Sales.

1904, art. 16, sec. 202. 1888, art. 16. sec. 187. 1860, art. 16, sec. 125. 1785, ch. 72, sec. 3. 1876, ch. 327.

217. When any suit is instituted to foreclose a mortgage, the court may decree that, unless the debt and costs be paid by a day fixed by the decree, the property mortgaged, or so much thereof as may be necessary for the satisfaction of said debt and cost, shall be sold; and such sale shall be for cash, unless the plaintiff shall consent to a sale on credit; and if upon the sale, under such decree, of the whole mortgaged property, the net proceeds thereof, after the costs allowed by the court are satisfied, shall not suffice to satisfy the mortgage debt and accrued interest, as this shall be found by the judgment of the court upon the report of the auditor thereof, the court may, upon the motion of the plaintiff, enter a decree *in personam* against the mortgagor, or other party to the suit, who is liable for the payment thereof; provided, the mortgagee would be entitled to maintain an action at law upon the covenants contained in said mortgage for said residue of the said mortgage debt so remaining unsatisfied by the proceeds of such sale; which decree shall have the same effect as a judgment at law, and may be enforced only in like manner, by a writ of execution in the nature of a writ of *fieri facias*, or otherwise.

Personal decrees.

Before the decree *in personam* is passed, an order *nisi* should issue so as to give the defendant an opportunity to be heard. If the mortgage is not under the seal of the mortgagor, no decree *in personam* can be entered because no action of covenant could be maintained. McDonald *v.* Workingmen's Bldg. Assn., 60 Md. 590.

The portion of this section relative to a personal decree, was enacted to avoid the delay and expense of a separate suit, and such remedy is cumulative and does not affect the right of action on the covenants to pay the mortgage debt. Commercial Bldg. Assn. *v.* Robinson, 90 Md. 632 (separate opinion).

As to decrees *in personam*, see also. art. 66, sec. 24.

No application.

This section has no application to a sale of stock to pay debts due by the stockholder to a bank. Reese *v.* Bank of Commerce, 14 Md. 284.

This section has no application to a bill by a creditor of a mortgagor seeking a sale of his real estate. Purpose of this section. Gibson *v.* McCormick, 10 G. & J. 102.

This section does not affect the question of whether covenants run with the land. Commercial Bldg. Assn. *v.* Robinson, 90 Md. 632 (separate opinion).

Generally.

Object of this section. It contemplates that no more of the mortgaged premises should be sold than is practically unavoidable to pay the debt and expenses. Thomas *v.* Fewster, 95 Md. 449; Johnson *v.* Hambleton, 52 Md. 386; Boteler *v.* Brookes, 7 G. & J. 143.

This section contemplates the division of the mortgaged property into lots, if such division would produce more advantageous results. Johnson *v.* Hambleton, 52 Md. 386.

While ordinarily a defendant is entitled to have a day given him to bring the money into court, yet he may waive such privilege by his answer, or by a stipulation in the mortgage that upon default, the mortgagee "may forthwith foreclose," etc. Johnson *v.* Robertson, 31 Md. 487: Dorsey *v.* Dorsey, 30 Md. 528; David *v.* Grahame, 2 H. & G. 98.