

It is admitted, however, in this case, that the strip of land in question was not included within the boundaries of the tract called *Cole's Harbour*, of which *John Smith's* lot was a part; and, that no patent had been granted for it to any one; whence it is clear, that, as it might have been, at any time, made the subject of a distinct grant; and could not be attached to any other tract, as an incident or appurtenant, and no title to it had been acquired under the act allowing owners of lots to extend them into the water, it must now be considered as the property of the state. (*i*)

But considering the bed of this basin as being property, like all the other lands of the state, which are covered with navigable water, to which a legal title might have been acquired by any one from the Land Office, subject to the uses of navigation, &c.; or as being property, a title to portions of which might have been acquired according to the act allowing certain lots to be improved; (*j*) yet it appears, that both of those modes of acquiring title to it were, in some respects, modified by a subsequent act of Assembly, by which it is declared, that the port wardens should ascertain the course of the channel; that no wharf should be extended into the basin, so as to divert the course of the channel; and that no person should make a wharf without the permission of the port wardens; who were directed to prevent any obstruction to the navigation, and to keep the harbour clear for the use of

being of opinion, that they are not empowered to dispose of any land within the city. His Excellency the Governor was pleased to signify, that if Mr. Hyde would petition His Lordship, he would forward the same; and, in the interim, no person whatever could claim any prior title thereto.—M. S.

This shews, that there was then no pre-emption right in the owner of any tract to any vacancy originally existing, or afterwards made, not alluvion, lying between such tract and the tide; and that such vacancy was considered as land subject, like any other land, to be sold in the Land Office. But in this particular case it was not liable to be so taken up by a warrant of resurvey, because, as appears by the following among other instructions given by the Board of Revenue to His Lordship's agent and receiver-general, the taking up of any such land had been prohibited by a *reserve*, the then existence of which must have been the cause why no patent could be granted to Hyde.

30th June, 1768.—'A reserve being laid on all vacant land that now is or shall or may be hereafter found within the city of Annapolis and town of Baltimore, or within five miles round the said city and town, be it by escheat or otherwise, you are not to do any act, that may affect these lands, without particular instructions from His Lordship or this Board.'—*Proceedings of the Board of Revenue, fol. 22—a book in the Land Office.*

(*i*) 1745, ch. 9; Harrison v. Sterett, 4 H. & McH. 540.—(*j*) 1745, ch. 9.