be held in common with the remaining two parts. Lord Ellenborough observed, however, that if the fund when raised had been distributable by them as executors, that would have brought the case within the rule of Bonifaut v. Greenfield *supra*, that if A. devise to four to sell and apply the money to the performance of his will and afterwards appoints the four executors, and one refusing to meddle, the other three sell the land, the sale is good, for when he devised the land to four to sell and afterwards made them his executors, it was tantamount to devising at first that such his executors should sell, Denne v. Judge, 11 East. 228. And so the concurrence of executors, having under a will an implied power of sale for payment of debts, is not necessary to a conveyance by a devisee in trust for sale under the same will, Hodkinson v. Quinn, 30 L. J. Chan. 118.

Distinction between power to sell and devise of property to be sold.—But the distinction between a naked power given to the executors to sell, and a devise of the estate to them to be sold, is well establishd.[3] In Guyer v. Maynard *supra*, after a devise of the residue, the testator directed his executors to sell such parts of his real and personal estate as they might think proper, for the payment of debts and legacies, and it was held a mere naked power to sell, the land not being devised to them to be sold, and until the power was exercised the land passed to the devisee, and he only was entitled to receive the rents and profits; and so it was held in Jenifer's lessee v. Beard, 4 H. & McH. 73, that under a devise of lands, whereby the testator authorized his executors to sell and convey part of the land for payment of debts, the devisee took the land charged with the debts, that by a sale and conveyance of the executors the legal estate would be divested out of him, but by a sale only the purchaser took but an equitable interest.

Maryland legislation.—By the Act of 1865, ch. 51,[4] repealing and re-

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[3] Seeger v. Leakin, 76 Md. 500; Fredericks v. Sisco, 72 Md. 393. Cf. Baumeister v. Silver, 98 Md. 423; Rizer v. Perry, 58 Md. 112.

[4] Amended by the Act of 1884, ch. 426, by the addition of the following clause: "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." Code 1911, Art. 93, sec. 290.

A sale made by an executor without confirmation by the Orphans Court is invalid. Carter v. Van Bokkelen, 73 Md. 175.

Where an executor reports a sale to the Orphans Court, under this provision of the Code, that court has jurisdiction to determine whether the will confers power to make the sale. Ogle v. Reynolds, 75 Md. 145. And it has power to rescind its ratification of such a sale effected by misrepresentation. Montgomery v. Williamson, 37 Md. 421. But where it vacates a sale, it cannot pass on and adjust the rights and equities of the purchaser, growing out of the order of vacation, such jurisdiction belonging exclusively to a court of equity. Eichelberger v. Hawthorne, 33 Md. 588. And it has no power, on *ex parte* application of a tenant for life, to order