

tion shall operate as a revocation of such administration *durante minoritate*, or *pendente lite*. And upon such revocation, it shall be the duty of every administrator *durante minoritate*, or *pendente lite*, to exhibit to the orphans' court his accounts without delay, and to deliver to the executor or administrator, on demand, all the goods, chattels and personal estate in his possession belonging to the decedent; and on failure, his bond shall be liable to be put in suit by the executor or administrator; but all suits pending by or against any such administrator may be prosecuted or defended by the executor or administrator appointed to succeed him, in the same manner as hereinbefore provided where letters of administration have been revoked by the production of a will, and the grant of letters testamentary.

The duties of an administrator *pendente lite* are not co-extensive with those of an ordinary administrator; he cannot distribute and his letters are revoked by granting of letters testamentary or of administration. Having granted letters under a mistake of fact, or in ignorance of existence of a paper purporting to be a will, orphans' court may revoke them. Letters should have been revoked. *Burgess v. Boswell*, 139 Md. 679.

This section referred to in construing sec. 72—see notes thereto. *Baldwin v. Mitchell*, 86 Md. 380. And see *Warfield v. Valentine*, 130 Md. 592.

See notes to sec. 72.

### Administration de Bonis Non.

An. Code, 1924, sec. 71. 1912, sec. 70. 1904, sec. 69. 1888, sec. 70. 1798, ch. 101, sub-chs. 5, 14, secs. 2, 6.

**74.** If an executor or administrator shall die before administration is completed, letters *de bonis non* or *de bonis non cum testamento annexo* may be granted at the discretion of the court, giving preference, however, to the person entitled if he shall actually apply for the same; and the form of the letters shall be as hereinbefore directed, except that the words "not already administered" shall be added in their proper place; and the authority conferred thereby shall be to administer all things herein described as assets, not converted into money and not distributed and delivered or retained by the executor or former administrator, under the court's direction.

#### When administrator d. b. n. will be appointed.

Proceedings commenced by next of kin do not abate by death of administrator and appointment of party filing petition as administrator *d. b. n.*, nor disqualify him from prosecuting in his own right what was begun as next of kin. *Fulford v. Fulford*, 153 Md. 89.

Since distributees can only get title through an administration, an administrator *d. b. n.* will be appointed although estate has been entirely closed except to distribute. *Smith v. Dennis*, 33 Md. 449; *Lawson v. Burgee*, 121 Md. 208.

As to when letters *d. b. n.* will be granted, see also *Woelfel v. Evans*, 74 Md. 350; *Myers v. Forbes*, 74 Md. 362; *Smith v. Dennis*, 33 Md. 449; *Scott v. Fox*, 14 Md. 388; *Alexander v. Stewart*, 8 G. & J. 226. Cf. *Myers v. Safe Deposit Co.*, 73 Md. 424; *Lawson v. Burgee*, 121 Md. 208.

#### Powers of administrator d. b. n.

To administrator *d. b. n.* is committed only administration of property which remains *in specie*. He has nothing to do with assets wasted, misapplied or converted, and hence cannot sue for a *devastavit*. *Morrow v. Fidelity Co.*, 100 Md. 262; *Sibley v. Williams*, 3 G. & J. 63; *Neale v. Hagthorp*, 3 Bl. 563; *Hagthorp v. Neale*, 7 G. & J. 13; *Hagthorp v. Hook*, 1 G. & J. 274; *United States v. Walker*, 109 U. S. 258. And see *Ingle v. Jones*, 9 Wall, 486.

Where a will confers a power to sell real estate upon executor, administrator *d. b. n.*, *c. t. a.* succeeds to power of sale under sec. 302; *contra*, however, if executor dies before testator, and hence power of sale never vests. If nothing remains to be done to complete administration, letters *d. b. n.* are nugatory. *Wilcoxon v. Reese*, 63 Md. 545.

#### Generally.

When an administration in orphans' court by an administrator *d. b. n.*, *c. t. a.* is necessary to confer title upon a legatee. Jurisdiction of equity. Property in-