

In consequence of this resolve, arbitrators were appointed, who have lately determined and awarded, that a actual damage upon the property purchased by said Garrison amounted to the sum of £. 3500, with interest from the 11th day of September 1781, which will add to the sum £. 783 6 8, so that in this satisfaction of the commissioners, the state having received bond for £. 5062 10, and being obliged to pay £. 3283 6 8, loses the sum last mentioned. The deficiency of the land purchased made no part of the sum determined by the arbitrators. Mr. Garretson having had credit for it, amounting to £. 634 10.

What reasons are given by you and colonel Ramsey to reconcile us to this heavy loss? It is alleged, that Mr. Russell had the care and management of this ore and coal. This is contradicted by the entry in your books, in which the part you account for is charged. And it is also contradicted by colonel Ramsey's letter, wherein it appears, that he either sold, or was acquainted with the sale of such part of this subject, as he chose to credit the state for. And it also appears, from Mr. Russell's accounts, now in the auditor's office, that he had nothing to do with the ore and coal, for there is not a title respecting these articles in his accounts; and as you say he was interested in the subject, and would not suffer it to be wasted, it may be fairly concluded, if this ore and coal had been committed to him, some entry respecting it would have been made in his accounts. And as Mr. Russell's superintendence of the works ceased when the commissioners sold them, if any subject was committed to him by them, they certainly would have made some minute of this in their books, or have taken something from him, to shew that he had received the articles from them; no such thing is done or pretended by you, and the attempt to throw the blame of the misconduct of the commissioners on a dead man, is an ungenerous artifice, not uncommon with men who have no other way of making their escape from censure.

Mr. Russell, it is said, came to Annapolis to settle his accounts with the intendand; why the settlement did not take place, is unknown: This is thrown out to induce a belief that I was to blame in the delay of settlement with Mr. Russell. What was the cause the account was not settled, I do not know; very probably no person was blameable; but it is at least known both to you and colonel Ramsey, that the intendand had nothing to do with the accounts until they were passed by the auditor; and it is also known, that these accounts were never settled by the auditor, and therefore the intendand was not at all answerable for the delay; but in this, as in all the representations made by you and your colleague, material circumstances are suppressed, and you leave those who read your performances, to infer censure where you are convinced none is merited upon a just state of the case.

You assert, that I acknowledged before the council, that from testimony disclosed upon the arbitration, "I was of opinion Mr. Garretson had no right to the ore and coal;" this is a palpable misrepresentation. I said before the governor and council, that whatever might be the terms of sale, I was satisfied from information I received during the arbitration, "that it was not the intention of the commissioner to sell the ore and coal, because I had reason to believe he intended it for another purpose;" but though his design might have been to reserve this ore and coal for a different purpose, yet if the terms of sale were so extensive as to include this subject, and the design of the seller to reserve it, were not declared, but kept within his own bosom, it must be obvious that the purchaser would have a right to it.

I mentioned the sale of property to Aquila Johns nominally, but really to colonel Ramsey, as improper conduct of the commissioner engaged in this management. You and colonel Ramsey have endeavoured to obviate the censure which ought to fall on him for this transaction, and the conduct of both upon this has been in perfect agreement with that which you both have practised upon all former occasions. First you abuse me for misrepresentation, then give a defective and deceitful state of the case, and with many professions, and some observations suited to impose on those who will not examine minutely, you flatter yourselves that you have been dexterously extricated from the charge; but you are much mistaken if you suppose these manœuvres will avail. Troublesome as it is to state truly the facts in every case which you misrepresent, it shall be done rather than you should escape the just judgement of the public. In my former publication I stated in short the substance of the transaction now referred to. The account given of it by you and colonel Ramsey renders it necessary that I should give the following particular state, both of the laws and the facts which are connected with the case. The property purchased in the name of Mr. Johns had been the property of Fotherrell's heirs, and of James Christie, and was vested in the commissioners for the state by the act for confiscating British property. The legislature, at October session 1780, passed an act "to settle and adjust the accounts of the troops of this state in the service of the United States, and for other purposes therein mentioned." In the twelfth section of this act, Talbot's or New Cornaught manor, and several other manors in different counties, having been formerly the property of the late proprietary, and confiscated, were set apart and burdened with the payment of the money

due upon certificates, granted to the officers and soldiers, and it was declared, "that the said certificates should and might be received for the principal and interest due thereon as specie, rating Spanish dollars at seven shillings and six-pence each, in payment for the said lands, or any other British property to be sold in this state, except that specially engaged to sink the new bills of credit, and such as was or should be specially engaged for the security, and payment of loans to be made to this state; provided, that in case of many of the said certificates shall be paid in on sales of other property, as that the said manors shall be greatly more than sufficient and adequate security for the residue, the general assembly may apply to any other purposes any part of the said manors, leaving amply sufficient to secure the full payment of the other out standing certificates." The legislature afterwards, at the same session, passed an act "to procure a loan, and for the sale of escheat lands and the other confiscated property therein mentioned," with the following preamble:

"Whereas it is necessary to procure a sum of specie for the relief of such of the quota of the troops of this state in the continental service as are prisoners with the enemy, clothing for the recruits to be raised in this state, and a sum of money to defray the immediate and necessary expences of government, until the taxes imposed by act of this session can be collected."

