

Exceptions to title.

Where all parties are of legal age and the defendants admit the allegations of the bill, the fact that no testimony is taken in support of such allegations does not vitiate purchaser's title, and is not a ground of exceptions thereto. *Scarlett v. Robinson*, 112 Md. 204; *Slingluff v. Stanley*, 66 Md. 220; *Bolgiano v. Cooke*, 19 Md. 394. *Cf. Earle v. Turton*, 26 Md. 33 (involving infants).

The erroneous action of the court on matters not jurisdictional, cannot be raised collaterally, and does not affect the title of a purchaser under this section. *Benson v. Benson*, 70 Md. 258; *Dugan v. Baltimore*, 70 Md. 7; *Slingluff v. Stanley*, 66 Md. 220; *Downs v. Friel*, 57 Md. 536; *Bolgiano v. Cooke*, 19 Md. 392. And see *Scarlett v. Robinson*, 112 Md. 206.

Generally.

While every tenant in common is entitled to the separate enjoyment of his interest either by partition or sale in lieu thereof, equity will adapt its methods to the exigencies of justice to protect equitable rights. Where one tenant in common pays a charge or encumbrance upon the common property, he is entitled to contribution from his co-tenant, and as against his co-tenant, to an equitable lien for the amount due him. Effect of a divorce on property held as tenants by the entirety. *Meyers v. Loan & Sav. Ass'n*, 139 Md. 613.

The right of a joint owner of property to have it partitioned or sold in lieu of partition, does not depend upon the extent of his interest. A sale of the common property may be decreed upon the bill of any concurrent owner where it appears that same cannot be divided among the parties entitled without loss or injury. Cases reviewed. *Lewis v. Carver*, 140 Md. 131. And see *Bosley v. Burke*, 154 Md. 31.

There may be no partition between a life tenant and a remainderman since this section does not apply to such a case. There may, however, be partition where a one-half interest is owned by the plaintiff and the other one-half interest is owned by one person for life with remainder over. Disposition of fund. *Tolson v. Bryan*, 130 Md. 340.

A bill may be filed under this section for the sale of a remainder, owned jointly during the life of the life tenant. *Downin v. Sprecher*, 35 Md. 484; *Billingslea v. Baldwin*, 23 Md. 106.

Plaintiffs held to have taken an interest in property under a will and to be entitled to file a bill under this section. Plaintiffs' interest held to be concurrent. The right given to some of the owners of a one-seventh interest in certain property to file a bill under this section is not affected by the fact that the will conferred upon the executor a naked power to sell and convey the other six-sevenths interest. *Booth v. Eberly*, 124 Md. 23; *Lewis v. Carver*, 140 Md. 132.

Specific performance of an alleged contract denied, and a decree for the sale of the property under this section upheld. *Rickard v. Neff*, 130 Md. 94.

A bill held to have been filed under this section, and not under sec. 63, and hence, that the bill need not be retained in order that a guardian *ad litem* might be appointed under sec. 64. Where the guardian joins in the bill, and there is proof that the property is not susceptible of partition without loss and injury, a sale may be decreed. *Koontz v. Koontz*, 79 Md. 360; *Benson v. Benson*, 70 Md. 257; *Earle v. Turton*, 26 Md. 33; *Lawes v. Lumpkin*, 18 Md. 340; *Dalrymple v. Taneyhill*, 4 Md. Ch. 173. *Cf. Mumma v. Brinton*, 77 Md. 200; *Gill v. Wells*, 59 Md. 499.

This section distinguished from sec. 63. Where lands of an infant are sold under this section, the proceeds go to the guardian. *Benson v. Benson*, 70 Md. 257; *Bolgiano v. Cooke*, 19 Md. 392.

A proceeding under this section distinguished from proceedings under art. 46, sec. 8, *et seq.* On a bill praying for partition and general relief, if the commissioners appointed to divide the land report that it is not susceptible of partition, and such report is ratified, the property may be sold and the proceeds distributed without amendment of the bill. *Johnson v. Hoover*, 75 Md. 489. And see *Billingslea v. Baldwin*, 23 Md. 114; *Campbell v. Lowe*, 9 Md. 509; *Tomlinson v. McKaig*, 5 Gill, 274; *Roser v. Slade*, 3 Md. Ch. 91.

This section authorizes the sale of lands where they are held jointly, whether by descent or by purchase. This section is *in pari materia* with the act of 1831, ch. 311, and the act of 1839, ch. 23, and must be construed in connection with them. *Billingslea v. Baldwin*, 23 Md. 114. And see *Smith v. Townshend*, 27 Md. 390; *Lawes v. Lumpkin*, 18 Md. 340; *Hewitt's Case*, 3 Bl. 185. *Cf. Roser v. Slade*, 3 Md. Ch. 91.

It is only where property cannot be divided in kind without loss or injury that a sale may be had; proof held insufficient to authorize a sale and that the property should be divided in kind. A partition may be had without amendment of the bill where the prayer is for a sale and for general relief. *Rowe v. Gillelan*, 112 Md. 111.

Questions of title, and of adverse rights, cannot be raised or passed on in partition proceedings. Jurisdiction under this section depends upon community of interest. *Savary v. DaCamara*, 60 Md. 147. And see *Williams v. Harlan*, 88 Md. 4; *Boone v. Boone*, 3 Md. Ch. 497.

Partition will not be denied because of the difficulty or inconvenience attending it. On a bill praying for a sale and general relief, partition may be had. Construction of the acts of 1875, ch. 72, and 1831, ch. 311. *Campbell v. Lowe*, 9 Md. 509.