

and if he be sued for any claim, and shall make it appear to the court in which suit is brought that he hath so paid away, delivered or distributed, and the plaintiff cannot prove that the defendant had notice as aforesaid before such payment, delivery or distribution, the court shall not proceed to give judgment (although the amount of the claim against the deceased may be ascertained), until the plaintiff shall be able to show further assets coming into the defendant's hands; but if the plaintiff shall prove notice as aforesaid of the said claim against the defendant, judgment may immediately be given for such sum as the plaintiff ought to have received at the dividend, and *feri facias* may issue and have effect, and further judgment may be given on coming in of further assets.

In a suit against sureties on bond of administratrix, plea that assets were distributed after meeting of distributees was demurrable, since there might still be liability because of notice to administratrix. *Watkins v. State*, 162 Md. 611.

An administrator who fails to give notice required by sec. 116 is not entitled to protection of this section; nor will this section protect administrator if he has notice of the claim. What amounts to notice? (But see sec. 124.) *Stewart v. Carr*, 6 Gill, 410.

An administrator who proceeds as law directs is protected from claims of judgment creditors, and of all others of which he had no notice. *Cape Sable Co.'s Case*, 3 Bl. 670.

Although executor is relieved from liability under this section, creditor may still pursue his remedy against property or legatee or devisee. This section distinguished from sec. 112. *Zollickoffer v. Seth*, 44 Md. 370; *Coburn v. Harris*, 53 Md. 371.

This section has no application to taxes; executors must take notice of, and pay them. *Bonaparte v. State*, 63 Md. 469.

This section will be applied by analogy in a creditors' suit. *Welch v. Stewart*, 2 Bl. 39. Cited but not construed in *Coward v. State*, 7 G. & J. 479; *Murray v. Hurst*, 163 Md. 489; *Carrollton Bank v. Hollander* (Judge Smith, Circuit Court of Baltimore City), *Daily Record*, Mar. 7, 1939.

An. Code, 1924, sec. 112. 1912, sec. 108A. 1916, ch. 14.

115. In no case shall the mere failure of administrators or executors to plead *plene administravit* or insufficiency of assets of their decedents render any judgments against them in their representative capacity personally binding upon them as individuals or upon their property or upon the sureties on their bonds.

Although absolute judgments at law by a creditor of decedent against executor generally amount to an admission of assets and could not, prior to this section, be resisted on ground of a deficiency of assets, yet as between creditors and heirs, such judgment was not conclusive in a proceeding to subject real estate to payment of debts. *McLaughlin v. McGee*, 131 Md. 161.

Cited in *Frank et al. v. Warehime*, *Daily Record*, July 7, 1939.

See notes to sec. 112.

An. Code, 1924, sec. 113. 1912, sec. 109. 1904, sec. 108. 1888, sec. 109. 1798, ch. 101, sub-ch. 8, sec. 13. 1802, ch. 101. 1823, ch. 131, sec. 2. 1882, ch. 125. 1914, ch. 624. 1924, ch. 457.

116. No administrator who shall, after the full expiration of the notice herein provided for, have paid away the assets to the discharge of just and legally proven claims shall be answerable for any claim of which he had no notice; provided, that at least six months before he shall make distribution amongst creditors or persons entitled, he shall have caused to be inserted in as many newspapers as the Orphans' Court or the Register of Wills shall direct, an advertisement as follows, or fully to the following effect, viz: "This is to give notice that the subscriber hath obtained from the Orphans' Court of County, in Maryland, letters testamentary (or of administration) on the personal estate of, late of, deceased. All persons having claims against the deceased are warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the day of next; they may otherwise by law