

with separate, as well as conjunct powers; and most of the sales which have been made, were under the direction of one commissioner only, the others being obliged to attend other sales at the same time, in different parts of the state; and in all the sales which have been made by your remonstrant, who transacted an equal share of the business, whilst in office, there is but one person who has refused to bond, and his purchase amounts only to the sum of £. 137 16 3

In consequence of refusals to bond by the different purchasers, together with other motives, the commissioners were induced to present an address to the general assembly, dated the 5th day of June, 1782, requesting their advice and direction, which yet remains among the files of the honourable house of delegates, and to which he begs leave to refer your honours; and an act was thereupon passed, making provision accordingly, entitled, An act respecting claims to confiscated British property, and to direct the commissioners in certain cases; that suits have not been commenced against those who refused to comply with the terms of sale, has not been the fault of your remonstrant; although he presumes he may with propriety remark, that the state is by no means injured, nor the delinquents benefited by the not taking bonds; because he thinks he may venture to assert, that the greater part of the property which remains unbonded, is in possession of some of the most opulent men in the state, who are well able to pay for it; and because, by the provision contained in the act aforesaid, the state may obtain a judgment against them for the amount of their purchases, before the money would become due, provided bonds had been given according to the terms of sale; and he may add, that the property cannot be divested out of the state until payment is made.

That many of the purchasers will not bond by the day set in the resolve, if left to their option, is certain; because the property sold by the commissioners has, in most instances, been purchased at a very extravagant price; and if your remonstrant may be permitted to hazard an opinion, it will not sell for more upon a second sale, even if sold for all kinds of certificates, and the state will lose the interest which has become due since the sales.

Your remonstrant flatters himself that he has discharged his duty as a faithful trustee of the public, and that he has ever, with unshaken integrity, steadily adhered to the true interest of the state. And under the circumstances he has had the honour to premise, which are strictly true and capable of the clearest demonstration, he conceives himself as much entitled to a proportionate part of the commission arising on the unbonded sales, as any citizen of the state is entitled to any property which he has acquired under the sanction of law. He applies to the dispassionate consideration of your honours as to the justice of the claim, and hopes, that that part of the said report which directs a second sale of the unbonded property, may not be passed into a law, as the legislature will thereby, at one breath, give their fiat to deprive him of that which he apprehends to be justly due to him for services performed years ago. Your remonstrant, since the resignation of colonel Ramsey, was prevailed on to accept the appointment in his stead, and has neglected his private business, and devoted almost the whole of his time for several months past, which was by no means incumbent on him, to the business of the office, without any other prospect or desire of reward than finally to complete the unfinished business, and to enable him to draw the commission due to him for former services which cannot be done previous to a final settlement; notwithstanding he cannot either in reason, justice, law, honour or conscience, be any more responsible for the conduct of any commissioner but himself, than any other member of the community, when it is considered that they acted in a separate capacity, in conformity to the directions and under the authority and obligation of law.

Your remonstrant preferred a memorial to the honourable the general assembly at their last session, which was referred for consideration to the present session, to which the state is party, and your remonstrant only remotely interested to which he prays the attention of your honours.

Signed, G. DUVALL.

December 22, 1784.

To the honourable the Senate of Maryland.

The petition of Clement Hollyday, one of the commissioners of confiscated property.

Your petitioner begs leave to represent, that during his late necessary absence from the seat of government, a bill passed the house of delegates containing a clause which directs, upon certain contingencies, a second sale of that part of the confiscated property which has been sold by the commissioners, and for which bonds have not been taken. The second sale is directed to be made by the intendant, and the commissioners may in consequence lose the whole of the commissions arising upon the first sale.

The gentleman who is joined in commission with your petitioner preferred, some days ago, a remonstrance to the general assembly, which was received by your honours, and, according to the usual course of business, after one reading, was

referred to the house of delegates, who did not give it a second reading. As it contains a state of facts which your petitioner deems very material, he begs leave, with the consent of the remonstrant, to refer your honours to it, and earnestly entreats that your honours will take it into your most serious consideration.

