

The act of 1720, ch. 24, is to be liberally construed—design thereof. Although an administrator be returned *non est*, if before suit brought on the bond he voluntarily appears, such suit on the bond can not be maintained. *State v. Jones*, 8 Md. 91.

This section has no application where the bond is simply conditioned upon the payment of all debts, legacies, etc. *Duvall v. Snowden*, 7 G. & J. 433.

This section has no application in a creditors' suit. *Emory v. Seth*, 2 Bl. 542.

Cited but not construed in *Seighman v. Marshall*, 17 Md. 571; *Brown v. Murdock*, 16 Md. 531.

1904, art. 93, sec. 105. 1888, art. 93, sec. 106. 1860, art. 93, sec. 107. 1798, ch. 101, sub-ch. 8, sec. 11.

106. If any action shall be commenced against an administrator for the recovery of a larger debt or damages than he shall think due, so that the same cannot be ascertained before verdict, the administrator shall be allowed to retain such sum to meet the said debt or damages as the orphans' court shall allow, and if more than enough be allowed, he shall afterwards account for it, but nothing shall be retained on account of such further debt or damages where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims.

The protection of this and the following section should be extended to distributees who are contesting claims which the executors decline to contest, especially where a large part of the disputed claims is against the executors themselves. *Clarke v. Sandrock*, 113 Md. 429.

The retention of assets to meet an unliquidated demand against the estate is not the right of the executor, but rests in the sound discretion of the orphans' court. *Ing v. Baltimore, etc., Ass'n*, 21 Md. 431.

Cited but not construed in *Miller v. Dorsey*, 9 Md. 323.

Ibid. sec. 106. 1888, art. 93, sec. 107. 1860, art. 93, sec. 108. 1798, ch. 101, sub-ch. 8, sec. 18.

107. If a claim be exhibited against an administrator, which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or to be delivered up or distributed in case the claim be not satisfied; and if on any claim exhibited and disputed as aforesaid, the creditor or claimant shall not, within nine months after such dispute or rejection, commence a suit for recovery, the creditor shall be forever barred; and the administrator may plead this section in bar, together with the general issue or other plea proper to bring the merits of the cause to trial; and on any dividend to be made nine months after such dispute or rejection and failure to bring suit, the administrator may proceed to pay or distribute as if he had not knowledge or notice of such claim, or as if it did not exist; but if the claim be put in suit within nine months, it may be ascertained by verdict or otherwise, and the court shall proceed as herein directed, regard being had to the rules herein laid down as to the notice to be given by the administrator, and distribution or payment to be made after such notice.

Construction of the word "exhibited", as used in this section. If the claim is passed by the orphans' court under section 116, and payment