Andrew Gibson, Matthew Gibson and William Stephenson, do, on or before the first day of November next, execute to the complainants, jointly or severally, a release of their interest in the premises; provided, before that time, they shall have been paid for their improvements, under the statute of Ohio. And the circuit court is hereby directed to proceed to ascertain the value of such improvements, agreeable to the above statute; each party to pay his own costs in this court.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Ohio, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, so far as relief is denied by the said court against Baker and Patterson, who are in possession of the 600 acres of land; and that the said decree of the said circuit court in this cause be and the same is hereby reversed as to the other defendants. And it is further ordered by this court, that this cause be and the same is hereby remanded to the said circuit court, with instructions to decree, that William Wilson, Andrew Gibson, Matthew Gibson and William Stephenson, do, on or before the first day of November, in the year of our Lord 1830, execute to the complainants, jointly or severally, a release of their interest in the premises; provided, that before that time, they shall have been paid for their improvements, under the statute of Ohio. And that the said circuit court be and the same is hereby directed to proceed to ascertain the value of such improvements, agreeable to the above statute. And that the said court do and act further in the premises, as to law and justice may appertain. And it is further ordered by this court, that each party respectively in this court pay his own costs accruing in this court.

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*349] *Mary Ronkendorff, Plaintiff in error, *v.* James N. Taylor's Lessee, Defendant in error.

Tax-sales.

The official tax-books of the corporation of Washington, made up by the register from the original returns or lists of the assessors, laid before the court of appeals, he being empowered by the ordinances of the corporation to correct the valuations made by the assessors, are evidence; and it is not required, that the assessor's original lists shall be produced in evidence, to prove the assessment of the taxes on real estate in the city of Washington. p. 359.

In an *ex parte* proceeding, as a sale of land for taxes, under a special authority, great strictness is required; to divest an individual of his property, against his consent, every substantial requisite of the law must be complied with; no presumption can be raised in behalf of a collector who sells real estate for taxes, to cure any radical defect in his proceedings, and the proof of regularity devolves upon the person who claims under the collector's sale.[1] p. 359.

Proof of the regular appointment of the assessors is not necessary; they acted under the authority of the corporation, and the highest evidence of this fact is the sanction given to their returns. p. 360.

The act of congress, under which the lot in the city of Washington in controversy was sold;

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[1] Parker *v.* Overman, 18 How. 137; Clarke *v.* Strickland, 2 Curt. 439; Miner *v.* McLean, 4 McLean, 138; Moore *v.* Brown, Id. 211; Raymond *v.* Longworth, Id. 481; s. c. 14 How. 76; Slater *v.* Maxwell, 6 Wall. 269; Mason *v.* Fearson, 9 How. 268.

required, that public notice of the time and place of sale of lots, the property of non-residents, should be given, by advertising, "once a week," in some newspaper in the city, for three months; notice of the sale of the lot in controversy was published for three months; but in the course of that period, eleven days at one time, at another, ten days, and at another, eight days transpired, in succeeding weeks, between the insertions of the advertisement in the newspapers. "A week" is a definite period of time, commencing on Sunday and ending on Saturday; the notice was published Monday, January 6th, and was omitted until Saturday, January 18th, leaving an interval of eleven days; still, the publication on Saturday was within the week preceding the notice of the 6th; and this was sufficient. It would be a most rigid construction of the act of congress, justified neither by its spirit nor its language, to say, that this notice must be published on any particular day of a week; if published once a week, for three months, the law is complied with, and its object effectuated.[1] p. 361.

No doubt can exist, that a part of a lot may be sold for taxes, where they have accrued on such part. p. 361.

The lot on which the taxes were assessed, belonged to two persons, as tenants in common: the assessment was made, by a valuation of each half of the lot. To make a sale of the interest of one tenant in common, for unpaid taxes, valid, it need not extend to the interest of both claimants; one having paid his tax, the interest of the other may well be sold for the balance. p. 361.

The advertisement purported to sell "half of lot No. 4, in square No. 491;" and the other half was advertised in the same manner, as belonging to the other tenant in common; this was not a sufficient advertisement; and a sale made under the same was void. p. 362.

