

An. Code, 1924, sec. 35. 1912, sec. 34. 1904, sec. 34. 1888, sec. 35. 1839, ch. 21, sec. 1. 1894, ch. 462. 1898, ch. 496.

36. No administration or letters testamentary on any will executed after the 9th of April, 1898, shall be granted to any judge of the orphans' court, or of the circuit court, or register of wills of the county where he is judge or register of wills, unless he be next of kin or largest creditor.

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

An. Code, 1924, sec. 36. 1912, sec. 35. 1904, sec. 35. 1888, sec. 36. 1798, ch. 101, sub-ch. 5, sec. 4.

37. If administration shall be granted and a will for the disposition of the personal estate of the deceased shall afterwards be proved according to law, and an executor named therein shall apply for letters testamentary within thirty days thereafter, and shall be capable, and shall execute a bond as herein directed, letters testamentary shall be accordingly granted to him, and the same shall be construed as a revocation of the letters of administration.

The grant of letters is a judgment *in rem*, and does not prove intestacy when a will is offered for probate. *Emmert v. Stouffer*, 64 Md. 551.

This section makes no distinction between a foreign and domestic will, and in the light of sec. 369, there is no reason for any such distinction. *Dalrymple v. Gamble*, 66 Md. 305.

This section referred to in construing sec. 38—see notes thereto. *Pacy v. Cosgrove*, 113 Md. 319.

Cited but not construed in *Georgetown College v. Browne*, 34 Md. 455; *Kane v. Paul*, 14 Pet. 33.

See notes to sec. 73.

An. Code, 1924, sec. 37. 1912, sec. 36. 1904, sec. 36. 1888, sec. 37. 1798, ch. 101, sub-ch. 5, sec. 4. 1802, ch. 101, sec. 6.

38. All acts done by any executor or administrator according to law, before any actual or implied revocation of his letters, shall be valid and effectual, and the executor or administrator obtaining letters after a revocation shall thereby be authorized to prosecute any actions at law or in equity commenced by the former executor or administrator, and obtain judgment in his own name, and likewise to defend any suit commenced against the former executor or administrator; and the new executor or administrator shall have the benefit of all judgments obtained by the former executor or administrator, and shall be bound by all judgments obtained against him, unless the same shall be shown to have been obtained by fraud and set aside by the court in which the judgment was rendered upon such suggestion of fraud, either upon examination in a summary way into the fact, or by directing an issue to try the same, or unless the executor or administrator shall show to the court that there are good grounds to open the judgment, in which case the court shall open the judgment for future litigation; and with respect to the allowance of costs, all such executors and administrators shall be on the same footing as if 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.

Executor is protected in all lawful acts done before revocation of letters as result of caveat proceedings. *Schmidt v. Johnston*, 154 Md. 133.

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