

thereof, have not been sold, and which are clear of elder surveys and patents?" It is also further enacted, "That the intendant of the revenue shall be, and hereby is empowered and required, to inquire into the several grants that have issued for lands within the said manor; and where it shall appear to him that such grants have been fraudulently or illegally obtained, that the attorney-general be directed to take such steps as will bring the validity of such grants to a legal decision."

From these recitals, the grounds upon which the legislature proceeded, are apparent. There was no complaint in the petition against the conduct of the commissioners. You have cautiously avoided entering into a minute detail of the evidence upon which you set the sale aside; had this been done, you would have condemned yourself. Although Mr. Hollyday's letter is evidence, that the commissioners were deceived as to the situation of the lots he purchased, yet it by no means follows, that they were deceived in the situation of other lots, or that the sale was made in a confused manner. It has already been observed, that no commission has been charged on the commission of lots affected by the claim of Pritchett Willey, or any other person, nor on those materially affected by patented land. It remains then for you to prove, that in every case where the sales were set aside, that the lots were *totally different in soil, situation and improvements, from what appeared on the old plot, by which the commissioners were directed when they made the sale.* I aver, and so the truth is, that there was no description of soil or improvements on the old plot; and that in general the sales were set aside upon the most frivolous pretences without ever hearing any testimony on behalf of the state. I am not now possessed of the evidence which governed your conduct, the depositions being in your possession, but I have the substance of them upon memory. You permitted one purchaser to retain such part of the lot he purchased as he thought proper, and relinquish the remainder, which he had sold shortly after the sale. It must be admitted by every dispassionate man, that if a purchaser had just cause to be released from his purchase, the whole ought to have been given up, and not a particular part. By retaining the most valuable part, and giving up that which is less valuable, the state must sustain an injury, because on a second sale of the part relinquished, it must sell for a less sum *by the acre*, than if the whole was sold together. You released another purchaser under a pretence set up, that there was more marsh and less upland than was expected at the time of the sale, when on recurring to the original sale, made by the very man whose deposition was taken, the contrary appeared. If the suggestion had been true, the purchaser could have had no pretence at law or in equity to be exonerated, as he knew that neither the quantity of marsh or upland was no assertion of the commissioners as to the quantity of either, and the *probable* quantity only was mentioned in any case. Another reason why the sale of this lot ought not to have been set aside, is, that the proprietor at this time was not the original purchaser, nor was he a resident of the state at the time the sale was made, as I have been informed and believe, but had given a considerable premium for the purchase to the first purchaser; and after he had built several vessels, and destroyed the most valuable timber on the lot, and rendered it much less valuable than at the former sale, he was permitted, by you, to relinquish the purchase. Another purchaser suggested, that according to the former sale, all the land included in a particular lease was sold to him. The very reverse appeared on the face of the sale, and yet you exonerated him from the purchase. You permitted purchasers to swear for one another, when it was impossible that the party swearing could know whether he was swearing true or not. A was permitted to swear that B was deceived; and B to swear, that at the time of the sale, A conceived that his lot lay differently from what he apprehended. Pretences such as these, were deemed by you a sufficient justification for declaring the sale void, and directing a resale. If you had examined the original papers, then in your possession, you must have been convinced, that the procedure was unjustifiable. Although you was acting as trustee on behalf of the public, you never sought for information on behalf of the state; but upon this slight testimony, this *ex parte* hearing, the sale was set aside, not only in instances where you may pretend the evidence satisfied you, but in others where no application was made to you. Several of the purchasers declared, that they had never spoken to you, and insisted on retaining their purchase agreeable to the original sale, and do retain them to this hour.

