

refused, on account of the rules of the office not having been complied with, still the Lord Proprietary, like the king, might dispense with all rule, and give a patent at his pleasure; or if, on the other hand, a patent were allowed to issue; yet the patentee could only take subject to all prior claims, incumbrances and equities. Therefore it could have answered no good purpose to allow an appeal from any decision of the Chancellor as judge of the Land Office. (*f*)

Under the proprietary government, the Land Office was always open, as the market, where any part of the vacant lands of the province might be purchased. But to this rule there were excep-

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*Coursey upon Wye*, the cultivated part whereof is now in dispute. And she further asserteth, that all common warrants, at the time of the making of that survey were qualified, and gave sufficient power to the surveyors to lay out, survey and make returns of cultivated as well as uncultivated lands, as in the present case now in dispute; and to prove the practice of the office at the time of laying out the tract aforesaid, the complainant produced an original common warrant, dated the 20th of June, 1694, and signed by Col. William Diggs and Major Nicholas Sewall, secretaries of this province; and eight months after the time of making out of the common warrant for two thousand three hundred and forty-five acres unto Col. Peter Lawyer, out of which warrant the assignment of nine hundred and twenty acres was made unto Col. Coursey aforesaid. The complainant thereupon argued, that it had been the ancient practice of the office to except such lands only as had been formerly surveyed or resurveyed for his lordship's use; but that all cultivated land of which time, the lands, now in dispute, were subject to common warrants, as well as clear vacant lands. She therefore prayed, on behalf of her son, a minor and legatee of Col. William Coursey, deceased, that the special warrant for the two hundred and thirty acres of land aforesaid, so as before by Vincent Hemsley obtained and executed upon the cultivation of that part of the tract called *Coursey upon Wye* devised unto William Coursey a minor as aforesaid, together with the certificate and other proceedings thereon, might be declared null and void, and that an entry be made thereof in the margin of the record book, where the special warrant aforesaid is recorded, setting forth the insufficiency and invalidity of the special warrant and return aforesaid.

29th January, 1721.—LLOYD, *Judge*.—The arguments and allegations of both parties being fully heard and duly considered, it is adjudged, pronounced and declared, that the reasons offered by the petitioner in maintenance of a *caveat* heretofore entered in the Land Office, at the making out Letters Patent in the name of Vincent Hemsley, for the land in dispute, are good and sufficient, according to the course and practice of the Land Office to bar the said Vincent Hemsley from any further proceedings thereon; and it is likewise declared, that the certificate and resurvey of two hundred and thirty acres of land aforesaid, part of *Coursey upon Wye*, already returned into his lordship's Land Office by Vincent Hemsley, aforesaid, be held and deemed to be null and void, as being found to lie within the bounds of a more ancient survey. And that an entry hereof be made in the margin of the record book where the warrant of such resurvey is recorded.—*Land Records, lib. E. J. No. 1, fol. 1.*

(*f*) *Ex parte Beck*, 1 Bro. C. C. 578; *Ex parte O'Reilly*, 1 Ves., jun., 112; *Ex parte Kooops*, 6 Ves. 599; *Ex parte Fox*, 1 Ves. & Bea. 67.