

could only be considered as a compensation to the agent for services to be performed by him within the powers and trusts committed to him. The commission was a full satisfaction for every service, and for all expences foreseen and unforeseen, to be incurred in the execution of the authority and trust reposed in the agent. The conditional contract between the state and the agent cannot extend to, or include, any services rendered the state independent of the trust, and without any power or authority derived from the act under which the agent was appointed.

Your memorialist further sheweth, that he embarked for England in August, and arrived in September 1783, and immediately gave the trustees notice of his appointment, and required an immediate transfer of the stock. Mr. Hanbury and Mr. Grove declined to give any answer without Mr. Russell, and he requested time to take the opinions of counsel, which he did on a case stated, in which some facts were mistaken, others misrepresented, and some material ones omitted, although your memorialist used every means in his power to induce Mr. Russell to state the truth.

The only fact on which Mr. Russell grounded his refusal to transfer the stock, was, "that the legislature of this state confiscated his property for his conduct as trustee, in protesting the bills of exchange in August 1780." Mr. Hanbury died in January 1784. After five months delay, Mr. Grove consented to transfer the stock whenever Mr. Russell would join him; but Mr. Russell refused to transfer any part of the bank stock, unless the state would give him £. 12,000 stock, in compensation for his confiscated property. In the course of the correspondence with Mr. Russell, he made several propositions to your memorialist, which he accepted; but Mr. Russell receded from them without any reason. On the 26th of March your memorialist delivered to the right honourable the marquis of Carmarthen, secretary for foreign affairs, a state of the claim by this state to the bank stock, the refusal of Mr. Russell to transfer any part of the stock, and his reasons for refusal, and the several proposals made, and afterwards retracted by Mr. Russell. This representation his lordship could not receive and notice in his official character, but he was pleased to express his private opinion, that Mr. Russell acted very improperly, in attempting to withhold all the bank stock; and that the proposals Mr. Russell had made, and your memorialist accepted, appeared to his lordship very fair and reasonable. These sentiments his lordship communicated to Mr. Russell, who declared, "that he acted by the advice of his attorney and would abide by it." All hopes of obtaining any part of the bank stock, by any means within the power of your memorialist, being entirely cut off, he prepared for his immediate departure from England.

On the 31st of March a subpoena was delivered to your memorialist, to appear on the 28th of April in the high court of chancery of Great-Britain, to answer a bill exhibited by Mr. Russell against your memorialist, Mr. Grove, and the bank of England. On this bill Mr. Russell obtained an injunction against Mr. Grove and the bank of England, to prevent a transfer of any part of the bank stock to the state, without an order of the court. Mr. Russell, by his bill, for relief, prayed, that so much of the stock might be sold as would reimburse him the value of his third of the iron-works, which he estimated at £. 10,000 sterling; that the residue of the stock should be retained, under order of the court, until this state passed an act to redeliver and secure him his other confiscated property, (or pay him out of the stock the value thereof,) which he estimated at five or six thousand pounds sterling; and that before the remainder should be transferred, the freedom of collecting his debts in this state, by a law thereof, should be properly secured to him. After these three things were done, he consented to join in a transfer of the residue. In a few days afterwards your memorialist stated the claim of the state to the stock, and the substance of Mr. Russell's bill to eminent counsel, who advised your memorialist to appear to the bill. If your memorialist had not engaged to appear, a subpoena would have issued, returnable in a few days; and after the expiration of the time, an attachment of contempt would have followed; the service of which could not be avoided, but by your memorialist concealing himself. After appearance, if no answer, the several processes being spent, the bill would have been taken pro confesso. The object of the injunction was to prevent the state from obtaining the stock from Mr. Grove, if he survived Mr. Russell, and if Mr. Grove died before Mr. Russell, that he should have it in his power to keep all the stock for his indemnification. Mr. Grove refused to engage any other solicitor but the one employed by Mr. Russell, and Mr. Grove declared to your memorialist, "that he thought Mr. Russell acted right, and if he was in Mr. Russell's place, he would not deliver up a shilling of the stock before he was satisfied for his confiscated property." Involved in these unexpected difficulties, your memorialist engaged counsel of great integrity and eminent legal abilities, and solicitors of distinguished worth, capacity, and diligence, from whom he experienced the utmost candour, and not only professional, but friendly advice and assistance.

The attorney-general, Mr. Erskine, and Mr. Stanley, your memorialist's three counsel, were of opinion, that Mr. Russell could not maintain his bill; and if your memorialist would file one in his name, that an order might be obtained for a transfer of all the stock, except the value of Mr. Russell's confiscated property, which the court might retain until a hearing of the merits. A consultation being proposed between the counsel of your memorialist and of Mr. Russell; it was proposed by his counsel to your memorialist, that if he would file a bill against the trustees to compel an execution of the trust, that Mr. Russell's answer should be immediately prepared, and he would consent to an order of the court for the trustees to transfer to your memorialist all the stock, except the value of Mr. Russell's loss, as he should estimate it by his answer; and that stock to cover such sum should be transferred to the accountant-general, subject to the order of the