

participate in the benefit of the decree in the case; but when the debt of such plaintiff shall not be admitted by the pleadings in the case on the part of the defendant interested in contesting the same, the court shall, on application of any of the parties, send to any court of law an issue for determining the fact of such indebtedness, subject to the rules usually applied to issues out of chancery; provided this section shall not apply to any case pending in court in this State on April 7, 1898.<sup>1</sup>

#### **Application of this section.**

This section has no application where the thing complained of has not been executed, but rests merely in contemplation or intention. *Balls v. Balls*, 69 Md. 389; *Frederick Bank v. Shafer*, 87 Md. 57; *Hubbard v. Hubbard*, 14 Md. 360; *Uhl v. Dillon*, 10 Md. 503.

This section applies only in equity, and does not remove the disability of a non-judgment creditor at law. *Wanamaker v. Bowes*, 36 Md. 56.

This section only removes the disability of non-judgment creditors in case of a fraudulent conveyance, but leaves the law in other cases wholly unaffected. *Morton v. Grafflin*, 68 Md. 563.

This section applied. *Flack v. Charron*, 29 Md. 323; *Sanderson v. Stockdale*, 11 Md. 573; *Wylie v. Basil*, 4 Md. Ch. 329.

This section has no application to a bill to restrain a mortgage sale. Application of this section. Fraud not made out. *Kisney v. Drury*, 141 Md. 690.

#### **Generally.**

While the bill must allege an existing indebtedness, the evidence or proof of the debt need not be set out. Before relief can be granted, the claim must be proved. *Sinclaire v. Auxiliary Realty Co.*, 99 Md. 230.

Object of this section. The findings of a jury as to the indebtedness, are entitled to great weight and should prevail unless the equity court is clearly convinced that they are erroneous. *Goodman v. Wineland*, 61 Md. 452.

This section referred to in deciding that a simple contract creditor cannot interfere in litigation in which the party in possession of property, or claiming title to it, is engaged. *Postal Co. v. Snowden*, 68 Md. 123.

The comprehensive language of this section, both as to what may be vacated, and who may institute the proceeding, commented on and applied in a partnership case. *Sanderson v. Stockdale*, 11 Md. 573.

This section does away with the necessity of a lien by judgment or otherwise, against the property, as preliminary to equitable relief. *Schaferman v. O'Brien*, 28 Md. 574.

This section referred to in determining what creditors may set aside a fraudulent conveyance. *Spuck v. Logan*, 97 Md. 159.

This section referred to in discussing the right of a creditor without a judgment to attack a conveyance on the ground that it is void under a statute. *High Grade Brick Co. v. Amos*, 95 Md. 601.

Prior to the act of 1835, ch. 380, sec. 2, equity would not interfere, even against fraudulent conveyances, until judgment had been obtained. *Frederick Bank v. Shafer*, 87 Md. 58; *Morton v. Grafflin*, 68 Md. 562; *Christopher v. Christopher*, 64 Md. 588; *Wylie v. Basil*, 4 Md. Ch. 329; *Richards v. Swan*, 7 Gill, 377. *Cf. Swan v. Dent*, 2 Md. Ch. 117.

Where a bill charges fraud, a plea must be supported by answer—sec. 172.

As to appeals in cases of issues sent to a court of law, see art. 5, sec. 5.

As to fraudulent conveyances, see also arts. 39B, 45 and 47.

### **Husband and Wife.**

An. Code, sec. 48. 1906, ch. 768.

49. Any married man who shall think that the pledging of his credit by his wife for necessaries is being abused, may apply by petition to any

<sup>1</sup>No attempt is here made to collect or annotate cases involving fraudulent conveyances apart from the particular application of this section—see Md. Digest. See also note to *Swan v. Dent*, 2 Md. Ch. 111.