

Chancellor, as judge of the Land Office; and, indeed, there seems to be no more reason now why an appeal should be allowed, than

serve that there has been laid out for Thomas Bladen, Esq. by virtue of these warrants six thousand three hundred and five acres, of which two thousand two hundred and fifty-four acres are claimed by Mr. Ross; and it is also evident, that five thousand and two hundred acres were surveyed before Mr. Bladen left this Province, which he did in June, 1747, yet he never made good, rights for more than four thousand and twelve acres, which was in 1746.

Your Excellency will observe, that in the order of October, 1743, as well as in the other two of the 15th and 16th of April, 1745, there are these words, 'caution to be paid on the return of the certificate,' which is unprecedented, and the more extraordinary as no special order appears, or is referred to.

By the 11th article of his Lordship's instructions, dated the 14th day of June, 1733, contained in the following words: 'There shall be in all future common warrants a clause inserted by proviso, that the patent shall be taken out within the space of two years after the date of such warrant which said clause you are hereby enjoined so strictly to observe as not to suffer the renewal of said warrants after such time or any patents to issue contrary to the true intent and meaning thereof,' it is, as your Excellency will observe, expressly ordered, that a conditional clause be inserted in every common warrant enjoining the person obtaining it to sue out patent within two years from the date of such warrant; nevertheless, there is no such proviso or clause in the warrants granted by Mr. Bladen, which are therefore, in that respect, repugnant to his Lordship's instructions.

We shall conclude our remarks on these warrants with observing, that instead of the usual words, 'return your certificates of survey thereof within six months from the date thereof,' there are inserted in the warrant of the 16th of April, 1745, the words following, 'return your certificates of survey thereof into his Lordship's Land Office *with all convenient speed,*' which expression we conceive can never be construed to imply the space of fifteen or sixteen years.

It appears by an old and imperfect memorandum book in the office, that certificates for *Buck Lodge, Sugar Bottom, Providence, Turkey Flight, Bigg Bottom, Prized, Lawrence, Cove, and Three Spring Bottom,* were returned into this office some time before April, 1747. This Mr. Thomas Cressap, by his letter to us, dated the 6th of April, 1761, seems to admit, or rather insists on; and is supported by the evidence of Col. Thomas Prather, who acted, at that time, as an assistant to Cressap; and by the deposition of one Joseph Tomlinson, which deposition with that of Col. Thomas Prather, and Mr. Cressap's letter are submitted to your Excellency's perusal; but we beg leave to remark, that although all certificates are directed to be returned by the deputy Surveyors into the Land Office, there is nothing more common than for the partys themselves, or for others in their behalf to withdraw the same; nor can it be otherwise, for until the Examiner's endorsement appears on the back of each certificate as well as his Lordship's agents' acknowledgement of composition, the certificate is incomplete; and as nothing appears to the contrary it is more than probable, if any regard be paid to Tomlinson's deposition, that this was the case with those certificates delivered into the office for Mr. Bladen, before April, 1747.

Upon the whole, as Mr. Bladen did not pay caution for, or make good rights to more than 4,012 acres, though he had it in his power before he left the Province, and as no person ever applied on his behalf to pay up caution for the remainder until May, 1761, which was after Doctor Ross had obtained his special warrants, and there is a sufficient quantity of land surveyed and unpatented to satisfy both their claims.