

if it were personal estate in his hands; in case the purchaser of any such real estate has transferred, or shall transfer his said purchase to another person, it shall be lawful for the orphans' court, upon petition in writing by the original purchaser and such assignee and upon being satisfied that such substitution or transfer may be made without injury to the estate, to pass an order substituting such assignee as purchaser of the said real estate, upon such terms as may be deemed expedient, regard being had to the interests of the estate, and directing the executor to convey the said real estate to the said assignee, his heirs and assigns; 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.

#### **Application of this section.**

A power of sale held to have been given executors, and this section applied. *Seeger v. Leakin*, 76 Md. 510.

An alleged implied power of sale in a will, denied. *Porterfield v. Porterfield*, 85 Md. 664; *Young v. Twigg*, 27 Md. 630; *cf. Ogle v. Reynolds*, 75 Md. 150.

This section has no application unless the executor is authorized to sell real estate. *Alther v. Barroll*, 22 Md. 510. And see *Dent v. Maddox*, 4 Md. 530.

This section has no application to a sale made before it became operative. *Harlan v. Brown*, 2 Gill, 479.

#### **Executor is quasi trustee.**

In sales under this section the executors are *quasi* trustees. They are entitled to nothing more than their commission. If by dealing with the assets the executors make a profit, they must account to the *cestui qui trusts*. *Gephart v. Strong*, 20 Md. 527.

This section has no application unless the executor is authorized to sell. Such authorization is a naked trust for the fulfillment of which the executor is subject to the control of the orphans' court. *Alther v. Barroll*, 22 Md. 510.

#### **Ratification of sale.**

In passing upon the ratification of the sale, the orphans' court has jurisdiction to determine whether the will gives the executor power to sell. *Ogle v. Reynolds*, 75 Md. 151.

If an order of ratification has been procured by fraud or misrepresentation, the orphans' court has power to rescind within a reasonable time and under proper circumstances. *Montgomery v. Williamson*, 37 Md. 427.

#### **Generally.**

Section 284 has no application to real estate directed to be sold as provided in this section. *Brooks v. Bergner*, 83 Md. 354.

A sale under this section is a judicial one, and the statute of frauds has no application. *Warehime v. Graf*, 83 Md. 101.

When the sale is ratified by the orphans' court, it stands in respect to its enforcement in other tribunals on the same footing as an ordinary contract of sale, the orphans' court having no power to enforce its execution. *Carter v. Von Bokkelen*, 73 Md. 179.

The jurisdiction of the orphans' court extends no further than confirming or rejecting the sale; it does not include the adjusting of equities resulting from vacating the sale. *Eichelberger v. Hawthorne*, 33 Md. 595.

This section does not interfere with the concurrent jurisdiction of equity. *Wright v. Williams*, 93 Md. 69; *Ogle v. Reynolds*, 75 Md. 151; *Keplinger v. Maccubbin*, 58 Md. 212; *Long v. Long*, 62 Md. 77 (dissenting opinion).