

The sale of lot No. 10 was vacated upon the deposition of Doctor Wheeland, who deposed, "that this lot was declared to contain the lands held by a certain Levin Bestpitch, by leases from the lord proprietor, which land, when laid out, in a great measure excluded him from the same, and that by Party certificate, said to contain the quantity of three hundred and seventy-one and three quarters of an acre; and that when said lands were surveyed by a certain Matthew Smith, deputy-surveyor, the aforesaid lot No. 10, only contained one hundred and eighty-two acres, as by certificate, reference being had thereto, will more fully appear." That Doctor Wheeland, who is a respectable character, has sworn to facts according to the best of his recollection, I have not the smallest doubt; but all men are subject to the imperfections of memory, "and as the remembrance of things fail and go off, men are apt to entertain opinions in their stead." It appears by the sale that a part only of the land held, under a lease or leases from the lord proprietor by Mr. Bestpitch, was sold with this lot, and that the remainder of the land held under lease by him was sold in lot No. 11. Therefore there was no ground for vacating the sale of this lot.

I have before observed, that men were permitted to swear what it was impossible they could know to be true, and that purchasers were sworn for one another. Mr. Travers, who was a purchaser, swore, "that Pitchet Willey (who was also a purchaser) bought three lots in the town of Vienna which he (Mr. Willey) fully expected to lay in a quite different place from what they were laid off." Mr. Willey also swore, "that Mr. Travers bought three lots in the town of Vienna, which were expected to lay in a quite different place from what they were when they were laid off." Upon these two depositions the sale of these six lots was set aside. It will readily occur to any thinking mind, that Mr. Travers could not possibly know what were the expectations or expectations of Mr. Willey at the time he was bidding; nor could Mr. Willey know how Mr. Travers's lots, according to his expectation, were to lay. The thoughts of either were known to no mortal but himself; and I will venture to say, that it is more than probable that neither would have sworn that he was deceived by any conduct of the commissioners. In the sale of a few lots in a small town on the premises, when the number of each lot, and the street on which it lay was particularly mentioned, no purchaser could be deceived, unless he deceived himself.

According to your state of the sales made void, as delivered to the commissioners, only four of the purchasers, at the first sale, chose to retain their purchases; the refales were directed in every other instance. But there were other purchasers who insisted on retaining their purchases under the first sale, and do still retain them. There was no application on the part of either of those purchasers to be released from his contract.

You vacated the sale of lot No. 7, which was sold for £. 1551 7, and of near twenty lots in the town of Vienna amounting with the lot last mentioned to about one fourth of the sales of the manor, without any testimony whatever that has yet been produced. If the evidence had been sufficient to induce you to direct a refale in the cases where it was offered, it was certainly an unwarrantable stretch and abuse of power to vacate sales in cases where no testimony was attempted to be produced. But all this, in the plenitude of your power, you undertook to do, and *ought* to be serious in your objections to the claim of commission!

The circumstances of this sale, and the evidence upon which it was declared void by the intendant of the revenue, are now fully stated. The extracts which I have made are faithfully taken from the original papers lodged in the offices before mentioned, which are referred to for greater certainty, in case it should be contended that there is any misrepresentation. No just opinion could be formed from the depositions alone, or any reasoning upon them, without a knowledge of the facts and circumstances now published. No commission was charged on those lots purchased by Mr. James Sullivan and Mr. Hollyday. To those who will exercise their reason, and not suffer themselves to be the dupes of sophistry and misrepresentation, the right of the commissioners to a commission on the sale of the other lots must appear as clear as the sun at noon-day, when there is not a cloud to intervene. When demonstration appears, all doubt must cease.

You have urged, that as the lots purchased by Mr. Hollyday did not lie as he supposed, that the other lots would be thrown into confusion, and lie differently from what was supposed and declared; and that when a number of lots bind upon, and are connected with, each other; if a field which was

retained.

The above purchasers do not choose to relinquish their purchases on Nanticoke manor. The other purchasers have, except Mr. Hollyday.

DAN. OF ST. THOMAS JENIFER, intendant.

N. B. Mr. Hollyday was afterwards released, except for the purchase of one lot.

John Henry, Esq; purchased one lot in the town of Vienna; Mrs. Anne Records, four lots; Dr. Conder, one lot; and George Bonwill, one lot, which he transferred to Dr. Wheeland.

