

MARYLAND GAZETTE.

T H U R S D A Y, J A N U A R Y 18, 1787.

[Continued from No. 2086.]

To DANIEL of St. Tho. JENIFER, Esquire.

S I R,

W H E N you find that it will not suit your purpose to answer my arguments fairly, or to state them truly, you have recourse to the usual artifice of misrepresentation; and the acuteness of your prevarication is such, that a close attention is necessary to avoid imposition.—You have insisted that, in some cases, if bond and security was not immediately given, the sale was void. I have denied the position, and you allege, that the consequence of my construction of the law is, that the commissioners and the purchasers might dispense with it at pleasure; and that according to my assertion, one party is bound by a contract though the other refuses to comply on his part. The very reverse of this doctrine is what I have contended for; and the conduct of the commissioners has been correspondent to the true construction of the laws, and consistent with the real interest of the state. If they had conceived that in any case a sale was void because a bond was not immediately given, then the consequence of their opinion must have been, that the purchaser might dispense with the law when he pleased, by refusing to give bond. The construction is certainly true, that when the purchaser refused to bond agreeable to the terms of sale, the state was not bound by it, and the sale was voidable in the option of the commissioners, who were authorized to resell the property; but in all the instances in controversy, it is an undeniable fact that the property sold extravagantly high at the first sale. The interest of the state therefore required that a second sale should not be made, because a certain loss must have been incurred, and because the purchaser was bound to pay although no bond was given. The result of your specious argument, which carries with it an affected regard for the public interest, is directly the reverse of what you have adduced it to support; because if it proves any thing, it proves that the purchaser might dispense with the law at pleasure by refusing his bond.

You have insisted, that the commissioners by making the resale, must either have supposed that they were rightly ordered by you, or that they designed to secure to themselves a profit by acting under an illegal order. This is an invidious remark which might naturally enough be expected from a man whose guilty mind is ever haunted by suspicion, and who suspects that all men are actuated by the same unworthy motives which regulate his own conduct.—The commissioners acted in a ministerial capacity, and although they were astonished at your weak, injudicious and improper conduct; they very well knew that when the first sales were vacated, and a resale ordered, that the state had lost all benefit and advantage, which might have been derived from the first sales; and therefore it was altogether immaterial *quod sibi* should make the resale.

I did not intend to make any further reply to the other objections which you made to the commissioners account. In my former publications, I replied fully to those objections as far as they appeared to me to require a serious answer; but the uncommon pains you have taken to establish the second objection, and misrepresent the circumstances of the others, require that I should once more undeceive the public. Silence might be considered by those unacquainted with facts, as an acknowledgment of the truth and propriety of those objections.—You admit that the right to commission depends on the fact of rendering the service required by law.—I have contended, and it must be admitted by every reasonable man, that when a purchaser refused to comply with the terms of sale, by giving bond with security, that the law was as fully complied with, on the part of the commissioners, by commencing suit against him, as if they had obtained his bond with security. This has been done, and in most instances judgments have been obtained, as will appear by the following certificate:

I hereby certify, that at May and October terms in the year 1786, the commissioners of confiscated British property recovered judgments in the general court for the western shore, for the use of the state, against nine different persons, for purchases by them made of confiscated property, to the amount of £29,117 9 3; current money, and costs of suit.

Tell.

THO. B. HODGKIN, clk. gen. ct. w. f.

In these judgments interest is included until the time they were rendered.—To prove that the commissioners are not entitled to a commission on the unbonded sales, you observe, that an income and

estate are not as certainly secured by having large sums charged to a number of persons, in a book to be proved by witnesses, as if the bond of each of those purchasers was obtained with good security. You very well knew that the debt due the state for the property sold and not bonded for, did not depend on the precarious proof of witnesses, and that judgments were obtained for nearly the whole of that debt. But to state facts truly would not answer your purpose. Misrepresentation is the weapon with which you seem determined to contend. I admitted, that it is incumbent on the commissioners, to prove the sale in case it should be denied by the purchaser. This has not been done in any case but that of Stephen Steward, and company. I have before stated the facts respecting this transaction. Upon a full and true state of the case, you were of opinion that the purchase was *bona fide* made, and as intendant of the revenue, directed a suit against Mr. Steward. You have since been very industrious to obtain his deposition to the contrary; but you cannot pretend that you were not as fully informed when you directed a suit against him, as you now are. You observed at the time, that you had conferred with major Yates on the subject, and that Mr. Steward had offered to swear that he did not make the purchase. That Mr. Steward is mistaken, and that he did make the purchase, can be proved by the most clear and indisputable testimony. It fully appears from the following deposition and certificate from gentlemen of character, who were present at the sale:

Maryland, sc. January 14, 1786. Then came William Campbell, of Anne-Arundel county, before the subscriber, one of the judges of the general court, and made oath on the Holy Evangelists of Almighty God, that at the sale of the property of the Nottingham company, in February 1782, he was present when Stephen Steward, jun. bid for one or more lots of land that were selling, and which were struck off to the said Stephen Steward at thirty shillings per acre, or thereabouts; that other lots were set up, and the said Stephen Steward proceeded to bid, and when other persons bid, this deponent well remembers that the said Stephen Steward made a declaration that no lot, then selling, should go or be struck off for less than what he had given for those struck off to him, which this deponent believes to have been thirty shillings, or thereabouts, as aforesaid, and that the said Stephen Steward purchased several other lots, the numbers of which this deponent cannot recollect, which sold for something more than thirty shillings.

