

administration, shall be granted, in the same manner as if she had not been named in the will, unless her husband shall, with two sureties, give bond as aforesaid, to be received and sued as aforesaid, for her faithful performance; and the bond of any executrix who is unmarried, and above eighteen, given as aforesaid, shall be binding in the same manner as if she were of the full age of twenty-one years.

CHAP. 5. *To whom, and under what circumstances, letters of administration may be granted.*

1. NO letters of administration shall be granted to a person infamous as aforesaid, or to an idiot, lunatic, or person *non compos mentis*, or to a person who is not a citizen of the United States, or under eighteen years of age; and any question respecting in any, soundness of mind, citizenship or age, may be heard and established as if the same respected a person named as an executor.

2. Whenever any person hath died intestate, leaving in this state goods, chattels, or personal estate, letters of administration may notwithstanding be granted by the orphans court of the county wherein was the party's mansion-house or residence; or in case he or she had no mansion or residence within the state, letters shall be granted in the county where the party died; and in case the party neither had mansion or residence, nor died within the state, letters may be granted in the county wherein lies, or is supposed to lie, a considerable part of the party's personal estate.

3. It shall be incumbent on any person applying for such letters, to prove such dying intestate to the satisfaction of the court, unless the same be notorious; and the court may examine such person on oath or affirmation, touching the time, place, and manner of the death, and whether or not the party dying left any will; and if such dying intestate be not proved to the satisfaction of the court, no letters of administration shall be granted; no such letters shall be granted until at least twenty days after the death of the supposed intestate, and at least seven days after application for the same.

4. If such letters shall be granted, and a will for the disposing of the personal estate of the deceased shall afterwards be proved according to law, and an executor or executrix, or executors named therein, shall apply for letters testamentary within thirty days thereafter, and shall be capable of the same, and shall execute a bond as aforesaid, letters testamentary shall be accordingly granted, and the same shall be construed as a revocation of the letters of administration; provided nevertheless, that all acts done by any administrator or administratrix according to law, before any actual or implied revocation of the letters of administration, shall be valid and effectual; and provided, that the executor, executrix or executors, so obtaining letters testamentary, shall thereby be authorized to prosecute any actions at law or equity, commenced by the administrator, administratrix or administrators, and to obtain judgment in his, her, or their own names, and likewise to defend any suit, as aforesaid, commenced against the said administrator, administratrix or administrators; and the granting letters testamentary in such case shall not be construed to affect any suit, as aforesaid, commenced against the administrator, administratrix or administrators, but the plaintiff or plaintiffs shall be allowed to prosecute the same unto judgment; nor shall the granting such letters testamentary be construed to affect any suit brought by the administrator, administratrix or administrators, but the same shall be prosecuted unto judgment, unless the executor, executrix or executors, shall come into court, and pray that the same be struck out, or discontinued; and the executor, executrix or executors, shall have the benefit of all judgments obtained by the administrator, administratrix or administrators, and shall be bound by all judgments obtained against them, 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 an examination in a summary manner into the fact, or by directing an issue to try the same, or unless the said executor shall shew to the court that there are good grounds to open the judgment, in which case the court shall and they are hereby authorized to open the said judgment for future litigation; and with respect to the allowance of costs, all administrators shall be on the same footing as if letters testamentary had not been granted, and the same rules in making the executor or executors plaintiffs or defendants shall be observed as are directed by the act of one thousand seven hundred and eighty-five; chapter eighty.