1 Dr. Sullivan did not purchase an acre.

said to be contained in No. 1 should fall in No. 2, &c—that every lot will be deranged. Let fact be opposed to this argument; it will then appear that the premises are false; the arguments drawn from them are of course fallacious, and must fall to the ground. Neither of Mr. Hollyday's lots were supposed to contain a field, or any improvement which upon actual survey fell into any other lot, nor were any of his lots so connected with other lots that their lines depended on the lines of his. There has been no dispute about the lines of the lots purchased by him; nor has it been pretended that they interfered with the lines of any other lots. Their situation precluded all dispute of this kind. Two of the lots purchased by him lie between different tracts of patented land. The other two are adjacent to patented tracts, and are bound by them, the out-line of the manor and Nanticoke river, and by three of the lines of No. 7, one of No. 9, and one of No. 10, which it has not been pretended were erroneous. It has been shewn from the depositions referred to, that no field or improvement was sold or asserted to be contained in any particular lot which fell into a different one upon an actual survey. From your intimations an inference may be drawn, that Mr. Hollyday would not have been released had it not been by my decision, which depended on the man in whose case I was to decide. If you mean to inculcate this opinion, I must assert that it has no foundation in truth. Mr. Hollyday proposed, as appears by his letter, to be released from the purchase of three lots, and to retain the fourth. You had no objection to this, upon condition that he would account with the State for a small part of this lot which he had sold. This he was willing to agree to, provided he could be reimbursed for the expenses of surveying which he had been at. This you refused to do. He urged that you had released others similarly circumstanced without imposing any condition. You insisted on your first proposition. After some diversity of sentiment between you, the question was asked me, whether in my opinion you could release him with propriety on any other terms? I did not answer the question generally, but barely observed that, in my opinion, his case could not be distinguished from that of others, whom you had released. I cautiously avoided giving an opinion in a matter submitted by law to your determination.

It has been insisted, that the commissioners are not entitled to the stipulated reward for this service, because the state could derive no benefit from their conduct. This is begging the question; but it is an admission that they are entitled to the reward, if the state could receive the benefit; i. e. if payment of the bonds taken for the property sold, could be compelled without injustice to the purchaser. This is the ground upon which a court of equity would consider the subject. Now, Sir, if this proof was given to a chancellor, what would be his determination? Would he hesitate a moment? Can you suppose that he could be induced to believe that the complainants were serious in their application for relief? He would be convinced, that in the cases where a commission has been charged, no purchaser had even the shadow of a right to be released from his contract, or to claim relief in equity, and would decree accordingly. In a court of equity, favour and partiality are not the rules of decision. Conjecture is not indulged. The determinations are founded upon the immutable principles of justice and rules of equity, which are not to be moved by prayers or tears.

The capture of the British army at York, in October 1781, is mentioned as a circumstance to give colour to the opinion, that the commissioners ought to have postponed the sale of this manor until after a survey could be made. This glorious event which filled the heart of every honest whig in the union with transports of joy, and gratitude to the Saviour of our country, and which was matter of humiliation and regret to those who retained their attachment to the old government, and were ready to relinquish independence, and return to their obedience to the mother country, was rather an inducement to the commissioners to proceed to complete the sales already begun, as directed by law, than to procrastinate that business. As trustees of the public; they thought it a duty to embrace the most favourable opportunities to sell; and notwithstanding this signal success, the credit of the public money, for the redemption of which this property was pledged, was not established. If the sale of this manor had been postponed until after a survey, which, on account of its low and swampy situation, could not have been made until late in the spring, when our bay was infested and threatened with pirates, we may justly conclude, that the amount of the sale would have been greatly short of the sum for which it sold shortly after our success at York. Men who were opposed to the confiscation of British property, and who were looking forward to a restitution of it after the return of peace, might probably have been tempted by this consideration to delay the sales.

