

hands; in case the purchaser of any such real estate has transferred, or shall transfer his said purchase to another person, it shall be lawful for the orphans' court, upon petition in writing by the original purchaser and such assignee and upon being satisfied that such substitution or transfer may be made without injury to the estate, to pass an order substituting such assignee as purchaser of the said real estate, upon such terms as may be deemed expedient, regard being had to the interests of the estate, and directing the executor to convey the said real estate to the said assignee, his heirs and assigns; provided, however, that it shall not be necessary to the validity of the sale of any such real estate by the executor that the same be ratified by the orphans' court, as aforesaid, in any case where a court of equity of competent jurisdiction has assumed jurisdiction in relation to the sale of any such real estate.

Application of this section.

A power of sale held to have been given executors, and this section applied. *Seeger v. Leakin*, 76 Md. 510.

An alleged implied power of sale in a will denied. *Porterfield v. Porterfield*, 85 Md. 664; *Young v. Twigg*, 27 Md. 630. *Cf. Ogle v. Reynolds*, 75 Md. 150.

This section has no application unless executor is authorized to sell real estate. *Alther v. Barroll*, 22 Md. 510. And see *Dent v. Maddox*, 4 Md. 530.

This section has no application to a sale made before it became operative. *Harlan v. Brown*, 2 Gill, 479.

Executor is quasi trustee.

In sales under this section the executors are *quasi* trustees. They are entitled to nothing more than their commission. If by dealing with assets the executors make a profit, they must account to *cestui qui trusts*. *Gephart v. Strong*, 20 Md. 527.

This section has no application unless executor is authorized to sell. Such authorization is a naked trust for fulfillment of which executor is subject to control of orphans' court. *Alther v. Barroll*, 22 Md. 510.

Ratification of sale.

In passing upon ratification of sale, orphans' court has jurisdiction to determine whether will gives executor power to sell. *Ogle v. Reynolds*, 75 Md. 151.

If an order of ratification has been procured by fraud or misrepresentation, orphans' court has power to rescind within a reasonable time and under proper circumstances. *Montgomery v. Williamson*, 37 Md. 427.

Generally.

Design of this section is to save expense and delay of chancery proceedings rather than take away jurisdiction of equity when invoked. Motion to dismiss bill denied; rights of creditors. *Perkins v. Warburton*, 4 Fed. (2nd), (Dist. Ct. Md.), 745.

This section referred to in construing sec. 292—see notes thereto. *Knapp v. Knapp*, 149 Md. 220.

See notes to art. 16, sec. 242.

Once having accepted a bid, the executor or trustee cannot reopen the sale. *Cook v. Safe Dep. & Tr. Co.*, 172 Md. 399.

Equity Courts will ordinarily not interfere with the administration of estates by probate Court, except to remedy some evil or establish some right which such Courts are powerless to grant or establish. *Gaver v. Gaver*, 176 Md. 190.

Sec. 295 has no application to real estate directed to be sold as provided in this section. *Brooks v. Bergner*, 83 Md. 354.

A sale under this section is a judicial one and the statute of frauds has no application. *Warehime v. Graf*, 83 Md. 101.

When sale is ratified by orphans' court, it stands in respect to its enforcement in other tribunals on same footing as an ordinary contract of sale, orphans' court having no power to enforce its execution. *Carter v. Von Bokkelen*, 73 Md. 179.

The jurisdiction of orphans' court extends no further than confirming or rejecting sale; it does not include adjusting of equities resulting from vacating sale. *Eichelberger v. Hawthorne*, 33 Md. 595.

This section does not interfere with concurrent jurisdiction of equity. *Wright v. Williams*, 93 Md. 69; *Ogle v. Reynolds*, 75 Md. 151; *Keplinger v. Maccubbin*, 58 Md. 212; *Long v. Long*, 62 Md. 77 (dissenting opinion).

Where an executor is authorized by will to sell real estate no order of court need be passed to enable him to execute such power. The sale must be reported to and ratified by court. This section contrasted with sec. 295. *Lochary v. Corrigan*, 132 Md. 373.