

MARYLAND GAZETTE.

T H U R S D A Y, M A R C H 1, 1787.

To GABRIEL DUVALL, Esquire.

S I R,

UPPOSING that the subjects in dispute between us were sufficiently explained to be understood, and that a continuance of our controversy would neither give pleasure or information to the public, I did not intend again to publish; but your last address contains assertions so groundless, and reasoning so fallacious, that I should be wanting in a just regard to truth were I by silence to suffer the intended deception to take place. Your laboured slander, and studied abuse, I view with equal contempt and inoffence, and shall never envy or attempt to rival you in a talent which the most vulgar and malicious generally possess in the highest degree.

To prove your right to double commission on the sales of Nanticoke manor, you have laboured very hard to invalidate the testimony of several witnesses, men of acknowledged integrity and good understanding. The attempt must be allowed to be a bold one, and it must also be admitted that your cause requires such remedy; but, I believe this, like all your other shifts, will prove unsuccessful, and if you could induce mankind, so far to forget the respect which is due to the testimony of honest men on oath, as to suppose the witnesses alluded to did not swear to the truth; yet you would not, by this, prove your right to double commission, which, by arguments that need not be repeated, has been shown to be illegal in every case.

For the purpose of proving that the witnesses have sworn to the truth, you have mentioned *written descriptions* of the lots, the original sale, and the plots of the manor. The only books I ever saw respecting the sale of this property are, your sale book and leger; they were produced before the governor and council, and are now in my possession ready to be shewn. The only description of the lots or lands, parts of Nanticoke manor, appearing upon the sale book is, the quantity of land sold to each purchaser; for instance, Henry Hooper 47½ acres, at 10/6, £. 23 17 6. Clement Hollyday 157, and 155½, at £. 4 4 6, £. 1320 6 3. William Wheeland and James Shaw 494½ acres, at £. 2 13 0, £. 1323 13 6. And so on to the end of the sales. I have the plot which was made by Mr. Barrow, surveyor of Dorchester county, in consequence of your first sale, which I got from the land-office, and is, I presume, agreeably to the plot by which you sold.—And the only descriptions upon the plot made by the surveyor are, the lots laid down and circumscribed by lines, and numbered, and referred to in the surveyor's explanation by letters and figures. The plot upon which the commissioners drew lines, and by which they sold, has not been returned to my knowledge. There is an old plot in the land-office made for the late proprietor, but upon this the manor is not divided into lots, as you sold them; and therefore, I presume, this is not the plot you refer to.

You have attempted to set aside the evidence of Mr. Traverse and Mr. Willey, reasoning from the nature of their testimony, and drawing the form of your argument from the particular manner of wording their depositions.—Mr. Traverse swears, that Pritchett Willey *fully expected* the lots he bought lay in a different manner from what they were laid off. You say, that it is impossible for any mortal but Pritchett Willey to know his *thoughts, conceptions, or expectations*. It appears to me, that your position is by no means true; because there are a variety of circumstances and situations from which what passes in a man's mind may be disclosed with such certainty as to be depoted to by others.—Suppose, for instance, a tract of land called Black-Acre, lying in Anne Arundel county, was exposed to public sale, declared by the auctioneer

to be the land intended to be sold, persons assemble on the land and bid for it, conversation passes respecting the soil and improvements on the land, and it is struck off to A. Afterwards the seller offers to convey to the purchaser a tract of land in Kent county called Black-Acre: Could not any person present at the sale, and acquainted with all the circumstances, very safely swear that A. *fully expected* he was bidding for, and did purchase, Black-Acre in Anne Arundel county? The witness might give the grounds of his assertion, so might Mr. Traverse and Mr. Willey have done; and the only exception which could, according to the most minute legal exactness, be taken to their evidence is, that they have not disclosed the facts and circumstances upon which they make their respective assertions; but when men of character undertake to swear *positively*, although they do not disclose the grounds of their assertion, every man of candour would rather suppose the assertion was grounded on facts and circumstances sufficient to convince the rational mind, than, that such men would hatch up a perjury to serve each other in a concern of very small value. The testimony of the witness, together with the application of Mr. Hollyday, and a view of the land, and the nature of the thing, were, in my judgment, sufficient to vacate the sales, and I never heard of any contrary evidence being in existence. Mr. Hollyday's purchases lay at the upper and lower parts of the manor, and Mr. Sullivan's nearly in the middle. You admit these purchasers were properly released; there were several different tracts of patented land in the manor, which, it would appear, the commissioners knew nothing of. Under these circumstances, can it be possible that sales made by drawing lines with a pen over an old plot, without a survey, had the smallest chance of being right? That you did not sell Mr. Steel's and Mr. Berratt's lands *intentionally* is admitted; but it is, nevertheless, certain, that the lands of these gentlemen were included in the lines by which you sold.

The sales of Nanticoke manor were taken up in the assembly in June, 1783, when the following resolution, which originated in the senate, passed:

“Whereas the claims which have been set up to the property sold in Nanticoke manor will cover most of the purchases which were made; and it being unjust to subject the purchasers to executions, until the state is satisfied of their title to said lands: RESOLVED, That no execution be issued against the purchasers of said manor, sold for the redemption of the last emission, before the end of next session of assembly, unless further order be taken therein at said session.”

