

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. 302. *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.

Since this section requires the court to distribute the proceeds of sale to the parties entitled, in a proceeding under this section, where a deed under which a wife and minor children claim is filed as an exhibit, it is not necessary that their claims should be presented by next friends. *Hewitt's Appeal*, 55 Md. 517.

This section referred to in upholding the general powers of equity to appoint a trustee where there is need of one. *Dodge v. Dodge*, 109 Md. 168. And see *Dorsey v. Thompson*, 37 Md. 26; *Davis v. Clabaugh*, 30 Md. 510.

Cited but not construed in *Jones v. Stockett*, 2 Bl. 435; *Ex parte Street*, 1 Bl. 532; *Mackubin v. Brown*, 1 Bl. 410.

Cited but not construed in *Fid. & Dep. Co. v. State*, 164 Md. 313.

As to trustees, see sec. 256, *et seq.*

An. Code, 1924, sec. 98. 1912, sec. 95. 1904, sec. 91. 1888, sec. 80. 1785, ch. 72, sec. 13. 1826, ch. 159.

103. In all cases where the court shall decree that a deed of any kind shall be executed, a trustee to execute such deed may be appointed, and until such trustee shall execute a deed, the decree itself, if passed in the county where the land lies, shall have the same effect that the deed would if executed; but if passed in another county, the decree shall have that effect if recorded in the county where the land lies within six months from the date thereof.

Under this section, the court can direct the conveyance of an estate or the transfer of a right, but not the making of personal covenants in the absence of the parties to be bound and their privies. Hence, the court may appoint a trustee to execute a renewal of a lease for 99 years, the owners of the reversion being non-residents, but the non-residents cannot be bound by any personal covenant such as one for renewal. Specific performance. *Worthington v. Lee*, 61 Md. 541. And see *Hollander v. Central Metal Co.*, 109 Md. 148 (notes secs. 116 and 117); *Warfield v. Valentine*, 130 Md. 593.

This section has no application where a trustee sells property under a decree, but, although the sale is ratified and the purchase price paid, fails to execute a deed to the purchaser. *Sanders v. McDonald*, 63 Md. 508.

A decree directing executors to hold certain city stock as trustees for the use of certain parties, held not to be notice by virtue of this section, of the will of the testa-