

demand and refused, this section applies although the claim is not physically presented to the administrator. Effect of an assignment of the claim. *Bradford v. Street*, 84 Md. 276; *cf. Coburn v. Harris*, 53 Md. 370; *Peterson v. Ellicott*, 9 Md. 60.

Suit brought and a plea of *non assumpsit* are a sufficient demand and refusal to pay under this section. This section has no application to a claim for goods sold the administrator after the death of the deceased, but has reference to such claims as are referred to in sections 91 and 92. *Coburn v. Harris*, 58 Md. 100.

This section distinguished from sections 108 and 118, in that the latter only relieve the executor from liability, whereas this section bars the claim entirely. *Zollickoffer v. Seth*, 44 Md. 370. And see *Coburn v. Harris*, 53 Md. 371; *Coburn v. Harris*, 58 Md. 104.

Where one of two executors disputes a claim which has been passed by the orphans' court, it becomes incumbent upon the claimant to institute suit thereon at law or in equity so as to establish it by judgment or decree. *Strasbaugh v. Dallam*, 93 Md. 716.

This section has no application to possible or contingent claims. *Orendorff v. Utz*, 48 Md. 304.

See notes to sec. 106.

1904, art. 93, sec. 107. 1888, art. 93, sec. 108. 1860, art. 93, sec. 109.
1798, ch. 101, sub-ch. 8, sec. 15. 1823, ch. 131, sec. 2.

108. In case all the assets have been paid away, delivered or distributed as herein directed, and a claim shall afterwards be exhibited of which the administrator hath not notice by the exhibition of the claim legally authenticated as herein required, he shall not be answerable for the same; and if he be sued for any claim, and shall make it appear to the court in which suit is brought that he hath so paid away, delivered or distributed, and the plaintiff cannot prove that the defendant had notice as aforesaid before such payment, delivery or distribution, the court shall not proceed to give judgment (although the amount of the claim against the deceased may be ascertained), until the plaintiff shall be able to show further assets coming into the defendant's hands; but if the plaintiff shall prove notice as aforesaid of the said claim against the defendant, judgment may immediately be given for such sum as the plaintiff ought to have received at the dividend, and *feri facias* may issue and have effect, and further judgment may be given on coming in of further assets.

An administrator who fails to give the notice required by section 109 is not entitled to the protection of this section; nor will this section protect the administrator if he has notice of the claim. What amounts to notice? (But see section 116). *Stewart v. Carr*, 6 Gill, 410.

An administrator who proceeds as the law directs is protected from the claims of judgment creditors, and of all others of which he had no notice. *Cape Sable Co.'s Case*, 3 Bl. 670.

Although an executor is relieved from liability under this section, the creditor may still pursue his remedy against the property or the legatee or devisee. This section distinguished from section 107. *Zollickoffer v. Seth*, 44 Md. 370; *Coburn v. Harris*, 53 Md. 371.

This section has no application to taxes; executors must take notice of, and pay them. *Bonaparte v. State*, 63 Md. 469.

This section will be applied by analogy in a creditors' suit. *Welch v. Stewart*, 2 Bl. 39.

Cited but not construed in *Coward v. State*, 7 G. & J. 479.