

part of the certificates, for which the property was sold, had been paid.

I come now to speak of the commission on the resales directed by you to be made, under the act to establish funds, &c. This amounts to £. 218 3, and arises on the resale of the property sold under different acts of assembly, and purchased at the first sales by different persons.* To enable the reader to form an opinion on this subject, it is necessary that that clause of the act, under which the resales were directed, should be published. "And be it enacted, That every purchaser of confiscated British property, who hath not given bond, shall give bond before the first day of April next, with such security as the commissioners for the sale and preservation of confiscated British property, under the direction of the intendant of the revenue, shall require, for the payment of the purchase money with interest, agreeably to the contract, payable on the first day of January, seventeen hundred and ninety, with interest annually, to commence from the first day of September last; which indulgence of payment till the year seventeen hundred and ninety, shall not extend to such bonds as may be drawn for the redemption of emissions of June seventeen hundred and eighty, but they shall be paid at the same time as others drawn, notwithstanding the time of payment mentioned in such bonds; and if any purchaser or purchasers of confiscated British property shall neglect or omit to give bond with security as aforesaid, on or before the first day of April as aforesaid, the intendant of the revenue is hereby authorized and empowered, and expressly directed to enforce, by the mode directed by the ninth clause of the act passed April session, seventeen hundred and eighty-two, entitled, An act respecting claims to confiscated British property, and to direct the commissioners in certain cases, payment of the principal and interest due by contract from such purchaser or purchasers, if the said intendant shall judge such purchaser or purchasers able to pay the same, and if unable the contract shall be void, and shall be so declared by the said intendant, and the property shall be exposed to a second sale by the commissioners aforesaid, under the direction aforesaid, for current money, or all certificates before mentioned, payable the first day of January 1790, with interest annually." From a view of this clause it is apparent that no sale ought to have been declared void, and a resale directed, unless the purchaser was unable to pay. The evidence, on which you declared these sales void, and directed resales, has never yet been disclosed to the public. Some certain and fixed rule ought to have been pursued by you in judging of the ability or inability of the purchaser. Mere will and pleasure ought not to have been the guide. By exercising an arbitrary discretion,—by deciding at random and without proper inquiry, great injury has been done to the public; and the commissioners have been compelled *unnecessarily* to perform two services at a great and heavy expence, and I will undertake to say in cases where the purchasers were not unable to pay. On the former sales, when the purchasers refused or neglected to give bond agreeably to the terms of sale, the commissioners were authorized to declare the sale void, and to sell the property again, or to hold the purchaser liable. I believe it will not be denied that the property in the instances referred to, sold extravagantly high, and greatly beyond its actual worth. Impressed with this opinion, the commissioners made it a rule to insist on the sale, hold the purchasers to their contracts, and reject, without distinction, every application to reliev the property. Upon a consideration of all circumstances, this was deemed the most eligible line of conduct, not only because it was the most advantageous to the state, but because if any one purchaser had ever been indulged with a resale, every one who had given a high price for property purchased, and had made an imprudent and hasty bargain, would have expected the same indulgence; and upon every resale there must have been a certain loss to the public. No attention was wanting in the commissioners, nor any expence spared by them, to induce a compliance. Notice was given in the Gazettes from time to time, and attendance frequently given in Baltimore-town, in the neighbourhood of which most of the delinquent purchasers resided, to take bonds, but in a great measure without effect. Some urged, that they were creditors of the public, and that the state ought to discount their claims; others, that the property purchased was different from what they apprehended; and others, that claims were made which ought to be settled. These facts were often made known to you, and your advice to the commissioners was, to postpone bringing suits, and to state these circumstances to the general assembly, that they might take the subject into consideration. This was done session after session, and lists of those who had refused and neglected to bond, presented, stating the reasons of each individual purchaser for not bonding. Nothing final was done until November session 1784, when the act to establish funds, passed.—It is asked, if any rule of conscience will