After making provisions respecting the loan and escheat lands in the seventh section of this law, it is enacted, "that the commissioners should sell sundry parcels of confiscated property, among which was the property of Fotherrell's heirs, and James Christie, bought in the name of Aquila Johns, as before mentioned, on the terms of paying one fifth part of the sum bid in specie at the rate of seven shillings and six-pence per Spanish dollar, and the remaining four fifth parts thereof in the new bills of credit emitted by this state, and the new continental bills of credit emitted in this state, at seven shillings and six pence per dollar, the specie to be paid within three weeks from the day of sale, one half of the bills of credit to be paid within two months after the said sale, and the remainder within four months from the sale; but if the first and second payments should not be made by the times limited, the commissioners might advertise and expose the land again for sale; if the first payment should be made, and the second neglected, the first payment should be forfeited; but if default should be made in the last payment, the second being made, no conveyance shall be made till the last payment shall be made up with ten per cent interest."

In pursuance of the act last mentioned, the following advertisement was published in the Annapolis, and I suppose also in the Baltimore news-papers:

"PUBLIC AUCTION. March 12, 1781.

"Whereas the general assembly at their last session did enact, "That the following lots, to wit, No. 11, 38, 40 and 41, in Baltimore-town, and the land adjoining or near to Baltimore-town, belonging to the heirs of Edward Fotherrell, late of the kingdom of Ireland; the property of Anthony Bacon, John Eversfield, George and Andrew Buchanan, James Brown and company, Mackie, Spiers and company, Mackie, Spiers, French and company, James Christie, John Buchanan, John Glasford and company, the heirs of Samuel Hyde, the heirs of Thomas Bladen, all of Great-Britain," should be sold at auction:

"Notice is hereby given, that all the property late belonging to any or all of the aforesaid persons, lying in or adjoining to Baltimore town, will be exposed to sale on Wednesday the 4th of April next, at the court-house in said town, on the following terms, viz. One fifth part of the purchase money to be paid in specie within three weeks from the day of sale, the remaining four fifths in the new bills of credit emitted by this state, and the new continental bills of credit emitted in this state, one half to be paid in two months, the other half within four months from the day of sale

"By order of the commissioners,

"THOMAS YATES, auctioneer.

"N. B. The commissioners appointed to preserve confiscated British property are now attending in Baltimore-town."

The sale took place on the day mentioned in the said advertisement. The lands were set up I presume agreeably to the advertisement, and the sales to Mr. Johns and others entered on the commissioners' books in the following terms:

"Sales of property which belonged to Fotherrell's heirs, James Christie, junior, E. Mackie, and Messrs. James and Robert Christie, sold at Baltimore-town on the 4th day of April 1781; terms one fifth in specie in three weeks, four fifths in black and state continental, half in two, the other in four months."

The purchasers, captain Johns among others (I presume by direction of colonel Ramsey for whom he bought) tendered certificates at par with specie for the first payment, the value of certificates, compared with specie at that time, being seven or eight for one, in consequence of which no money was received, and the purposes designed by the legislature defeated. The assembly, composed of the same members who passed the acts of October session 1780, at their session in May 1781, finding that the important purposes of the act of 1780 were likely to be defeated, passed an act, chap. 20, to explain and amend the "act to settle and adjust the accounts of

the troops of this state in the service of the United States, and for other purposes therein mentioned," with the following preamble:

"Whereas, on the sale by the commissioners appointed to preserve confiscated British property, of some lots and parcels of land in or near Baltimore-town, some of the purchasers have tendered the first payment in certificates issued by the commissioners appointed to settle the accounts of the late troops, and it was the evident intention of the assembly, that the first payment should be in specie only, and the property would have sold for a much greater price if the bidders and others had been informed, or believed that such certificates would have been received in payment."

It is then enacted, that if the purchasers will pay the fifth in specie by the 20th of July then next, and make the other payments in bills of credit on days mentioned in the act, that they should be entitled to the property purchased; and upon failure of the purchasers making the first payment as aforesaid, then the commissioners to expose the property to sale, and the legislature declaring, that it was not their intention to preclude the established courts of justice from determining on the said contracts, or the execution thereof.

