

“ Whereupon it was ordered, that all proceedings upon the said surreptitious order and warrant be stopped, and set aside, and that warrant of resurvey issue to the petitioner.”

LIBER C. B. fol. 321.

We have hitherto, in treating of this point, gone upon the supposition that the lands to be resurveyed had been patented, so that a title in fee vested somewhere—but, although resurveys were generally made on patented lands, they might be made on lands lying on certificate, and to which no person, of course, had a complete title; but the principle was still the same;—The owner of the certificate, had the *best* title, and no one else could resurvey the land.—It does not even appear to have been necessary under the proprietary government that the original tracts should be patented previous to a patent of confirmation on the resurvey, and it was, in fact, needless, for, as I have just remarked, it was the practice to vacate the original grants on record when they were covered and superceded by the patents of confirmation. The patents themselves appear in the early times to have been brought in and surrendered in the office, and in subsequent periods the order for a resurvey always contained a proviso that the original patent should be vacated. I shall not pretend to account with certainty, for the motive of this regulation or to state its effect upon the dates of titles. It had possibly some reference to the proprietary's system of revenue by simplifying the rent rolls, in discharging from them those tracts which were sunk in resurveys, and taking up in their stead the new patents, increased by the surplus and vacancy added. But the disadvantage, in the loss of eldership, by forfeiting the original patents and certificates, if such was the effect, must have been a greater impediment to resurveys than can be reconciled with the inducements of the proprietary to encourage them. I rather suppose, however, that, in practice, and in general acceptance, the claims of the original tracts as to seniority were not annulled by the vacation of the grants under which they had been held. Much stress was always laid upon a *survey*, duly returned to the office, although afterwards surrendered, or even vacated on the ground of error; insomuch that the land included in such surveys, though never cultivated or improved, was, as appears by various instances, deemed not to be subject to the operation of a common warrant: and if a former survey, though annulled, left upon the land the stamp and character of cultivation it might with equal reason leave it entitled to its original privilege of eldership, and with greater reason if the land by actual cultivation and improvements declared its own