A. C. HANSON.

Annapolis, January 12, 1787.

I hereby certify, that I attended the greater part of the time during the sale of the Nottingham company's property in February 1782, and as well as I can recollect, after great part of the land, negroes, &c. was sold, there was a part of what, I think, was called *this* land laid off in lots and numbered, offered for sale, and to the best of my recollection and belief, two of those lots, I think the two first offered, were bid for and struck off to Mr. Stephen Steward, jun. but on whose account, or concern, I know not.

JAMES WILLIAMS.

Other testimony might be obtained to corroborate the foregoing deposition and certificate, and prove, beyond the reach of doubt, that the purchase was really made. This for the present is thought sufficient to enable the public to judge of the propriety of the conduct of the commissioners in insisting upon the sale, and how far it is justifiable in the late intendant of the revenue, whose peculiar duty it was to enforce the recovery and collection of those debts, in being thus uncommonly assiduous in his endeavours to defeat the state in the prosecution of that which appears to be a just claim. He will not attend to the unbiassed testimony of disinterested persons, but, contrary to every principle of reason, and in defiance of the known established law of the land, he appeals to the evidence of the person interested, and eagerly embraces the opportunity of making his imperfections subservient to his own detestable purposes. Whatever may be the event of the suit against Mr. Steward, the conduct of the late intendant of the revenue, in my opinion, cannot be considered in any other light than that of open and avowed treachery to the state.—Impartial men will be apt to believe that you are actuated by personal malevolence, and that, to disappoint the commissioners of a claim of one hundred pounds, you would not hesitate to sacrifice forty times that sum of the public revenue. After all, Sir, to what valuable purpose can this inquiry tend? The charge of com-

mission on this property was made, because there was no doubt entertained of the reality of the sale; and when the subject was discussed before the executive, it appeared by the account of sales returned by the auctioneer of Baltimore county, who was an officer acting upon oath, that the property was sold to Stephen Steward, and company; and a gentleman was attending who was present when the sale was made, and who would have proved that Mr. Steward actually did purchase, if it had been thought necessary.—It was the commission on the sale of *this* property and *James's Park*, for which the commissioners offered to give bond to account with the public, in case the state should not succeed in the suits which were depending. To give a sanction to our insinuation that the commissioners did not wish to hazard the sense of a full council on their claim, you have asserted with your usual veracity, that "they offered to give bond to return any money that hereafter might be made appear, that should be paid for commission and not due;" and this you say "you conceive was done to remove the objections to acting upon the account immediately." Your memory must be bad indeed, if you do not perfectly recollect that your assertion is directly contrary to the truth, and that the fact is strictly as I have related it. If the state should succeed in those suits the right to commission is clear and indubitable; it was never claimed if a contrary event should take place. Exclusive of the purchase made by Stephen Steward, and company, there remains of the unbonded debt, for which judgments are not yet recovered, according to the information of the attorney-general, about the sum of one thousand pounds. This sum is due from persons whose present circumstances are such, that there is scarcely a possibility of a loss to the public.

Your third objection is so frivolous that it would be time mispent, and language misapplied, to bestow any additional remarks upon it. The subject has already been examined, and being understood, no confutation is necessary.

The fourth objection respects the ore and coal claimed by the purchaser of the Lancashire furnace, the circumstances of which I have already truly stated. The impropriety of urging this subject as an objection to the commissioners claim for commission, must strike every man upon the slightest examination. Concomitant to your invariable practice of visiting the sins of others upon the commissioners, you have imputed to them the loss of £2500, awarded by arbitrators between the state and Mr. Garretson, to him, under a resolve of the general assembly. This you say is a loss occasioned by the deficiency of the ore and coal, and the consequence of the commissioners management of these articles. Your own state of the case contradicts you. It appears that the sum was awarded for damages committed on the property purchased, which comprehends not only the ore and coal but damages committed on the furnace, as stated in the resolve, under which the arbitrators acted; and the damages which were committed on this property immediately after the sale in September 1781, by a person not acting under the authority of the commissioner, could not possibly be a consequence of colonel Ramfey's letter to Mr. Garretson in March 1782, which respected the ore and coal. The sum awarded is a consequence of the interposition of the legislature in a case to which our courts of justice are competent, and in which the dispute, I presume, might have been properly and justly decided. The value of the ore and coal is very well known. It was sold by Mr. Russell to Mr. Bailey, and accounted for by the commissioners so far as it came to their knowledge.—Notwithstanding this fact appears in the report of a committee of the house of delegates on Mr. Garretson's petition*, and notwithstanding it appears by the books and papers of the commissioners in your possession, that Mr. Russell had the conduct and management of the property of the Principio company, and was accountable to the state for the produce and profits of it;—and although it has not been admitted by me that Mr. Russell had been guilty of any mismanage-

* Extra of the report of the committee on the petition of Job Garretson, November session 1784. "That it appears by the certificate of the vendue master, that the said Garretson bought all the property on the land called Buck's Range, or Lancashire Furnace, except the negroes, live stock and household furniture. That Thomas Russell sold a certain Elam Bailey, who took away, 304 loads of coal, and 332 tons of ore which were taken from the said Garretson by the order of the aforesaid commissioners, and for which he promised the said Garretson payment, as appears by the letter, provided he could establish his claim."