

Land Law 1779 (B)

CHAPTER XIII.

An Act for establishing a Land Office and ascertaining the terms and manner of granting waste and unappropriated lands.

Approved May 1779 by the Virginia General Assembly

I. **WHEREAS**, there are large quantities of waste and unappropriated lands within the territory of this commonwealth, the granting of which will encourage the migration of foreigners hither, promote population, increase the annual revenue, and create a fund for discharging the public debt: **be it enacted** by the General Assembly, that an office shall be, and is hereby constituted for the purpose of granting lands within this commonwealth, into which all the records now in the secretary's office, of patents or grants for lands heretofore issued with all papers and documents relating thereto, and all certificates of surveys of lands now in the said office, and not patented, shall be removed and lodged for their safe keeping; and all future grants of lands shall issue from the said office in manner and form herein after mentioned. A register of the said land office shall be appointed, from time to time, by joint ballot of both houses of assembly, who shall give bond with sufficient security to the governor or first magistrate of this commonwealth, in the penalty of fifty thousand pounds current money; shall hold his office during good behavior; be entitled to receive such fees as shall hereafter be allowed by law, and shall have power to appoint a deputy and clerks to assist in executing the business of the said office, but shall nevertheless reside there himself. If any vacancy shall happen by the death, resignation, or removal of a register during the recess of the general assembly, the governor or first magistrate of the commonwealth, by and with the advice of the council, may appoint some other person, giving bond and security in like manner, to act as register of the said office until the end of the next session of assembly. All copies of the records and other papers of the said office, or of the records and papers hereby directed to be removed from the secretary's office and lodged therein, duly attested by such register, shall be as good evidence as the originals would be.

II. **And whereas** a certain bounty in lands hath been engaged to the troops on continental establishment raised by the ordinance of convention or the laws of this commonwealth, and to the troops upon Virginia establishment: **be it enacted**, that the officers and soldiers of the said troops, as well as the officers and soldiers to whom a bounty in lands may, or shall be hereafter allowed by any law of this commonwealth, shall be entitled to the quantity of waste or unappropriated lands respectively engaged to them by such laws, a commissioned officer or his heirs, upon certificate from any general officer of the Virginia line, or the commanding officer of the troops on the Virginia establishment as the case may be, and a non-commissioned officer or soldier, or his heirs, upon certificate from the colonel or commanding officer of the regiment, or corps to which they respectively belonged, that such officer or soldier hath served the time required by law, or hath been slain or died in the service, distinguishing particularly the time such officer or soldier hath served, and in what regiment or corps such service hath been performed, or death happened; and upon making proof before any court of record within this commonwealth by the persons own oath, or other satisfactory evidence of the truth and authenticity of

the said certificate, and that the party had never before proved or claimed his right to land for the service therein mentioned, which proof the clerk of the court before whom it shall be made, is hereby empowered and required to endorse and certify upon the original certificate, making an entry or minute thereof in his order book and recording the same; and every county court shall annually, in the month of October, send to the register's office, a list of all certificates granted by their respective county courts upon any of the before mentioned rights, there to be recorded. And for creating a sinking fund in aid of the annual taxes to discharge the public debt: **be it enacted**, that any person may acquire title to so much waste and unappropriated land as he or she shall desire to purchase, on paying the consideration of forty pounds for every hundred acres, and so in proportion for a greater or smaller quantity, and obtaining certificate from the public auditors in the following manner: the consideration money shall be paid into the hands of the treasurer, who shall thereupon give to the purchaser a receipt for the payment, specifying the purpose it was made for, which being delivered to the auditors, they shall give to such person a certificate thereof, with the quantity of land he or she is thereby entitled to.

