

This is the same land which has furnished the example of the first resurvey found on record.

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OF THE TITLE NECESSARY TO THE VALIDITY OF WARRANTS OF RESURVEY.

It was always peculiar to this kind of warrant that it was to operate on the party's own land, that is to say, on land, in some sort, owned, or claimed, by the person in whose name the warrant was issued. Without a title set forth he could not obtain the warrant, and without a good title it would not avail him when obtained and executed, if by means of a caveat, or in any other way, the defect became known. It is hardly necessary to state as an exception to this, that persons sometimes obtained warrants or orders for resurveying the proprietary's manors, in order to discover how their own lands stood in relation thereto, or that the land of one man was resurveyed at the instance of another, as in the case of Weatherly and Lyon, already cited. I speak of ordinary warrants of resurvey, of which the primary avowed object was generally to remove uncertainties respecting the bounds, quantities, &c. of the original tracts; and it was certainly not allowed, except on very special grounds, for a person to resurvey, for this purpose, lands in which he had no interest: (*f*) still less could he be permitted to resurvey the land of another for the purpose of discovering and taking up the adjoining vacancy, except so far as the running the lines of that other person's land was an operation auxiliary to the resurvey of his own. It was therefore, at all times, necessary for a person, in applying for a warrant of resurvey, to state a title to the land in question, by saying that he was seized in fee, or by some other (*g*) expressions importing that he was the right-

(*f*) There has at all times been an idea, natural enough to the parties interested, and which the government never took any positive measures to discountenance, that the owners of land have some kind of preferable claim to the *vacancy* adjoining them, and as to *surplus*, it was still more natural for them to consider it their own, since it was actually within their bounds. Through respect to this excusable prepossession, alone, the government would not so far encourage land-hunters as to permit them to resurvey the lands of others for the discovery of vacancy; and if anything less than a real title would serve for obtaining resurvey warrants a pretence of title would never be wanting where an advantage was expected. Vacant land could undoubtedly be taken in other ways; but this though often complained of by those whom it adjoined, and who perhaps had hoped to hold it without payment, had less the appearance of injury than a resurvey at the pleasure of any person who chose to make it.

(*g*) Our resurvey warrants, at present, invariably state that the party is "seized in fee," but formerly, there was a variety of special matter contained in the warrants, either written by the persons who applied, or by the clerk, on their information, in preparing their petitions.