

lects or refuses to execute such trust, the court, upon the petition of any person interested in the sale of such property, may appoint a trustee to sell and convey the same, and apply the money arising from the sale to the purposes intended.

**Application of this section.**

This section applied where the persons directed to sell real estate upon a certain contingency, are dead when the contingency happens. *Noble v. Bernie*, 105 Md. 80.

This section applied where a testator directed his real estate to be sold and the proceeds to be disposed of in a certain manner, but did not provide how the sale should be made. If he appoints no executor, the sale can be legally authorized only under this section. *Baumeister v. Silver*, 98 Md. 422. And see *Wilcoxon v. Reese*, 63 Md. 546.

This section applied where lands are devised to be sold for payment of debts, and no trustee is named in will. *Magruder v. Peter*, 4 G. & J. 330.

This section has no application where a testator bequeaths money to a trustee to be invested, and the interest applied to the support of his son for life. *Offutt v. Jones*, 110 Md. 240. And see *Hawkins v. Chapman*, 36 Md. 97; *Winder v. Dufferfer*, 2 Bl. 172, note (g).

Upon the *ex parte* petition of any person interested in a trust estate, the court will appoint a trustee in place of a deceased trustee, this section being applicable. *Jencks v. Safe Deposit & Trust Co.*, 120 Md. 631.

**Generally.**

The jurisdiction of equity under this section is concurrent with that of the orphans' court under art. 93, sec. 300, and the jurisdiction first invoked, prevails. *Wright v. Williams*, 93 Md. 69; *Noble v. Birnie*, 105 Md. 80.

Decree and sale upheld under this section. Cases of concurrent jurisdiction of orphans' court and equity court, to direct a sale, not directly in point. Parties. Irregularities not jurisdictional. *Forbes v. Littell*, 138 Md. 214.

Where a substituted trustee has been properly appointed under this section and the court has jurisdiction, a mere irregularity in the proceedings will not sustain exceptions to the sale on the purchaser's appeal. *Saml. Ready School v. Safe Dep. & Trust Co.*, 121 Md. 518.

Trusts of real estate upon the trustee's death devolve upon his heir under art. 46, sec. 5, for the preservation of the title until the appointment of a new trustee by an equity court under its general powers under this section. *Weller v. Kolb*, 128 Md. 226.

The court may appoint the trustee upon the *ex parte* petition of any person interested in the property; appointment valid. *Kennard v. Bernard*, 98 Md. 518. And see *Offutt v. Jones*, 110 Md. 238 (note modification after re-argument); *Sloan v. Safe Deposit Co.*, 73 Md. 245; *Cowman v. Colquhoun*, 60 Md. 136; *Fulton v. Harman*, 44 Md. 266; *Dorsey v. Thompson*, 37 Md. 46.

Although application under this section is always made *ex parte*, yet if the object be to pay debts, it is treated in all subsequent proceedings as a creditor's suit. *Hammond v. Hammond*, 2 Bl. 320.

It is not necessary that all the heirs should unite in application for a sale of the decedent's property. Where the parties do not pray for a sale of certain property, and the decree does not authorize its sale, a sale of such property is a nullity, although ratified by the court. *Shriver v. Lynn*, 2 How. 43.

This section referred to in discussing statutory authority for the representation of absent persons in equity proceedings. The constitutionality of this section has never been called in question, and it confers upon equity courts power and jurisdiction which they did not formerly have. *Kingan Packing Co. v. Lloyd*, 110 Md. 626.

The appointment of a trustee held not to have been made under this section, the time for sale not having arrived; and hence a power of sale did not vest in such trustee. At a later period it would have been competent to have appointed a trustee under this section, save for the act of 1865, ch. 162—see art. 93, sec. 300. *Keplinger v. Maccubbin*, 58 Md. 210.

The appointment of the trustee named in the will as trustee for the sale of property under this section, invests him with all the power, and imposes upon him all the obligations in the will. *Conner v. Ogle*, 4 Md. Ch. 448; *Deakins' Case*, 2 Bl. 404.

This section does not affect the power of sale of an executor under a will, nor such authority as he derives by implication. *Magruder v. Peter*, 11 G. & J. 239.