It is not sufficient, that in an advertisement of land for sale for unpaid taxes, such *a description is given, as would enable the person desirous of purchasing to ascertain the [*350 situation of the property by inquiry; nor if the purchaser at the sale had been informed of every fact necessary to enable him to fix a value upon the property, would the sale be valid, unless the same information had been communicated to the public in the notice. p. 362.

The 10th section of the act of congress provides, that real property in Washingon, on which two or more years' taxes shall be due and unpaid, may be sold, &c.; in this section, a distinction is made between a general and a special tax; property may be sold to pay the former, as soon as two years' taxes shall be due; but to pay the latter, property cannot be sold, until the expiration of two years after the second year's tax becomes due. The taxes for which the property in controversy was sold, became due, by the ordinance of the corporation, on the 1st day of January 1821 and 1822; the special tax for paving was charged against the lot, in 1820, and became due on the first of January 1821; but the ground on which it was assessed was not liable to be sold for the tax, until the 1st of January 1823. The first notice of the sale was given on the 6th of December 1822, nearly a month before the lot was liable to be sold for the special tax of 1820: *Held*, that the whole period should have elapsed which was necessary to render the lot liable to be sold for the special tax, before the advertisement was published. p. 364.

ERROR to the Circuit Court of the district of Columbia, for the county of Washington. This was an ejectment, brought by the defendant in error, in the circuit court, for the recovery of an undivided moiety of a lot of ground, in the city of Washington, No. 4, in square No. 491.

The lessor of the plaintiff in the ejectment claimed to be entitled to the lot of ground, as tenant in common with the heirs-at-law of Henry Toland, deceased; and on the 10th of March 1823, the half of the lot so held by the lessor of the plaintiff, was set up and exposed to public sale, as assessed to James N. Taylor, for taxes due to the corporation of Washington, for the years 1820 and 1821, amounting, in the whole, including the expenses of the sale, to the sum of $47.91; and Henry T. Weightman became the purchaser of the same. Mary Ronkendorff, the plaintiff in error, held, as lessee, under the purchaser at the tax-sale.

In the circuit court, the jury returned a verdict for the plaintiff in the

[1] See Early *v.* Homans, 16 How. 610.

ejectment; upon which judgment for his unexpired term in an undivided moiety of the lot, as tenant in common, was rendered in his favor, under the instructions of the court; to which several exceptions were taken.

*351] *The plaintiff in the circuit court made out his title under the commissioners of the city of Washington, by regular conveyances to himself and Henry Toland, deceased; and it was agreed, that the plaintiff's lessee and Toland's heirs were, under the same, seised in fee, as tenants in common of the premises, before the sale of the half lot for taxes.

The defendant proved the assessment of the taxes on the lot, by the production of the regular evidence, and that the taxes were assessed and the assessments were entered in the tax-books, according to the forms usually pursued and authorized under the charter and ordinances of the corporation of Washington.

In the tax-book of 1820, the assessment of lot No. 4, in square No. 491, appeared arranged in columns, in the established and accustomed form; in which were placed the name and residence of the owner of the property; the number of the square; the number of the lot; its contents in square feet; the rate of assessment; the valuation; the valuation of the improvements; and the amount of the tax. The lot in controversy was entered in the tax-book of 1820 thus:

Names.	No. of square.	No. of lots.	No. of square feet.	Rate of assessment.	Valuation.	Total amount.	Amount of Tax.
Taylor, James N.	491	½ 4	4202	40	1680	1680	
						8 40	
Paving-tax.						23 46	31 86
Toland's heirs, Henry	491	½ 4	4202	40	1680	1680	8 40

In the tax-book for 1821, the assessments of the lot were entered as follows:

Taylor, James N.	491	½ 4	4202	40	1680	1680	8 40
Toland's heirs, Henry	491	½ 4	4202	40	1680	1680	8 40

It was also proved, on the part of the defendant in the ejectment, that the persons appointed to take the value of the property liable to assessments for taxes in the city of Washington, usually perform the duty in October