Now, Sir, if it was admitted, that the right of the commissioners to a commission on the resale of Nanticoke manor, depended on the propriety of your conduct in declaring the sale void, what must be the determination? Whether the question should be decided in a court of law or equity, in my judgement, our right is clear and indisputable. Your argument, to prove that we are not entitled to a commission on the resale, because it is not expressly given by law, scarcely deserves to be considered. The two and an half per cent. commission was given in an act passed in January 1782, and it is never afterwards mentioned in any law directing the sale of confiscated property; so that if it proves any thing, it will prove that we are not entitled to a commission

on the sales of any property made in the years 1783, 1784 and 1785. You have said, that a charge of *double commission on business finished but once*, will readily be admitted to be extraordinary. It is answered, that the business of the first sale was completely finished; the bonds were taken and lodged in the treasury, and this appears in the recital of the act which authorized you to inquire into the circumstances of the sale, and of course, your acute reasoning will not apply; and upon your own principles you must give up the point. It is said, that the intention of the legislature must decide the question as to the legality of the charge, and that the principles of justice must determine the equity of the claim. Let me ask, if it is reasonable to suppose that the legislature, or any member of it, could expect that the sales would be set aside, unless it could be satisfactorily proved, that the purchasers had been deceived in the manner they had set forth? Was the intendant of the revenue, under the act referred to, to exercise an arbitrary discretion? These questions must be answered in the negative. Some certain rule ought to have been followed. It was the incumbent and indispensable duty of the intendant to have sought for evidence on behalf of the state. Written evidence could have been furnished, which must have countervailed the testimony he had taken on behalf of the purchasers, and a different conduct would have been adopted. You acknowledged before the governor and council, that one reason which, amongst others, induced you to set aside the sale, was, that you expected the manor would sell for more on a second sale than it did on the first. The event proved you were mistaken, and by declaring it void, and directing a resale, the state lost, by the difference between the two, and the consequent loss of interest, upwards of two thousand pounds. The legislature of the state of Maryland direct a particular service to be performed,—they appoint their trustees or agents, who are to have a stipulated reward, and proceed to discharge their trust, as they contend, according to the true and liberal construction of the act under which they derive their authority; the service is performed. Some time afterwards, those who have made contracts with the agents or trustees, who have acquired rights to, and created obligations on themselves, find it their interest to endeavour to exonerate themselves from their contracts and obligations thus entered into. They petition the general assembly to be exonerated, and allege, that they have been deceived as to the soil, situation and improvements, of the property purchased, but do not pretend to say, that there was fraud, or any intention to deceive, in the agents or trustees. The legislature appoint a third person to inquire into the circumstances of the case, and exonerate the purchasers if they have been deceived in the manner set forth. He makes the inquiry, and although he cannot say, upon the evidence disclosed, that they have been deceived as they represent, yet, as he has reason to believe that the state will be benefited by a second sale of the same property, he ventures to release the purchasers from their contracts. I ask, if there is a lawyer of character in the state who will assert, that because the purchasers are exonerated from their contracts, it follows as a consequence that the agents are to lose their commissions? I believe there is not one. If the loss of the commission is a necessary consequence of the exonerated of the purchaser, then would the right of the agent or trustee depend on the will of the individual appointed by the legislature to make the examination. They would be deprived of their rights, unheard, not in any established court of judicature, not by the judgment of their peers, nor by the law of the land, contrary to the principles of our declaration of rights, which ought to be ever inviolably adhered to. Had the legislature, in the act to vest certain powers in the intendant of the revenue respecting Nanticoke manor, inserted a clause to the following effect, "And be it enacted, That if it shall appear to the intendant of the revenue, that the purchasers of said manor were deceived as to the soil, situation and improvements, of the lots by them purchased in the manner set forth, then the commissioners shall not be entitled to any commission for their services;" I contend that this would not have deprived them of their right to the commission; and the law being contrary to the principles of the declaration of rights, would have been of no validity. A law repugnant to the principles of our declaration of rights, and not founded upon the immutable rules and principles of justice and equity, is in itself null and void; nor are the makers of it legislators, but oppressors. In vain would it be to attempt a superstructure, which can or ought to be approved, upon a foundation which merits nothing but indignation and contempt. Was I in the situation which your conduct, and arguments in support of it, would place me, I should consider myself deprived of the rights of a citizen of the state, and as much a slave as the subject of the most tyrannical and unlimited monarch on earth.

