

BLAND, C., 15th May, 1826.—Ordered, that Eli Hewitt pay unto Martha Hewitt, the sum of one hundred and seventy-five dollars with interest thereon, being the amount which became due on the 10th of April last, of the sum allowed her as alimony; or shew good cause to the contrary, on the 15th day of June next; *provided that a copy of this order, together with a copy of the petition, be served on Eli Hewitt, on or before the 27th instant. **103**

The plaintiff by her petition stated, that a copy had been served as required; that the defendant had failed to shew cause or to pay; whereupon she prayed for a *feri facias*; which was ordered accordingly. The payment of other instalments of the alimony was enforced in like manner; after which the case was terminated by the death of the defendant.

HOFFMAN v. JOHNSON.

PRINCIPAL AND SURETY.—PATENTS FOR LANDS.—WARRANT OF RESURVEY.

The principles of equity in relation to parties standing as creditor, principal debtor, and surety.

Where evidences of debt are received under an agreement, that when paid, they are to go in discharge of so much, the assignee is bound to use due diligence in collecting them; and on failing to do so, to return them to the assignor. (a)

Every patent for land from the State binds it to warrant to the grantee, and his assigns; that the trust described shall contain the number of acres specified. (b)

How a deficiency in quantity is made up.

The office of a warrant of resurvey.

The right to take in contiguous vacancy under a warrant of resurvey, is a privilege incident to a legal, not an equitable title. Where a tract of land is sold as containing so many acres, more or less, a reasonable allowance for small errors, &c., is to be made. But where an allowance may be claimed for deficiency, it may be made up by the vendor, by taking in contiguous vacancy under a warrant of resurvey, before he has parted with his legal title; and the vendee will be bound to receive the vacancy so added, so far as to make up the alleged deficiency.

It appears, that Fielder Gantt mortgaged two parcels of land in Frederick County, the one called Fout's Delight, and the other The Resurvey on Beauty, to the late James Hunter, who afterwards made his will, and died; that Hunter, by his will, directed

(a) See *Glenn v. Smith*, 2 G. & J. 493, notes; *Whitridge v. Durkee*, 2 Md. Ch. 442.

(b) See *Cunningham v. Browning*, post, 299.