III. **And be it enacted**, that upon application of any person or persons, their heirs or assigns, having title to waste or unappropriated lands, either by military rights or treasury rights, and lodging in the land office a certificate thereof, the register of the said office shall grant to such person or persons a printed warrant under his hand and the seal of his office, specifying the quantity of land and the rights upon which it is due, authorizing any surveyor duly qualified according to law, to lay off and survey the same, and shall regularly enter and record in the books of his office, all such certificates and the warrants issued thereupon, which warrants shall be always good and valid until executed by actual survey, or exchanged in the manner herein after directed; provided that no warrant on treasury rights, other than preemption warrants, to be obtained by virtue of this act, shall be granted or issued before the fifteenth day of October next; nor shall the surveyor of any county admit the entry or location of any warrant on treasury rights, except preemption warrants, in his books, before the first day of May next. Any person holding a land warrant upon any of the before mentioned rights, may have the same executed in one or more surveys in such case, or where the lands on which any warrant is located shall be insufficient to satisfy such warrant the party may have the said warrant exchanged by the register of the land office for others of the same amount in the whole, but divided as best may answer the purposes of the party, or entitle him to so much land elsewhere as will make good the deficiency. A surveyor shall be appointed in every county, to be nominated, examined, and certified able by the president and professors of William and Mary College, and if a good character, commissioned by the governor, with a reservation in such commission to the said professors, for the use of the college, of one sixth part of the legal fees which shall be received by such surveyor, for the yearly payment of which, he shall give bond with sufficient security to the president and masters of the said college. He shall hold his office during good behavior; shall reside within his county; and before he shall be capable of entering upon the execution of his office, shall before the court of the same county, take an oath and give bond with two sufficient sureties, to the governor and his successors, in such sum as he, with advice of his council, shall have directed for the faithful execution of his office. All deputy surveyors shall be nominated by their principals, who shall be answerable for them, examined and certified able by the president and masters of the said college, and if of good character, commissioned by the governor, and shall thereupon be entitled to one half of all fees received for services performed by them respectively, after deducting the

proportion thereof due to the college. If any principal surveyor shall fail to nominate a sufficient number of deputies to perform the services of his office in due time, the court of the county shall direct what number he shall nominate, and in case of failure, shall nominate for him. And if any deputy surveyor, or any other on his behalf, and with his privity, shall pay or agree to pay any greater part of the profits of his office, sum of money in gross, or other valuable consideration to his principal for his recommendation or interest in procuring the deputation, such deputy and principal shall be thereby rendered for ever incapable of serving in such office; it shall not be necessary for the present chief or deputy surveyors of the several counties duly examined, commissioned, and qualified according to the laws heretofore in force, to be again commissioned and qualified under the directions of this act, nor in cases now depending before any court within this commonwealth. Every person having a land warrant founded on any of the before mentioned rights, and being desirous of locating the same on any particular waste and unappropriated lands, shall lodge such warrant with the chief surveyor of the county wherein the said lands or the greater part of them lie, who shall give a receipt for the same if required. The party shall direct the location thereof so specially and precisely, as that others may be enabled with certainty, to locate other warrants on the adjacent residuum; which location shall bear date the day on which it shall be made, and shall be entered by the surveyor in a book to be kept for that purpose, in which there shall be left no blank leaves or spaces between the different entries. And if several persons shall apply with their warrants at the office of any surveyor at priority of the dates of their warrants, but if such warrants be dated on the same day, the surveyor shall settle the right of priority between such persons by lot. And every surveyor shall, at the time of making entries for persons not being inhabitants of his county, appoint a time for surveying their land, and give notice thereof in writing to the persons making the same. And if on such application at his office, the surveyor shall refuse to enter such location, under pretence of a prior entry for the same lands made by some other persons, he shall have a right to demand of the said surveyor a view of the original of such prior entry in his book, and also an attested copy of it. But it shall not be lawful for any surveyor to admit an entry for any land without a warrant from the register of the land office, except in the particular case of certificates from the commissioners of the county for tracts of land, not exceeding four hundred acres allowed in consideration of settlements, according to an act of assembly, entitled "An act for adjusting and settling the titles of claimants to unpatented lands, under the present and former government, previous to the establishment of the commonwealth's land office." No entry or location of land shall be admitted within the county and limits of the Cherokee Indians, or on the north west side of the Ohio River, or on the lands reserved by act of the assembly for any particular nation or tribe of Indians, or on the lands granted by law to Richard Henderson and company, or in that tract of country reserved by resolution of the general assembly for the benefit of the troops serving in the present war, and bounded by the Green River and a south east course from the head thereof to the Cumberland Mountains; with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee River; with the said river to the Ohio River, and with the Ohio to the said Green River, until the farther order of the general assembly. Any chief surveyor having warrant for lands, and desirous to locate the same on lands within his own county, shall enter such location before the clerk of the county, who shall return the same to his next court, there to be recorded, and the said surveyor shall proceed to have the survey made as soon as may be, and within six months at farthest, by some one of his deputies, or if he hath no deputy, then by any surveyor or deputy surveyor of an adjacent county, or his entry shall be void, and the land liable

