

*Fought and Dear Bought*, which was laid out on the 21st of April, 1788, laid to the northward of them both, and extended entirely from the one to the other; and that the tract called *Jolly's First Attempt*, which was laid out in the year 1791, laid to the southward of them; and, in like manner, extended from the one to the other. The certificate of *Jolly's First Attempt*, calls for a black oak, at one point, a white oak at another, and a white oak at a third; which calls having been shewn and proved by witnesses, the lines of that tract were extended to those boundary trees accordingly, as the law required, whereby that tract has not only been made to border upon, but, to some extent, to interlock with the tract called *Long Fought and Dear Bought*, so as to leave not the least vacancy contiguous to *Litten's Fancy*, over which a resurvey could be extended from it, so as to embrace any part of *M' Causland's First Attempt*.

But *Patterson* and *Ellicott*, to impeach the testimony of the witnesses produced by *M' Causland* to prove the call for the marked black oak, the going to which brings those two elder tracts together, and closes the access to *M' Causland's First Attempt*, shew, that the black oak, of which the witnesses speak, is that which is designated as a marked black oak in the certificate of *Jolly's First Attempt*, bearing date in the year 1791; and that in a block, so cut out of that tree as to include the whole of the only chop mark upon it, there appears to have been added, by natural growth, only *twelve* concentric layers of wood outside of, and since the chop mark was made. They exhibited this block to the court as evidence; alleging, that, according to the regular and uniform course of nature, there is in all trees one such concentric layer of wood always formed every year. And, therefore, they contended, that the irresistible presumption was, that the black oak, shewn by those witnesses, upon the resurvey, could not have received the chop mark so long ago as the year 1791, when the tract called *Jolly's First Attempt* was laid out; and, consequently, could not be the marked black oak called for in the certificate of that tract; and that call being thus clearly disproved, the lines of that tract must, so far, be laid down by course and distance; and in that mode of locating it, there would be left a considerable space of vacancy along which the resurvey of *Litten's Fancy* might be extended, as it had been, so as to take in the whole of the tract called *M' Causland's First Attempt*.

3d December, 1830.—BLAND, Chancellor.—This case standing