

letters testamentary have been granted in a county proper for granting them.

**52.** 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.

Id s 44  
1798, c 101,  
sub-c 3 s 4  
Proceedings  
when sole ex-  
ecutor not pres-  
ent at probate,  
but within  
State.

Proviso.

**53.** 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 aforesaid, in case the party be as aforesaid out of the State at the time of the authentication or probate, and shall return as aforesaid; but letters of administration after the expiration of the said six months may be granted without such proceeding, by summons against the executor so returning.

Id s 45  
1798, c 101,  
sub-c 3, s 5  
Proceedings  
where sole ex-  
ecutor not pres-  
ent at probate,  
and out of  
State

**54.** If there shall be more than one executor named in a will, there may be the same proceedings with respect to each of them as if he were the only executor named; and any circumstances under which letters of administration may be granted, on failure of a sole named executor, shall authorize the granting letters testamentary to one or more of the executors, on failure of one or more of the rest; and any circumstances under which letters of administration may be granted, on failure of a sole named executor, shall authorize the granting of such letters of administration on failure of all the executors; and in no case where there are several executors named in a will, shall letters testamentary be granted to one only, or to any number of them less than the whole, or shall letters of administration be granted until there shall be such proceedings against

Id s 46  
1798, c 101,  
sub-c 3, s 6  
Proceedings  
when more than  
one executor.