

Costs.

Where costs are rendered against an administrator under this section, such judgment is against the administrator personally and not against the estate. Hence, the administrator's surety is not responsible. *Ferguson v. Cappeau*, 6 H. & J. 402.

The authority given the orphans' court by section 5 to allow costs and counsel fees, is somewhat modified by this section. *Dalrymple v Gamble*, 68 Md. 164.

This section provides the only restraint upon executors in disputing claims. *Bowie v. Ghiselin*, 30 Md. 557.

Generally.

Distinction drawn between the right of action under this section for personal injuries resulting in death, and the right of action under article 67, section 1; each is independent of the other. History of this section. *Stewart v. United Electric, etc., Power Co.*, 104 Md. 334.

Money collected by an administrator under this section for damages to the deceased and his estate, must be duly accounted for like other assets; *contra* as to damages recovered by the administrator under the statute of another jurisdiction (similar to those recoverable in Maryland under article 67), on account of the death of the deceased. *Dronenburg v. Harris*, 108 Md. 616.

The words "personal action" construed. The act of 1798, ch. 101, held to include an action of trespass *q. c. f.* *Kennerly v. Wilson*, 1 Md. 107. As to trover, see *Brummett v. Golden*, 9 Gill, 97.

The act of 1888, ch. 262, held to have no application where the plaintiff died before its passage. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

The act of 1861, ch. 44, strictly construed. That act had no application to actions for malicious prosecution. *Clark v. Carroll*, 59 Md. 182.

See notes to sec. 81.

For the statute regulating suits for negligence resulting in death, for the benefit of the family of the deceased, see art. 67, sec. 1, *et seq.*

For forms of declarations and pleas in suits by and against executors and administrators, see art. 75, sec. 24, sub-sec. 90, *et seq.*

As to the plea by an administrator of "insufficient assets," and proceedings thereafter, see art. 26, sec. 26, *et seq.*

As to suits before a justice of the peace where executors or administrators are parties, see art. 52, sections 9 and 10; see also. art. 52, sec. 59.

As to abatement in the court of appeals, see art. 5, sec. 75, *et seq.*

1904, art. 93, sec. 104. 1888, art. 93, sec. 105. 1860, art. 93, sec. 106.
1720, ch. 24, sec. 2. 1838, ch. 329.

105. No creditor shall bring a suit upon an administration or testamentary bond for any debt or damages due from or recovered against the decedent before a *non est* on a summons is returned against the administrator, or a *fiery facias* returned *nulla bona* by the sheriff of the county where the administration was granted, or where the effects of such deceased lie, or such other apparent insolvency or insufficiency of the estate of such administrator as shall, in the judgment of the court, render such creditor remediless by any other reasonable means save that of suing such bond.

This section limits the broad language of section 101. This section is applicable to creditors whose debts have been established, and a declaration must allege a compliance with the prescribed conditions. *Mertens v. Moore*, 108 Md. 637. As to the allegations of the *narr.*, see also. *Dorsey v. State*, 4 G. & J. 477; *Laidler v. State*, 2 H. & G. 280; *Seegar v. State*, 5 H. & J. 488; *cf. Laidler v. State*, 2 H. & G. 282.

For a replication to a plea setting up a failure to comply with this section, held sufficient as demonstrating that the creditor was remediless save by suing the bond, see *Iglehart v. State*, 2 G. & J. 245.