consisting of its capital. In case of a permanent loss, a remedy against grievous taxation was always at hand by a reduction of the capital.

Having come to the conclusion that the tax on the capital of the Bank of the Commonwealth is a tax on the property of the institution, and which consists of the stocks of the United States, we do not perceive how the case can be distinguished from that of the *Bank of Commerce* v. *New York City*, 2 Black, 620, heretofore before this court.

JUDGMENT REVERSED, and the cause remitted, with directions to enter judgment in conformity with this opinion.

FLORENTINE *v.* BARTON.

A State legislature may, constitutionally, pass a private act authorizing a court to decree, on the petition of an administrator, *private* sale of the real estate of an intestate to pay his debts, even though the act should not require notice to heirs or to any one, and although the same general subject is regulated by general statute much more full and provident in its nature.

In making the order of sale under such private act, the court is presumed to have adjudged every question necessary to justify such order or decree, viz.: The death of the owners; that the petitioners were his administrators; that the personal estate was insufficient to pay the debts of deceased; that the private acts of Assembly, as to the manner of sale, were within the constitutional power of the legislature, and that all the provisions of the law as to notices which are directory to the administrators have been complied with. Nor need it enter upon the record the evidence on which any fact is decided. Especially does all this apply after long lapse of time.

A GENERAL statute of Illinois, passed at an early day, enacted that, when any administrator whose intestate had died leaving real estate, should discover that the personal estate was insufficient to pay his debts, such administrator should make and deliver to the Circuit Court of the county, an account of the debts and personal estate of such his intestate,

with a petition requesting aid of said court by its order of sale of a part of the real property.

The act was full, minute, and stringent in its requirements of notice to the heirs of the intestate, with "a copy of the account and petition." It directed "due examination" by the court of all objections made by any one, and that sale of so much of the realty as would pay the debts should, from time to time, be ordered, or the whole, if requisite, only in case the court should find that the personalty was insufficient to do so. But the act directed that no sale not a public one, made in open hours of day, and upon full public notice, and with a description, to "common certainty," of the land, should be made at all.

With this *general* statute in existence and force, the legislature of Illinois passed, in 1821, a private act, reciting that Beck and O'Harra, administrators of Aaron Crane, had, by petition to it, set forth that the said Crane, late of Missouri, had died intestate, not leaving sufficient personal estate to pay his debts, but leaving real estate; and enacting that the said Beck and O'Harra should have power to sell such part of his real estate as they might at any time be ordered to do by the proper court, for the payment of his debts; and that such sales "may be made at *private* sale instead of public sale," notwithstanding the above recited general act. It was provided, however, that before any sale was completed, it should be reported to one of the judges of the court allowing it, and be approved by him.

The administrators accordingly made a petition to the State Circuit Court. Neither the petition, however, nor any other proceeding except the record *of court*, now appeared. This record recited a petition setting forth that the personal estate was not sufficient to pay debts, and praying an order to sell certain parts of the real estate, for the purpose of paying them, agreeably to the private act of legislature already referred to, and concluding with an order that the administrators should sell an item described. *But there was no mention whatever in the record, that any notice had been given to heirs or to anybody, or that the estate was in any way indebted.*

Argument for title through the heirs.

Ten days after order made, the administrators sold the property, and their sale was reported by them to one of the judges of the court, which allowed it, and by him was approved. This was in A. D. 1823.

Ejectment for the land thus sold was now brought, A. D. 1857, in the Federal court for the Northern Circuit of Illinois, by Florentine, who had purchased, in 1856, from the heirs of Crane, against Barton, claiming under the vendee of the administrators. Judgment was given for the defendant, which was the error assigned.

Grimshaw, for the plaintiff in error: Men can be deprived of their property only by law. Law is a rule of civil conduct. A rule is general and universal. The act under consideration is not a rule, but an edict or decree limited to an individual case; hence it is not a law, and not within the legislative power. It is not intended to deny altogether the power of the legislature to pass private or special acts. There are many transactions of agency or negotiation which may be done by special act. But the legislature has no power to pass a special act, or, which is the same thing, make an edict, by which an individual is to be deprived of his property, *in violation of the general laws of the State.* This is undeniably true in principle, and the only obstacle in the way of its universal recognition is legislative usage. It is admitted that Colonial and State legislatures have frequently passed acts in violation of this principle, and that such acts have, in a few instances, been sanctioned by judicial decisions; but since the adoption of our American constitutions, their validity has always been questioned, and the weight of legislative, as well as judicial authority, is against their validity. When they have been sanctioned, it has been under the pressure of expediency, at the sacrifice of principle.

