

# MARYLAND GAZETTE.

T H U R S D A Y, O C T O B E R 1 2, 1 7 8 6.

To GABRIEL DUVALL, Esquire.

S I R,

THE justice due to a character, at least as valuable as that of any of the commissioners, requires that I should answer your address in the last week's paper, which I shall do without entering so far into the spirit of altercation, as to stain my paper with those terms of gross and ungentlemanly abuse which make up the greatest part of your performance, and which you seem to suppose will supply the places both of fact and reasoning. However provoked men may be, yet as the public can scarcely be supposed to feel their passions, it is both silly and indecent to stuff a publication with effusions of the writer's rage or malevolence.

The letter which you refer to was written by me to a gentleman who was a member of the last house of delegates, and who attended at the last session of assembly, and was well acquainted with most of the attempts to injure the late intendant, and the measures to discontinue the office. A copy of the letter was obtained, as I am informed by this gentleman, without his privity or consent; how it came to your hands I know not. I mention this fact, not because there is any thing in this letter which I withheld not to be disclosed, but to shew that your assertion, that I had taken uncommon pains to circulate its contents, is not well founded; unless, indeed, a copy of a private letter surreptitiously obtained by some person who has communicated it to you, and your publication of it, is proper evidence to prove that I had circulated its contents. The copy which you have published is truly taken from the original letter now in my possession, except the leaving out a word or two of little import, and substituting at the end of the letter the word conclusion instead of consequence; mistakes probably owing to the hurry in which the copy was taken. I admit the justice of your remark, that when any matter is spoken of, and particularly when the characters of men are involved, the speaker ought to adhere to truth, but cannot help regretting that this precept, instead of having the weight it deserves with the preceptor, is left to struggle against a multitude of examples directly opposed to it, and this being the case, I fear it may lose much of its influence with the rest of mankind, for whose benefit your discovery of it was certainly published.

You charge me with having calumniated the commissioners, by asserting those things for facts, which I knew to be false, and with having uncandidly suppressed some things which ought to have been communicated. The best way to come at truth, is to state the several parts of the letter, and to examine the evidence and reasoning upon each part, that the mind may not be diverted by a multiplicity of matters from drawing just conclusions upon each part. It is asserted that "a thin council had passed a most extraordinary account of the commissioners." The first part of this assertion is not denied, there were only three of the council attending, which is as thin as it could be to make a board. My reasons for asserting that the account was of a most extraordinary kind were, first, that a double commission, amounting to £.1786 16 10, was charged by the commissioners (if I rightly understand Mr. Richmond's report of the case to the governor and council) on property by them sold for £.35757 15 9, when by law they were at most entitled to half that sum only on the sale of the property; a charge of double commission on business finished but once will readily be admitted to be extraordinary; it is altogether out of the common course of business; in the present instance I presumed to think the charge illegal and unjust. The commissioners were directed by sundry laws to sell confiscated property, in most instances upon credit, in many the lands to be sold were to be laid off in convenient lots. In all cases where sales were made on any length of credit, bonds with proper security were directed to be taken and lodged with the treasurer; as a reward for these services the commissioners were allowed two and a half per cent. commission; they were prohibited to sell property unless they were satisfied it belonged to British subjects and was confiscated. The commissioners, acting under these laws, sold property to a great amount, and did not take bonds for a considerable part of it as required by law; they sold property, particularly Nanticoke manor, without having the land properly laid off so as to ascertain what each purchaser bought. The commissioners sold property where the state's title was disputed, and where there was reason to suppose the claims set up to it were not without foundation.

The general assembly at the fall session 1784, being applied to by some of the purchasers of Nanticoke manor, to be released from their purchases, alleging and proving that the land which they supposed they purchased, and which was pointed out to them at the sale, would not be comprized within the limits delineated upon the plot made use of by the commissioners. The house of delegates passed a bill authorising the intendant to inquire into the circumstances, declare the sales of this property void, and to resel the land. The house of delegates also by a bill to establish funds, &c. directed that where bonds had not been taken by the commissioners, the intendant might sue the purchasers, or declare the sales void and resel the property; and also, the intendant was directed to sell all confiscated property not sold by the commissioners; for these services he was allowed one and a half per cent. To the best of my recollection both you and Mr. Hollyday remonstrated against the passage of these bills, alleging that you were not blamable on account of bonds not being taken for the property sold, and that there was not time to survey Nanticoke manor, and suggesting that if the bills passed in the manner as framed by the delegates, that you would lose the commission altogether on sales that you had made, although in making these sales you had considerable trouble and incurred some expence. I state the substance of your memorials from memory, not having been able to get them; if I am mistaken it may be shewn by producing them. The senate proposed to amend the bills in the particulars objected to, upon the principles, as I was informed, that unless they were altered the commissioners would not be entitled to any commission on the first sales, or if commission should be given them on those sales, that the intendant would also be entitled to a commission on the resale, and so the state be charged with double commission, and also that it was but just that the commissioners should have an opportunity of finishing such part of the business as they had begun, and draw their commission when the business was completed; the bills were accordingly amended, and the commissioners were directed to resel instead of the intendant. No commission is allowed the commissioners on the resale by any law or resolve that I can find or ever heard of. Upon what ground is it then that this charge is made? The intention of the legislature must decide the question as to the legality of the charge, principles of justice must determine the equity of the claim. The resolve authorising the charge of two and a half per cent. commission never can be fairly set up to warrant the charge upon a resale, because the commission was only given upon completing the business according to law, and because, if the legislature intended a commission on resales, strong inducements to negligence were given to the officers who were to make the sales, for if upon every resale, a new commission was to arise to the same officers, it would be obviously the interest of the officer to multiply sales, and of course not to finish the business. In some of the laws bonds were directed to be given by the purchasers immediately, and of course the sales were void unless this condition was complied with; was it ever supposed that upon a second sale a new commission was chargeable? If the double commission was not expressly given by the first resolve, can the charge of it be supported by a fair construction of the acts above referred to? If the legislature had intended a commission upon the resales, they certainly would have mentioned it; their silence shews they intended none should be paid, except what the commissioners would have been entitled to had the business been completed under the first sales; it may be said they knew the resale implied a new commission, and therefore it was not necessary to repeat what followed of course. I answer that this cannot be, because if the legislature had intended any commission, they would have given them less than two and a half per cent. The intendant, for sales made by him and completed, was entitled to one and a half per cent. this was thought adequate for his trouble, and the same commission would have been given to the commissioners by the first resolve, had it been in the view of the legislature that they would be paid in specie, for it must be remembered that the very high commission of two and a half per cent. originated when paper money only was in circulation, and was payable in red money, depreciated nearly two for one, or in wheat at seven shillings and six-pence per bushel, nearly double what that article sold for in specie. Instead of receiving what was about equal to one and a half per cent. specie, the commissioners have received five per cent. specie at least, upon the greater part of the property resold, and in some instances, according to my calculation, they have