*352] in each *year, and make out annual lists of the same, and of its assessed value; which, after being laid before the board of appeal empowered to correct the valuations, are returned to the register of the corporation, with the corrections, if any; in whose custody and office, the original books containing such lists and valuations are preserved; and the register, by the authority of the corporation, then proceeds to digest the tax-books, year by year, in the form described, and transfers into such tax-books, from the original assessment-books so returned by the assessors, through the board of appeal, the lists of the several species, descriptions and parcels of property on which such taxes are imposed, and the assessed valuation of the same, as corrected by the board of appeal; extending in the proper column pre-

pared for the purpose, the amount of the taxes imposed upon the same respectively: which tax-books, given in evidence by the defendant, were so made up and arranged by the register, in the years 1820 and 1821, respectively; the general taxes therein respectively assessed becoming due and payable, according to the laws of the corporation, on the first day of January of each year then next ensuing; that is to say, the general tax (exclusive of the special tax for paving) for the year 1820, on the 1st of January 1821; and that for the year 1821, on the first of January 1822.

The court, on motion of the plaintiff, instructed the jury that the tax-books, so given in evidence by the defendant, were not competent evidence to prove the assessments of the lot for the years 1820 and 1821, unless the defendant first proved the regular appointment and authority of the assessors whose books and returns were used in making up and arranging the tax-books as aforesaid; and also produced the original books, so returned by the assessors, through the board of appeal, in each year, respectively; to which opinion and instruction of the court, the defendant in the circuit court excepted.

It was further proved on the part of the defendant, that the collector of the taxes imposed by the corporation in third and fourth wards, who was authorized to advertise and sell all property in those wards liable to be sold by taxes, on *Monday the 6th of December, in the year 1822, the taxes on lot in controversy being unpaid, caused to be inserted in the [*353 National Intelligencer, the following advertisement:

"Will be sold, at public sale, on Monday the 10th of March next, at 10 o'clock, A. M., at the City Hall, the following described property, to satisfy the corporation of Washington city, for taxes due thereon up to the year 1821 inclusive, with costs and charges; unless previously paid to the subscriber, to wit: (and among others are the following.)

To whom assessed.	No. of square.	No. of lot.	Amount.
James N. Taylor,	491	½ of 4	$16 80
Paving-tax, interest 10 per cent.			23 46
Henry Toland's heirs,	491	½ of 4	16 80

This advertisement was repeated, and republished, by the direction of the collector, on the several days following:

Friday, December 6th, 1822.
Saturday, December 14th, 1822.
Monday, December 16th, 1822.
Tuesday, December 17th, 1822.
Wednesday, December 25th, 1822.
Saturday, January 4th, 1823.
Monday, January 6th, 1823.
Saturday, January 18th, 1823.
Tuesday, January 21st, 1823.
Saturday, February 1st, 1823.
Tuesday, February 4th, 1823.
Thursday, February 6th, 1823.
Saturday, February 8th, 1823.
Tuesday, February 11th, 1823.
Wednesday, Februay 12th, 1823.
Thursday, February 13th, 1823.
Friday, February 14th, 1823.
Saturday, February 15th, 1823.
Monday, February 17th, 1823.
Tuesday, February 18th, 1823.
Wednesday, February 19th, 1823.
Saturday, March 1st, 1823.
Monday, March 3d, 1823.
Tuesday, March 4th, 1823.
Wednesday, March 5th, 1823
Monday, March 10th, 1823.

The tenth section of the act of congress of the 15th May 1820, "to incorporate the inhabitants of the city of Washington, and to repeal all other acts heretofore passed," requires that real estate upon which two years' taxes are unpaid and in arrear, shall be advertised "once a week" for three months.

In pursuance of his authority and duty, and according to the tenor of the advertisement, the collector, on the 10th of *March 1823, set up *354] at public sale one-half of the lot No. 4, in square 491; and the same having been purchased by Henry T. Weightman, he paid the amount of the purchase-money, on the 11th of March 1823, to the collector, who thereupon executed and delivered to him a certificate under his hand, and executed in the presence of a witness; stating, that "at a sale made by me, as collector of taxes for the third and fourth wards of the city of Washington, on the 10th of March 1823, after due notice given as required by the acts of the corporation of said city, I set up and exposed to public sale, half of lot No. 4, in square 491, assessed to James N. Taylor, for taxes due the said corporation on the same, for the years 1820 and 1821, amounting in the whole, including the expenses of sale, to the sum of $47.91; when a certain Henry T. Weightman, being the highest bidder, became the purchaser thereof, at and for the sum of $47.91: the receipt of $47.91 is hereby acknowledged, subject however to redemption as provided for by law.