The same act provides, that "if any of the purchasers should insist on a conveyance upon the terms of making the first payment in certificates, and filing a bill in chancery by the 10th of July then next, the land was not to be resold, and that the party might, if he chose, commence his action for damages, and if any recovered the state would be answerable."

The purchasers, Mr. Johns among others, within the time mentioned in the act last mentioned, filed their bills in chancery against the commissioners to compel a conveyance of the property, claiming a right to make the first payment in certificates, and offering to pay or secure the others in bills of credit. The attorney-general being a purchaser to the amount of £. 2360, and having filed a bill also, it could not be reasonably expected that he should appear for the state in the case, an appearance was entered for the commissioners on behalf of the state by another gentleman of the profession. The cause continued without any thing final having been done until the act for consolidating the funds, &c. passed, upon which most of the purchasers discontinued their suits. The bill in the name of Mr. Johns was struck off, he paying costs, no payment for the property was made by him, nor any bond given, and a suit was commenced against him and judgment obtained, as I before mentioned; but it seems the judgment was not final until the last term, and nothing is paid for this valuable property, although Mr. Johns or his friend has kept the possession of and used the property from the time of the sale.

The above facts make a full state of this case, and it must be admitted that the object intended to be accomplished by the legislature was as effectually defeated by filing bills in chancery, as if certificates had been received; whether this was right is now to be examined. The first question to be considered is, whether by a fair construction of the acts of October 1780, certificates under the first act ought to have been tendered and received for property sold under the latter act. The solution of this question will depend upon the single consideration; whether it was the intention of the legislature that certificates should be received for the first payment of the property directed to be sold for specie. In the construction of acts of assembly the rule is, that the intention of the legislature must govern; to discover the intention in the present case, it will be proper to inquire what was the object intended to be attained by passing the act for "procuring a loan, and for the sale of escheat and confiscated lands;" the preamble tells us it was to procure a sum of specie for the immediate relief of our prisoners, clothing for the recruits, and to defray the immediate expences of government. Would certificates answer these purposes? certainly not; and therefore it must be clear that it was not the intention of the legislature that they should be received in lieu of specie for property sold under this act, unless we suppose that the assembly having particular objects in view intended to defeat the attainment of them, and this supposition cannot be made, if the members of the assembly were in their senses, and acted as all rational beings do. If then it was clearly the intention of this act, that specie should be received, and not certificates, for the first payment, and the two acts considered as distinct and separate laws; let us consider what effect the act for procuring a loan, &c. would have, in case the act "to settle and adjust the accounts, &c." was contrary to it. I have always understood, that it is a maxim that "subsequent laws repeal prior contrary laws," although there be no express words of repeal in the subsequent law; the last will of the legislature expressed in the form of a law makes the rule, and all contrary provisions antecedently made are done away by the expression of this last will. If the first and second laws can be reconciled, they ought to receive a consistent construction, and the laws must be substantially contrary to warrant such a construction as will have the effect of the last law being a repeal to the first. If, in the present case, the provision in the act to settle and adjust the accounts, &c. is contrary to the subsequent act to procure a loan, &c. the prior provision will be repealed by the subsequent law. If there is no inconsistency in the two laws, it must be by construing the first so as not to make payments in certificates valid for pro-

perty sold and known that it is makes certificate the latter act. strict and separate opinion that property referred either that the that the prior legislature; the in the case, the institutional power where funds are such as to pay curities, that nature, after purchase upon the faith of other purposes; conduct, and present influence tion upon purchase passed, I believe both received together, and the the two houses supposable that as to begin upon the final sentence before colonel tificates, can be under the funds to settle accounts purchased after before the "act lonel Ramsey has his certificates with the wording of the different bills property were drawn consideration at session quoted, gaged, which wards the bill tain that both ad far as respects subject; and in the two acts shall as one law, an whole as will c legislature. Sup two acts, with part, are put of the legislature lieve no person would entertain the legislature paid, for this could attain th plished, and t certificates as sp sold, must be so then directed to tion the objects promise to the o but the subjects mited. By a con sale is entirely fru in the first act, o be pledged for a construction of a so restrained or e certain intention plied in the sam the same subject raised by a sale o as the money int property directed words, yet, by a if, express words ed from being p property pledged observed, that if it is impossible to subsequent parts. By construing th suggested, and a their plain and o lows, no injury you contend for, produced; and c cency, whom the preserve, were le The construction opinion of the M ately after the tra declaration is no ble weight, espe not the intention should be paid, their opinion the It may be adder certain, from the four fifths of the be sold was to be be no pretence lieu of these bills follow, according Ramsey, that the to pay the least v yet they were ten This introduces a question. The ing made payable