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? It is answered, certainly not; but this is not the matter in dispute. The question is more properly stated when it is put upon this footing: An agent is employed by his principal to do a particular piece of business for a stipulated reward; the business is undertaken by the agent, and proceeded on until it is almost finished; all the trouble is gone through, all the expence incurred, and scarcely any thing remains to be done; difficulties arise, and application is made to the principal, to know what is to be done: can the principal, in this last stage of the business, appoint a third person, with power to say that the business shall not be completed in the manner first agreed, and so defeat the agent's right to the stipulated reward? Can the principal, at this stage of the business, direct, that every thing be begun and done a second time, without any new reward, or for the reward first stipulated only? Can he, at this stage of the business, dismiss his agent without making him compensation for his services? If a compensation is to be made, ought it to be any thing short of the stipulated reward, when it is considered that the agent has been at more trouble, and incurred greater expence, than if no difficulty had arisen, and the business had been completed agreeably to the original contract? If these questions cannot be answered in the affirmative, the right of the commissioners to the commission contended for, must be granted. It has been observed that "if on every resale a new commission was to arise, it would be obviously the interest of the officer to multiply sales, and of course not to finish the business." To this it is answered, that the commissioners have not, by their conduct, at any time, shewn a disposition to multiply sales, nor have they ever contended for such an absurdity, that on every resale a new commission was to arise; and it is denied that in any case, the sale was void, if bond was not given immediately.

It is admitted that equity would consider the whole circumstances of the case, and determine what was justly due, independent of stipulations for reward. This doctrine will operate most powerfully against you, and the justice of it cannot be disputed. If the commissioners are entitled to receive an equitable compensation for their services, independent of stipulations for reward, much is still due to them. They have not charged any commission on many sales which have been made where bonds were not taken, although no imputation of misconduct or mismanagement has been, or can be, made against them in these cases. By an act of April session 1782, c. 59, the commissioners were directed to sell the reserves in St. Mary's, Charles, Baltimore, and Harford counties, and on Monocacy manor in Frederick county, and Gunpowder, North-East, and Elk manors; and also those parts of the manors in St. Mary's, Charles, Kent, and Worcester counties, which then remained unsold, for specie, one third to be paid in thirty days, one other third in two years, and the residue in three years, from the day of sale. A preference was given by the act to tenants on manors, and settlers on reserves, of purchasing such parts of any manor or reserved lands as they were then settled on, upon paying such reasonable and moderate valuation therefor, as the commissioners or persons nominated by them should, on oath, determine. In consequence of this act the commissioners proceeded to have the business done. Attendance was given in Cæcil, Harford, Baltimore, Frederick, Charles, and St. Mary's counties; proper persons were appointed, and qualified, to make the valuations of the different tracts and lots to be sold; the valuations were made, and in many cases bonds were taken agreeably to these valuations. For all these services which were attended with a heavy expence, the commissioners have never received one shilling. No additional labour remained to be done by them, but to take the bond of the purchaser where it had not been given before, upon his application for a titling to the register of the land office, and to give the titling. These sales, according to my calculation, would have amounted to about £. 30,000, and the commission on them of course would be £. 750. The intendant refused to confirm the valuations, because, in his opinion, they were too low; and it must be admitted that in many instances they were too low; but, I believe, it will be found that by making the proper allowances, for the difference between specie and certificates, agreeable to *his rate of exchange*, that his sales of this property have been equally low. Are not the commissioners as justly entitled to a compensation for these services, as any citizen of the state is entitled to the property he has acquired under sanction of law? In my judgment no honest man will dispute their right, though no charge was ever made by them.

To prove that we are not entitled to a commission on any resale, it is urged, that if the legislature had intended any commission, less than two and an half per cent. would have been given; that one and an half per cent. was thought enough for the intendant, and that no more would have been given to the commissioners, had it been in the view of the legislature, that they would be paid in specie. It is answer that if, during the war, when our affairs were the most threatening aspect, it was necessary that three commissioners should be appointed to carry into effect the intentions of the legislature, and to make speedy sales of the property to answer the

most pressing and important public services, each commissioner, in justice and equity, ought to have been allowed as much for his services as you have been paid, *in time of peace*, when the business was less difficult, and attended with much less expence and trouble. You have boasted that your account of sales of confiscated property amounted to £. 154,296, sold by you between March and November, to upwards of 1500 persons, has been laid before the general assembly, and settled by the auditor. It is admitted that the gross amount of your sales amounts to that sum; but it is a fact that the reserves in Baltimore and Harford counties, and the manor in Cæcil county, containing upwards of 100,000 acres of land, have been sold by you without previous surveys, and bonds taken from the purchasers for a supposed gross sum; and the quantity of acres left to be ascertained at a future period. Those who have a knowledge of this subject, who are acquainted with the number of persons who have passed their bonds, and the quantities of land for which they have been given, are convinced that the deductions, upon an actual survey, will be considerable; and that there is not nearly the quantity of land sold for which bonds are taken. Yet upon this gross amount you have charged commission and paid yourself, when you were both creditor and pay-master, not only without surveys previous to the sale, but without waiting until they could be made and the quantity of each purchaser ascertained; and that there are many disputes between the purchasers is a fact that cannot be denied.