The collector made a return of the sale in the following form:

Sqr.	Lot.	To whom assessed.	Purchaser.	Tax.	Expen.	Am. sold for.
491	½ 4	James N. Taylor,	H. T. Weightman,	45 33	2 58	47 91

Mr. Weightman entered upon the half lot so sold to him, and was possessed thereof, more than two years after the day of sale; and afterwards, on the 5th of October 1826, received in due form a conveyance in fee-simple of the said half lot, which deed was duly recorded; the plaintiff's lessor, James N. Taylor, or any person for him or in his behalf, or any person whatever, not having at any time paid or in any manner tendered to Mr. Weightman, or deposited in the hands of the mayor or other officer of the corporation, the money paid to the collector, or any part thereof.

The court, on the motion of the plaintiff, instructed the jury, that the advertisement of the property was defective and illegal in the several instances and particulars following, to wit: *1. That, being pub- *355] lished and republished as aforesaid, on the several days aforesaid, from the 6th of December 1822 to the 17th of March 1823, both inclusive, was not an advertisement "once a week," for three months, within the meaning of the tenth section of the act of congress, passed on the 15th of May 1820, "to incorporate the inhabitants of the city of Washington, and to repeal all acts heretofore passed for that purpose." 2. That the said corporation, or its collector of taxes acting under its authority, was not competent to advertise and sell any part of the said lot No. 4, in square No. 491, less than the entire lot, for the taxes so assessed on the same and due to the said corporation. 3. That the entire lot should have been assessed to the two tenants in common, Taylor and Toland; and accordingly advertised and sold, as assessed to them. 4. That the said advertisement did not sufficiently designate what half of the said lot was charged with the said taxes

and was to be sold for the same; and did not purport to be an advertisement of an undivided moiety of the same for sale. 5. That the said corporation, or its said collector, had no power or authority to advertise the said lot for sale, till the last of the two years' taxes, for which the same was advertised for sale, had remained unpaid and in arrears for two years. 6. That the said advertisement does not purport to advertise the said lot for two years' taxes unpaid and in arrears. 7. That the said property so attempted to be sold, was not described with sufficient certainty, either in the advertisement or at the sale. For which several defects, in the process of the assessment, advertisement and sale of the said lot, the said sale is illegal and void. The defendant excepted to all these instructions and opinions of the court, and prosecuted this writ of error.

The case was argued by *Jones*, for the plaintiff in error; and by *Burrell* and *Key*, for the defendant.

**Jones*, for the plaintiff in error, contended, that the objections to the sale, which had been made for taxes, of the moiety of the lot, [*356 were untenable. The taxes for which the sale had been made, had been regularly assessed under the authority of the corporation of Washington, and in conformity to law; all the forms of the law and ordinances had been complied with in this assessment; the registering of the taxes; the advertisement; and the sale. He cited the charter and ordinances of the corporation in support of that position.

Burrell and *Key*, for the defendant, contended, that no proof had been made, on the trial in the circuit court, of the assessment of the taxes. The original books of the assessors should have been produced; and not the statements or abstracts from them, made by the register. There may have been alterations made on appeals, and the original books of the assessors were the only legal evidence. Laws for the sale of lands for taxes should be construed strictly, and their provisions should be strictly pursued. They are penal in their nature and effects. They go to wrest the property of the owner out of his hands by act of law; and every form which the law directs must be entirely and fully answered. 8 Wheat. 682.

The description of the property was imperfect; it did not designate the part of the lot to be sold with sufficient, if with any, precision. If the corporation could divide a lot, which is denied, in order to comply with the law, there should have been an assessment of a half lot, and a description of it as such. To show that such a description was insufficient, they cited, 1 Har. & Gill 172.