to the entry of any other person. Every chief surveyor shall proceed with all practicable dispatch, to survey all lands entered for in his office, and shall, if the party live within his county, either give him personal notice of the time at which he will attend to make such survey, or shall publish such notice by fixing an advertisement thereof on the door of the courthouse of the county, on two several court days, which time so appointed shall be at least one month after personal notice given, or after the second advertisement so published; and if the surveyor shall accordingly attend, and the party, or some one for him, shall fail to appear at the time with proper chain carriers, and a person to mark the lines, if necessary, his entry shall become void, the land thereafter subject to the entry of any other person, and the surveyor shall return him the warrant, which may, notwithstanding, be located anew upon any other waste or unappropriated lands, or again upon the same lands where it hath not, in the mean time, been entered for by another person. Where the chief surveyor doth not mean to survey himself, he shall immediately after the entry made, direct a deputy surveyor to perform the duty, who shall proceed as is before directed in the case of the chief surveyor. The persons employed to carry the chain on any survey, shall be sworn by the surveyor, whether principal or deputy to measure justly and exactly to the best of their abilities, and to deliver a true account thereof to such surveyor, and shall be paid for their trouble by the party for whom the survey is made. The surveyor at the time of making the survey, shall see the same bounded plainly by marked trees, except where a water course or ancient marked line shall be the boundary, and shall make the breadth of each survey at least one third of its length in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water courses, or bounds of lands before appropriated. He shall as soon as it can conveniently be done, and within three months at farthest after making the survey, deliver to his employer, or his order, a fair and true plat and certificate of such survey, the quantity contained, the hundred (where hundreds are established in the county wherein it lies) the courses and descriptions of the several boundaries, natural and artificial, ancient and new, expressing the proper names of such natural boundaries, where they have any, and the name of every person whose former line is made a boundary; and also the nature of the warrant and rights on which such survey was made, and shall at the same time redeliver the said warrant to the party. The said surveyor may, nevertheless, detain the said certificates and warrants until the payment of his fees. The said plats and certificates shall be examined and tried by the said principal surveyor, whether truly made and legally proportioned as to length and breadth, and shall be entered within three months at farthest after the survey is made, in a book well bound, to be provided by the court of his county, at the county charge. And he shall in the month of July every year, return to the president and professors of William and Mary College, and also to the clerk's office of his county court, a true list of all surveys made by him, or his deputies, in the preceding twelve months, with the names of the persons for whom they were respectively made, and the quantities contained in each, there to be recorded by such clerk; and no person after the first day of May next, shall hold the offices of clerk of a county court and surveyor of a county, nor shall a deputy in either office act as deputy or chief in the other. Any surveyor, whether principal or deputy, failing in any of the duties aforesaid, shall be liable to be indicted in the general court, and punished by amercement or deprivation of his office and incapacity to take it again, at the discretion of a jury, and shall moreover be liable to any party injured, for all damages he may sustain by such failure. Every county court shall once in every year, and oftener if they see cause, appoint two or more capable persons to examine the books of entries and surveys in possession of their chief surveyor, and to report in what condition and order the same are kept; and on

