

therefor, which, however, is granted upon an order of the chancellor, or judge of the land office, accompanying the act of vacation: and when a certificate is not returned within the time prescribed by law, either in the first instance, or after it has been ordered for correction, so that it becomes, *ipso facto*, vacated, the party is in like manner entitled to warrant for his payments, without any special order for that purpose.

When, on return of a certificate of resurvey, it is certified by the surveyor that the original tracts fall short of the quantity granted, or, in the case of parts of patented tracts, the quantity for which such parts were transferred and conveyed, the party is entitled, on application, to warrant, common or special, for the deficiency. In all those cases, assignees or legal representatives, have the same rights as principals. The provisions of the law upon this subject are highly favourable to landholders, as the deficiency in every distinct tract or part of a tract is made good by the state, while surplus land in other tracts or parts of tracts is not accounted for, even when found in the same resurvey. It has been already remarked that where allowance for deficiency is claimed on a resurvey upon the Eastern shore, a certificate is required from the Western shore land office that such allowance has not been already made in respect to the same original surveys; which certificate the last mentioned office, as possessing the ancient records, is supposed competent to furnish; but that some difficulty exists in furnishing certificates so precise as the law requires. There is, in fact, as the records and alphabets now stand, no effectual way of ascertaining, in all cases, whether deficiency has been allowed or not.

Having stated all the grounds, authorities, and rights, upon which warrants are obtained from the land office, I am next to notice the uses that may be made of them, independent of carrying them into immediate and full execution according to their tenor, and principally in relation to division and assignment: in doing which I must recur to original principles, in order to shew by what steps the practice of splitting warrants, by assignment or otherwise, has come to the state in which it is at present found. As to simple assignment, it was always permitted, and I cannot say that there was ever a time when *parts* of warrants were not assigned; but, the extent to which that practice has ultimately been carried is not countenanced by the original rules of the land office. The instructions of the proprietary to Charles Carroll esq. of the 12th of September 1712, shew, at once, what had begun to be practiced, and what was prohibited for the future; and these instructions contain, in my opinion, the true principle by which the dividing of warrants for different surveys ought to be restricted. The late chancellor, in the case of *Prather vs. Pra-*