

lege of securing, at option, all the vacancy to be found in the reserves, not sold by a particular name, or designation, to other people; and that therefore, whenever a vacancy is surveyed under warrant, he may come in and obtain it provided, at most, that he has not before obtained the full quantity, expressed in his certificate.

Now this cannot surely have been the meaning of the intendant; because several of these certificates have been granted to different persons:—they cannot each have an exclusive right to the same thing; and, supposing the intent of the intendant to have been to introduce a scramble amongst those purchasers, to the probable perpetual exclusion of all other men, he has intended what he had no power of doing—his authority was to sell; and it is essential to a sale, that the thing sold be certain, or at least reducible to a certainty, by some act or acts agreed, or implied, to be done.—Again, the intendant could not properly be said to make a sale when the contract was to be binding at the option of the purchaser only, without any limitation of time within which the option shall be made.

It is indeed difficult to assign a *good* reason, wherefore the intendant granted such certificates at all,—they appear intended to confer a privilege of hunting for so many acres in the reserves, not sold to others, and to stipulate that if the grantee can find so many, or more, he may secure them, at a certain price; and if he can find none, that he shall pay nothing, notwithstanding he has executed a bond for a certain sum, which must unavoidably be recovered, unless he can obtain relief from the legislature, or from the court of chancery, on the ground, that he has obtained no land, or not so much as his certificate expresses.

But, supposing the operation of his certificate to be, the giving him a privilege of hunting for vacant land, and of obtaining a patent or conveyance for it, when found, at a certain price (and the operation of his certificate or of the entry on the intendants books cannot possibly be supposed, without any other evidence of contract, to be more extensive or beneficial) he surely ought not, with success, to plead that privilege, against a person who has had a prior survey under a warrant, in consequence of a law, passed since the grant of the certificate, expressly subjecting vacant land in the reserves to be taken by a warrant.

The case before the chancellor is briefly this: Markey returns a survey under a common warrant, and is caveated by Hurst, who has had no survey at all of the land in dispute, but alleges that in the year 1785, he purchased from the intendant a part of the land comprehended in Markey's sur-