his death or removal, shall have power to take the same into their possession, and deliver them to the succeeding chief surveyor. Every person for whom any waste or unappropriated lands shall be so located and laid off, shall within twelve months at farthest after the survey made, return the plat and certificate of the said survey into the land office, together with the warrant on which the lands were surveyed, and may demand of the register a receipt for the same, and on failing to make such return within twelve months as aforesaid, or if the breadth of his plat be not one third of its length as before directed, it shall be lawful for any other person to enter a caveat in the said land office against the issuing of any grant to him, expressing therein for what cause the grant should not issue; or if any person shall obtain a survey of lands to which another hath by law a better right, the person having such better right, may in like manner enter a caveat to prevent his obtaining a grant until the title can be determined; such caveat also expressing the nature of the right on which the plaintiff therein claims the said land. The person entering any caveat, shall take from the register a certified copy thereof, which, within three days thereafter, he shall deliver to the clerk of the general court, or such caveat shall become void; the said clerk on receiving the same, shall enter it in a book, and thereupon issue a summons, reciting the cause for which such caveat is entered, and requiring the defendant to appear on the seventh day of the succeeding court and defend his right; and on such process being returned executed, the court shall proceed to determine the right of the cause in a summary way, without pleadings in writing, empanelling and swearing a jury for the finding of such facts as are material to the cause, and are not agreed by the parties; and shall thereupon give judgment, on which no appeal or writ of error shall be allowed; a copy of such judgment, if in favor of the defendant, being delivered into the land office, shall vacate the said caveat; and if not delivered within three months, a new caveat may for that cause be entered against the grant; and if the said judgment be in favor of the plaintiff, upon delivering the same into the land office, together with a plat and certificate of the survey, and also producing a legal certificate of new rights on his own account, he shall be entitled to a grant thereof; but on failing to make such return and produce such certificates within six months after judgment so rendered, it shall be lawful for any other person to enter a caveat for that cause against issuing the grant; upon which subsequent caveats, such proceedings shall be had as are before directed in the case of an original caveat; and in any caveat where judgment shall be given for the defendant, the court shall award him his costs, and may compel the plaintiff in any caveat, if they think fit, to give security for costs, or on failure thereof, may dismiss his suit; and in case the plaintiff in any such caveat shall recover, the court may, if they think it reasonable, award costs against the defendant; provided that where any lands surveyed upon a land warrant as aforesaid, shall, in consequence of any judgment upon a caveat, be granted to any other person than the party claiming under such warrant, such party shall be entitled to a new warrant from the register for the quantity of land so granted to another, reciting the original warrant and rights, and the particular cause of granting the new warrant. And to prevent confusion and mistakes in the application, exchange, or renewal of warrants, the register of the land office is hereby directed and required to leave a sufficient margin in the record books of his office, and whenever any warrant shall be exchanged, renewed, or finally carried into execution by a grant, to note the same in the margin opposite to such warrant, with folio references to the grant, or other mode of application; and also to note in the margin opposite to each grant, the warrant or warrants and survey on which such grant is founded, with proper folio references to the books in which the same are recorded. All persons, as well foreigners as others, shall have right to assign or transfer warrants or

certificates of survey for lands, and any foreigner purchasing warrants for lands, may locate and have the same surveyed, and after returning a certificate of survey to the land office, shall be allowed the term of eighteen months, either to become a citizen, or to transfer his right in such certificate of survey to some citizen of this, or any other of the United States of America. When any grant shall have been finally completed, the register shall cause the plat and certificate of survey on which such grant is founded, to be exactly entered and recorded in well-bound books, to be provided for that purpose at the public charge. Due returns of the several articles herein before required being made into the land office, the register, within not less than six, nor more than nine months, shall make out a grant by way of deed poll to the party having right, in the following form: "A. B. esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come greeting: Know ye that in consideration of military service performed by C. D. to this Commonwealth, &c. (or in consideration of military service performed by C. D. to the United American States, or in consideration of the sum ofcurrent money, paid by C. D. into the treasury of this Commonwealth, &c.) there is granted by the said Commonwealth unto the said C. D. a certain tract or parcel of land containingacres, lying in the county ofand hundred of, &c. (describing the particular bounds of the land and the date of the survey upon which the grant issues) with its appurtenances; to have and to hold the said tract of parcel of land with its appurtenances to the said C. D. and his heirs for ever. In witness whereof the said A. B. governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at.....on theday ofin the year of our Lord and of the Commonwealth.....A. B. upon which grant the said register shall endorse that the party hath title to the same; whereupon it shall be signed by the governor, sealed with the seal of the Commonwealth, and then entered of record at full length in good well bound books to be provided for that purpose at the public expense and kept by the register, and being so entered, shall be certified to have been registered and then be delivered, together with the original certificate of survey to the party or his order. Where a grant shall be made to the heir or assignee of a person claiming under any of the before mentioned rights, the material circumstances of the title shall be recited in such grant: and for preventing hasty and surreptitious grants and avoiding controversies and expensive law suits, **Be it enacted**, that no surveyor shall at any time within twelve months after the survey made, issue or deliver any certificate, copy or plat of land by him surveyed, except only to the person or persons for whom the same was surveyed; or to his, her, or their order, unless a caveat shall have been entered against a grant to the person claiming under such survey, to be proved by an authentic certificate of such caveat from the clerk of the general court produced to the surveyor; and if any surveyor shall presume to issue any certificate, copy, or plat as aforesaid, to any other than the person or persons entitled thereto, every surveyor so offending shall forfeit and pay to the party injured, his or her legal representatives or assigns, fifty pounds current money for every hundred acres of land contained in the survey, whereof a certificate, copy, or plat shall be so issued, or shall be liable to the action of the party injured at the common law for his or her damages at the election of the party. Any person possessing high lands, to which any swamp, marshes, or sunken grounds are contiguous, shall have the preemption of such swamps, marshes, or sunken grounds for one year, from and after the passing of this act, and if such person shall not obtain a grant for such swamps, marshes, or sunken grounds within the said year, then any other person may enter on and obtain a grant for the same in the like manner as is directed in the case of other unappropriated lands. But nothing herein contained shall be construed or extend to give liberty to any person to survey,

