

TESTAMENTARY SYSTEM.

may be the same proceedings, with respect to granting letters testamentary or of administration, as if the party so renouncing had not been named on the will; provided nevertheless, that any executor or executrix named in a will shall be entitled, notwithstanding any failure or renunciation as aforesaid, on filing a bond as aforesaid before letters testamentary or of administration shall actually be committed to another or others as aforesaid, to have letters testamentary granted to him or her, or to be included therein, as the case may require.

8. In case letters testamentary shall be granted to one or more of the executors named in a will, on failure of the rest, no executor or executrix, not named in the said letters, shall in any manner interfere with the administration, or have any greater interest in the estate of the deceased, than if he or she had not been named in the will as executor or executrix; and if letters of administration, with a copy of the will annexed, shall be granted, no executor or executrix therein named shall in any manner interfere further with the administration, or have any greater interest in the estate aforesaid, than if he or she had not been named as aforesaid; and no executor or executrix named in a will shall, before letters testamentary shall be granted to him or her, have any power to dispose of any part of the estate of the deceased, or to interfere therewith, further than is necessary to collect and preserve the same; provided nevertheless, that any act of an executor or executrix named in a will, done before obtaining letters testamentary, shall, in case he or she shall afterwards obtain such letters, be as valid and effectual as if the said act had been done after obtaining such letters; and in case of a suit commenced by such executor or executrix, it shall be sufficient to produce the said letters, or a certificate under the seal of the office where they were obtained, that they have been granted to the party at any time before the trial or final hearing on such suit; and in any case whatever where an exhibit of such letters testamentary or of administration would be good or available, a certificate as aforesaid shall also be good and available.

9. It shall not be necessary, in any suit at law or equity brought by or against an executor, executrix or executors, to make a party of any executor or executrix named in the will, who shall not also be named in the letters testamentary, but the making him, her or them, a party or parties by mistake, shall not vitiate any proceeding for or against the proper party or parties.

10. Any bond executed by an executor or executrix, or an administrator or administratrix, as hereafter mentioned, shall be recorded in the office of the register of wills where administration is granted; and any person conceiving him or herself interested in the administration of the estate, shall be entitled to, and have on demand, a copy of such bond, and a certificate from the register, under his hand and the seal of his office, paying ten shillings for the same; upon which copy and certificate an action may be maintained, in the name of the state, for the use of the party interested, who shall state in his declaration the damage by him or her sustained, and judgment may be recovered upon such action for the damage actually sustained, to be fixed by a jury; and the plea of *non est factum* shall not be received to such action, unless verified by the oath, or affirmation, as the case may require, of the defendant or defendants tendering the same; and in such action the defendant or defendants may plead, that although he (she or they) executed such bond, the party to whose use the same is sued hath not been damaged by the act of the said executor, (or executrix, administrator or administratrix;) and if the defendant or defendants shall plead *non est factum*, verified as aforesaid, and issue shall thereon be joined, and the jury shall find against the defendant or defendants, they shall also proceed to find the damage actually sustained by the party for whose use the action shall be brought.

11. The condition of the bond to be passed by any executor or executrix, administrator or administratrix, shall be as follows, or to the following effect:
“ The condition of the above obligation is such, that if the above bounden ———
“ ——— shall well and truly perform the office of executor or executrix, administrator or administratrix, of ——— ———, late of ———, deceased; according to
“ law,