apply the same rules in the matter of the time within which an application is made to revoke letters as in an application for letters. *Edwards v. Bruce*, 8 Md. 397; *cf. Stocksdale v. Conaway*, 14 Md. 107.

This section referred to in construing section 33—see notes thereto. *Georgetown College v. Browne*, 34 Md. 457.

Ibid. sec. 44. 1888, art. 93, sec. 45. 1860, art. 93, sec. 45. 1798, ch. 101, sub-ch. 3, sec. 5.

45. If the sole executor be out of the State at the time of authentication or probate, and shall not within six months thereafter return and file a bond as aforesaid, letters of administration may be granted as aforesaid; but in case the said executor be out of the State, and shall return at any time before the expiration of the said six months, there may be a summons and the same proceedings thereon as if he