

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 filing of bond under sec. 8, and jurisdiction of court becomes complete on report of sale under sec. 10. *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 control of a court of equity are governed by 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 nature of proceedings provided for by this and following sections, and particularly of sec. 13, subsequent encumbrances 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 power must be specifically named; mere reference to such party as solicitor of mortgage 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 mortgage of a man's executors by the word "executors" is not such a naming as will authorize executors to sell under this section. If, however, mortgagee is given a power of sale by mortgage, his executor becomes his assignee in law, and as such may exercise the power. *Barrick v. Horner*, 78 Md. 256; *Harnickell v. Orndorf*, 35 Md. 343.

Where a sale is made by a party in distinct reference to a power expressly and lawfully conferred upon him by mortgage, the sale is valid, although capacity in which party acted was not correctly stated. *Barroll v. Benton*, 121 Md. 177.

Generally.

Where suit is entered in state court, to foreclose mortgage before petition in bankruptcy against mortgagor is filed, foreclosure case may be prosecuted without interference of bankruptcy court; *contra*, however, where (as under this section) state court does not acquire jurisdiction until property sold and report of sale filed. *In re Hurlock*, 23 F. (2nd), (Dist. Ct. Md.), 500.

Interest, when payable. Power of sale in Baltimore. Construction of mortgage. *Owens v. Graetzel*, 146 Md. 364.

Power of sale is a power coupled with an interest, appurtenant to the estate, and hence passes to assignees of mortgagee (at law or in fact). Power of sale is not affected by death or lunacy of mortgagor. The fact that a first assignee is incapable of exercising 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; *Mackubin v. Boarman*, 54 Md. 384; *Harnickell v. Orndorf*, 35 Md. 342; *Dill v. Satterfield*, 34 Md. 53; *Berry v. Skinner*, 30 Md. 573. And see *Erb v. Grimes*, 94 Md. 108; *Barroll v. Benton*, 121 Md. 177.

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

The only pre-requisite of a sale under this section is that prescribed by sec. 8. Sale will not be set aside because 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 mortgage, his executor becomes his assignee in law, and as such may exercise the power. *Barrick v. Horner*, 78 Md. 256; *Harnickell v. Orndorf*, 35 Md. 343.

Where a mortgage merely provides that "all expenses incident to such sale are to be paid," neither mortgagee nor his assignee is entitled to commissions; *contra*, as to expenses incident to 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 terms provided in this section, and that proceedings in connection with sale did not comply with following sections. *Korns v. Shaffer*, 27 Md. 90. And see *Madore v. Thompson*, 155 Md. 676. (See also notes to art. 81, sec. 150.)

This section and secs. 12 and 13 held to define extent of title to be sold under a power in a second mortgage and to protect rights of subsequent lienors; no occasion for bill for foreclosure. When second mortgagee may foreclose. *Strohmeier v. Remson*, 135 Md. 443.

A deed held not to be a technical mortgage within contemplation of this section. *Bank of Commerce v. Lanahan*, 45 Md. 407. And see *Harrison v. Annapolis, etc., R. R. Co.*, 50 Md. 514.