

# MARYLAND GAZETTE.

T H U R S D A Y, MARCH 15, 1787.

[Continued from No. 2094.]

To GABRIEL DUVAL, Esquire.

S I R,

YOU say I contended in my first address, that you were not entitled to commission on resales, and in my subsequent publications I deny your right to commission in every instance where bond and security had not been given, and this you insinuate in an absurdity. You have not said directly that I had changed my ground, or had committed an inconsistency, but this you wish to be believed, and as many people do not retain the newspapers to examine past publications, you were in hopes that some might suppose your insinuation well founded, although you know that it was most unjust. I not only objected to double commission in my first publication; but also to the commission charged on the *unbonded debt*, it was the second objection to the commissioners accounts, and amounted to the sum of £ 875 0 0, upon the capital stated by me to be £ 35,000, which you allege was magnified. The objections made to your accounts, and the grounds of those objections, have never been varied throughout my publications, and to shew an instance of inconsistency, you must have recourse to your never-failing resources, fiction and misconstruction.

The circumstances, inducing me to direct resales, have been stated, and therefore need not be repeated. The discretion vested in the intendant by the legislature was exercised according to the best of his judgment, having no possible motive to form an improper opinion upon any of the cases.—You have endeavoured to shew that Mr. Long was able to pay the sum of £ 12,294 10 0, the amount of the first purchase, because you say he had some valuable property near the land he purchased, and had a claim for damages against the state, which was afterwards ascertained at £ 900, of which the state was to pay  $\frac{1}{2}$ .—I apprehend in cases where the purchaser upon just grounds was supported by the intendant to be unable to pay the *whole purchase money*, the sale ought to have been declared void.—Suppose this opinion to be right, I ask, by what calculation do you make Mr. Long able to pay the purchase money? The property bought, I presume, sold as high, at least, at your sale, as it would have done at a sale by the sheriff, if suit had been commenced against Mr. Long, and execution issued against his property; the amount of the second sale is £ 5,538 2 6, and the state's part of Mr. Long's claim £ 616, the difference between these two sums and the sum of the first sale is £ 6,140 7 6. Will you pretend to say that Mr. Long's estate, near the purchase, or elsewhere, was sufficient to pay this balance? It is all known to you, that the claim of Mr. Long for damages was settled *long after the resale was ordered*. Where persons are in doubtful circumstances, commencing suits seemed to me the worst way of securing the state, and this was certainly the idea of the assembly, or they would not have given the discretionary powers to declare the sales void, in case of inability to pay the purchase money and interest.

If the first sale had been declared void by you, upon the first neglect or refusal to give bond, the property would most certainly have brought greatly more to the state than it has done.—And you will not undertake to say, that if you had put up the property, at the time you ought to have done so, that it would not have brought far more than it did when sold. I was informed, that Mr. Hughes bid for several lots, and particularly the lot on which the *Kingbury furnace stood*, which sold to Mr. Long for £ 5,492, and to the best of my remembrance, Mr. Holliday admitted, before the council, that Mr. Washington bid for the property. There certainly must have been other bidders, besides Mr. Long, for this property, or it would not have sold so high as it did.

You deny you gave me the information, which I have alleged you did, respecting Mr. Paxson's offer.—Your denial does not at all surprise me, although he had denied was most certainly as asserted by me.—You accuse me of misconduct in neglecting to sell this property to Dr. Way, by which an advantageous bargain for the state was lost. This charge is perfectly consistent with that spirit which has never forsaken you since my objections were first made to your accounts, and which has so often led you blindly on to attack, though to get at the object, justice, propriety and truth, are trampled under foot. You know, if you have read the law, that where sales were set aside by the intendant and resales ordered, the commissioners always had the power to make the resales.—That the intendant had no power to bargain for, or sell, property under these circumstances, and if he had

undertaken to sell this property at private sale, without authority, you would have been clamorous against the usurpation, especially as it might have deprived you of a pretence of claim to commission.—I acted agreeably to law, in vacating the sale, and directing a resale, by the commissioners; and you now charge the obedience to law as a fault. How blind are men when malevolence and resentment have the direction of them.

You say, that reasonable notice was all that was required, by law, previous to the resale of property. By the act for consolidating the funds, &c. notice is not directed to be given; but the law, under which the property was first sold, directs, that four weeks notice should be given; and the resale ought to have been conducted in the same manner as directed for the original sale. This, I conceive, was the idea of the legislature, or they would have directed particularly as to the notice to be given upon the resales.

To my allegation, that the low sale of James's Park was owing to the manner of conducting the business by the commissioners; you answer, that it is nothing but the peevish saer of old age; that there were several bidders besides the two companies.—This fact is asserted, but not proved, and you evade, altogether, answering an obvious objection to your mode of conducting the business, which is, that you did not set the property up at what you esteemed nearly its value; if you had done this, you would have soon discovered whether it could be got for the land. Upon this subject I will further observe, that you either thought the land sold at the second sale for its value, or you did not; if the latter, I say, it was in your power, and your's only, to have prevented this injury to the state, by conducting the sale properly; but if you are of opinion the property sold for its value, then you have been guilty of wilful injustice, by attempting to throw an odium upon me for the low sale of property, which, you admit, sold for its value. What you have said of a recovery from the first purchaser upon the commissioners contract, with a warranty, as you are pleased to call it, is too palpable a deception to pass upon the most unthinking.

