

do so would be unjust to the public or to some individual, or because the applicant had in some way failed to comply with the conditions of plantation, or because the facts set forth in the proceedings are, in some material particular, irregular or untrue, or because the lands specified in the certificate are not vacant, but are, in whole or in part, included in an elder warrant, entry, survey, or patent. (*d*)

It appears that James Cunningham, as assignee of two common warrants, on the 31st of October, 1826, placed them in the hands of the surveyor of Allegany County for execution; who on that day, in pursuance of the rules and orders established by the Governor and Council, noted down in his book the receipt of them, and designated the place at which Cunningham desired to have them located, in these words: "I hereby locate the within warrants for James Cunningham at a large spring on the west side of the North Fork of the Little Crossings, and near a large oak tree, marked J. C.; and adjoining the south corner of lot number 2,370." By virtue of these warrants, on the third day of November following, the surveyor laid out and surveyed a tract of land for *Cunningham, containing two thousand four hundred and eighty acres and one-half acre, to be held by the name **300** of Cheviot Dale. The certificate of survey was returned to the land office on the 8th of January, 1827, and on the same day the caution money was paid.

On the first day of November, 1826, Meshak Browning obtained from the land office, a special warrant for two hundred and ten acres of land, lying in Allegany County, in which warrant the description of the location of the land is expressed in these words: "On or near the head of the North Fork of the Little Crossings, and at the large spring, called Browning's Spring, and also near a place called Patke's Pane, and near the foot of the Meadow-Mountain." By virtue of this warrant the surveyor says, in his certificate, bearing date on the fifteenth day of the same month, that he had surveyed a tract to be held by the name of Browning's Hunting Ground, containing two hundred and ten acres, the location of which he thus describes: "Beginning in the centre between two bounded sugar-trees near the head, and on the west side of the North Fork of the Little Crossings, and south twenty-six degrees and three-fourths of a degree, west about eight perches from the head of a large spring, called Browning's Spring, and south five degrees and one-half degree, east about eight and one-half perches from a large white-oak tree marked J. C., and running thence north sixty-three and one-fourth of a degree, east forty-five perches to a bounded hemlock tree standing at the Panthers' Pen, north sixty-nine degrees;" and so on, describing a tract lying in the form of a narrow oblong figure, in about the middle of the one side of

(*d*) Cited in *Armstrong v. Percy*, 34 Md. 430.