The publication of the advertisement was not made in conformity with the provisions of the charter. The tenth section directs that the advertisement shall be inserted once a week, for three months; but the case shows that this was not done. A period of twelve days had elapsed between the days on which the advertisement appeared; and no more than seven days should have passed. Once a week, means once in every seven days; from one day, a particular day, to *another, a corresponding day in the succeeding [*357 week. In every period of seven days, the insertion of the notice was not sufficient. If the advertisement commenced on one day in a week, it should have been repeated on the following corresponding day in the

succeeding week; and so on, until it had been inserted for three months. The stipulation to pay rent quarterly, and the construction given to such covenants, illustrate and explain the position of the defendant in error. Would it be a compliance with an agreement to pay two quarters' rent, quarterly, to make the payment at any time within six months, being two quarters? The payments are to be made, under such covenant, from quarter-day to quarter-day; and there is a breach, if the corresponding and succeeding quarter-day is suffered to pass without payment being made.

It was also contended, that the corporation had no authority to advertise the lot for sale, until the last of the two years' taxes were due, for which the sale was to be made; and that the advertisement does not purport to expose the property to be sold for two years' taxes unpaid, and in arrears.

Jones, in reply, argued, that the books of the assessors were not the original records of the assessment of the taxes. The returns are made to the register, and are entered by him; and his books exhibit regular and proper evidence of the charges and assessments on property in the city. The register is a public, sworn officer, and the duties he performs are official acts, which are shown by his books.

The advertisement was inserted in every succeeding period of seven days, and this was a compliance with the law. It was a publication in every succeeding week, or space of seven days; and this was according to the letter of the charter. When a term is fixed for the performance of an act, the whole time is allowed to do it; even to the last minute. So, to require advertising once a week, gives all the next week for the next advertising. On what succeeding day in the hebdomadal division of a week, the advertisement shall appear, is not required; the name of the day of the week on
*358] which it must be published is of no moment; as the names *of the days of the week are arbitrary. It is the period of seven days, which the law regards as the space of a week; and in this case, as there was no period of fourteen days in which the notice of the sale was omitted, no longer period than twelve days having passed during the three months in which the advertisement did not appear, all was regular.

As to the objection that the property sold had not been sufficiently described; as the powers of the corporation are to tax all interests in lands, the right to assess the tax on an undivided moiety of a tenant in common, cannot be denied. Such was this case; and the advertisement described sufficiently an undivided half of the lot, of which Taylor was the owner with Toland's heirs.

McLean, Justice, delivered the opinion of the court.—This writ of error is prosecuted to reverse a judgment of the circuit court for the district of Columbia. The defendant in error brought an action of ejectment in the circuit court, to recover possession of lot No. 4, in square No. 491, in the city of Washington, half of which had been sold for taxes; and under the special instructions of the court, recovered a verdict and judgment. Several exceptions were taken to the competency of the evidence admitted on the trial, all of which appear in the bill of exceptions.

The first objection was taken to the competency of the proof of the assessment of the lot for taxation: the legality of the tax is not disputed. To show the taxes assessed on the lot for the years 1820 and 1821, the

defendant below produced in evidence the official tax-books of the corporation, regularly made up by its officers; from which it appeared, that the plaintiff stood charged, for 1820, with $31.86, for the tax on the half of lot No. 4, which contained 4202 square feet, valued at $1680. For the year 1821, he stood charged with $8.40, tax on the same lot. It appeared in proof, that the assessors appointed by the authority of the corporation, make a valuation of *property within the city, about the month of October, annually, and a return of their proceedings; which are laid [*359 before the board of appeal empowered to correct the valuations of the assessors, according to the laws and ordinances of the corporation. The assessment lists are then returned to the register of the corporation; the register then proceeds to make out the tax-books, from the original assessment lists returned by the assessors, and corrected by the board of appeal. But it was contended, that the original lists of the assessors must be produced, and also proof of their appointment.

The court recognise the correctness of the principle contended for by the counsel for the plaintiff in error; that in an *ex parte* proceeding of this kind, under a special authority, great strictness is required. To divest an individual of his property, against his consent, every substantial requisite of the law must be shown to have been complied with. No presumption can be raised in behalf of a collector who sells real estate for taxes, to cover any radical defect in his proceeding; and the proof of regularity in the procedure devolves upon the person who claims under the collector's sale.

