

part for the benefit of the creditor; provided he can satisfy the court that such claim is just or may probably be recovered; and when it is certain there is a claim of a person out of the State, but the amount thereof can not be ascertained, the court may allow such sum as it may think proper to be retained, to be accounted for, nevertheless, if within three years after the death of the deceased no demand shall be made by the creditor or his representatives and suit brought on the rejection thereof by the administrator; and from the time of making payment to or dividend amongst the creditors as herein directed, all interest on such claim or proportionable part thereof shall cease; provided that the administrator shall pay or tender the same, together with such further part as shall be due, on further money coming into hand, to the creditor on demand; and in case the administrator on demand of a greater sum made by such creditor shall tender the principal and interest which were due at the time of such dividend, or the just proportional part thereof, together with such further proportion as aforesaid of assets, and the claimant shall notwithstanding bring suit, the administrator at any time before judgment may bring into court the money so tendered, or money to an equal amount; and if he shall satisfy the court that the said sum was really the amount of the principal and interest due at the time of such dividend, or of the proportionable part to which the claimant was entitled at the dividend, together with such further proportion (if any there arose), the court shall thereupon give judgment that the sum so brought in, deducting the costs sustained by the defendant, be paid to the plaintiff, and the said judgment shall be pleadable in bar to any action afterwards brought to recover the said debt; or, in case the administrator shall not tender as aforesaid before the suit brought, the creditor shall recover no more than the proportionable part due at the time of the dividend, and such further proportion as he was entitled to on the coming in of further assets, with interest on each to the time of judgment.

Object of portion of this section authorizing administrator to retain money to meet a claim; such retainer does not imply an acknowledgment of debt, or remove bar of statute of limitations. *Pole v. Simmons*, 49 Md. 19.

Cited but not construed in *State v. Md. Casualty Co.*, 164 Md. 74; *Goldsborough v. DeWitt*, 171 Md. 266; *Carrollton Bank v. Hollander* (Judge Smith, Circuit Court of Baltimore City), *Daily Record*, Mar. 7, 1939; *Frank et al. v. Warehime*, *Daily Record*, July 7, 1939.

An. Code, 1924, sec. 106. 1912, sec. 104. 1904, sec. 103. 1888, sec. 104. 1798, ch. 101, sub-ch 8, sec. 5. 1861, ch. 44. 1888, ch. 262. 1929, ch. 570. 1937, ch. 127.

109. Executors and Administrators shall have full power to commence and prosecute any personal action whatever, at law or in equity, which the testator or intestate might have commenced and prosecuted, except actions of slander, provided, that if the death of the testator or intestate shall have resulted from the wrong for which any such personal action might have been commenced, then the Executor or Administrator shall be entitled to recover the funeral expenses of said testator or intestate, not to exceed, however, the sum of Three Hundred Dollars (\$300.00), in addition to any other damages recoverable in such actions; and they shall be liable to be sued in any court of law or equity, in any action (except slander) which might have been maintained against the deceased; and they shall be entitled to and answerable for costs in the same manner as the deceased would have been, and shall be allowed for the same in their accounts, if the court awarding costs against them shall certify that there were probable grounds for instituting, prosecuting or defending the action