

by him or them, only of the said Executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such Cure or Charge of Administration of any such Will or Testament, shall be as good and as effectual in the Law, as if all the Residue of the same Executors named in the said **281** *Testament, so refusing the Administration of the same Testament, had joined with him or them in the making of the Bargain and Sale of such Lands, Tenements, or other Hereditaments so willed to be sold by the Executors of any such Testators, which heretofore hath made or declared, or that hereafter shall make or declare any such Will, of any such Lands, Tenements, or other Hereditaments after his Decease, to be sold by his Executors.

II. Provided always, That this Act shall not extend to give Power or Authority to any Executor or Executors at any time hereafter to bargain or put to sale any Lands, Tenements, or Hereditaments, by Virtue and Authority of any Will or Testament heretofore made, otherwise than they might do by the Course of the Common Law afore the making this Act.

2 Roll. 336. Land devised to be sold by divers Executors, cannot by Common Law be sold by part of them. Part of the Executors, who take upon them the Charge of a Will, may sell any Land devised by the Testator to be sold. 3 Cro. 80. Devise, Br. 10. Bro. Devise, 31. Co. Litt. 113 a. Wills made before this Statute.

This Statute is well known to have applied to Maryland. Thus in *Digges' lessee v. Jarman*, 4 H. & McH. 485, the testator empowered his five executors, one of whom was the lessor of the plaintiff who was also heir at law, to sell a certain piece of land, and apply the produce to the discharge of his debts. Three of the executors renounced, and letters testamentary were granted to the lessor of the plaintiff and the other executor named in the will, and the former then released and relinquished to the latter who sold and conveyed the land to the defendant. It appeared also that the acting executor had paid large debts due by the testator out of the estate. Judgment was given for the defendant, and see *Guyer v. Maynard*, 6 G. & J. 420. By the Act of 1865, ch. 162,¹ where a testator has directed his

¹ Code 1911, Art. 93, sec. 291. *Venable v. Mercantile Trust Co.*, 74 Md. 187; *Warehime v. Graf*, 83 Md. 101; *Snook v. Munday*, 90 Md. 703.

The Act applies even where the power of sale is not expressly mandatory. *Bay v. Posner*, 78 Md. 42. As to a power of sale "where it is absolutely necessary," see *Moale v. Cutting*, 59 Md. 510.

Concurrent jurisdiction of equity and Orphans Courts.—The design of the legislature in conferring this power on the Orphans Court was evidently