In addition to that state of facts, your petitioner is under the necessity to represent, that he is not chargeable with neglect, although bonds in many instances have not been taken from the purchasers of confiscated property agreeable to their contracts. It was his sincere wish to proceed against them agreeable to the ninth clause in the act respecting claims to confiscated property, and to direct the commissioners in certain cases. This clause, your petitioner apprehends, has not been recollected by some of those whose voices were given for its passage at April session 1782. It is as follows, "And be it enacted, that where any person hath purchased, or shall hereafter purchase, public property of the said commissioners, and shall not comply with the terms of sale by giving bond as required, or by non-payment at the time limited, (and no provision hath been already made in such cases) the said commissioners may sue such purchaser in their names (endorsing on the writ that the action is brought for the use of the state) for the sum due, and may declare for so much money received for their use, and the defendant shall plead the general issue and proceed to trial the first court, unless the court are fully satisfied that justice requires a continuance of the cause, and the court shall compel a trial as soon as the same can be had with justice to the party and the state, and on the judgment which shall be rendered for the whole purchase money, execution shall issue from time to time for the recovery of the several payments as they become due." With respect to the injury which the state may sustain by repealing this clause, or by rendering it a dead letter, your petitioner begs leave to refer your honours to the aforesaid remonstrance.

Your petitioner lastly represents, that in the spring of the year 1782, he, for the purpose of better executing the duties of his office, removed his family to Annapolis, and has resided there and in the neighbourhood ever since, that the expences of his living have been thereby increased greatly beyond what they were before, and that he has received from the public since November 1782 only £. 285. £. 200 of which was partly in consideration of pay due before that period; and if nothing is to be allowed him for the sales of that part of the confiscated property which is unbonded, he apprehends that if there is not a balance against him in favour of the state, there will be little or nothing for him to receive, and after several years service with strict fidelity he will find himself deprived of his rights and reduced thereby to much distress; but above all, a stigma will, by the world, who seldom inquire minutely into circumstances, be fixed on his character. His only hope and his earnest petition is, that the virtuous senate of Maryland will consider those things, and that they will not permit so much wrong and such injustice to their petitioner.

Signed, CLEMENT HOLLYDAY.

December 31, 1784.

Notwithstanding all your complaints and professions, both the bill respecting Nantocoke manor, and the bill for consolidating the funds, passed the house of delegates, containing a direction that the intendant should resell the property. Both you and Mr. Hollyday suggest the strongest apprehensions of losing all commission on property sold and not bonded for, if the bill with the direction above mentioned passed into a law. The senate proposed an amendment to the bill for consolidating the funds, &c. that the commissioners should resell instead of the intendant; this amendment was acceded to by the delegates, and conformably to the principle of the amendment, the bill respecting Nantocoke manor, which I believe had passed both houses, directing the intendant to resell, was also by consent altered. Was the intention of these alterations to give you two commissions, or to secure one only? Your memorials answer the question. The only complaint that you had was, that if the property was directed to be resold without your having an opportunity of finishing the business, and thereby entitling yourselves to commission, that you would lose the whole fruits of your past labours. The alteration was made to prevent all grounds of complaint, and to give you a fair opportunity of entitling yourselves to a commission, by performing that service to the state upon which alone it could be due. And the point now in dispute is, whether it is just, that you should be allowed to pervert the law so altered to the purpose of securing the old, and of giving a new commission? Suppose your memorial, instead of suggesting the grievance that it contained, had been in substance according to your present claim. Then it would have run in this manner: We the commissioners have sold property which has not been bonded for agreeable to law. And we have sold property and taken bonds in some cases wherein the purchasers complain they were deceived. And we understand the assembly are about to give the intendant powers to order resales of the above property, and to give him one and an half per cent. commission on the resales. Our right to two and an half