received from ten to twenty per cent. specie, on the sum bonded for, the last sales being greatly below the first, and commission being charged on both. If the claim of double commission is not warranted by any express law, are there any principles of equity under which it can be supported?

It is admitted that the business was not completed—under the first sales.—Suppose this happened not by the fault either of the commissioners or the state.—Will any rule of conscience warrant the person who was to do the business in demanding as much for doing one half the work as if he had done the whole, especially as no kind of benefit resulted to the state from doing one half only; nay more, as the state lost considerably by it.—Suppose then the state, without a new bargain as to reward, ordered that the business should be begun again and finished; then would equity determine, that their new order gave a title to the reward stipulated for the first service directed to be done, and which was not finished, and also the same reward for the service last directed. I conceive in this case, as the reward first contracted for, was not earned, and no particular reward was stipulated by the second order, equity would consider the whole circumstances, and determine what was justly due, independent of stipulations for reward.—And I think it would not be doubted, that two and a half per cent. paid in specie, was an adequate reward for selling property in such large parcels twice, and taking bond once. The reward paid by the commissioners to the vendue-master, was very trifling compared to a commission of two and half per cent. on the amount of the sales.—It is said, the commissioners did their duty, and the state's interfering prevented them from completing the business under the first sales, and imposing a new duty, ought to pay a new reward; it is answered, that ample time had been given the commissioners to finish the business, or to take measures to compel purchasers to comply with their contract, before the consolidating act passed; to point out the several causes why this was delayed, would lead me into a more minute detail than the compass of this paper will admit—should this argument be urged, I shall only remark at present, that as to parts of Nanticoke manor, it cannot be pretended that a resale was not of necessity, and that owing to the commissioners not complying with the law.—It was proved to the satisfaction of the delegates, that the lands which the purchasers thought they bought, would not fall to them by following the plot which was used by the commissioners.—If any additional proof was necessary to establish this fact, Mr. Hollyday's letter, dated 20th day of July 1785, desiring to be released from a purchase made by himself, because deceived in the location of the land (tho' he was both seller and buyer) would convince the most unbelieving, that the sale was made in the most confused manner. The commissioners did not charge commission on this property, bought by Mr. Hollyday, or on property bought by Mr. Sullivan, but a double commission is charged on other parts of this property which were resold.

The second objection to the commissioners receiving part of the money charged in their account is, that commission is charged on the sum of at least £.35,000 which is not bonded, and it is doubtful, from various causes, whether the state will ever recover. To give one instance among many; Stephen Steward, and company, is charged with property to the amount of £.4376 6 3. The commissioners don't know who Stephen Steward, and company, are, as you declare in your memorandum to me, dated the 27th of August, 1785. Stephen Steward denies having purchased the property, and the commissioners can't prove he purchased it, nor do they know who was the purchaser. Can the state recover the money under these circumstances? If the state cannot recover, whose fault is it? Yet the commission on the sale of this property is charged and paid. The third objection to the commissioners receiving the amount of their claim, is, that the commissioners were indebted to the state for property purchased, when the greater part of the commission claimed as the balance due them arose, and that therefore the account ought to have been settled, charging the commissioners with the property, by them bought, and giving credit for their commissions, and striking the balance actually due them, or the state, as the case might be, and if their was a balance due the commissioners, it ought to be paid, if a balance was due the state, bond ought to have been given for such balance. This has not been done; but the commissioners have taken a credit for what was due by them to the year 1790, and call on the state to pay ready specie for the state's debit; by which means, if the commissioners, or any of them, owed the state for property sold by them £.1000, and