To consider the subject upon the principles of equity. I trust that there are few who will question the sincerity of the commissioners when they assert, that they were actuated by the motives they have suggested when they were making the sales; the reasons were assigned at the time; they were then transacting the public business for a *per diem* allowance. The sale of Nanticoke manor was the first upon which a commission was drawn; and as the act was passed after they left Annapolis, it was not

until after their return that they knew that they were entitled to any thing more than the *per diem* allowance. Had they been selling property in the year 1781 on commission, calumny and detraction might have assigned different motives. You have admitted that you believe their motives to have been as suggested. Their attention could not be turned to the business of the sales on the eastern shore, without neglecting those on the western, which were of much greater importance to the public. I may now ask, if this is a true and candid state of the case, and I aver that it is, if a court of equity would hesitate to give the stipulated reward? I conceive it would not. Upon a fair and liberal construction of that part of the act which directs the property to be laid off in convenient lots, considered in one sense, it means nothing more than a prohibition to sell the property in large parcels, whereby numbers would have been prevented from bidding to the great injury and disadvantage of the public. The words of the act are, "shall and may be laid off in convenient parcels by the commissioners, as they may judge most advantageous, and exposed to sale, &c." But suppose the chancellor should be of opinion that a survey was necessary, previous to a sale, would he hesitate to decree an equitable compensation for the service? And if an equitable compensation for the service, independent of stipulations for reward, should be decreed, would it not exceed the two and an half per cent. commission?

It is insinuated by you, that at the time Mr. Hollyday and I remonstrated against the passage of the bills directing the resale of Nanticoke manor, and of the unbonded property, that it was our own opinion that we should not be entitled to a commission on the resales. Your memory, Sir, serves you to recollect or forget, as best suits your purpose. There was not a syllable either in Mr. Hollyday's memorial, or my remonstrance, respecting the resale of Nanticoke manor. They were both on the subject of the resales of the unbonded property, and I stated in the strongest terms I could, my right to a commission on unbonded property, and I urged as one reason among others, "that the state was not injured, nor the delinquent purchasers benefited, by their not having bonded agreeably to law, as they were in general opulent in their circumstances, and the state might recover judgments upon suits being brought against them." Here it may not be amiss to observe, that when that remonstrance was laid before the legislature, it had been agitated in the house of delegates, whether the whole of the property that then remained unbonded should not be resold. It was to prevent the adoption of so pernicious a measure, which the house had been nearly led into for want of proper information on the subject, that the remonstrance was preferred. If the act had passed with such a clause in it, I will undertake to say, that the state must have lost from forty to fifty thousand pounds. I foresaw, that if such an act should pass, that the commissioners might be compelled to file a bill in chancery to recover their commission, but never entertained a doubt about their right to it; and this is known to every gentleman with whom I have conversed on the subject. If you will recollect, you must remember, that I expressed the same opinion to you, when application was made to you for payment of the commission arising on the resale of Nanticoke manor; and yet you will intimate that this is an opinion *now* taken up. My character has never been remarkable for the fluctuation of my opinions, or the versatility of my conduct.

A commission has been charged on the resale of a lot of Monococy manor, which had been sold in September 1782; the lot was sold clear of incumbrance, as none appeared on the day of sale, nor was there indeed any. On the petition of Andrew Adams, the general assembly directed a resale of the lot by a resolve passed at November session 1783. As the resolve contains a state of the case, it is here inserted.

"Whereas it appears to this general assembly, that Martin Adams, late of Frederick county, in obtaining a lease for lives of certain lands on Monococy manor from the proprietary agent, by mistake had the name of Henry inserted instead of Andrew; and whereas the supposed life estate in the lands was, by will, afterwards bequeathed to the said Andrew; and whereas the lands have since been sold by the state, and the person in whom the right now is has declared his willingness to relinquish the purchase in favour of the petitioner: Resolved, That the commissioners for confiscated property, after due notice, do again set up to public sale the aforesaid lot of ground, distinguished on the present plot by No 29, for the use of Andrew Adams, his life therein, and sell the reversion to the highest bidder, on the same terms that the former sale was made, and that the treasurer deliver up any monies, certificates, or securities, which may have been paid in virtue of the former sale."

Can it be imagined by any reasonable man, that the commissioners were to perform these services without any compensation or reward? It is clear, beyond a doubt, that the resale was directed by the legislature, through favour to the petitioner, and not from any fault or mismanagement of the commissioners. Can it be supposed that it was the intention of any one member of the general assembly, that the commission on the resale was not to be paid? The bond of the purchaser at the former sale was taken, lodged in the treasury, and the greater

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