In a Kentucky case,* Judge Underwood, after deciding an act of the Kentucky legislature, which forfeited lands to the commonwealth, and then gave them to the occupant, unless

* Gaines et al. *v.* Buford, 1 Dana, 499.

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the owner, in a given time after the passage of the act, should make certain improvements on them, to be unconstitutional, says: "I do not admit that there is any *sovereign power*, in the literal meaning of the terms, to be found anywhere in our system of government. The people possess, as it regards their governments, a *revolutionary sovereign* power: but so long as the governments remain, which they have instituted to establish justice, and to secure the enjoyment of the right of life, liberty, and property, and of pursuing happiness, *sovereign power*, or, which I take to be the same thing, *power without limitation*, is nowhere to be found in any branch or department of the Government, either State or National; nor, indeed, in all of them put together."

In Massachusetts,* the court held, in one case, that a resolve of the State legislature, authorizing an individual, whose claim was barred by the statute of limitations, to bring a suit for its recovery, was void. They say it is "clear that the court in which the action may be pending, must determine it according to law. If any other rule should be adopted in deciding the case, one party or the other would be deprived of that protection which is guaranteed by our constitution to every citizen, in the enjoyment of his life, liberty, and property, according to standing laws."

In another case,† the same court refers to and approves this decision, and upon the same general reasoning, with additional illustrations, decides that a resolve of the legislature, directing a judge of probate to take an administration bond in a particular case, in a mode different from that prescribed by the general laws of the State, was void.

In Maine,‡ the case just cited is referred to and approved, and, upon the same general reasoning, the court decided that an act granting an appeal in a certain case, was void. The general doctrine is asserted, that the legislature has no authority, under the constitution, to pass any act or resolve,

* Holden *v.* Jarvis, 11 Massachusetts, 400.
† Picquet's Appeal, 5 Pickering, 65.
‡ Lewis *v.* Webb, 3 Maine, 326.

granting an appeal or a new trial in any case, between private citizens, or dispensing with any general law in favor of a particular case.

In *Ex parte Bedford*,* Hickey, J., touching upon our exact cases, says: "The legislature have not the power, as is supposed, to pass a law for the sale of a man's property, because he is indebted. They have the power to subject the lands of a debtor to sale for the satisfaction of the judgments and decrees of the judicial tribunal; but they have not the power to direct by statute, that the land, or any estate of any man, shall be sold for the satisfaction of any debt, which they may be informed or believe he owes. The creditor must appeal to the proper judicial tribunal, and there establish his claim; and, after he has a judgment or decree, the law then prescribes what estate is liable for the satisfaction of such judgment or decree."

In New Hampshire it has been declared by their Supreme Court that the legislature of that State could not, by a special act or resolve, authorize the guardian of minors to make a valid conveyance of the real estate of his wards.†

Other States, except Pennsylvania, where, from want of a court of chancery, their legislature, from early days, exercised anomalous powers, would furnish similar precedents.

But, supposing the statute to have been legal, there is no evidence that its requisitions were complied with. All *ex parte* proceedings being liable to abuse, must be strictly confined to the ground covered by the law.

This principle is nowhere more exactly declared than in Illinois. In *Smith* v. *Hileman*,‡ their court say: "A special power, granted by statute, affecting rights of individuals, and which divests the title to real estate, ought to be strictly pursued, and should appear to be so on the *face* of the proceedings." In the same book, though in another case,§ it says: "As the proceedings under the statute are summary, it should be

* Jurist and Law Magazine for October, 1853, p. 301.

† 4 New Hampshire, 572, 574. Opinion of the judges in reply to the House of Representatives

‡ 1 Scammon, 325.

§ Day v. Eaton, 1 Id. 476.

strictly complied with." In both cases the court did but declare what Lord Mansfield says in *Rex* v. *Coke*:* "This is a special authority, delegated by act of Parliament to particular persons, to take away a man's property and estate against his will; therefore it must be strictly pursued, and must appear to be so upon the face of the order."

