

near the mouth of Sidelinghill Creek, to execute some warrants held by John V. L. McMahon, for the use of The Baltimore and Ohio Railroad Company; that the surveyor, being otherwise engaged, sent his deputy, who made the survey, as required, under a common warrant, of the tract called Clara Fisher, on the 25th day of May, 1828. But the warrant not having been put into the surveyor's hands until four days after, that is, on the 29th of May, he therefore dated the certificate of survey for Clara Fisher on that day, and not of the day when the survey was actually made.

On the other side, it appears, that William W. Hoyer, under whom The Chesapeake and Ohio Canal Company claim, as his assignee, having a special warrant, placed it in the hands of the surveyor of Allegany County, "which warrant, the surveyor says, was by me, on the 28th day of May, 1828, located for the said William W. Hoyer, in a book kept by me for the purpose, on the bank of the Potomac River, below and adjoining to the lines of a tract of land, the property of Mr. Lantz, which tract of land lies at the mouth of the Devil's Alley run; and to extend down from the lines of said Lantz's land with the meanders of the Potomac River to the lands formerly belonging to McQueen, and now said to belong to Mr. Hughes, and to extend out from the river for quantity." \* And the surveyor further says, "I certify, as surveyor of Allegany County, that I have carefully sur- **259**veyed for and in the name of him, the said William W. Hoyer, all that tract or parcel of land lying and being in Allegany County aforesaid. Beginning about twelve feet south from an ancient elm tree, standing on the bank of the Potomac River," &c. Thus going on to describe the lands which had been so specially located in the surveyor's book, by courses and distances, to be held by the name of River's Bend, which courses, distances, and quantity of the tract, called River's Bend, on comparison, appear to be precisely the same as those of the tract of land, called Clara Fisher; which conclusively shews, that those two names do not designate different tracts, but identically the same lands.

BLAND, C., 22d January, 1830.—These cross-caveats standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

By the second article of the rules and orders of the 15th of April, 1782, for the direction of surveyors, it is declared, that "upon receipt of any common warrant you are to note down in a book, to be kept by you for that purpose, the time of your receiving it, the quantity of acres included therein, the date thereof, and at what place, the person who obtains it, locates the same; and, when any other person desires to locate a warrant on land which some other person has already entered a warrant to affect, you shall, if re-