

the description should by no means be equally applicable to other lands. It is true that a surveyor is not to refuse to execute a special warrant because the location is loose and imperfect. The warrant is presumed to have some location, though vaguely expressed, and the party may, I conceive, in this case, aid, though not contradict, the apparent intention, by his declaration to the surveyor: especially as the survey is not conclusive in favour of him who obtains it. Nevertheless, as the first certificate is an advantage, if a junior warrant with a better location is at the same time presented, although the surveyor may not refuse to act on the imperfect location if it can be made any way intelligible, he may also, it is believed, make a survey of the same date under the more exact location. This is however, a matter upon which I am far from pretending to lay down any absolute rule, and the dates of all special warrants are, if possible, to be respected by the surveyor, there being a resource if the survey should be found to have been made under a warrant not applicable to it. It is not certain, moreover, that a survey would be annulled by the judge of the land office merely for want of an exact location in the warrant. This is perhaps a case which would come under a maxim that has sometimes been suggested in the land office, but which ought to be received with a good deal of allowance, namely, that an actual survey is equivalent to a location. Where a well supported interest appeared in opposition to such a survey the case would, I suppose, be doubtful.

The binding quality of a special warrant requires to be considered also in another aspect. As to quantity, the warrant binds no more than it expresses, although by the present practice, which I do not undertake to condemn, for it merely concerns the state in point of revenue, more may be taken on survey. When the expressed quantity of a special warrant does not embrace all the vacancy which might be taken under its location, a subsequent warrant may, before the first is executed, bind the remainder, and restrict the other to its stipulated quantity: but, if the second warrant should also fail to cover the whole of the vacancy not bound by the first, there arises a question which of the two warrants has the privilege of taking the surplus or residue. This seems to be determined rather by the necessity of the case than by any set principle. The elder warrant will it is presumed be first executed, and as there can be no certainty that in taking more than its quantity it will leave enough to gratify the junior warrant, it must be restricted to that quantity, and the other will of course have the privilege of taking the residue. If on the wilful delay of the owner of the senior warrant, the other should be first executed (for every holder of a warrant has a