

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.

Letters held to have been improperly revoked under this section and secs. 45, 46 and 47, inasmuch as a motion to revoke letters must be filed within same time after applicant has knowledge that they have been granted as that provided by law within which an application for letters must be made; application for revocation held too late. *Bowers v. Cook*, 124 Md. 570.

An application for revocation of letters need not be filed within thirty days from grant of such letters, but within time, after knowledge of order granting letters, provided by law within which original application for letters may be made. *Burgess v. Boswell*, 139 Md. 680; *Edwards v. Bruce*, 8 Md. 397. *Cf. Stocksdales v. Conaway*, 14 Md. 107.

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

See notes to sec. 45.

An. Code, sec. 44. 1904, sec. 43. 1888, sec. 44. 1798, ch. 101, sub-ch. 3, sec. 4.

45. 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 state, or had been declared a lunatic, letters are improperly granted to another. *Wheeler v. Stifler*, 82 Md. 648.

See notes to sec. 44:

An. Code, sec. 45. 1904, sec. 44. 1888, sec. 45. 1798, ch. 101, sub-ch. 3, sec. 5.

46. 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 had been in the State at the time of the authentication or probate; and upon the said proceedings letters of administration may be granted before the expiration of six months. But it shall not be held necessary to proceed by summons as afore-