In this case, was it necessary to exhibit proof of the regular appointment of the assessors? They acted under the authority of the corporation, and the highest evidence of this fact is the sanction which it has given to their return. This return has been examined and corrected by the board of appeal, and was then handed over to the register. What better proof can be required of the assessors' authority to act. The municipal powers of the corporation are conferred by a public law, and all courts are bound to notice them. Is it necessary, in any case, to go into the proof of the election of the mayor, or any of the other officers of this corporation? This has not been contended; nor can it be necessary to prove the appointment of an officer of the corporation, who has acted under its authority, and whose proceedings, as in the present case, have received its express sanction.

Did the court below err, in requiring the original assessment lists to be produced? These lists, under the law, were not conclusive on the *cor- [*360 poration, nor on the person whose property was assessed. They were laid before the court of appeal, for their correction and sanction, and they were then passed to the register. If the assessment was not conclusive, nor indeed, binding on either party, until sanctioned by the board of appeal; then, without this sanction, the assessment lists could not be received as evidence. These lists being handed over to the register, the law requires him to furnish a tax-book to the collector, from the original assessment lists on file in his office, according to a prescribed form. This was done in the case under consideration; and is not this book evidence? It was made out and arranged by an officer, in pursuance of a duty expressly enjoined by law. This not only makes the tax-book evidence, but the best evidence which can be given, of the facts it contains. In this book, are stated, the name of the owner of the property, and his residence, if known; the number of the

square, the number of the lot, the square feet it contains, the rate of assessment, the valuation, and the amount of the tax. Only a part of these appear upon the assessment list.

This court think, that the circuit court erred in their instructions to the jury, on both of the points stated. 1. In deciding that the proof was not competent to show the authority of the assessors: and 2. That the official tax-book, certified by the register, did not prove an assessment on the property.

The next point presented by the bill of exceptions is as to the legality of the notice of sale given by the collector. The court instructed the jury, that the advertisement was defective in several particulars. By the 10th section of the act of congress, which directs this proceeding, the collector is required to give public notice of the time and place of sale, by advertising, once a week, in some newspaper printed in the city of Washington, for three months; when the property is assessed to a person who resides within the United States, but without the district of Columbia. Notice of the sale of the lot in controversy was given by the collector; first, in a newspaper
*361] published the 6th of *December 1822, and last, in the same paper of the 10th of March 1823. These periods embrace the time the advertisement is required to be published; but it is contended, that the notice was not published once in each week, within the meaning of the act of congress. In examining the dates of the publications, it appears, that eleven days, at one time, transpired between them, and at another time, ten days, at another, eight. These omissions, it is contended, are fatal; that the publication being once made, it was essential to the validity of the notice that it should be published every seventh day thereafter.

The words of the law are, "once a week." Does this limit the publication to a particular day of the week? If the notice be published on Monday, is it fatal, to omit the publication until the Tuesday week succeeding? The object of the notice is as well answered by such a publication, as if it had been made on the following Monday. A week is a definite period of time, commencing on Sunday and ending on Saturday. By this construction, the notice in this case must be held sufficient. It was published Monday, January the 6th, and omitted until Saturday, January the 18th, leaving an interval of eleven days; still, the publication on Saturday was within the week succeeding the notice of the 6th. It would be a most rigid construction of the act of congress, justified neither by its spirit nor its language, to say that this notice must be published on any particular day of a week. If published once a week, for three months, the law is complied with, and its object effectuated. The circuit court erred on this point, in their instructions to the jury.

The court below also instructed the jury, "that the corporation, or its collector of taxes, acting under its authority, was not competent to advertise and sell any part of said lot No. 4, for the taxes assessed on the same." By the law, not less than a lot, when the property upon which the tax has accrued is not less than that quantity, may be sold for the taxes due thereon.
*362] *No doubt can exist, that a part of a lot may be sold for taxes, where they have accrued on such part; it appears, therefore, that the circuit court have also erred on this point.

