

deem it advantageous for the persons interested in the administration, *ex officio*, or upon their application), direct a sale of the whole property therein contained, or of such part, or to such an amount, as the Court may think proper, the Court to direct the manner and terms of sale, but no credit longer than 12 months is to be given, and bond with security shall be taken, and in case the Court suspects any fraud, collusion, contrivance, or improper management to affect the sale, or that it was unreasonably made, or that the property was sold much under its value, it shall have power to compel the executor, &c., to account for all such deficiencies as may have arisen by his misconduct, observing the inventory as a rule for ascertaining such deficiency.

It has been decided that the executor *must* comply with an order of the Orphans Court directing a sale of personalty for payment of debts, and that he cannot retain the property at the appraisement, paying the debts out of his own funds. In *Hall v. Griffith*, 2 H. & J. 483, the administrator had been many years in the administration of the estate, and had overpaid to creditors the amount of the inventory, and treated the property, which consisted in part of negroes, as his own; but he was compelled to sell the negroes and their increase, and the other property, and account for the amount of sales to the representatives. And this was affirmed in *Haslett v. Glenn*, 7 H. & J. 17, where it was also held, that an account, wherein an executor is charged with the appraised value of the estate according to the inventory, concludes nobody. If the debts are small in comparison with the assets, which latter consist of specific articles of personalty, the order of sale should designate with all practicable certainty what is to be sold. So if the executor should attempt to sell more than necessary, or otherwise act improperly, a remedy may be had by application to the Orphans Court, or Chancery will grant an injunction. The matter, however, is necessarily within the discretion of the Orphans Court to a great degree; and an order directing a sale is *prima facie* good, and will not be reversed unless it appears to have been unnecessary, *Lowe v. Lowe*, 6 Md. 347. Before the Act of 1798, ch. 101, the Orphans Court might order a sale, but could not set a sale aside. In case of fraud, &c., relief could only be had in Chancery, and in *Conway v. Green*, 1 H. & J. 151, it was held by Chancellor Hanson, that Chancery had not since the **590** Act of *1798 lost its jurisdiction. It was also there determined that an executor could not purchase at his own sale; see *Scott v. Burch*, 6 H. & J. 67.²⁴ But in *Williams v. Marshall*, 4 G. & J. 376, it was decided, on a brief but comprehensive discussion of the subject, that such sales were *voidable* only and not void, and voidable on the application of the *cestui que trust* only, that a mere wrong-doer or a stranger having no interest could not be heard on such an objection, and that a court of law was not the proper *forum* in which to impeach the transaction. It seems

personal estate of a decedent, on application of an administrator or executor, whenever it shall appear thereby, or upon such further proof as the court may require, that a sale is advantageous to the persons interested in said estate." Code 1911, Art. 93, sec. 283.

²⁴ *Eichelberger v. Hawthorne*, 33 Md. 588.