

side of the Court of Chancery, to prevent the emanation of a patent, are, and always have been substantially the same in Maryland as in England; insomuch so as to leave little room to doubt, that the law and the forms of proceeding of Maryland, in relation to the making out of grants, and the proceeding by *caveat*, were derived entirely from those of England with only such modifications here as the circumstances of the country required.

But by an act of assembly touching the taking up of land, passed during the government of the first lord proprietary, it was

The judge of the Eastern Shore land office in effect has said, that Coleston could, under his warrant, survey no land which did not correspond to the description or location of his warrant. But it has been here long since settled, that a special warrant shall be allowed to do every thing, which a common warrant might do. It appears, that a common warrant might have affected any part of the vacancy comprehended in Coleston's certificate, that is to say, that no other warrant affected it; and therefore it is rightly comprehended in Coleston's certificate. The Chancellor is glad of an opportunity of informing the judge of the Eastern Shore land office of an important point, of which the said judge could not reasonably be supposed to be apprized; and which whether it be right or wrong the present Chancellor did not decide. It was in fact decided under the former government.

Under a common warrant any uncultivated vacant land, not before *surveyed*, or *located*, may be affected. A special warrant of vacant cultivation is intended to affect a *particular vacancy described in the warrant*. If it accurately describes the vacancy, it effectually binds it, against all subsequent warrants or locations. But nothing is better established than this,—that a special warrant of vacant cultivation may abandon its first intention and may be used to affect any lands, which may be affected by a common warrant, however distant they may be from the land described in the special warrant.

It appears then to the Chancellor, that the judge's direction to exclude the vacancy not contiguous to the land, mentioned in the special warrant, is wrong; and that Coleston is entitled to a patent for every part of the land, included as vacancy in his certificate, when certificates of the several parts shall be returned, and

It is accordingly adjudged and ordered, that the transcript of the record in this case be returned to the aforesaid judge, and that he be and is hereby directed to proceed, and to direct proceedings for carrying into effect his decision for returning as many separate certificates of the vacancy, surveyed for the defendant, James Coleston, as there appear to be distinct pieces of vacancy, in the certificate of "Guardian's Neglect."

The Chancellor's decision, or rather his declaration of the rules of the land office is simply as follows:—whatever may be done by a common warrant, may be affected by a special warrant of vacant cultivation. It makes no difference whether or not the survey under a special warrant includes part of the land designated by the special warrant. In fact the important difference between the two warrants is, that the special warrant, before survey, affects the land *accurately described* in it. The common warrant affects no land, until it is surveyed, or *located with the surveyor*. When a certificate has returned two or more distinct tracts, each having a certain beginning, the surveyor is directed to return several distinct certificates on each of which a patent is to be obtained.

As to costs, they are left to the discretion of the judge.