

versy between individuals; because the decision on a *caveat* was not, in any way, conclusive of the right. If the patent was

for laying out the tract aforesaid, called *Coursey upon Wye*; which said tract of land, as the said Hemsley alleged, for the imperfections aforesaid, remained still to be vacant, and subject to his special warrant, laid upon the cultivation thereof as aforesaid.

*Secondly*.—It was alleged, that although the warrant upon which the surveyor had laid out *Coursey upon Wye*, should be held and deemed to be good and sufficient warrant to the surveyor for the taking up of so much of that tract called *Coursey upon Wye*, as had not before been cultivated; yet that the survey thereof, as far as it related to any part of the cultivated lands must necessarily be null and void; such lands being excepted in all common warrants, according to the usual form, 'lands not already laid out for, nor cultivated by any person, nor lands reserved for his lordship's use;' but that the lands so by him, the said Hemsley, taken up, by virtue of his lordship's special warrant aforesaid, were cultivated at and before the time of the survey of *Coursey upon Wye*, no one will pretend to deny. Wherefore as the said lands would not be affected by the common warrant aforesaid, allowing it to be a good warrant, which, however, he doth not grant, he prays that his lordship's Letters Patent may be made out to him, the said Vincent Hemsley, according to the course of the office, for the two hundred and thirty acres of cultivated vacant land, according to his certificate of survey thereof already made and returned into his lordship's Land Office.

Whereupon the complainant replied to the first allegation, and saith, true it is that the warrant upon which the survey of the tract of land called *Coursey upon Wye*, is grounded, was by an assignment from Col. Peter 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 practiced 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 consonent 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