

MARYLAND GAZETTE.

T H U R S D A Y, DECEMBER 7, 1786.

[Continued from our last.]

To GABRIEL DUVAL, Esquire.

S I R,

SUPPOSE this proof had been given to a chancellor, would he have hesitated to declare the purchase void? But you say, I never sought for information, but determined upon ex parte evidence against the state. You know I went to the land, examined with the surveyor its location by the plots, and took every measure in my power to obtain true information; I found that the facts sworn to by the witnesses must be true, for that it was impossible to lay down the lands according to the plot you sold by, so as to suit any probable idea of purchases having been made agreeably to it. The thing was so evident upon actual survey, that it proved itself. But you allege, that the preamble of the act states, that the purchasers suggested the lands appeared upon actual survey to be different in soil, situation and improvements, from what appeared on the plot used by the commissioners, and that this being the suggestion, and the act being grounded on it, "I ought to shew, that in every instance, where the sales were set aside, the lots were totally different in soil, situation and improvements, from what appeared upon the old plot;" and you aver that there was no description of soil or improvements on the old plot. What a miserable quibble on words is this! In a settled part of the country, it is not supposable that the soil and improvements, on any different portions of ground, are so exactly similar that there is no choice between them. If the land upon survey is shewn to lie entirely different from what was declared, the other differences will follow of course—but there was no description of soil or improvement on the plot; it would be strange if there should be. Plots are not often made to shew the quality of the soil, or the nature of improvements on the land, but are intended only to delineate the extent of grounds; but there were improvements on the land, and there were differences of soil—these were objects of sight and examination. Now, when a man was told that lot No. 1, for instance, contained such improvements,—or described such a settlement, a person inclined to bid would examine the improvements and soil, and if he liked them, would give a good price for them. Would it be a satisfactory answer to a purchaser who bid under the impression, that he should have a right to the improvements and soil said to be included in lot No. 1, and which were not included on making the experiment,—that there was no description of soil or improvements on the plot? He would justly answer, you informed me, that the lines by which you sold took in such a plantation, and supposing you told the truth, I could myself see the improvements and soil; but now your lines run quite different from what I was told, and leave out the very soil and improvements which induced me to buy; and therefore you have deceived and will injure me, if you compel me to pay for a different thing from what I bought. According to your subtle distinction, the purchasers could only be relieved, if the soil and improvements upon actual survey were found to be different from the soil and improvements described on the plot, and as every one knew there was no description of soil and improvements on the plot, no relief in any case could be had—this would have been adding mockery and insult to injury—and if an act had passed upon such principles, the legislature would have been liable to the reproach, which is now justly due to you, for perverting the plain meaning of a law, made for the purposes of justice. The obvious meaning of the act is, to authorize the intendant to inquire, whether the purchasers could by pursuing the plot used at the sale get the property which they really bought, and if they could not and chose to relinquish their bargains, to declare the sales void and to resell the property.

The assembly in this their direction acted as I conceive exactly agreeable to the rule which would have been adopted by a chancellor, if the subject had been submitted to him. For if a man, who is supposed to know the extent and limits of his property, sells it to another, at the same time describing its limits and the improvements on it, and afterwards upon trial, it is found that the land lies in an entire different position, leaving out the soil and improvements which were the objects of purchase, I believe no person in the least acquainted with the rules of justice would say the purchaser should be obliged to take the property, so differently circumstanced from what he was led to suppose, at the price stipulated for the property intended to be bought.

You agree it was right to release Mr. Hollyday and Mr. Sullivan from their purchases. Were the soil and improvements on their lots, described on the plot? Your rules of construction depend on the man upon whose case they are to be applied, and are not at all governed by the subject to be decided on; and I have no doubt, but you would have determined according to these excellent rules, had the power been given to you. The purchasers, it seems, did not blame the commissioners, that is, they did not charge them with wilful deception. They certainly could not have done this upon just grounds, because it appeared, the commissioners were themselves deceived, or rather that they knew nothing about the matter. But this can make no difference in the case now in debate, for it is of no consequence to the purchasers, whether the commissioners acted from ignorance or design, the injury was the same in either case, and therefore the relief ought to be the same. If there be any case where a resale was ordered by me which you think was not justifiable, point it out, that the circumstances may be examined, and the case fairly determined. You choose to deal in generals, like most men who are afraid to venture a fair argument on any particular case. Who is the man that did not choose to have his purchase vacated, and still holds the property bought, notwithstanding a resale was ordered? What witness has sworn to facts, that it was impossible for him to know were true? What purchaser, except Mr. Hollyday (whose case was ultimately left to your decision, and which was not determined agreeable to terms held out to him in my letter to him before referred to,) retaining the most valuable part of the property bought, and was permitted to relinquish the least valuable? Let us have pointed answers to these queries; state all circumstances fully; and let the cases, you particularly refer to, be examined, before any inference is made to my disadvantage. It is the most easy thing imaginable to surmise, but it is not so easy to prove. If you will state particulars, I shall then be able to detect you, but while under the cover of vague intimations, it is impossible to fix you to any point. You refer to one sale as improper to have been set aside, because, as you say, "the objection by the person liable to pay was, that there was more marsh than the lot was supposed to contain; and at the sale the probable quantity only of upland or marsh was stated by the commissioners; that the proprietor, when the sale was set aside, was not the first purchaser, but had given a considerable premium to the first purchaser; and that he had committed damage to the lot by using the most valuable timber on it." This case, though no name is mentioned, I presume, points at the purchase which was held by Salathiel Fitchet, when the sale was set aside. A short state of this case, with a few remarks upon it, will shew how groundless your charge is, and will serve as a specimen, both of your candour in stating facts, and of the justness of your reasoning from them. The lot alluded to was, I am informed, sold to one Roger McCallister, who did not bond and run away, and George Bonwell gave bond for the purchase money; Fitchet bought the property for a higher price than it sold for by the state, all parties supposing the land lay as pointed out by the commissioners at the sale. Fitchet used the land, and got timber from it, and supposed he had made a good purchase; but when the land was actually surveyed, according to the plot used by you, it was found that it lay so very differently from what was declared by the commissioners at the sale, and from what Fitchet understood, and the quantity of marsh was so far beyond what even the latitude of probable quantity would warrant, that this man, although he had paid a premium for the purchase, and had put improvements on the land to the value of £.125, (as appraised by Mr. Kirkman and Mr. Darby, who were by you appointed for the express purpose,) yet he was willing to lose the whole, rather than retain the purchase; this case is referred to in the deposition of Richard Standtoid, the vendue-master, by description of lot No. 6.—Your first reason against setting this sale aside is, that the probable quantity of each kind of soil was only mentioned by the commissioners. This is contradicted by the oath of the vendue-master above referred to, and he, I presume, knew the description by which he sold the land, but suppose your word is to be taken before his oath, which certainly will not be done by any person the least acquainted with either, yet I conceive, when the quantity of unprofitable ground so far exceeds what any man would have had an idea of, it only the probable quantity was mentioned, that it was just cause for setting the sale aside; a few acres more or less would have made no such difference as would

