(LXIIId YEAR.) THE (No. 2096.)

MARYLAND GAZETTE.

THURSDAY, MARCH 15, 1787.

[*Continued from* No. 2094.]

To GABRIEL DUVALL, Eſquire.

SIR,

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 is 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 news-papers 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 theſe 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 judgement, 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 $\frac{11}{16}$.—I apprehend in caſes where the purchaſer upon juſt grounds was ſuppoſed 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, add 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 alſo 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 laſt ſold. I was informed, that Mr. Hughes bid for ſeveral lots, and particularly the lot on which the Kingſbury furnace ſtood, which ſold to Mr. Long for £. 5,492, and, to the beſt of my remembrance, Mr. Hollyday 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 the fact 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 alone* 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 ſneer 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 ſubtile 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 reſel 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 execution with all his other property; would the whole have 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 judgements were obtained for the ſtate againſt debtors who had not bonded to the amount of £. 13104 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 $4\frac{1}{4}$. No part of the money, that I know of, has been paid on any of theſe judgements—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