

He may, if he thinks proper, have vacated both the certificate of Rogue's harbour, made by Clark, and the certificate of Jones's purchase, made by the surveyor; and he may then have a new certificate returned, comprehending just his real purchase; or he may have an order for correcting the latter certificate, so as to exclude Whitford's vacancy C.

It is adjudged and ordered, that the caveat of Hugh Whitford against the certificate Jones's surplus be dismissed; that the said Whitford's caveat against the certificate of Rogue's harbour, and the certificate of Jones's purchase be admitted; that the caveat of Benjamin Jones against the certificate of Hugh's adventure be also admitted; and that orders, agreeably to what is herein before mentioned, shall, on application, be granted.

N. B. The chancellor omitted to mention one fact, which was, that at the time Whitford took out his warrant of resurvey, and even when he returned his certificate, there was no certificate of Jones's purchase returned; so that he could not with any plausibility claim, under his purchase, vacancy contiguous to Whitford's patent, and not comprehended in his the said Jones's purchase.

Now that the certificate of purchase is returned, no man, perhaps, hereafter, can with plausibility claim as vacancy, under a warrant hereafter taken out, the land comprehended in the certificate of Jones's purchase.

November 17, 1796.

NELM } *The dispute turns upon this single point; what*
 agt } *is the termination of the 11th line of Kirk-*
 SMITH } *minster?*

The expression in the certificate is, "thence W 126 ps. to a marked white oak, standing upon the north side of the branch first mentioned, where the first bounder standeth, and upon the east side of a glade, that runneth into the said branch, being a *corner tree* of a tract of land surveyed for *Phoenix Hall.*" The caveator lays down Kirkminster so as to run to a spot which he contends, and which he offers deposition to prove, to be the beginning of a tract called "Dogdown bottom," surveyed for Phoenix Hall, which tract, he says, was the only tract in the neighbourhood, or county surveyed for Phoenix Hall. The deft. admits the allegation that the said "Dogdown bottom" was the only tract surveyed for Phoenix Hall.

If the 11th line of Kirkminster be as contended by the caveator, its course is nearly opposite to the course expressed, which is west, and the length of it is much shorter than the