

1800. *a quo*, a man might safely begin a settlement on the western frontier of *Pennsylvania*; and if, after that epoch, actual settlers, or grantees, persisted in their endeavours to make a settlement, they would not incur a forfeiture of the land. 2d. That even if it were a case of forfeiture, no individual could take advantage of it, by entering on the land: the advantage could only be taken by the commonwealth, whose officers might issue new warrants, in the form prescribed by the act of assembly.

Verdict, accordingly, for the plaintiff.

Ross, for the plaintiff.

Brackenridge, and *Young*, for the defendant.

Bell's Lessee *versus* Levers.

EJECTMENT, for land in *Northampton* county. The charge contained the following points:

By the COURT: 1st. A warrant, which loses its descriptive location, by a prior warrant, may be laid on any vacant land. It has been the uniform practice of the surveyors so to do; and the practice has long received the sanction of the land office. 2d. A deputy surveyor gave an order to his assistant, to execute a survey; and, before it was actually executed, he died; but it was alleged, that neither the assistant, nor the party, knew of his death, till after the execution of the survey. The truth of the allegation should be examined; but, in an old transaction, if the title depends upon it, the examination should not be very strict; and every doubt should operate in favour of the validity of the survey. 3d. This is the case of a lost *application*; and, in cases of this kind, above all others, there must be due diligence employed to designate and effectuate the claim: for, if the survey is made, in a place different from that designated in the application, the land office can have no notice of the fact, until a return is made; and it would be hard, that a subsequent purchaser without notice, and without the means of obtaining notice, when he purchases, should be affected by the claim. 4th. In the case of a warrant, neither the negligence, nor the fraud, of the public officer, shall work an injury to the party. But if the party assists in committing the fraud, not only the party himself, but every person claiming under him, or deriving title directly through him, shall be debarred from taking advantage of the transaction. 5th. If an application, made and entered in *August* 1765, is not acted upon till 1773; and a *caveat*, entered in 1775, is the first notice of a survey; the lapse of time amounts to a dereliction of the inceptive right, as the Courts of *Pennsylvania* have often decided. (1)

(1) This cause was tried in the Circuit Court, *Northampton* county, before SHIPPEN, C. J. and YEATES, J.

Beissel