

general jurisdiction of a court of equity. *Cockey v. Cole*, 28 Md. 282; *Warehime v. Carroll County Bldg. Assn.*, 44 Md. 517. *Cf. Warfield v. Ross*, 38 Md. 90.

In sales under this section, the trust commences with the filing of the bond under section 7, and the jurisdiction of the court becomes complete on the report of sale under section 9. *Warehime v. Carroll County Bldg. Assn.*, 44 Md. 516. And see *Wilson v. Watts*, 9 Md. 459; *Warfield v. Dorsey*, 39 Md. 308.

Sales under this section when brought within the control of a court of equity, are governed by the same rules as other sales in equity. *Gaither v. Tolson*, 84 Md. 641; *Warfield v. Dorsey*, 39 Md. 302. And see *Albert v. Hamilton*, 76 Md. 308.

In view of the nature of the proceedings provided for by this and the following sections, and particularly of section 12, subsequent encumbrancers need not be made parties. *Chilton v. Brooks*, 71 Md. 448.

Courts apply the rules more strictly to sales made under this section than to sales made under a decree in equity. *Chilton v. Brooks*, 69 Md. 587.

#### Designation of person to exercise power.

The party who is to exercise the power must be specifically named; the mere reference to such party as the solicitor of the mortgagee, is not sufficient. *Madigan v. Workingmen's Bldg. Assn.*, 73 Md. 320; *Frostburg Bldg. Assn. v. Lowdermilk*, 50 Md. 179; *Queen City Bldg Assn. v. Price*, 53 Md. 400; *Chilton v. Brooks*, 71 Md. 450.

The designation in the mortgage of a man's executors by the word "executors," is not such a naming as will authorize the executors to sell under this section. If, however, the mortgagee is given a power of sale by the mortgage, his executor becomes his assignee in law, and as such, may exercise the power. *Barrick v. Horner*, 78 Md. 256; *Harnickell v. Orndorff*, 35 Md. 343.

#### Generally.

The power of sale is a power coupled with an interest, appurtenant to the estate, and hence passes to assignees of the mortgagee (at law or in fact). The power of sale is not affected by the death or lunacy of the mortgagor. The fact that a first assignee is incapable of exercising the power of sale, does not prevent a second assignee from exercising it. *Maslin v. Marshall*, 94 Md. 484; *Johnson v. Glenn*, 80 Md. 370; *Barrick v. Horner*, 78 Md. 255; *Western Maryland, etc., Co. v. Goodwin*, 77 Md. 278; *Chilton v. Brooks*, 71 Md. 450; *Bouldin v. Reynolds*, 58 Md. 495; *Mackubln v. Boarman*, 54 Md. 384; *Harnickell v. Orndorff*, 35 Md. 342; *Dill v. Satterfield*, 34 Md. 53; *Berry v. Skinner*, 30 Md. 573. And see *Erb v. Grimes*, 94 Md. 108.

The language "terms and contingencies" as used in this section, does not include the place of sale—meaning of such words. Where the clause in the mortgage giving the power of sale, directs that the place of sale be outside the county where the mortgaged premises are situated, there is no valid power of sale. *Webb v. Haefter*, 53 Md. 190.

The only pre-requisite of a sale under this section, is that prescribed by section 7. The sale will not be set aside because the mortgage notes were not filed, no application having been made for that purpose and the indebtedness, and their ownership, not being denied. *Heider v. Bladen*, 83 Md. 244. And see *Haskie v. James*, 75 Md. 572.

If a mortgagee is given a power of sale by the mortgage, his executor becomes his assignee in law, and as such, may exercise the power. *Barrick v. Horner*, 78 Md. 256; *Harnickell v. Orndorff*, 35 Md. 343.

Where a mortgage merely provides that "all expenses incident to such sale are to be paid," neither the mortgagee nor his assignee is entitled to commissions; *contra*, as to expenses incident to the sale. *Johnson v. Glenn*, 80 Md. 370.

A sale under this section is not within the fourth section of the statute of frauds. *Gaither v. Tolson*, 84 Md. 641; *Warfield v. Dorsey*, 39 Md. 302.

A power of sale held not to be upon the terms provided in this section, and that the proceedings in connection with the sale, did not comply with the following sections. *Korns v. Shaffer*, 27 Md. 90.