Application was made in November session, 1784, to the assembly by the purchasers, the petition was committed, and the assembly found sufficient grounds to pass a law; the intendant delivered you the bonds taken for the vacated sales. All these things you were perfectly acquainted with, and never disclosed any objection to these measures, maintaining a perfect silence, until a question arises respecting your charge of double commission. and then every thing is to be tried to support a sale respecting which, always before, the most perfect indifference had been shewn.—You charge me with being hasty in declaring the sales void. The act passed November session, 1784. The sales were not declared void until sometime in April, 1785. You knew of the law, and if you had any evidence to contradict, or invalidate, what had been disclosed, you certainly ought to have discovered it, and not to have kept it back, as a ground for censure, or as a pretext for charging a double commission, when it could answer no other purpose.

You charge me with vacating parts of purchases, and suffering the purchasers to retain the most valuable part, to the injury of the state, and the case of Dr. Wheeland's purchase is recited as an instance to prove this charge. Let us examine the circumstances. It appears by the treasurer's books and the bonds lodged, that Dr. Wheeland bonded for £. 737 7 3, with his securities. Mr. James Shaw for £. 586 6 3, with his securities. It appears by the plot made in consequence, and under your direction, that lot No. 5 is divided between Dr. Wheeland and Mr. Shaw, 131½ acres to the latter, and 273½ to the former, the part of each being circumscribed by lines, and referred to in the surveyor's explanation, as the property of the respective purchasers. The entry upon your sale book, page 28, (which however, I did not see till May 1786,) long after the sale was vacated, is as follows: William Wheeland, } 494½ acres, at £. 2 13 0, James Shaw, } £. 1323 13 6.

And in your leger, page 63, thus:

William Wheeland and James Shaw,
1782, Jan. 22. To confiscated property per sale book,
page 28, specie or red - - - £. 1323 13 6

By bond W. Wheeland, £. 737 7 3
By ditto J. Shaw, 586 6 3
£. 1323 13 6

Under these circumstances, was it possible to me to suppose that Dr. Wheeland had bought the whole lot, and afterwards, without the approbation of the commissioners, transferred a part of his purchase to Mr. Shaw? The commissioners took separate bonds from these purchasers. They severed the purchase by their plot; and these gentlemen were to every intent and purpose, separate purchasers of distinct parcels of land. If Dr. Wheeland was the purchaser of the whole, and afterwards sold out, a bond ought to have been taken for the whole,—and the whole ought to have been laid off for him by the commissioners plot; but the reverse of this appeared; and if there was an improper separation of this purchase, it was the act of the commissioners, not of the intendant; I found them separate purchasers.—Dr. Wheeland did not choose to have his purchase vacated, and therefore I could not meddle with it.—Mr. Shaw complained of being deceived, supported his allegation, and desired to be released from the purchase, and therefore I could not refuse to release him. Now with what attention to truth or candour can you allege, that “Dr. Wheeland purchased lot No. 5, and soon afterwards sold parts of it to another person.”—If it be so, your books are wrong. Your survey is wrong. And the bonds taken by you and lodged in the treasury, were wrong. How was I to know, without the least intimation from you, that all these acts were erroneous, and not notwithstanding their evidence, Mr. Shaw had nothing to do with the purchase? It would save me much trouble, and I think you some mortification, if you would examine facts with more attention before you make assertions. The charge just mentioned is of a piece with the account you have stated to shew the lots on the resale of the manor, in which a calculation is made, without the smallest attention to fact; and when this liberty is taken, figures may be made to speak any thing. When called upon to shew the reason why you made the sale of Nanticoke manor so expeditious, that you had not time to lay off the land agreeably to law, by way of justification you alleged, in your publication of the 5th of October, 1786, “that the governor and council saw the necessity of supporting the red money, and urged the commissioners to proceed to the sales of property; that their idea corresponded with that of the commissioners, and that much depended on execution at that critical period.” When dates are compared, you find this ground is not tenable, because I have shewn beyond doubt, that instead of our circumstances being *critical* when you made this sale, they were secure and flourishing, and did not require your great aid, the British army having been taken three months before at York.—You now tell us, “this glorious event, which put our affairs in a flourishing condition, was an inducement with the commissioners to go on with the sales while we were in this situation, for it was to be apprehended, if the sales were delayed until the succeeding spring, our bay would be infested and threatened with pirates.”

It must be observed, that you change your ground to the direct contrary, with as much facility as a horn-pipe dancer does his steps, and you do it without seeming to have your feelings in the least hurt by the turn. But you are not content with having fixed yourself in this despicable situation, but are determined to heighten its disgrace by a barefaced misrepresentation, alleging that the capture of the British army is mentioned by me to give colour to an opinion that the commissioners ought to have postponed the sale of this manor until after a survey could be made.—This important event was not mentioned with such view, nor is so stated, nor can it be so understood. I alleged, that between the time of the British army being taken, and the time you made the sale, was near three months, in which there was ample time to have made the survey, and been prepared to sell as soon as you did. I shewed by the fact, that your allegation, that this was “a critical period,” was not true, and that the excuse for selling without survey, was assigned pretence intended to deceive.—You now admit the force of the evidence I offered, by taking a contrary ground. If you were governed by that regard to veracity you so often profess to be,

* On Wednesday the 28th of February, after the press was set for the above, being in the land-office, and mentioning something respecting plots of Nanticoke manor, which you stated in your last publication, Mr. Callahan, the register, informed me, that there were two plots of the manor in the office, and gave them to me. I observed upon one of the plots lines drawn and lots marked in your hand writing; and lots held by Mr. Callister's and Smith's heirs are mentioned; but I have not an opportunity, without stopping my publication for this week, to compare these plots with your state of facts and reasoning. These plots, to the best of my recollection and belief, I never saw before, although I inquired for all the plots in the office, and received from the register, which I have referred to. The register informs me, that he delivered all the plots of this manor which he knew to be in the office at the time of my application, and supposes they he has never given me must have been put in since.