

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.

An. Code, sec. 104. 1904, sec. 103. 1888, sec. 104. 1798, ch. 101, sub-ch. 8, sec. 5. 1861, ch. 44. 1888, ch. 262.

106. 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; and they shall be liable to be sued in any court of law or equity, in any action (except for slander and injuries to the person) 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 on which a judgment or decree shall have been given against them. The words "actions for injury done to the person," hereinbefore used, shall not be held to embrace actions for illegal arrest, false imprisonment or violation of the twenty-third, twenty-sixth, thirty-first and thirty-second articles of the declaration of rights, or any of them, or of the existing or any future provisions of the code, touching the writ of *habeas corpus* or proceedings thereunder; for all of which enumerated wrongs, actions may be maintained by and against executors as they may be or might have been by and against the party or parties deceased.

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.

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.*,