

any or all of the parties are non-residents; and see 1868, ch. 273,⁵ giving powers of sale or lease, where there are vested or contingent interests in remainder, or by way of executory devise, in the land. It is held that the jurisdiction of the Court in cases to which the section applies must be sought for exclusively there, and the Court must be satisfied by the proof that the land cannot be divided without loss or injury to the parties interested, *Earle v. Turton*, 26 Md. 23, distinguishing *Bolgiano v. Cook*, 19

divide the property without loss, &c., the court may decree a sale. *Johnson v. Hoover*, 75 Md. 486.

The bill need not contain such a specific description of the property as is ordinarily found in a deed. A general description sufficient to identify the property is all that is requisite. *Thruston v. Minke*, 32 Md. 571.

As to a bill being multifarious, where it seeks a partition, or sale for partition, and also some other independent relief, see *Foos v. Scarf*, 55 Md. 301; *Belt v. Bowie*, 65 Md. 350; *Mitchell v. Farrish*, 69 Md. 235; *Reckefus v. Lyon*, 69 Md. 589; *Murguiondo v. Hoover*, 72 Md. 9; *Koontz v. Koontz*, 79 Md. 358; *Claude v. Handy*, 83 Md. 225.

Proof of allegations of bill.—Where the defendants are of full age and competent to bind themselves, their admission of the facts alleged in the bill is sufficient to support a decree; and the absence of testimony in such case does not affect the marketability of the title to the property sold under the decree. *Scarlett v. Robinson*, 112 Md. 202. In other cases, however, the jurisdictional allegations of the bill must be proved to justify a decree. *Thruston v. Minke*, 32 Md. 576; *Downes v. Friel*, 57 Md. 535; *Wilson v. Green*, 63 Md. 550; *Mitchell v. Farrish*, 69 Md. 238; *Benson v. Benson*, 70 Md. 259. Cf. *Johnson v. Hoover*, 75 Md. 492. But it is the allegations of the bill that confer jurisdiction and determine the power of the court to pass the decree; and although the proof be defective, or the decree be passed without proof, such defect does not affect the question of jurisdiction. *Slingluff v. Stanley*, 66 Md. 220.

And see generally as to the conclusiveness of the decree, *Bull v. Pyle*, 41 Md. 419; *Rice v. Donald*, 97 Md. 396. Cf. *Brown v. Thomas*, 46 Md. 636; *Shartzler v. Mountain Asso.*, 86 Md. 335; *Godwin v. Banks*, 89 Md. 679; *Houck v. Houck*, 112 Md. 122.

Partition of undivided interest.—Since the object of a partition suit is to put an end to the co-tenancy, there cannot be a partition of an undivided interest in land; nor can any sale be made of such interest since the court cannot decree a sale except under such circumstances as would justify a partition before the statute. *Dugan v. Baltimore*, 70 Md. 1. But where several tenants in common prosecute a suit for partition as the holders of a common interest, the share to which they are collectively entitled may be assigned to them, and they can thereafter by petition in the suit obtain a re-division among themselves, or a sale if necessary. *Gittings v. Worthington*, 67 Md. 139; *Godwin v. Banks*, 89 Md. 679.

⁵ Code 1911, Art. 16, sec. 228. See also sec. 229. A bill for sale for partition cannot bind persons not *in esse*, but the life tenant may represent the estate in cases of simple partition. *Downin v. Sprecher*, 35 Md. 474; *Long v. Long*, 62 Md. 68.