have justified a vacation of the sale; but when the quantity of unprofitable soil is double what was declared, it becomes a matter of consequence to the purchaser. Your second reason is, that the holder, when the first sale was set aside, was not the first purchaser; this makes no difference in the case, unless it be shewn that the holder purchased after it had been found by actual survey that the land lay differently from what was supposed at the first sale. In the present instance, the purchase made by Fitchet was before the actual survey of the manor, and under an impression that the land lay as described by you; and it will be difficult to shew any rule of justice or common sense, which will prove, that because a man has agreed to pay more than the first purchaser engaged for, that therefore he shall not be entitled to the same relief that the man from whom he purchased would have been entitled to. I have always understood that a fair purchaser was entitled to every benefit which the person from whom he purchased could justly claim. But according to your logic, a man loses the benefits which could be claimed by the person from whom he purchased, because he pays more for the property than was paid by the seller. One would suppose, that the circumstance of paying an higher price, if it was to have any influence on the case, ought to confer additional privileges, instead of causing a diminution of them. You will reply, that is measuring the subject by the rule of right, which is the old unfashionable method of determining questions, and which you have for some time discarded as altogether unfit for your purposes.

Your third reason is, that the man had cut down and used timber from the land; he had done so; and you knew that he gave bond to account for the damage and rents, that the waste was valued by the above-named gentlemen appointed by you, and that as the man had made improvements to a far greater value than the damage amounted to, as appears by an account stated by you now in my possession, you set the improvements against the damage and part of the rents, and make a balance of £.45 due the state, the justice of which balance depends on ascertaining the person mentioned as a life in a lease. Why did you suppress these facts? A person having done damage on the land is no cause for not setting aside a sale; for the very act authorizing the intendant to decide on this subject supposes, that purchases may properly be set aside, although damages have been done to the property, because the third section of the act directs, "that if any of the said purchasers elect to be released from his purchase, hath had the use and possession of the said land, or hath committed waste or damage thereon, and hath not paid to the state interest equivalent to such use or damage, that the intendant shall have power and authority to settle the value of such use or damage with the said purchaser, and if they cannot agree, to appoint indifferent persons to settle the same; the value of which use or waste shall be secured by bond, and paid to the treasurer of the eastern shore, and the power hereby vested in the intendant, to declare the sale void, shall only be exercised upon the purchaser agreeing and entering into bond to the value of the use or damage aforesaid settled as herein directed."

The land above referred to sold at the first sale for £.3 8 6 per acre, at the second sale it was connected with two other lots, to wit, No. 5 and 6, in the last plot laying from the water, in the whole containing 718 acres, when so connected sold at £.3 1 3 per acre, whereas, had the back lots been sold as originally laid out, I am credibly informed they would not have sold for any thing like half the money per acre; it cannot therefore be fairly said, there was any loss to the state from vacating this purchase.

If I could be ascertained of your other cases they would receive as satisfactory an answer as that which I have particularly stated.

To reconcile those who employed and have paid you, to your deviation from the direction given to the commissioners by law, that is, to lay off the lands to be sold in convenient parcels, which implies, that surveys were to be made, you have most forunately thought of the critical situation of our affairs in the year 1781, and of your great exertions to support the credit of the red money. Now, with every disposition to give all due credit to your wisdom in supposing, that sudden sales of property made upon bond, payable in three succeeding years, would in time of danger give credit to a money depending for its redemption on the success of the American cause, I cannot agree that your actions perfectly correspond with this theory. But we are now upon the subject of Nanticoke manor, and cer-