

provided, the mortgagee would be entitled to maintain an action at law upon the covenants contained in said mortgage for said residue of the said mortgage debt so remaining unsatisfied by the proceeds of such sale; which decree shall have the same effect as a judgment at law, and may be enforced only in like manner, by a writ of execution in the nature of a writ of *feri facias*, or otherwise.

Personal decrees.

Before the decree *in personam* is passed, an order *nisi* should issue so as to give the defendant an opportunity to be heard. If the mortgage is not under the seal of the mortgagor, no decree *in personam* can be entered because no action of covenant could be maintained. *McDonald v. Workingmen's Bldg. Assn.*, 60 Md. 590.

The portion of this section relative to a personal decree, was enacted to avoid the delay and expense of a separate suit, and such remedy is cumulative and does not affect the right of action on the covenants to pay the mortgage debt. *Commercial Bldg. Assn. v. Robinson*, 90 Md. 632 (separate opinion).

As to decrees *in personam*, see also art. 66, sec. 25.

No application.

This section has no application to a sale of stock to pay debts due by the stockholder to a bank. *Reese v. Bank of Commerce*, 14 Md. 284.

This section has no application to a bill by a creditor of a mortgagor seeking a sale of his real estate. Purpose of this section. *Gibson v. McCormick*, 10 G. & J. 102.

This section does not affect the question of whether covenants run with the land. *Commercial Bldg. Assn. v. Robinson*, 90 Md. 632 (separate opinion).

Generally.

Object of this section. It contemplates that no more of the mortgaged premises should be sold than is practically unavoidable to pay the debt and expenses. *Thomas v. Fewster*, 95 Md. 449; *Johnson v. Hambleton*, 52 Md. 386; *Boteler v. Brookes*, 7 G. & J. 143.

This section contemplates the division of the mortgaged property into lots, if such division would produce more advantageous results. *Johnson v. Hambleton*, 52 Md. 386.

While ordinarily a defendant is entitled to have a day given him to bring the money into court, yet he may waive such privilege by his answer, or by a stipulation in the mortgage that upon default, the mortgagee "may forthwith foreclose," etc. *Johnson v. Robertson*, 31 Md. 487; *Dorsey v. Dorsey*, 30 Md. 528; *David v. Grahame*, 2 H. & G. 98.

A sale directed to be made on a credit of twelve months, is equivalent to a day being given for the payment of the debt. *David v. Grahame*, 2 H. & G. 98.

This section construed in connection with sec. 246—see notes thereto. *Dorsey v. Dorsey*, 30 Md. 528.

For cases construing the act of 1785, ch. 72, sec. 3, see *Boteler v. Brookes*, 7 G. & J. 143; *Andrews v. Scotton*, 2 Bl. 666.

See sec. 245. As to parties, see secs. 199 and 203, *et seq.*

As to mortgages, see art. 66.

As to tax sales, see art. 81, sec. 197, *et seq.*

As to the ratification *nisi* of sales by the clerks of the courts having jurisdiction, see art. 17, sec. 43.

Deficiency decree may only be entered against party who might be sued on covenants in mortgage; not against guarantor. *Kushnick v. Bldg. & Loan Assn.*, 153 Md. 644.

Decision under this section cited in construing sec. 248. See notes thereto. *Mercantile Bank v. Title Guar. Co.*, 153 Md. 325.

Cited but not construed in *Prodis v. Constantinides*, 167 Md. 36.

A deficiency decree is permitted where recovery could be had on the covenants of the mortgage in suit at law and same defenses that might be urged there may be set up. *Kirsner v. Cohen*, 171 Md. 687.

Cited in *Carrollton Bank v. Hollander* (Judge Smith, Circuit Court of Baltimore City), Daily Record, Mar. 7, 1939.

An. Code, 1924, sec. 233. 1912, sec. 218. 1904, sec. 203. 1888, sec. 188. 1785, ch. 72, sec. 5. 1785, ch. 78. 1789, ch. 46. 1790, ch. 38. 1794, ch. 60. 1795, ch. 88, sec. 3. 1818, ch. 193, sec. 2. 1833, ch. 150, sec. 1. 1864, ch. 360.
1890, ch. 320. 1900, ch. 320. 1922, ch. 330, sec. 218.
1933, ch. 57.

242. Where any person dies, or shall have died, leaving any real estate in possession, remainder or reversion, and not leaving personal estate sufficient to pay his debts and costs of administration, the court, on any suit instituted by any of his creditors, or by the executor, administrator or