

unknown and if there be no heirs the State's Attorney shall appear to the bill.

Title of purchasers.

A purchaser of a decedent's real estate, is charged with knowledge of such decedent's debts and if the personalty is insufficient to pay them, he takes title subject to the creditor's rights under this section. *Gibson v. McCormick*, 10 G. & J. 65; *Green v. Early*, 39 Md. 231; *Van Bibber v. Reese*, 71 Md. 617.

After a final settlement of a decedent's personal estate in the orphans' court showing the payment of debts, the costs of administration and a balance on hand, a *bona fide* purchaser of real estate without notice of debts still due by the estate, gets a clear title. *Van Bibber v. Reese*, 71 Md. 611.

No application.

In order that the court may have jurisdiction under this section, there must be a debt *due by the decedent in his lifetime*. This section has no application where a bill is filed against the heirs and devisees of a non-resident for damages arising out of a refusal to comply with an option given the plaintiff by the decedent in his lifetime and closed by the plaintiff subsequent to the decedent's death. *McGaw v. Gorter*, 96 Md. 492. And see *Carey v. Dennis*, 13 Md. 15.

This section can have no operation upon real estate located outside of Maryland. *Seldner v. Katz*, 96 Md. 219.

Generally.

Before the real estate can be sold for the payment of debts, it must be alleged and proved that the personalty is insufficient. *Van Bibber v. Reese*, 71 Md. 611; *Hardesty v. Hardesty*, 77 Md. 189; *Warfield v. Owens*, 4 Gill, 383; *Baltzell v. Foss*, 1 H. & G. 506; *Wyse v. Smith*, 4 G. & J. 302 (overruling *Tessier v. Wyse*, 3 Bl. 28); *Griffith v. Frederick Bank*, 6 G. & J. 445; *Bank of United States v. Ritchie*, 8 Pet. 143.

It is not necessary that a creditor's bill under this section should provide for the coming in of other creditors. Unnecessary allegations and procedure. Bill sufficient. Contribution and substitution. *Gibson v. McCormick*, 10 G. & J. 65. And see *Robertson v. Parks*, 3 Md. Ch. 69; *Ridgely v. Bond*, 18 Md. 450.

The executor of the debtor should be made a party defendant to a creditor's bill under this section. *David v. Grahame*, 2 H. & G. 97; *Tyler v. Bowie*, 4 H. & J. 333. And see *McLaughlin v. McGee*, 131 Md. 163.

This section does not entitle a general unsecured creditor of a deceased mortgagor to redeem the mortgage and be subrogated to rights of mortgagee. *Quasi lien* arising out of this section. *McNiece v. Eliason*, 78 Md. 176.

This section and sec. 234 referred to in deciding that creditors of deceased persons may have their claims passed in the orphans' court without being barred from filing a bill in equity in case there is an insufficiency of assets; estoppel not made out. Creditor may proceed against a surplus in the hands of a trustee in a mortgage foreclosure case. When personal representative should be a party. *McLaughlin v. McGee*, 131 Md. 161.

This section and sec. 243 referred to in construing art. 93, sec. 340. Executors held to have no power under a will to sell real estate for the payment of legacies. *St. John's Church v. Dippoldsman*, 118 Md. 247.

By bill of revivor after a decree for an account, a widow and heirs of a deceased defendant may be made parties, and by an allegation of the insufficiency of the personal estate to pay debts, the bill may be given the attributes of a creditor's bill under this section. *Glenn v. Smith*, 17 Md. 282.

A decree for sale under this section, establishes the debt and the insufficiency of the personal estate. *Griffith v. Reizart*, 6 Gill, 453; *Post v. Mackall*, 3 Bl. 486.

The rents and profits of lands in the hands of the heir, may also be subjected to the intestate's debts. *Scott v. Scott*, 17 Md. 91.

This section places infants and adults on the same basis, and hence an infant reaching his majority after a decree is passed cannot then object. *Tessier v. Wyse*, 3 Bl. 62. And see *Campbell's Case*, 2 Bl. 224; *Watkins v. Worthington*, 2 Bl. 521; *Hammond v. Hammond*, 2 Bl. 352.

The proceeding against the administrator relative to the personal property, and that against the heir relative to the real estate, are entirely independent of each