If you are really in earnest in making this surmise, why was not this contract lodged in the treasury with the other securities? Every body might then see whether it agreed with the charge on your books, and might judge of its effect.

The charge of neglecting your duty, to sell the property again if bond and security was not given by the purchaser immediately on the first sale, you have endeavoured to evade by a subtle distinction between void and voidable. My meaning was expressed in language which you could not misunderstand—and you admit, "that the commissioners had a right to resell the property, upon refusal by the purchaser to give bond," and I allege, that it was your duty to have done this, if any regard is to be paid to the laws, under which you derived your authority.—Whether your neglecting this duty has been productive of advantage or loss to the state, is a question, upon which, we widely differ, and the grounds of this difference have been already stated. The fact is, that a very considerable part of the state revenue remained unsettled, and is still in doubt, by your mode of proceeding, which would have been settled, and ascertained, by attending to the directions of the legislature; and I should not hesitate to declare my opinion, that in most cases of sale, either of public or private property, when the purchaser begins to make objections, excuses, and delays, the sooner another purchaser is found the better for the seller. You allege, that the sales in controversy were extravagantly high, and therefore the state would have lost by a resale; but have these extravagant high sales brought any money into the treasury? Or was it possible to have procured, from the purchasers who did not give bond, a sum equal to what the property would have sold for to others; who would have bonded, had the property been resold, as it ought to have been?—Take the instance of Mr. Long's purchase, and suppose he had been sued after the act for consolidating the funds passed, and judgment had been obtained, and execution issued, and the property sold could have been taken in full, and the property sold for as much as the state's property would have sold for to a solvent purchaser, on the day Mr. Long first bought?—I am satisfied no man acquainted with the circumstances will assert the affirmative. And if so, it must be admitted, that all the difference was lost to the state by your mismanagement.

You still insist, that the commissioners are entitled to commission on the unbonded debt, because they commenced suits for the debts.—I contend, that the

directions of the law not being fully complied with, the commissioners are not entitled to commission upon the unbonded debt; and that the payment of any compensation to which they may be entitled for having partly done the business, ought to have been delayed until the money due from the debtors was paid or secured to the state. To induce an opinion, that the money due from the debtors was secured to the state when you received commission, you have now published a certificate of the clerk of the general court, that judgments were obtained in May and October terms last to the amount of £ 29,117 9 3 $\frac{1}{2}$  current money.

It will readily occur to every reader, that upon the present argument it is material to know the sums recovered at the respective terms, because, as you received payment of commission upon the greatest part of this sum in July last, it is clear the judgments in October ought to have no influence on the question, even supposing that judgments in the general court secured the debts to the state. You were aware of this, and therefore blended the judgments of the two courts.—The fact is, that at May term final judgments were obtained for the state against debtors who had not bonded to the amount of £ 13,104 17 11.—The judgment against Aquila Johns being by default for want of a plea, and not final until October.—At October court judgments were obtained to the amount £ 16,012 11 4 $\frac{1}{2}$ . No part of the money, that I know of, has been paid on any of these judgments—and Mr. Henry Howard has filed a bill in chancery for relief, and Mr. Johns, or colonel Ramsey for him, has filed a petition, or bill, in chancery, as I am informed, and these two debts amount, according to my calculation, to upwards of £ 7000.—How many others will file bills in chancery, it is impossible to tell; and what will be the ultimate determination in the cases, is uncertain; and therefore, as no compensation is justly due to you, unless the state is secured in the payment of the sums for which commission is charged, and unless it appears the state has suffered no loss by your mode of conducting the business, your claim on this account ought to wait the issue of a final decision upon the application of the debtors.—Whether the payment of the unbonded debt, under the circumstances stated, is certainly secured to the state, every intelligent man will be able to determine; and if it should appear that the payment of this debt is not secured, then the conclusion, which I have drawn, and which you seem to admit the justice of, by attempting to invalidate my premises, must be admitted to be right.

The case of Stephen Steward and company, was stated in my last, and I therein gave the true reason of my ordering suits to be commenced, which was in consequence of a conversation with colonel Ramsey, and not from any information from major Yates. You insist that Mr. Steward bought the property; but you do not pretend that you can find out who the company were.

The property disputed consists of eleven lots of land, charged to Stephen Steward and company, and how far the proof you have adduced to establish the charge contradicts the affidavit of Mr. Steward, those who compare them will determine. The evidence adduced by you was altogether unknown to me, and therefore your charge of neglecting the testimony of disinterested witnesses, and having recourse to the oath of the party, is groundless. The affidavit of Mr. Steward was not given under any impression that it could be used, or have any influence, in the suits against him, and your insinuations on this head are without any kind of foundation in truth or justice.

Neither what I have done, or what you have asserted, respecting this purchase, can have the least influence upon the state's claim, which must depend upon the weight of evidence at the trial; and therefore your charge against me of injuring the state's right, must appear perfectly frivolous.

You have not thought proper to add any thing to what has been said on the third objection, which was grounded on the injustice of your receiving cash for what was claimed by you from the state, and paying certificates for what was due by you to the state, not because you really think the objection frivolous, but because you can say nothing on it that has the appearance of plausibility, even to yourself.

The subject of the deficiency of ore and coal at the Lancashire works, has been fully discussed.—That the quantity credited to the state, is greatly less than the quantity first sold, has been proved; and it has been shewn, that these articles having been improperly withheld from the purchaser, has been greatly detrimental to the state. That the commissioners sold, or were privy to the sale, of these