

TESTAMENTARY SYSTEM.

granted by the orphans court of the county wherein was the probat or authentication, to such person as they might be granted to in case of intellacy; and if the said executor or executrix, so procuring an attested copy, shall not obtain letters testamentary in some other county, within seventy days from the date of the copy, letters of administration may be granted as aforesaid by the orphans court of the county where the will was proved or authenticated, and it shall not be incumbent on the party applying for or taking such letters of administration, to shew that letters testamentary have not been obtained in some other county on 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.

4. In case the said sole executor or executrix shall not have been present at the authentication or probat, but shall have been within the state, a summons may issue against him or her, either at the instance of a person interested, or *ex officio* by the orphans court, or (in their recess) the register of wills of the county wherein the will was authenticated or proved, returnable not less than twenty, nor more than thirty days after date; and if the summons shall be returned summoned, and the executor or executrix shall not appear accordingly, or appearing shall not, within twenty days thereafter, file a bond or bonds 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 executrix, or reasonable excuse made in his or her behalf, the court may, at discretion, allow a further time, not exceeding forty days after such return or appearance, for filing such bond.

5. If the said sole executor or executrix be out of the state at the time of authentication or probat, 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 as aforesaid, and shall return, at any time before the expiration of the said six months, in order to expedite the granting of letters, there may be a summons, and the same proceedings thereon, as if he or she had been in the state at the time of authentication and probat, 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 authentication or probat, 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 or executrix so returning.

6. If there shall be more than one executor or executrix named in a will containing any disposition relative to any personal estate, there may be the same proceedings with respect to each of them as if he or she were the only executor or executrix named; and any circumstances under which letters of administration may be granted, on failure of a sole named executor or executrix, shall authorise the granting letters testamentary to one or more of the executors, on the 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 or executrix, shall authorise 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 each of them failing as would authorise the issuing letters of administration in case of the failure of a sole named executor.

7. If any executor or executrix named in a will shall file, or transmit to the orphans court of the county wherein the will shall have been authenticated or proved as aforesaid, an attested renunciation in writing of his or her trust, there