the concurrent jurisdiction of Orphans Courts with Courts of equity to sell real estate not above the value of $2,500,[28] see the Acts of 1865, ch. 162, 1866, ch. 81, and 1868, ch. 366. It may be observed, however, that if sufficient personal estate come to the executor's hands to pay all debts of the deceased, if he misapply it, the creditor has no remedy against the testator's real estate; he must sue the executor and his bond, Griffith v. Fred. Co. Bank, 6 G. & J. 424; Wyse v. Smith, 4 G. & J. 365; but see Stevens v. Gregg, 10 G. & J. 148. It was nevertheless re-affirmed in Dugan v. Hollins, 11 Md. 41, to be settled (singularly enough) in Maryland, that if there be sufficient personalty for the payment of debts, a *simple contract* creditor cannot resort to the realty for payment, *when the realty is devised and not charged with the debts*, and that if a specific legacy is taken for the payment of a simple contract debt, the legatee would be entitled to contribution from other specific legacies, but cannot charge with contribution the real estate devised.

Retention of assets for future payment.—By Art. 93, sec. 10 [29] of the

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The statute means that the administrator *c. t. a.* succeeds to the power of sale, wherever a testator has not directed only, but where he authorized and directed a sale. Venable v. Mercantile Trust Co., 74 Md. 192; Bay v. Posner, 78 Md. 42. A failure of the executor to give counter security when required by the Orphans Court is a refusal to act within the meaning of the section. Wright v. Williams, 93 Md. 69. Where the executor dies before the testator the Orphans Court has no power to appoint under this section; application must be made to a court of equity. Wilcoxon v. Reese, 63 Md. 542.

As to a re-sale at the risk of the purchaser, see Code 1911, Art. 93, sec. 292; Mealy v. Page, 41 Md. 172; Schwallenberg v. Jennings, 43 Md. 554.

[28] Code 1911, Art. 93, secs. 293-295. A sale made under these sections by order of the Orphans Court having jurisdiction of the subject matter and of the parties cannot be impeached collaterally for mere errors or irregularities in procedure, as for example where the court appoints the administratrix to sell, as administratrix, and not as trustee. Simpson v. Bailey, 80 Md. 421. Cf. Cronise v. Hardt, 47 Md. 433. But all those interested must be made parties to the proceeding. Snook v. Munday, 90 Md. 703.

[28] Code 1911, Art. 93, secs. 293-295. A sale made under these sections 113 Md. 10, 20, contains a full discussion of the applicability of this section of the Code and a review of all the important prior cases. The conclusions reached by the court are as follows: "1. Independent of Article 93, section 10, 'where the surplus bequeathed for life consists of money or property whose use is conversion into money, it is the *duty* of the executor to *invest* the same in some productive fund, or it must be put on adequate securities, and most properly under the direction of the Orphans Court, or a Court of Equity, so that the dividends or income may be received by the legatee for life and the principal after the death of the legatee for life, may be received by the legatee in remainder.' 2. Section 10 of Article 93 may apply to a legacy for life