To prove that my assertions are not true, that I have stained my credit, and that my disposition delights in calumny, you have published what you call a true state of the first and second sales. This, like your other true states is full of blunders from beginning to end, and is a misrepresentation of fact. Whether it has proceeded from *blameless ignorance*, or from a propensity to slander and defamation, I will not undertake to say. The following is a just state

of the different sales of the manor, as appears by the commissioners' books in your possession:

Amount of first sale,	£. 10,661 7 3
Deduct for purchases retained,	£. 1596 11 3
for two lots purchased by J. Sullivan,	623
for one do. purchased by H. M. Bryde,	176
for three do. purchased by W. Morgan,	33
	£. 2428 11 3

Amount of property sold at the first sale, and afterwards resold,—remains—	£. 8232 16 0
From which deduct for lots purchased by Mr. Hollyday and Mr. Sullivan,	2082 0 4
Leaves the amount of the sales exclusive of Mr. Hollyday's and Mr. Sullivan's purchases,	5950 15 8
Interest on that sum from 22d January, 1782, to 25th July, 1785,	1241 12 9

The sum justly due the state when the sales were vacated,	7193 8 5
Amount of the second sale,	7359 12 10
Deduct for lots sold which were not sold at the first sale. £. 754 10; for 52½ acres sold at the second sale more than at the first, average price,	853 5 2

Leaves the amount of the second sale including Mr. Hollyday's and Mr. Sullivan's purchases,	6506 7 8
Deduct for their purchases, the amount at the second sale, according to your calculation six hundred and thirty-one pounds five shillings and ten pence less than at the first, being two thousand eighty-two pounds and four pence,	£. 1650 14 6

From this sum a small deduction is to be made for compensation for the use of the land, but the loss will exceed	£. 2000,	£. 2337 15 8
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To this sum may be added whatever the state may lose in the refale of the lots purchased at the first sale by Mr. Sullivan, Mr. M^r Bryde and Mr. Morgan, which were vacated *without authority*. That there will be a loss, whenever those lots are resold, is certain. The commissioners sold no land which belonged to Mr. Steele or Mr. Beccatt, or to any other person but the former proprietor of the manor. In this state I have not been at the trouble to ascertain the real difference between the sale and refale of the property purchased by Mr. Hollyday and Mr. Sullivan, but have taken your calculation, which is erroneous both in the quantities of acres and the prices of the different parts of this property, as sold at the refale. If rightly ascertained, the difference would be less, and consequently the loss of the state would be still increased. This loss is certain, not imaginary; and has been occasioned by an unnecessary precipitation in you, in determining a matter of importance to the public, upon an *ex parte* hearing, and upon the slightest testimony.

The other instances of refales have been already particularized, and reasons given to evince the right of the commissioners to a commission on them. You have not answered my arguments, but have entered into a train of sophistry founded upon a wilful misrepresentation of fact,—*neglect* in the commissioners. Your premises being false, your conclusion must be absurd and unjust. It is admitted, that if those purchasers were ready and willing to give bonds with security, and the commissioners neglected to take them, that the claim to commission would be unjust, and that the loss which the state has sustained

by refales in case impaired to the commission has been neglected. It was made; but they were not. Letters were purchased at the sales were stated, the bonds could not be the candour and integrity and possess the bonds were not commissioners. You are as weak and ignorant, if you corrupt, if you your assertions, each such convincing compensation in a same in being determined. You have published my remonstrance to the state, that in our petition to a commission the refales should be annulled, and that the opportunity should be afforded, or that when the whole of the state directly concerned against a refale is the most clear and unambiguous which I would commission on the following grounds: "I remonstrant state that his duty as a father that he has ever adhered to the under the circumstances, which the clearness of much entitled to a commission arising from the state he has acquired appeals to the state honours as to the that that part of the second sale of the into a law, as their fate to depend to be justified by former years ago opinion was the state was I under an application that part of the into a law; and to joined the certificate of veracity: "I was present at the general assembly in this case. I will remember the unbonded state to be the same as Jan. 3, 1781. We seldom see for a construction, ing of the writer's ant of the revenue "warn and back he will not hesitate construction, upon to the writer's plan the commissioners' business of those lots was it to be finished by others, or by discretionary power to direct a refale, was not given was inserted in the after the remonstrance taken or suits or controversies, except who purchased Long, and Mr. arose on the refale them, which you mission, amount deducted, according £. 56 6 4 for commission charged, which If you are serious on refales, the state in dispute you contended a commission on refale you deny our right where bond and only in cases where agreeable to law even in cases where I shall leave you partial men will "thing of will have any opinion which you receive is an advocate to commission is merited, unless such case it is