

on which a judgment or decree shall have been given against them; provided, however, that any such action for injuries to the person to be maintainable against an executor or administrator must be commenced within six calendar months after the death of the testator or intestate.

One injured in collision of automobile in which she was riding, with automobile negligently driven by one killed therein, had cause of action against executor of decedent's estate but not against decedent's father, who owned automobile. *Crim v. Lumbermen's Mutual Casualty Co.*, 26 F. Supp. 715.

Costs and counsel fees.

The allowance of a counsel fee of \$75 and of costs in an appeal from justice of the peace (whose judgment was a sufficient protection to the administrator), in a replevin suit involving property appraised at \$40, the personal estate being inventoried at \$170, held improper. *Martin v. Staubs*, 142 Md. 271-2.

Allowance of counsel fee and costs held improper in view of this section. Authorities reviewed. *Beachley v. Estate of Bollinger*, 119 Md. 154.

Where costs are rendered against administrator under this section, such judgment is against administrator personally and not against estate. Hence administrator's surety is not responsible. *Ferguson v. Cappeau*, 6 H. & J. 402.

The authority given orphans' court by sec. 5 to allow costs and counsel fees is somewhat modified by this section. *Dalrymple v. Gamble*, 68 Md. 164.

This section provides the only restraint upon executors in disputing claims. *Bowie v. Ghiselin*, 30 Md. 557.

Generally.

In action for funeral expenses under this section, see notes to art. 56, sec. 196, and art. 67, sec. 1, in this particular case. *White v. State*, 106 F. (2d) 392.

This section referred to in construing art. 67, sec. 1. *Davis v. Ruzicka*, 170 Md. 114, 116.

Cited in *Carrollton Bank v. Hollander* (Judge Smith, Circuit Court of Baltimore City), Daily Record, Mar. 7, 1939; *White v. State* (U. S. Circuit Court of Appeals, 4th Circuit), Daily Record, Sept. 1, 1939.

Distinction drawn between right of action under this section for personal injuries resulting in death, and right of action under art. 67, sec. 1; each is independent of other. History of this section. *Stewart v. United Electric, etc., Power Co.*, 104 Md. 334; *Melitch v. United Rwy. Co.*, 121 Md. 463; *W., B. & A. R. Co. v. State*, 136 Md. 120; *White v. Safe Dep. & Tr. Co.*, 140 Md. 598; *Keyser v. Richards*, 148 Md. 677 (demurrer to narr. against joint wrongdoers sustained).

Money collected by administrator under this section for damages to deceased and his estate must be duly accounted for like other assets; *contra* as to damages recovered by administrator under statute of another jurisdiction (similar to those recoverable in Maryland under article 67), on account of death of deceased. *Dronenburg v. Harris*, 108 Md. 616.

Suit may not be brought under this article or under art. 67, sec. 1, or art. 75, sec. 29, by husband of woman who was killed by man, since deceased, against personal representative of latter. "*Actio personalis moritur cum persona.*" Meaning of "injuries to the person." *Demczuk v. Jenifer*, 138 Md. 490. And see *White v. Safe Dep. & Tr. Co.*, 140 Md. 599.

An action for alienation of wife's affections is an injury to the person within exception of the second clause of this section relative to suits against executors and administrators. Meaning of "injuries to the person." The latter part of this section may be referred to in construing the first portion. *White v. Safe Dep. & Tr. Co.*, 140 Md. 593.

The words "personal action" construed. The act of 1798, ch. 101, held to include action of trespass *q. c. f.* *Kennerly v. Wilson*, 1 Md. 107. As to trover, see *Brummett v. Golden*, 9 Gill, 97.

The act of 1888, ch. 262, held to have no application where the plaintiff died before its passage. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

The act of 1861, ch. 44, strictly construed. That act had no application to actions for malicious prosecution. *Clark v. Carroll*, 59 Md. 182. And see *White v. Safe Dep. & Tr. Co.*, 140 Md. 603.

See notes to sec. 83.

For the statute regulating suits for negligence resulting in death, for the benefit of the family of the deceased, see art. 67, sec. 1, *et seq.*

For forms of declarations and pleas in suits by and against executors and administrators, see art. 75, sec. 28, sub-sec. 90, *et seq.*

As to the plea by an administrator of "insufficient assets," and proceedings thereafter, see art. 26, sec. 25, *et seq.*

As to suits before a justice of the peace where executors or administrators are parties, see art. 52, secs. 10 and 11. See also art. 52, sec. 64.

As to abatement in the court of appeals, see art. 5, sec. 81, *et seq.*