

the erroneous survey of Clara Fisher; because that location is in *general terms, and might have been fairly and properly intended to embrace the same vacancy, without any knowl- **263**
edge, at that time, of the survey of it under the name of Clara Fisher. And, besides, if the location of River's Bend, made in the surveyor's book, corresponds fully with the survey of it, then the survey is such a following up of the right of pre-emption acquired by the location as will give date, to the perfected legal title, by relation, from the date of the location in the surveyor's book; but if it does not so correspond, and there should be found any essential discordance between the location in the surveyor's book, and the actual survey, then the perfected legal title of River's Bend, can only be carried back to the 5th of June, the date of the actual survey, and not to the 28th of May, the date of the location. *Cunningham v. Browning*, 1 Bland, 311, 325. There is, therefore, room to doubt, whether the claimant of River's Bend made the location in the surveyor's book with a full knowledge of the previous erroneous survey of Clara Fisher; and also whether the survey does, in fact, essentially conform to the special location made in the surveyor's book.

The decision of the Chancellor on a caveat in the land office is final, without appeal; and therefore, it has been the practice, in all cases of just doubt as to facts, or where a matter of much importance or difficulty presents itself, which can be left open after a patent shall have been issued, to permit each party to perfect his legal title, so as to allow the matter to be brought either before the Court of Chancery by a *scire facias*, or information to vacate the patent, or before a Court of common law in an action of ejectment, or otherwise; and thus give to the parties the benefit of a more full and satisfactory investigation, and a final decision by the Court of Appeals in some one or other of those modes; and so virtually and in effect allowing them the benefit of an appeal as in ordinary cases. *Johnson v. Hawn*, Land Hol. Ass. 417. For these reasons I shall allow each of these parties to obtain a patent.

Whereupon it is adjudged and ordered, that each of the caveats before mentioned, be and the same is hereby dismissed; each party to pay his own costs.

dismissed; that the said defendant William Biggs, be also hence dismissed; and that the said Richard and James Winchester do pay unto him the costs, by him sustained, in the defence of their suit against him, amounting, as taxed by the register of this Court, to the quantity of three thousand eight hundred and seven pounds of tobacco.