

that the grant expresses the red oak to be standing *in* the said N. W. line ; the red oak is proved not to have stood in the line ; and it is clear, from the expressions, that the red oak was to be the termination of the line. On the whole, it appears to the chancellor that any attempt, at this time, to carry the line to "Whiteshall" is almost an insult on common sense. We come now to the second point : It seems that a N W course, which is actually called for, from the red oak to the N branch of Patuxent, will take in all the land claimed by the defendant ; and as there is no tree, point, or spot, on the Patuxent, called for, the caveator contends, that nothing ought to controul the course. The defendant insists, that, supposing his proof of the actual running to fail, there ought to be an allowance for variation, which would leave him a part of his pretensions. But no such allowance ever has been made in this office, against or for a patentee ; altho', in favour of a patentee, the chancellor is authorized to correct present runnings of courses by *actual proof of the original runnings*.—If then, there were no other circumstances in this case, the caveat would without hesitation be allowed.

It is to be remarked that this N. W. course, to reach Patuxent, must run at least 250 perches through "Luggor" an elder tract, of which it takes at least 35 acres : and that this running will make "Ayno" contain at least 880 acres, instead of 400. It may here be observed too that, according to the plat in this cause, if "Ayno" should run to "Whiteshall," and the N W. course thereof should be continued to Patuxent, Ayno would contain at least 1100 acres. But the most remarkable circumstance of Ayno is this ; that the survey (if actually made at all) never could have been made with precision. Only the 6 first courses express distances, almost every one of which appear to be extended by the calls for trees. The 7th course, which is the course in question, if it must be N W, not only runs through an elder tract, and gives almost treble the quantity, (as has already been said) but is of the unreasonable length of, at least, 650 perches : it comes to no point on the river, and it strikes the river aslant.

It has always appeared to the chancellor that the true locations of those ancient tracts of which evidently no actual complete survey was made before the grant must depend on proofs. It strikes him, that the surveyor, and party, having got to the red oak at the end of the sixth course, determined to go thence to Patuxent, and fixed on the point at G. which appears from the plat peculiarly proper for a boundary. The distance being at least 500 perches, thro' woods, and perhaps broken grounds, they did not actually run it :---Nay, it is absolutely certain that they did not measure the distance of the seventh course, because the certificate has not expressed it.--