

order of the orphans Court for Frederick County, dated March 31st 1914, authorizing him to make sale of the said real estate under a supposed implied power contained in the will to make such sale, and in pursuance of such order had actually sold the said lands as follows--

1. The farm of 202 acres, described in Exhibit No. 2 filed with the Bill of Complaint to Charles B. Sappington for the sum of \$13,130.50.
2. The tract of 12 acres more or less, of woodland described in exhibit No. 3, to Francis R. and Charles B. Sappington, at and for the sum and price of \$245.63.
3. The property consisting of a house and lot located in Union Bridge, Carroll county, described in Exhibit 4 to bill, to Jacob Nusbaum for the sum of \$867.00 and
4. The two building lots located in the same town in Carroll County, to John N. Fogle for the sum of \$42.00.

And that all of said sales had been reported to and finally ratified by the Orphans Court for Frederick County, as would appear by reference to the record of proceedings in said Court.

It further appears from the evidence that all of said sales in pursuance of proceedings in the Orphan Court were satisfactory to all the parties in interest, and that it would be to the benefit of all the parties in interest that the sales already made, be ratified and confirmed by this court.

While the bill was filed with the object and purpose of obtaining a decree for the sale of the property, and nothing was alleged therein in regard to the sales already made by the executor under a supposed power contained in the will of Greenberry R. Sappington and while no reference was made therein to article 16, Sec. 93, of Bagby's Annotated Code of 1911, and while the powers of this Court under that section were not invoked, yet in the absence of objection and exception taken in the Court below to the granting of a decree upon the evidence alone, without regard to the allegations of the bill, such decree will be binding upon all the parties to the proceedings.

Code Art. 5, Sec. 36, provides that no objection to the sufficiency of the averments of the Bill shall be made in the Court of Appeals, "unless it appears by the record that such objection was made by exceptions filed in the Court from which such appeal shall have been taken." And this provision has been construed to mean that where no such exceptions are filed in the Court below before final decree, none can be filed after decree.

Fitzhugh Vs. McPherson, 9 G. J., 70.

See also Miller's Equity Procedure, Sec. 262, and Notes to Art. 5, Sec. 36, Bagby's Code of 1911.

In this case not only have no exceptions been filed but it is in evidence that all the parties in interest are desirous that the sales already made by the Executor be ratified and confirmed.

There will be no difficulty about this way of disposing of the case except as to the two vacant lots located at Union Bridge, in Carroll County, and as to these the bill alleges and the testimony shows that while the contract for the purchase of the same was made by the decedent with the vendor, in the lifetime of the former, yet no deed was made for the same until after the death of the vendee, the testator, which said deed, a copy of which is marked exhibit No. 5 to the Bill of Complaint, is therefore, of course, void for the purpose of passing the legal title from the vendor S. Raymond Senseney, to the vendee, Greenberry R. Sappington.

In order to perfect the title of the purchaser from the Executor of Greenberry R. Sappington, of these two lots, therefore, Mr. Senseney should join in the deed of Con-