take up, or obtain a grant for any swamps, marshes, or sunken grounds lying contiguous to the high lands of any feme covert, infant under the age of twenty one years, person not being compos mentis, or person out of the Commonwealth, according to the regulation of an act entitled "An act declaring who shall be deemed citizens of this Commonwealth," but all such persons shall be allowed one year after the removal of their several disabilities for the preemption of such lands.

IV. **And whereas**, through the ignorance, negligence, or fraud of surveyors, it may happen that diverse persons now do or may hereafter hold within the bounds expressed in their patents or grants, greater quantities of land than are therein mentioned, for quieting such possessions, preventing controversies, and doing equal justice to the Commonwealth and its citizens, **Be it enacted**, that it shall not be lawful for any person to enter for, survey, or take up, any parcel of land held as surplus in any patent or grant, except during the life time of the patentee or grantee, and before any transference, conveyance, or other alienation shall have been made of the lands contained in such patent or grant, and until the party intending to enter and take up the same, shall have given one full years notice to such patentee or grantee of such his intentions, and in case such patentee or grantee shall not within the year, obtain rights and sue forth a patent for the surplus land by him held, it shall be lawful for the person who gave notice as aforesaid, upon producing a certificate from the clerk of due proof of such notice before the court of the county wherein such patentee or grantee resides, to demand from the register of the land office, a warrant to the surveyor of the county wherein such lands lie, to resurvey at the proper charge of the person obtaining such warrant, the whole tract within the bounds of the patent or grant, and upon such persons returning into the land office a plat and certificate of such resurvey, together with the warrant on which it is founded, and obtaining and producing new rights for all the surplus land found within the said bounds, he may sue forth and obtain a new grant for such surplus, which shall be granted to him in the same manner as waste or unappropriated lands; but the former patentee or grantee may assign such surplus land in any part of his tract as he shall think fit in one entire piece, the breadth of which shall be at least one third of the length; and in such new grant there shall be a recital of the original patent or grant, the resurvey of which the surplus was ascertained and of other material circumstances.

V. **Provided always**, that if upon notice given as aforesaid, the original patentee or grantee shall within the year resurvey his tract, and it be thereupon found that he hath no more than the quantity of land expressed in his patent or grant, with the allowance herein after mentioned, the party giving such notice shall be liable to pay all charges of such resurvey, for which he shall give sufficient security to the said patentee or grantee at the time of the notice, otherwise such notice shall be void and of no effect; and moreover for his unjust vexation, shall also be liable to an action upon the case at the suit of the party grieved, and that in all such new surveys, the patentee or grantee shall have an allowance at the rate of five acres in every hundred, for the variation of instruments.

