

Generally.

A judicial sale will be upheld collaterally if jurisdictional facts are proven, although a jurisdictional allegation in the bill is lacking—see art. 5, secs. 30 and 31. Bill demurrable. The whole theory of this section is that parties in being represent persons unborn. An infant party to a suit is not more bound than those unborn, by representation. *Beggs v. Erb*, 138 Md. 350.

When a trustee has an implied power of sale under a will, the validity of a sale by him is not affected by the fact that he applies for a decree under this section instead of acting under the will. Under this section, it must appear that the sale was advantageous to the parties at the time of the decree. A decree authorizing sales to be made from time to time upon application to be thereafter made to the court, does not conform to this section. *Preston v. Safe Deposit Co.*, 116 Md. 214.

Under this section a court of equity, with all interested parties before it, may decree the sale of any kind of an estate. This section held applicable, if facts justify it, to property held as tenants by entireties where the property has been injured by fire. *Masterman v. Masterman*, 129 Md. 179. And see *Brell v. Brell*, 143 Md. 450.

Apart from this section equity has no authority to decree a sale of title of unborn remaindermen. A portion of the proceeds of the sale may not be reserved from the reinvestment prescribed by this section for distribution at once to life tenant. This section does not admit of a present money payment in lieu of a life interest. *Denson v. Denson*, 125 Md. 359.

This section referred to in upholding the power of trustees to sell property under a power of sale in a will, irrespective of whether that particular property had been held by the testator in his lifetime. *Carter v. Mullin*, 123 Md. 329.

Exceptions to the title of property sold under this section, overruled. *Stewart v. Kreuzer*, 127 Md. 4.

Primary purpose of this section. This section extends the doctrine of representation to the cases therein mentioned by providing that the parties in being shall represent unborn parties. The constitutionality of this section has never been called in question, and it confers upon equity jurisdiction which it did not theretofore have. *Kingan Packing Assn. v. Lloyd*, 110 Md. 623.

Under this section a farm devised to the wife and children of L., upon which a charge is made for the support of L. and his family, during life, may be sold. Disposition of proceeds. Object of this section. The fact that the will shows an intention that the life tenant shall hold a farm for the benefit of himself and family, does not defeat the application of this section. *Downes v. Long*, 79 Md. 384.

A bill under this section on behalf of an infant should be filed in infant's name, but its being filed in the name of guardian is an irregularity which, as long as it stands unreversed, does not affect the binding nature of the decree. Where a purchaser appeals from an order ratifying the sale, the decree directing the sale is not open for review. Where the court has jurisdiction the question of the proof that the sale was advantageous, will not be inquired into upon purchaser's appeal. *Newbold v. Schlens*, 66 Md. 587.

If the court has jurisdiction, mere irregularities in proceedings or proof, will not sustain exceptions to the sale by the purchaser. *Benson v. Yellott*, 76 Md. 168; *Rieman v. Von Kapff*, 76 Md. 421; *Newbold v. Schlens*, 66 Md. 587.

This section held to afford the only means for a sale of ground-rents devised for life, with remainders over. *Murphy v. Coale*, 107 Md. 209.

In a proper case, equity will decree a sale under this section for the purpose of using the proceeds to compromise litigation. *Caldwell v. Brown*, 66 Md. 296.

For cases holding that the plaintiff had no such interest in the property as enabled him to ask for a sale under this section, see *Bannon v. Comegys*, 69 Md. 418; *Newbold v. Schlens*, 66 Md. 589.

Unborn children and grandchildren held to be bound, along with parties in being, under the act of 1862, ch. 156. *Dunnington v. Evans*, 79 Md. 91. And see *Benson v. Yellott*, 76 Md. 169.

For cases involving the law on the subject of this section prior to its adoption, see *Long v. Long*, 62 Md. 33; *Downin v. Sprecher*, 35 Md. 479; *Ball v. Safe Deposit Co.*, 92 Md. 506. Cf. *Seeger v. Hunting*, 78 Md. 54.

Cited but not construed in *Carlin v. Harris*, 100 Md. 56; *Hyatt v. Vanneck*, 82 Md. 474; *Roche v. Waters*, 72 Md. 272; *Long v. Long*, 62 Md. 67 (see also dissenting opinion, page 85); *Druid, etc., Co. v. Oettinger*, 53 Md. 63; *Shreve v. Shreve*, 43 Md. 403; *Goldsborough v. Martin*, 41 Md. 505.

See notes to sec. 233.