"under present circumstances, Mr. Hall will decline drawing on his proportion, as he wishes you to avoid selling at the present prices, as long as possible; we refer you to him for more particular directions."

In another letter of the 13th April, 1807, the plaintiff directed the defendants that, after affecting sales of his half of the cotton, on the terms of his first letter, "they should pass the net proceeds of his proportion to the
*52] credit of Messrs. W. Potts & Co., and furnish him *with sales and account-current, as soon as possible, to enable him to settle with those gentlemen here."

After the receipt of these letters, the defendant, on the 5th June 1807, sold one hundred bags of the cotton on account of William Potts & Co., at 17*d.* sterling per pound, and immediately advised them thereof. The defendants afterwards, that is, on the 31st December 1807, had the remaining one hundred bags of cotton valued at 14*d.* sterling per pound, at which price they took it to themselves, and carried the amount to the credit of William Potts & Co., and on the 1st March following, sold them at a higher price. The plaintiff, thinking the defendant, guilty of a breach of orders, brought this action to recover damage, and on the preceding evidence, the circuit court was of opinion, that he could not separately maintain an action against them, on which a verdict and judgment passed against him.

Although the purchase of this cotton was on the joint account of the plaintiff, and of William Potts & Co., yet as, in its shipment to the defendants, their distinct interests were not only disclosed, but as separate and variant instructions were given as to the disposal of it, and as, under these directions, the defendants acted throughout the whole of their agency in this business, it is not easy to perceive on what ground they now allege that they can be liable only in a joint action in the names of the present plaintiff, and of William Potts & Co. By their own conduct, they have precluded themselves from every objection of this nature, for they have contracted, as to the one-half of this property, with the plaintiff, and as to the other moiety, with William Potts & Co., and it will be seen by a recurrence to the testimony, not only that their engagements with these parties are distinct, but of different kinds. In selling the proportion of W. Potts & Co., they had a discretion, but over the other they had no right to sell for less than cost and charges. This court, therefore, is of opinion, that the action was well brought, and that the judgment of the circuit court was erroneous and must be reversed.

Judgment reversed.

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*53] *Common Council of Alexandria *v.* Preston. (*a*)

Liability for taxes.

A purchaser of real estate, in Alexandria, is not personally liable for arrears of taxes, assessed before his purchase.

Error to the Circuit Court for the district of Columbia, sitting at Alexandria.

This was a motion in the court below, for judgment and execution against

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(*a*) February 18th, 1814. Absent, Washington and Johnson, Justices.

Preston (under the 11th section of the act of congress of 25th of February 1804, "to amend the charter of Alexandria," 2 U. S. Stat. 259), for taxes due to the corporation for the years 1804, 1805 and 1806, on a lot of ground in Alexandria, which Preston purchased of Scott, in the year 1807, after the taxes were due. The assessors' books were returned on the 1st of May, in every year, to the office of the clerk of the common council, where they remained subject to public inspection.

The court below, being of opinion, that the summary remedy by motion, judgment and execution, was given only against the person who was proprietor at the time of the assessment of the taxes, dismissed the motion; and the common council brought their writ of error.

The 11th section of the act to amend the charter of Alexandria is as follows: "Be it further enacted, that whenever taxes upon real property, or other claims charged upon real property within the town, shall be due and owing to the common council, and the proprietor shall fail to discharge the same, the said common council, after giving the party reasonable notice, when he resides in town; sixty days' notice, when he resides out of the town and in the United States; and after six months' publication in the newspapers, when he resides out of the United States; shall be empowered to recover the said taxes or debts, by motion, in the court of Alexandria; and provided it shall appear to the satisfaction *of the court, that such taxes or claims are justly due, judgment shall be granted and an execution [*54 shall issue thereupon, with the costs of suit, against the goods and chattels of the defaulter, if any can be found within the town; if not, that the whole property, upon which the tax or claim is due, shall, by order of the court, be leased out at public auction, for the shortest term of years that may be offered, on condition that the lessee pay the arrearages, and also the future taxes accruing during the term, and be at liberty to remove all his improvements at the expiration of the lease; provided always, that the common council may prosecute any other remedy, by action, for the recovery of the said taxes and claims which is now possessed or allowed."

