

An. Code, 1924, sec. 107. 1912, sec. 105. 1904, sec. 104. 1888, sec. 105. 1720, ch. 24, sec. 2. 1838, ch. 329.

**110.** No creditor shall bring a suit upon an administration or testamentary bond for any debt or damages due from or recovered against the decedent before a *non est* on a summons is returned against the administrator, or a *feri facias* returned *nulla bona* by the sheriff of the county where the administration was granted, or where the effects of such deceased lie, or such other apparent insolvency or insufficiency of the estate of such administrator as shall, in the judgment of the court, render such creditor remediless by any other reasonable means save that of suing such bond.

This section limits the broad language of sec. 106. This section is applicable to creditors whose debts have been established, and a declaration must allege a compliance with prescribed conditions. *Mertens v. Moore*, 108 Md. 637. As to allegations of *narr.*, see also *Dorsey v. State*, 4 G. & J. 477; *Laidler v. State*, 2 H. & G. 280; *Seegar v. State*, 5 H. & J. 488. *Cf. Laidler v. State*, 2 H. & G. 282.

For a replication to a plea setting up a failure to comply with this section held sufficient as demonstrating that creditor was remediless save by suing bond, see *Iglehart v. State*, 2 G. & J. 245.

The act of 1720, ch. 24, is to be liberally construed—design thereof. Although administrator be returned *non est*, if before suit brought on bond he voluntarily appears, such suit on bond cannot be maintained. *State v. Jones*, 8 Md. 91.

This section has no application where the bond is simply conditioned upon the payment of all debts, legacies, etc. *Duvall v. Snowden*, 7 G. & J. 433.

This section has no application in creditors' suit. *Emory v. Seth*, 2 Bl. 542.

Cited but not construed in *Seighman v. Marshall*, 17 Md. 571; *Brown v. Murdock*, 16 Md. 531.

An. Code, 1924, sec. 108. 1912, sec. 106. 1904, sec. 105. 1888, sec. 106. 1798, ch. 101, sub-ch. 8, sec. 11.

**111.** 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; *Goldsborough v. DeWitt*, 171 Md. 266.

An. Code, 1924, sec. 109. 1912, sec. 107. 1904, sec. 106. 1888, sec. 107. 1798, ch. 101, sub-ch. 8, sec. 18.

**112.** 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