You assert, that 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. You allude, I presume, to the property sold Charles Ridgely and company, and which you directed to be resold. A state of the case will enable the public to judge of the motives which actuated the commissioner who attended the sale, and also of the propriety of your conduct in directing a resale of that property. The sale was in the month of February 1782, of a lot of land in Baltimore county, containing 610 acres, which belonged to the Nottingham Company, for £. 7320 black money. At the time of the sale three different claims were made to the property; colonel Ramsey had taken the opinion of able council, who advised him that the state's title was good. It was apparent that if the property was sold, subject to the claims, it must affect the price of it, and that the state would be greatly injured. To prevent this injury to the state, colonel Ramsey agreed to warrant the state's title; and in consequence of this, the property sold for the sum before mentioned. The act which directed the commissioners not to sell any property but what they were fully and clearly satisfied belonged to British subjects, is not the law under which this property was sold, nor is there any such clause in the act directing the sale of this property. If it should be insisted that this conduct ought to have been observed in all cases, it must be allowed that the conduct of the commissioner was justifiable, not only because the property would have sold for a mere trifle, if the *right of the state only* had been sold, but because, in the words of the act, the claims, in the opinion of the commissioner, did not appear to be well grounded in law or equity, nor were they such as the commissioner had reason to believe would be admitted by the general assembly. But his attention to the interest of the state, and his endeavours to promote its welfare, have been frustrated by your interposition. One of the claimants who purchased a dormant claim for a small consideration, has filed his bill in chancery; but without waiting the event of the suit, and without endeavouring to purchase the rights of the claimants, or to make any compromise which would tend to the advantage of the public, you directed a resale of the state's right to the land; and being sold, subject to the claims, and under the incumbency of the suit in chancery, it sold only for £. 910. It is now immaterial whether the state had a title or not; if the claims are not supportable, the state cannot be benefited. Suits were commenced by your direction against Mr. M'Alister, Mr. Croxall, and Mr. Young; the two latter were taken, the former escaped the vigilance of the sheriff. He is a resident of North-Carolina, and, according to information which I cannot doubt, is in affluent circumstances. I conceive it could not have been a matter of difficulty to have brought suit against him there, and to have recovered the money. In the other instances no suit was directed, but a resale ordered. If suit had been brought, the state must have had this advantage, that upon judgment being recovered, which may be at the first term, all the property of the debtors could have been taken in execution, besides that purchased from the public, the title to which can never be divested out of the state, until payment of the whole purchase money. It may be said, that this must have distressed, or perhaps ruined, the purchasers, but however laudable it may be in the state to be thus merciful, it certainly never can be urged as a reason that the commissioners should transact the public business without any compensation whatever.

Little need be said to expose the futility of the second objection to the account. According to custom, the sum has been exaggerated. I believe the list of balances, on the books of the commissioners, for which bonds were not given, and on which a commission has been charged, amounts nearly to £. 30,000; but when facts are stated, I flatter myself that there will not be a doubt entertained of their right to the commission. Under the act to establish funds, &c. if bonds were not given by a particular day, the purchasers were to be sued, or resales directed. You examined the list, were of opinion the purchasers were able to pay, and directed suits to be brought. The accounts were drawn off, and put into the hands of the attorney-general; suits have been commenced on the accounts, and judgments recovered for a great part of those debts. It appears to me that no reasonable man, competent to decide, will, upon examining the laws under which the commissioners acted, hesitate to say, that, when

* Charles Ridgely, and Co. £. 7320 black money. Colonel Peter Adams, £. 750 army certificates. Charles Croxall, £. 1835 army certificates. James Young, £. 173 army certificates. Archibald M'Alister, £. 2637 specie. Gabriel P. Vanborn, £. 982 16 3 specie. Robert Long, £. 12,294 10 specie. The three last payable in certificates under the act to establish funds, &c.