VI. **And be it enacted**, that where any person shall find any mistake or uncertainty in the courses or description of the bounds of his land, and desires to rectify the same, or shall hold two or more tracts of land adjoining to each other, and is desirous to include them in one grant, he may in either case, having previously advertised his intentions and the time of application, at the door of the courthouse on two several court days, and also having given notice to the owners of the adjoining lands, present a petition

to the court of the county wherein such lands lie, reciting the nature and truth of the case, and such court may, and is hereby empowered to order the surveyor of their county to resurvey such lands at the charge of the party, according to his directions and the original or authentic title papers, taking care not to intrude upon the possessions of any other person, and to return a fair plat and certificate of such resurvey into the said court, to be examined and compared with the title papers; and if such court shall certify that in their opinion such resurvey is just and reasonable, the party may return the same, together with his material title papers in the Land Office, and demand the register's receipt for them; and in case any caveat shall be entered against his obtaining a new grant upon such resurvey, the same proceedings shall be had therein as is directed in the case of other caveats, and the general court upon hearing the same, may either prohibit such new grant, or vacate the caveat as to them shall seem just; but if no caveat shall be entered within six months after such return, or if a caveat shall be entered and vacated as aforesaid, the party upon producing new rights for whatever surplus land appears to be within the bounds, more than the before mentioned allowance of five acres for every hundred, may sue out and obtain a new grant for such lands thereupon, in which shall be recited the dates and other material circumstances of the former title, and the title papers shall be delivered by the register to the new owner. The judges of the general court shall, once in every year and oftener if they see cause, appoint two or more capable persons to examine the record books and papers in the Land Office, and report in what condition and order they are kept, who shall compare all warrants of survey returned to the said office executed, with the list of those issued there from, and cancel all such as shall appear to have been properly executed or exchanged, an account of which shall be kept by the register, charging therein those issued, and giving credit for those cancelled as aforesaid. The treasurer for the time being shall annually enter into bond with sufficient security to the governor in the sum of one hundred thousand pounds, for the just and faithful accounting for according to law, all money which shall come to his hands by virtue of this act. And that the proprietors of lands within this Commonwealth may no longer be subject to any servile, feudal, or precarious tenure, and to prevent the danger to a free state from perpetual revenue, **Be it enacted**, that the reservation of royal mines of quitrents, and all other reservations and conditions in the patents or grants of land from the crown of England or of Great Britain, under the former government, shall be, and are hereby declared null and void; and that all lands thereby respectively granted, shall be held in absolute and unconditional property to all intents and purposes whatsoever, in the same manner with the lands hereafter to be granted by the Commonwealth by virtue of this act; and no petition for lapsed land shall be admitted or received for or on account of any failure or forfeiture whatsoever, alleged to have been made or incurred after the twenty ninth day of September, in the year of our Lord one thousand seven hundred and seventy five. **And be it farther enacted**, that he or she be adjudged a felon and not have the benefit of clergy, who shall steal, or by other means take from the possession or custody of another, any warrant from the register of the Land Office of this Commonwealth, to authorize a survey of waste and unappropriated lands; or who shall alter, erase, or aid or assist in the alteration or erasure of any such warrant; or forge or counterfeit, or aid, abet, or assist in forging or counterfeiting any written or printed paper, purporting to be such warrant; or who shall transfer to the use of another, or for his or her own use, present or cause to be presented to the register for the exchange thereof, or to a surveyor for the execution thereof, any such warrant or paper purporting to be such warrant, knowing the same so transferred or presented for the exchange or the execution thereof to be stolen, or by other means

taken from the possession or custody of another, or altered or erased, or forged or counterfeited; and he or she shall be adjudged a felon and not have the benefit of clergy, who shall falsely make or counterfeit, or aid, abet, or assist, in safely keeping or counterfeiting any instrument stamping an impression in the figure and likeness of the seal officially used by the register of the Land Office, or who shall have in his or her possession or custody such instrument, and shall willfully conceal the same, knowing it to be falsely made or counterfeited. So much of all former acts of assembly as concern or relate to the entering taking up, or seating lands, or direct the mode of proceeding in any case provided for by this act, shall be, and are hereby repealed.

REF: "The Statutes at Large, Being a Collection of All the Laws of Virginia", Volume X, Edited by William Waller Hening, 1822, pp 50-65.