

This section has no application unless 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 assets the executors make a profit, they must account to *cestui qui trusts*. *Gephart v. Strong*, 20 Md. 527.

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

#### Ratification of sale.

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

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

#### Generally.

Sec. 293 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 sale is ratified by orphans' court, it stands in respect to its enforcement in other tribunals on same footing as an ordinary contract of sale, orphans' court having no power to enforce its execution. *Carter v. Von Bokkelen*, 73 Md. 179.

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

This section does not interfere with 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).

Where an executor is authorized by will to sell real estate no order of court need be passed to enable him to execute such power. The sale must be reported to and ratified by court. This section contrasted with sec. 293. *Lochary v. Corrigan*, 132 Md. 373.

Object of this section. It applies to all cases where an executor is authorized to sell real estate. The executor represents all parties in interest. *Dent v. Maddox*, 4 Md. 530. And see *Maddox v. Dent*, 4 Md. Ch. 549.

Prior to act of 1831, ch. 315, the executor's bond was not liable for proceeds of real estate sold for payment of debts; equity alone could administer equitable assets. *Cornish v. Wilson*, 6 Gill, 334; *Waring v. Waring*, 2 Bl. 677.

This section referred to in construing the act of 1831, ch. 315—see notes to sec. 360. *Warford v. Colvin*, 14 Md. 556.

This section referred to in construing sec. 300—see notes thereto. *Wright v. Williams*, 93 Md. 69.

This section referred to in construing art. 21, sec. 83—see notes thereto. *Smith v. Montgomery*, 75 Md. 140.

Cited but not construed in *Davis v. Clabaugh*, 30 Md. 510.

For curative statute involving sales under wills of non-residents, see art. 21, sec. 83.

As to the writ of *habere facias possessionem* in cases of sales made under a power contained in a will, see art. 75, sec. 99.

See art. 16, secs. 96 and 267, and notes to sec. 300 (this article).

An. Code, sec. 291. 1904, sec. 288. 1888, sec. 283. 1865, ch. 162, sec. 1.

**300.** In all cases in which a testator, by will, has directed his real estate to be sold for the payment of debts, or for any other purpose, and the executor or executors therein named shall refuse or decline to act, or shall die without executing the powers vested in him or them, it shall and may be lawful for the several orphans' courts of this State, upon petition of