

## CHAPTER XI.

## OF SURPLUS LANDS.

SURPLUS land is the excess included within the bounds of surveys, prosecuted to patent, beyond the quantities intended and declared to be granted ; arising from the practice of surveyors of stating the distance from one boundary, natural or artificial, to another, on erroneous measurement, or by estimate, without any actual measurement at all ; and, it has always been distinguished from vacant lands as having been, (though erroneously or fraudulently) so included ; for the general definition of the latter is that it has never been *granted*.—The wrong done to the proprietary in this particular was very early felt, and complained of : it was the business of his officers to discover the cases in which it existed ; and, owing probably to their activity, the patentees holding such surplus were led in numerous instances to take warrants of resurvey, for the purpose of ascertaining the quantities of land thus improperly held, and paying therefor, either on the terms of the original grants, or according to the conditions of plantation existing at the time of discovery ; upon which, patents of confirmation issued for the whole, together with such vacant land, thereto adjoining, as had been included in the resurveys. The subject of surplus land, however, though regulated pretty much by the will of the proprietaries while the government of the province remained in their hands, fell afterwards under different interpretations, and was one of the principal grounds of the land laws, the first of which was passed in the year 1699. The principal intention of this law was to restrain the proceedings, and limit the power, of the proprietary, in respect to the excess arising from error or fraud in the early surveys, by declaring that boundaries or *calls* should be respected if they could be established, and could be gratified by certain specified extensions of the courses claiming them.—The operation, and the respective times of duration, of the several laws of this kind which were successively enacted will hereafter be noticed. For the present, it remains to be observed that the proprietary, objected to the first law as infringing his rights and property, that his objections, and the answers of which they were susceptible, with the various disputes that took place on the question of a rightful power in the government to regulate the forms of surveys, and the interpretation of ancient grants, produced a long chain of legislative proceedings, which did not subside, or result in