E. J. Lee, for the plaintiff in error.—The question arising upon this case is, whether the proprietor, for the time being, of a lot in Alexandria, is personally liable to a judgment and execution for arrearages of taxes assessed upon the lot, before he became the proprietor thereof?

The act of congress gives a remedy, by motion, judgment and execution, against the proprietor who shall fail to discharge the taxes. Preston was the proprietor, at the time or the demand of payment, and has failed to pay. He is, therefore, within the express letter of the law. "The defaulter" also is the person who has failed to pay on demand; the person who was liable to pay, when the demand was made upon him. Every proprietor of the land is liable for its taxes, so long as he is proprietor. The claims, according to the words of the act, are charged upon the real property. They accompany the land into whose hands soever it may pass. The law was intended to give a remedy against any proprietor of the land. The taxes are placed on the same footing as other charges which are liens on the land. It is not a case of greater hardship than that of other liens on real estate. *Caveat emptor* is the rule, where he has the means of knowledge: here, the

assessors' books were always accessible. The purchaser is bound to take notice of the non-payment of the taxes; he purchases at his peril.

*55] *Swann*, contrà.—The statute uses the definite article, *the* proprietor." The question is, *which* proprietor? Scott or Preston? We say, it means him who was proprietor when the tax was laid, and in whose name the land was assessed, and who was unquestionable liable, in the first instance. He was "the proprietor"—"the defaulter" contemplated by the legislature. If he was liable, did his liability cease when he sold the land? or is he still liable? There is nothing in the law to justify an idea, that the legislature contemplated a succession of proprietors who should be successively liable; a succession of debtors; nor that they should be all liable at once; nor that the corporation should have its choice out of the several successive proprietors. It suggests the idea of one proprietor only, and of one debtor or defaulter only; and if but one, it can be no other than him who was confessedly liable—him who was proprietor at the time of the assessment. The tax is a lien on the lot so far as to authorize the court to direct it to be leased out to any one who will pay the taxes, in case the goods and chattels of the debtor cannot be found.

The books of the assessor and collector are not matter of record. The purchaser has no right to inspect them. The tax is a secret lien.

February 19th, 1814. The Court affirmed the judgment, without assigning their reasons.

Judgment affirmed.

Pleasants *v.* Maryland Insurance Company. (*a*)

Marine insurance.— Valuation.

When a cargo is insured by diverse polices, in some of which the rate of exchange is fixed, at which the prime cost of the cargo shall be valued; in ascertaining the amount of the interest of the assured, upon settlement of those policies in which the rate of exchange is fixed, the whole cargo is to be valued at that rate of exchange, without regard to the rate of exchange by which the value may have been ascertained in the other policies.

Error to the Circuit Court for the district of Maryland, in an action upon a policy of insurance, dated on the 18th of May 1810, on the cargo of the brig Elizabeth, from St. Petersburg or Cronstadt, to Philadelphia,
*56] against all risks, for $6000, "valuing *the invoice ruble at 46 cents." The invoice amounted to 95,565.71 rubles, equal, at 46 cents per ruble, to $43,960.23.

Before this policy was made, the plaintiff had effected eight other policies in Philadelphia, to the amount of $36,900. In the first seven of these policies, there was no valuation of the ruble; but in the eighth, it was valued at 40 cents. The defendants, at the time of executing this policy, had no knowledge of those affected in Philadelphia.

The vessel and cargo were captured by a Danish vessel and condemned. The plaintiff abandoned in due time. The underwriters at Philadelphia paid. But on settlement of the seven first policies, in which the value of

(*a*) February 12th, 1814.