

letters testamentary or of administration had not been granted; and the same rules in making such executor or administrator plaintiff or defendant shall be observed as directed for making new parties in cases where a party dies.

Sundry items in an account, including expenses connected with trial of a caveat, funeral expenses, physician's bill, commissions, taxes, etc., upheld under this section. *Parker v. Leighton*, 131 Md. 418.

Sales duly made by an executor under a power given by the will are good until actual or implied revocation of his letters, and fact that a caveat has been filed before ratification of sale, does not alter rule. In case of subsequent revocation, proceeds of sale would be turned over to his successor. *Pacy v. Cosgrove*, 113 Md. 318; *Seldner v. McCreery*, 75 Md. 295.

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

An. Code, sec. 37. 1904, sec. 37. 1888, sec. 38. 1798, ch. 101, sub-ch. 14, sec. 1. 1874, ch. 402.

38. If any person entitled to administration shall deliver or transmit to the orphans' court a declaration in writing that he is willing to decline the trust, the court shall proceed as if such person were not entitled; and in any case in which letters testamentary or of administration have been or may hereafter be granted to any person, either as sole executor or administrator, or as executor or administrator to act in conjunction with another person or with other persons, and such executor or administrator shall be desirous to retire from and resign such appointment after he shall have accepted the same, said executor or administrator may exhibit his petition *ex parte* in the court by which said letters were granted, accompanied by a full and particular account under oath of his or her receipts and disbursements, if any, as such executor or administrator; and the said court upon the filing of such petition and accounts shall have jurisdiction in the premises, and shall cause notice to be given by publication in one or more papers of the city or county where such letters were granted, and for such time as the said court may deem proper, of the filing of said petition; and if no good cause shall be shown to the contrary, by the day that may be limited in that behalf in said notice, the said court shall release and discharge the said executor or administrator from the further performance of the duties of said appointment, and may pass such order as to costs and commissions and impose such terms in other respects as the nature of the case may require; provided, that such executor or administrator and his sureties shall not, by such discharge, be released from liability to any person in interest for past acts, defaults or omission of duty.

This section does not mean that right to letters may not be waived or lost, otherwise than by written renunciation. Waiver or estoppel. *McColgan v. Kenny*, 68 Md. 260; *Pollard v. Mohler*, 55 Md. 289. *Cf. McIntire v. Worthington*, 68 Md. 208.

Letter of party entitled recommending a stranger, held to amount to renunciation. *Carpenter v. Jones*, 44 Md. 629. *Cf. McIntire v. Worthington*, 68 Md. 208.

A renunciation is final and irrevocable unless made under mistake of fact. *Carpenter v. Jones*, 44 Md. 629. And see *Slay v. Beck*, 107 Md. 362; *Lutz v. Mahan*, 80 Md. 237; *Glenn v. Reid*, 74 Md. 241; *Pollard v. Mohler*, 55 Md. 289; *Thomas v. Knighton*, 23 Md. 327; *Stocksdale v. Conaway*, 14 Md. 106.

An order discharging administrator under this section, passed under mistake of existing facts, will be rescinded. *Cummings v. Robinson*, 95 Md. 84. And see *Cummings v. Robinson*, 95 Md. 760.

Letters granted to one son upon representation that there were no other sons, will be revoked upon its appearing that there was another son and two daughters.