It is again objected, "that the entire lot should have been assessed to the

two tenants in common, Taylor and Toland; and accordingly advertised and sold, as assessed to them. The same valuation was placed on each half of this lot; so that, so far as the assessment goes, it did not substantially differ from the instruction given. But the sale, to be valid, need not extend to the interest of both claimants. One having paid his share of the tax, the interest of the other may well be sold for the balance. The court, therefore, erred, in their instructions on this point also.

In their fourth instruction, the court say to the jury, "that the advertisement did not sufficiently designate what half of the said lot was charged with the said taxes, and was to be sold for the same, and did not purport to be an advertisement of an undivided moiety." The law requires "the number of the lots (if the square has been divided into lots), the number of the square or squares, or other sufficient or definite description of the property selected for sale, to be stated in the advertisement." Congress had two objects in view, in requiring this notice to be given. 1. To apprise the owner of the property; and 2. To give notice to persons desirous of purchasing. These objects are important. It is necessary for the interest of the owner, that he should be informed of a proceeding which, unless arrested by the payment of the tax, would divest him of his property. And it was of equal, if not greater, importance, that the property should be so definitely described, that no purchaser could be at a loss to estimate its value. It is not sufficient, that such a description should be given in the advertisement, as would enable the person desirous of purchasing to ascertain the situation of the property by inquiry. Nor, if the purchaser at the sale had been informed of every fact necessary to enable him to fix a value upon the property; yet the sale would be void, unless the same information had been communicated to the public in the notice. Its defects, if any exist in the description of the *property to be sold, cannot be cured by any communication made to [*363
bidders, on the day of sale, by the auctioneer.

What was the description given in the advertisement of the property in controversy? It was described to be half of lot No. 4, in square No. 491; and the other half was advertised, at the same time, under the same description, as belonging to Toland's heirs. What would be understood by such a description? Suppose, half a square had been advertised, it not having been divided into lots: would it convey that certainty to the public, as to the precise property about to be sold, that would enable any one to form an opinion of its value? No one could suppose that an undivided half of the square was to be sold under the notice; and which half was offered, could not be determined from the advertisement. Would this be a notice, under the requisites of the law? The value of a lot or half lot depends upon its situation. If one of the half lots front two streets in a populous part of the city, it is of much higher value than the other half. And this difference in value may still be greater, if the lot be situated near the middle of a square, fronting the street, and it be divided so as to cut off one-half of it from the street. It will thus be seen, that it is not a matter of small importance to the person who wishes to purchase, to know which half of a lot is offered for sale; and as any uncertainty in this matter must materially affect the value of the property at the sale, it is of great importance to the owner, that the desciption should be definite. That an undivided moiety of a lot may be sold for taxes, has already been stated. But would any one understand

that one-half of lot No. 4, means an undivided moiety? In all cities, half lots are as common as whole ones; and when a half lot is spoken of, we understand it to be a piece of ground, half the size of an entire lot, and of as definite boundaries. The illustrations given show how great a difference in value may exist between halves of the same lot. And would not the preferable half be of much higher value than an undivided moiety of the
*364] entire lot? *In every point of view in which this notice can be considered, under the act of congress, it was radically defective. The property should have been described, as an undivided half of lot No. 4. Under such a description, no one could be at a loss, as to its situation and value. The instructions of the circuit court on this point are not erroneous.

