

other personal representative of said decedent, may decree that all the real estate of such person, or so much thereof as may be necessary, shall be sold to pay his debts; and the funeral expenses of the decedent, to be allowed in the discretion of the court according to the condition and circumstances of the deceased, not to exceed three hundred dollars, except by special order of court, and provided the estate of the deceased be solvent, shall be considered the debt of said decedent, and in the distribution of the proceeds arising from any sale under this section, the claim for funeral expenses shall take priority to all claims of the common creditors of the deceased. This section to apply to all cases where the heirs or devisees are residents or non-residents, or are of full age, or infants, or of sound mind, or *non compos mentis*, and to cases where the parties left no heirs, or where it is not known whether he left heirs or devisees, or, if the heirs or devisees be 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. Elhason*, 78 Md. 176.

This section and sec. 243 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. 252 referred to in construing art. 93, sec. 346. 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.