

between A B C, and D, but the intendant some time after they were chosen, and had acted in a variety of cases, agreed with D's assignee for the sale of the land in question, and took his bond, which has since been discharged: The land was surveyed, and a certificate returned into the land office, which certificate was caveated by A B and C.

On hearing of the said caveat, the late chancellor was of opinion that the said A B and C, not having purchased the land of the intendant, their case was not properly before him: He therefore directed the following opinion to be endorsed on the certificate of D's assignee. "The intendant being authorized by law to make sale of the lands in dispute; D having purchased those lands of the intendant as appears by his certificate of sale, and bounded, as the act of November 1784 directs, D is entitled to a patent, unless it shall appear that the said purchase and certificate of sale were made and obtained by fraud."

Before the said decision of the late chancellor, A B and C had applied to the agent appointed under the act of 1785, ch. 88, sec. 3, to purchase the said lands, in virtue of their supposed right of preemption, and on a supposition that the sale made by the intendant to D was void *ab initio*: The agent, by the advice of the executive, sold the said lands to them, and took their bonds for the same sum which D had bonded for: The bonds were returned to the treasurer, the interest thereon hath since been paid, and the obligors have installed.

The said A B and C, considering the dispute as not finally decided, and relying on the act of last session, ch. 35, apply to the present chancellor for a subpoena to D, to answer their caveat aforesaid; and now it is alledged by the caveators, that the purchase and certificate of sale aforesaid to D were obtained from the intendant by misrepresentation; that the right of preemption was in them; and that having purchased from the agent, and bonded, they are entitled to patents.

Qu. 1. Admitting the purchase and certificate of sale to D to have been obtained by fraud, is the judge of the land office authorized to enquire into the right of preemption?

Qu. 2. Admitting the said fraud, and the authority of the judge to enquire as aforesaid, and that the right of preemption was in A B and C, are they entitled to patents in virtue of the sale made to them by the agent? that is to say, had the agent a power of selling land, already sold by the intendant to D, before the sale of the intendant was determined to be void?

Qu. 3. As the act of 1785, ch. 66, sec. 6, subjects reserves to be taken by common warrant, admitting the sale by the intendant to be absolutely void, was the agent by the sub-