

seurs Vanstaphorffs, 12,741 gilders 10 stivers, making in the whole 270,000 gilders or florins, as will appear by Messieurs Vanstaphorffs account No. 2. That it appears to the intendant, that the state is not bound to pay the tobacco stipulated in the said contract, because, to say nothing of the extreme inequality of the agreement, it is clear that Messieurs Vanstaphorffs did not comply with their part of the contract, by paying the sum of money specified at the time agreed on, and therefore they can have no just claim upon the state for any thing more than the money advanced, and whatever is reasonable for the use of the money from the time advanced. Thus the intendant apprehends they have a right to claim, independent of all positive engagement; but it appears to him, that whenever one of the contracting parties would rigorously claim a compliance from the other, with articles of agreement which are disadvantageous to the party upon whom the claim is made, that the party claiming ought to shew a strict compliance on his part with the articles by him to be performed, for the expectation of such performance might have been the very motive inducing the other party to make the disadvantageous stipulations, and if the party first failing has an equal right upon failure as upon compliance to demand an execution of an agreement from the other, it would rather encourage the breach than the observance of contracts, and would destroy the best security which contractors have for mutual performance of engagements. Though a partial execution of an engagement by one party, will not give him a right rigorously to demand a performance from the other; yet when an advance of money has been made, a compensation ought to be given by the party benefited according to the principles of equity, and not according to positive stipulations of the contract, if they are inconsistent with justice. In the present case, there can be no pretence of claim to tobacco by any rule of justice or equity, and therefore it ought not to be paid to Messieurs Vanstaphorffs. The supposed situation of the state at the time the contract was made, and the relief to be afforded to it, by a speedy advance of a considerable sum of money, can alone justify in any degree an engagement to pay so dearly for it; dilatory, partial advances would not afford the intended relief, and of course the tobacco would not have been engaged, if a receipt of the whole sum of money stipulated to be paid had not been expected by the agent for the state, and whatever may be the sentiments of interested men on the subject, it must appear to the candid and impartial, that the state not having been benefited in the extent agreed on, ought not to pay double the real value of the sum advanced. Mr. Ridley, in his letter to Messieurs Vanstaphorffs, dated the 31st of August, No. 3. asserts, "That when he made the contract, it was under the impression that money would be wanting to the full amount of the tobacco for payment of the interest; this not being the case, his ideas were never other, than they should receive sufficient for the payment on to much as they should furnish; that the contract regarded Messieurs Vanstaphorffs, and not the money lenders, and that the delivery of 1000h gsh ad o. tobacco did not depend on receiving the six hundred thousand florins, but of making a loan of a sum of money, the interest of which would amount to the proceeds thereof, and that the state had not ratified the contract, as the paper sent them would point out, having only ratified the loan of money; and that it appeared to him, Mr. Ridley, that not wanting the money, they reserved the ratification of the contract until the quantity of tobacco to be delivered should be determined." If Mr. Ridley's idea of the contract expressed in this letter is right, then Messieurs Vanstaphorffs could have no claim upon the state for any tobacco, except what is sufficient to discharge the annual interest at the price agreed on, and this would not amount to 100 hogsheads per year on the money advanced within the time agreed on. But whether the contract was in its nature capable of being divided in this manner, so as to entitle Messieurs Vanstaphorffs to any tobacco, if the whole money was not advanced by the day appointed, the general assembly will judge. The intendant thinks there can be no proportion demanded upon a true construction of the contract.

The intendant not being sufficiently informed of the exchange between Amsterdam and Paris, nor of the true value of a gilder, which has not always been the same, nor yet furnished with Mr. Ridley's final account, the intendant cannot with precision say what sum of money belonging to the state may remain unexpended in Mr. Ridley's hands; but from his letter of the 13th of November 1783, No. 4. he acknowledges that he had received from 20 to 30 thousand livres from Messieurs Vanstaphorffs, more than what the goods that might be shipped would amount to; that he should go to Amsterdam, and endeavour to repay, as near as may be, what money he might have received more than sufficient for the necessary purposes; "that the reason why he received so much money, was occasioned by not knowing what the different charges might amount to, and he believes from a small mistake of his own." Mr. Ridley being abroad, and not having an opportunity to explain several charges against the state, no conclusive judgment ought to be formed upon his accounts; but the intendant thinks himself obliged by his duty to state an account against Mr. Ridley, not only for the money he has acknowledged to be in his hands by letter No. 4. but also for the charges in shipping the state's goods, which at present appear not to be just.

DANIEL of St. THO. JENIFER, Intendant.

Dr MATTHEW RIDLEY, Esq; in account with the STATE of MARYLAND.

Livres.

To cash received of Messieurs Vanstaphorffs more than the goods might amount to, as may appear by his letter to the governor and council, dated November 13, 1783, No. 4.

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