

enacting Art. 93, sec. 280, of the Code (Acts 1831, ch. 315, secs. 10-11, and 1833, ch. 262,) it is provided that in all cases where an executor may be authorized and directed to sell the real estate of a testator, he may sell and convey the same, and shall account therefor to the Orphans Court of the County where he obtained his letters, as he is bound to account for sales of personalty, and the sale shall not be valid unless confirmed by the Orphans Court, after notice of such sale as is practised in Courts of Equity, and his bond is to be answerable for the proceeds of such sale, &c., and provision is made for substituting the assignee of the purchaser in the latter's place.

This provision is in its terms confined to executors having merely a power to sell. In *Dent v. Maddox*, 4 Md. 522, the testator devised lands to his executor, in trust for the benefit of his widow, with remainder over, but authorized him to sell the land as he should deem best for all interested. And the Court held it to be quite consistent with the intention of the testator, that the executor should sell the lands under the Act of 1831, ch. 315, and hold the balance after closing the estate for the trusts of the will. They further said that the Act applied to all cases where executors are authorized and directed to sell real estates, that its object was to save the expense and delay of chancery proceedings, and the executor in respect of the proceeds of sale represents all parties in interest, as fully as he would in any case involving the personal estate of the deceased. It would seem therefore that as a devise of land to A. as trustee, with power to him to sell as executor, is within the Act, so a devise of land to him as executor to be sold is, on the principle of Lord Coke *supra*, fairly within its purview, especially as the trust for sale in the latter case would otherwise be enforceable \*only in equity, and see *Valentine v. Strong*, 20 Md. 527. **283** But the effect of the Act is important in another respect. It was decided in the *State v. Nicols*, 10 G. & J. 27, following *Barker v. May*, 9 B. & C. 489, and see the next Statute, that when lands were devised to trustees to be sold and the proceeds paid to the executor, that these proceeds when received by the executors were equitable assets, though the testator directed that they should be considered part of his personal estate; and from *Cornish v. Wilson*, 6 Gill, 299, it would appear that such proceeds of sale are

a sale of real estate devised to applicant for life and after her death to be sold by the executor. *Snook v. Munday*, 90 Md. 701.

As to a sale by the executor of a non-resident testator under the Act of 1872, ch. 451, (Code 1911, Art. 21, sec. 81), see *Norment v. Brydon*, 44 Md. 112; *Smith v. Montgomery*, 75 Md. 138; *Lindsay v. Wilson*, 103 Md. 268. As to a sale by an executor of land in another state, see *Roberts v. Roberts*, 71 Md. 1.

A power of sale given to an executor does not necessarily cease with the settlement of the personal estate, nor does it last for all time. It continues until the purpose for which it was given is accomplished. *Hoffman v. Hoffman*, 66 Md. 568.

As to an immediate ratification by the Orphans Court, without the publication of an order *nisi*, of a sale made under its authority, see Code 1911, Art. 93, sec. 300.