

in cases where the purchaser has entered into an agreement with the person in actual possession of such lands and tenements at the time of such sale to permit such person to remain in possession for a limited period, the judge shall grant the said writ if it appears in said application that the period limited by such agreement between the purchaser and the person in possession has expired, and should the party or parties so evicted by writ of *habere* as aforesaid re-enter upon said property, or any part of the same, without the consent of the purchaser, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof either before a justice of the peace or in the circuit court for any county for the State, or the criminal court of Baltimore City, he shall be fined not more than one hundred dollars or imprisoned not more than sixty days or both fined and imprisoned in the discretion of said justice or court.

Averments of petition held to sufficiently comply with this section. Order overruling demurrer not appealable; demurrer improper. *Zeller v. Silverman*, 143 Md. 342.

This section is remedial, and to be liberally construed. Object of this section. The "good cause" to be shown under this section means an answer according to the practice of court in which proceedings are pending, under oath if in equity; not only averments but evidence to sustain them are called for. The burden of proof is on respondent. Answer held insufficient. *Schaefer v. Land & Loan Co.*, 53 Md. 88. And see *McMechen v. Marman*, 8 G. & J. 74.

A failure to give notice to show cause to the tenants in possession is fatal to writ. The tenant against whom writ of *habere* has been issued under act of 1825, ch. 103 and who has been ejected by it, may upon its return move to quash it and show cause why writ should not have issued. *Waters v. Duvall*, 6 G. & J. 76.

Where party in possession claims title paramount and adverse to purchaser and to all of parties to suit under which the property was sold, the writ should not be granted, the case being submitted on petition and answer *Griffith v. Hammond*, 45 Md. 89. And see *Miller v. Wilson*, 32 Md. 301.

When a purchaser under a decree has fully complied with terms of sale, and possession is withheld by a party to the suit or one claiming under a party by title subsequent to the commencement of suit, possession will be delivered to purchaser by proper process. *Applegarth v. Russell*, 25 Md. 319. And see *Gowan v. Sunwalt*, 1 G. & J. 513; *Dorsey v. Campbell*, 1 Bl. 364.

Proceedings held not to be under this section. The writ of *habere facias possessionem* is a judicial writ of a court of law, and is not appropriate for ordinary use of a court of equity. *Morrill v. Gelston*, 32 Md. 118.

Where a sale has been made under decree of a court of equity, proceedings authorized by this section may be taken in cause in which decree was passed. Heirs of original debtor, considered debtors. This section does not militate against right of party in possession to defeat application for writ by showing sufficient cause. Every application for writ under this section involves to some extent an inquiry into nature and character of holding of party in possession; limited effect of decision on such application. *Nutwell v. Nutwell*, 47 Md. 43 (note also dissenting opinion, p. 50). And see *Schaefer v. Land & Loan Co.*, 53 Md. 88.

Ordinarily in summary proceedings under this section, the question of title is not involved or decided, inquiry being limited to fact of possession. Where a party holds property only in character of trustee and not in his own right, purchaser is not entitled to writ of *habere*. *Cooke v. Brice*, 20 Md. 400.

Although a defendant in a judgment at law fails to appear and move to quash writ, he may still keep possession of property sold under execution, and upon proceedings under act of 1825, ch. 103, defend at law on ground that description of land in sheriff's return was void for uncertainty. Acquiescence. *Nelson v. Turner*, 2 Md. Ch. 77.

For case upholding writ of *habere* irregularly issued, where it had been executed and purchaser was entitled to possession, see *Meloy v. Squires*, 42 Md. 378.

This section entitles a purchaser to writ where a sale has been made under a power contained in a mortgage. Where party in possession excepts to sale and his exceptions are overruled, he cannot raise same objections upon an application for writ of *habere*. The fact that sale was made by the assignee of mortgage does not defeat purchaser's right to writ. *Dill v. Satterfield*, 34 Md. 53.

Proceedings held to be in conformity with this section. Sundry alleged irregularities connected with sale and sheriff's return, held to be no defense to an application for writ of *habere*. An agreement between party in possession and a third party made after seizure and sale does not defeat writ. *Miller v. Wilson*, 32 Md. 298.

This section operates in favor of the purchaser of an equitable estate, as well as of a legal estate. *McMechen v. Marman*, 8 G. & J. 73.

Where pending application for writ of *habere*, purchaser of land dies, his right to writ does not devolve upon his administrators. *Turner v. Waters*, 14 Md. 62.