Now, the power conferred by the private act of the Illinois legislature was a power to sell for the payment of debts. The existence of debts was, therefore, a condition upon which the power depended, and which the defendant was bound to prove. And this could only be proved by the record of the Probate Court.

The mere order of sale made by the State Circuit Court does not prove the existence of debts. It might, indeed, prove it inferentially, if the order had been made by the State Circuit Court in the exercise of its general jurisdiction, after it had acquired jurisdiction of the persons of the heirs of Crane, by notice served on them or by publication. But as the Circuit Court made that order in the exercise of a special jurisdiction conferred by a private act without any notice whatever, the order can have no such effect. There can be no presumptions of facts not directly asserted by the order, particularly not of facts which, by law, must be established by another court, and which could only be proved in the Circuit Court by the record of that other court.

Mr. Justice GRIER delivered the opinion of the court.

The land in dispute, in this case, was sold by order of a court some forty years ago, to pay the debts of its deceased owner. The heirs seem to have acquiesced in the regularity and justice of this proceeding till the plaintiff in error, a few years ago, obtained from them a release of their title, doubtless for the purpose of this litigation.

By the law of Illinois, the lands of one deceased are liable for the payment of his debts. The Circuit Court of the county in which the administration is granted has jurisdic-

* 1 Cowper, 26.

tion to order their sale for that purpose. The petition of the administrator, setting forth that the personal property of the deceased is insufficient to pay such debts, and praying the court for an order of sale, brought the case fully within the jurisdiction of the court. It became a case of judicial cognizance, and the proceedings are judicial. The court has power over the subject-matter and the parties. It is true, in such proceedings, there are no adversary parties, because the proceeding is in the nature of a proceeding *in rem*, in which the estate is represented by the administrators, and, as in a proceeding *in rem* in admiralty, all the world are parties. In making the order of sale, the court are presumed to have adjudged every question necessary to justify such order or decree, viz., the death of the owner; that the petitioners were his administrators; that the personal estate was insufficient to pay the debts of the deceased; that the private act of Assembly, as to the manner of sale, was within the constitutional power of the legislature; and that all the provisions of the law, as to notices which are directory to the administrators, have been complied with. "The court having a right to decide every question which occurs in a cause, whether its decision be correct or otherwise, its judgment, until reversed, is binding on every other court." The purchaser, under such a sale, is not bound to look further back than the order of the court, or to inquire as to its mistakes. The court is not bound to enter on record the evidence on which any fact was decided. The proceedings on which the action of the court is grounded, are usually kept on separate papers, which are often mislaid or lost. A different doctrine would (especially after a lapse of over thirty years) render titles under a judicial sale worthless, and a "mere trap for the unwary." These propositions will be found discussed at length and fully decided by us in *Grignon's Lessee* v. *Astor*.* Any further argument in vindication of them would be superfluous.

The question raised as to the constitutional power of the

* 2 Howard, 319.

legislature of Illinois to pass the private acts modifying the general course of proceedings in similar cases, was necessarily decided by the Circuit Court of the State, under whose order and supervision this sale was made. The State court is the proper tribunal to construe and determine the validity of the enactments of their own legislature.

But assuming the question to be open for our decision, we see no reason to doubt the authority of the legislature to pass such acts as are now complained of, without infringing the Constitution of the State or of the United States. Such legislation is remedial, not judicial. It infringes no contract; it is not *ex post facto*, nor even retrospective; it is not the usurpation of judicial powers; it authorizes the administrators to sell at private sale, and not at public auction, as by the general law, but not till ordered by the proper court. Every question of a judicial nature was left to the judgment of the court. *It* must order the sale, and approve it when made. There may have been many reasons why it would be for the benefit of the estate and the creditors that the land should be sold at private and not at public sale. The legislature, by this private act, direct only the manner of sale; the courts are to judge of its necessity. Statutes are to be found in almost every State in the Union giving authority to guardians to sell the real estate of their wards, and usually requiring the supervision and approbation of a court. The power of the legislature to grant such special authority to guardians has been generally admitted. In a case in Illlnois,* it is said by their Supreme Court that, "to deny this power to the legislature in this view of its action, would almost annihilate its powers." Yet there was an assumption of power in that case far exceeding anything to be found in the present.

Let the judgment of the Circuit Court be

AFFIRMED.

* Mason *v.* Wait, 4 Scammon, 134.