

of the right. If the patent was refused, on account of the rules of the office not having been complied with, still the Lord Pro-

Lawyer for nine hundred and twenty acres of land, part of a greater warrant for two thousand three hundred and forty-five acres, which said warrant, as is above alleged, and according to a record thereof, was found to have been executed upon other lands before the assignment of the nine hundred and twenty acres, part thereof, unto Col. William Coursey aforesaid; but the petitioner also maintained, that it is also found, upon the same record, after the discovery of the imperfections of the warrant aforesaid; and, it is very probable, made by Col. Coursey himself for the greater security of his land, another entry is likewise found, next after the entry and discovery aforesaid, viz: upon the 8th of May, 1696, new caution is given for the same; which the complainant saith she is humbly of opinion was then accepted of by the Lord Proprietor as a full compliance with his conditions of plantation, it never having been practised by his lordship, nor any of his noble ancestors, to take advantage of inadvertent slips or mistakes; but always when discovered have allowed the liberty of amending the same, as in this present case. And the petitioner farther saith, that although it be not expressly mentioned on the face of the records, that the new caution given was on the part of the said Col. William Coursey; yet it is implied, as a most consonant reason, that such new caution given for the mending the defects in the warrant aforesaid did affect the assignment made unto Col. Coursey's part of that warrant, equally with all other parts thereof, it being declared upon record, that new caution was given for the same.

As to the second plea of the said Hemsley, that no common warrant would affect cultivated lands which, as he alleged, are excepted in all such warrants, the complainant answereth and saith. Notwithstanding it be at the present, and for many years hath been the practice of the land office to make an exception of all land already surveyed, cultivated or reserved for his lordship's use; yet, that the practice of the office was not the same, at the time of laying out the tract of land called Coursey upon Wye, the cultivated part whereof is now in dispute. And she further asserteth, that all common warrants, at the time of the making of that survey were qualified, and gave sufficient power to the surveyors to lay out, survey and make returns of cultivated as well as uncultivated lands, as in the present case now in dispute; and to prove the practice of the office at the time of laying out the tract aforesaid, the complainant produced an original common warrant, dated the 20th of June, 1694, and signed by Col. William Diggs and Major Nicholas Sewall, secretaries of this Province; and eight months after the time of making out of the common warrant for two thousand three hundred and forty-five acres unto Col. Peter Lawyer, out of which warrant the assignment of nine hundred and twenty acres was made unto Col. Coursey aforesaid. The complainant thereupon argued, that it had been the ancient practice of the office to except such lands only as had been formerly surveyed or resurveyed for his lordship's use; but that all cultivated land of which time, the lands, now in dispute, were subject to common warrants, as well as clear vacant lands. She therefore prayed, on behalf of her son, a minor and legatee of Col. William Coursey, deceased, that the special warrant for the two hundred and thirty acres of land aforesaid, so as before by Vincent Hemsley obtained and executed upon the cultivation of that part of the tract called Coursey upon Wye devised unto William Coursey a minor as aforesaid, together with the certificate and other proceedings thereon, might be declared null and void, and that an entry be made thereof in the