per cent. commission on the first sales is undoubted, and we shall demand it whether employed in the resales or not. And as this is not enough, we claim a right to resell also; and moreover two and an half per cent. specie on all the resales, and we shall be injured and aggrieved unless this our claim is acceded to. Would not such an application have been treated with indignation by every member of the legislature? And if such an attempt had been made, and you had been gratified, would not the legislature have sacrificed every regard to justice and their constituents, for the sake of men who, as officers, were generally thought by the delegates to have mismanaged the affairs committed to them. To support your claim to double commission you must suppose the legislature, in adopting the amendments of the bills referred to, intended wantonly to lavish the public money upon officers who neither asked, or deserved it, or that an alteration took place in consequence of your application, which the legislature intended for one purpose, and you have made use of for another. You may take your choice of these grounds, and none other is left for you. It is clear that the main object of your memorials was to secure a commission: for any other purpose they were vain and impertinent, for if the legislature wanted your advice respecting the proper conduct to be pursued, they would certainly have asked it, and it would have been strange presumption in you to have obstructed your counsel upon the legislature with no other design, than that of directing their conduct to the advantage of the state upon a subject which was as well known to every man as to you. It might have been consistent with your wisdom to give the assembly the information, but it would have been ill suited to theirs to have heard you with patience telling them a thing which the most ignorant man in the state knew. But having the security of your own interest principally in view, you thought professions of regard for the interest of the state might pave the way to the accomplishment of the end you chiefly aimed at. This is a very common artifice, and always has more effect than it deserves. You admit, that if the act had directed a resale of the property purchased, and for which bonds had not been given, you might have been compelled to file a bill in chancery, to recover your commission: by which I presume you mean if the resales had been by the act directed to be made by the intendant; for the act referred to directs the resale to be made by the commissioners, and therefore you cannot mean that a direction to them to resell would have had the effect suggested without giving up the point in controversy. I take what I suppose must be your meaning. If you would have been obliged to resort to chancery for a recovery of your commission on the first sales, upon a resale being directed by law to be made by the intendant. What has relieved you from that necessity? You will answer, the act directing the commissioners to sell instead of the intendant gives the commissioners a legal right to commission. I ask, to which commission, the first or the last? You will certainly not contend that it gives a right to both. Make your election, take either and you establish the objection I have made, which is, that you cannot in any instance charge both. As no commission was by the legislature expressly given on the resales, and you knew none was intended, you ought either to have refused to do the service and rested your claim to commission for the first sales upon its own merits, or you ought to have done the service upon the terms intended by the legislature, or if you thought, after the service was performed, you deserved more than a single commission, which alone you could claim by any law, you ought to have stated your case to the legislature, and prayed a further grant of money for your services; but having, as you suppose, secured one object by applying to the legislature, it could do you no harm to attempt another from a different power in which, by a variety of incidents, you have succeeded beyond all expectation, and have given an example to encourage the hopes of the most enterprising in their attacks on the treasury.

Suppose the legislature had passed the law you so much dreaded, and you had applied to the chancery court to recover your commission, and suppose a bill against the state had been determined to be proper, you would have been obliged to have stated the services performed, as the grounds upon which you claimed commission, and to have shewn some law by which the rate of commission was established. This would have given the chancellor an opportunity of examining your conduct in all the sales upon which you charged commission. And, as I have been informed, it is a rule in that court, — That he who seeks relief must do equity. I conceive that if the chancellor had discovered any misconduct in the sales of property, or any neglect by which the state had suffered, the loss sustained by mismanagement would at least have been set against so much commission as the loss amounted to, and if the loss exceeded the commission, you would, upon suit by the state, have been liable for the surplus of loss. But suppose every thing had appeared perfectly right, and that it was not your fault that the laws had been infringed by bonds not having been taken and lodged in the treasury, what could a chancellor have given you upon any principles of law or equity? Certainly not two and an half per cent. specie upon the sales. He would tell you, that this commission was payable in depreciated paper, or in wheat at a nominal sum, far beyond its real value; that the commission was

nominally so high was to be paid, and was usually rated at; ment had received time when the half of what the officers of government more than half the commissioners could in specie the commission was settled accounts money paid for every principle to pay the depreciated paper. though it might were not taken required to gain the performance of the body to put the reasonable deduction of the specific value of I think, would be a commission to one sales, supposing duty, and had capable of being the resales, that of the legislature was to give you had not expressed judge was called as to the apprehend he entitled to a resale legislature had half per cent. it would be a what was a real hope, because upon former of arbitrary value reward in specie given in articles arbitrary value; nominal sum agreed with the similar services, that this was the right, both in determined in mission where it in specie as formerly been depreciated paper with as much preference between in 1782.

The only ordinary measure three in number ought to have been intendant was allowed peace, and there were for sales higher commissions for the deficient war; but this was case, if it was his colleague, colonel peace establishment and Mr. Holliday by the very were; but before established, you ing the war was business, and it belief that the services rendered engaged in a war.

I have considered of construction of the bill for you to laws, or any citizen the act referred to, commission, even in the execution believe you to be I readily agree the duties of you in the reward might not to be but suppose this follow that you because you resell onal reward proposed was intended to preventing a depreciation of the first sales the commissioners, the from them, and deducted from your have been equal the first sales of resold, which will deduction stated necessarily and proper of resale, and occurred, proceeded