In their fifth instruction, the court say, "that the corporation, or its collector, had no power or authority to advertise the said lot for sale, till the last of the two years' taxes for which the same was advertised for sale, had remained unpaid and in arrear for two years." The tenth section of the act of congress, which governs this subject, provides, "that real property, whether improved or unimproved, in the city of Washington, on which two or more years' taxes shall have remained due and unpaid; or on which any special tax, imposed by virtue of the authority of the provisions of this act, shall have remained unpaid for two or more years after the same shall have become due, may be sold, &c." In this section, a distinction is made between a general and a special tax. Property may be sold to pay the former, so soon as two years' taxes shall be due; but to pay the latter, property cannot be sold, until the expiration of two years after the second year's tax becomes due. The taxes for which the lot in controversy was sold, were assessed in 1820 and 1821; and by the ordinance of the corporation, they became due on the 1st of January succeeding the assessment. A special tax for paving was charged against Taylor in 1820, and composed a part of the sum for which the property was sold. This special tax became due on the 1st of January 1821; but the ground on which it was assessed, was not liable to be sold for the tax, until the 1st of January 1823. On the 1st of January 1822, the same property was liable to be sold under the assessments of the years 1820 and 1821, for a general tax. The first notice of the sale was given on the 6th of December 1822,
*365] nearly a month before the lot was liable to be *sold for the special tax of 1820. Does this render the notice invalid? This court think that the whole period should have elapsed which was necessary to render the lot liable to be sold for special tax, before the advertisement was published. That the owner of the lot, by paying the tax, at any time before the 1st of January 1823, would save it from the liability of being sold; and that until this liability had attached, he could not be chargeable with the expense of notice, nor could it legally be given. The circuit court, therefore, did not err in their instruction to the jury on this point.

The court also instructed the jury, that the advertisement was defective, as it "does not purport to advertise the said lot for two years' taxes unpaid and in arrear." It states, that the lot was offered for sale, "for taxes due thereon up to the year 1821." This was sufficient; for if the taxes were due, and the property was liable to be sold for them, it can be of no importance to the purchaser to have a more technical description of the tax than the notice contained.

The seventh instruction, "that the said property, attempted to be sold, was not described with sufficient certainty, either in the advertisement or at the sale," is substantially embraced by the fourth instruction which has been considered.

For the errors specified, the judgment of the circuit court must be reversed, and the cause removed to that court for further proceedings, in conformity to this opinion.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that the cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein according to law and justice.

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* Bank of the United States, Plaintiffs in error, *v.* Levi Tyler, [*366
Defendant in error.

Promissory notes.—Liability of assignor in Kentucky.—Lien of judgment.—Liability to execution.—Discharge of assignor.

Action by the indorsees against the indorser of a promissory note, made and indorsed in the state of Kentucky.

The statute of Kentucky, authorizing the assignment of notes, is silent as to the duties of the assignee, or the nature of the contract created by the assignment; it only declares such assignments valid, and the assignee capable of suing in his own name; but the courts of that state have clearly defined his rights, duties and obligations resulting from the assignment. The assignee cannot maintain an action on the mere non-payment of the note, and notice thereof, until the holder of the note has made use of all due and legal diligence to recover the money from the maker; his engagement is held to be, that he will pay the amount, if, after due and diligent pursuit, the maker is found insolvent. p. 380.

The principles of the law of Kentucky, relative to the liability of indorsers of promissory notes, and proceedings to establish the same, as settled by the decisions of the courts of Kentucky. p. 381.

A judgment does not bind lands, in the state of Kentucky, the lien attaches only from the delivery of the execution to the sheriff; it then binds real and personal property, held by legal title; an execution returned, is no lien on any property not levied on; and no new lien can be acquired, until a new execution is put into the hands of the sheriff; and none can issue while a former levy is in force. Any delay, then, by the assignee, enables the debtor to alien his property, in the interval between judgment and the execution reaching the sheriff, as well as between the return of one and the lien acquired by a new execution. p. 383.

By the law of Kentucky, no equitable interest in real or personal property, unless it is held by mortgage, deed of trust, or other incumbrance, can be taken in execution; a *capias ad satisfaciendum* is the only mode by which the equitable estate of a debtor or his *choses in action* can be, in any way, reached, by any legal process; it may be the means of coercing the payment of the debt, and it must, therefore, be used. The return of *nulla bona* to an execution, is, in that state, the only evidence of there being no property of the debtor on which a levy can be made; it is not evidence of there being no equitable interest which is beyond the reach of such process; nor of his not having that kind of property, on which no levy can be made. p. 383.

After judgment obtained in the circuit court of the United States against the maker of a note, *capias ad satisfaciendum* was issued against him, by the holder, and he was put in prison, two jutices of the peace ordered his discharge, claiming to proceed according to the law of Kentucky in the case of insolvent debtors; and the jailer permitted him to leave the prison; the jailer made himself and his sureties liable for an escape, by permitting the prisoner to leave