

An. Code, sec. 106. 1904, sec. 105. 1888, sec. 106. 1798, ch. 101, sub-ch. 8, sec. 11.

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

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

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

An. Code, sec. 107. 1904, sec. 106. 1888, sec. 107. 1798, ch. 101, sub-ch. 8, sec. 18.

109. 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 orphans' court under sec. 121, and payment demanded and refused, this section applies although claim is not physically presented to administrator. Effect of an assignment of 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 administrator after death of deceased, but has reference to such claims as are referred to in secs. 93 and 94. *Coburn v. Harris*, 58 Md. 100.

Where suit is not brought within nine months after rejection of claim, surety is not bound by a judgment on such claim against administrator. *Md. Casualty Co. v. State*, 137 Md. 154.

This section distinguished from secs. 111 and 123, in that latter only relieve the executor from liability, whereas this section bars claim entirely. *Zollickoffer v. Seth*, 44 Md. 370. And see *Coburn v. Harris*, 53 Md. 371; *Coburn v. Harris*, 58 Md. 104.