

appears that the lease was comprehended, and that, instead of forty one, it contained $46\frac{1}{2}$ acres. The rest is all called vacant land added, to the amount of $179\frac{1}{2}$ acres, at the pleasure of the party, without regarding the courses of the valued land, which appears to have been regularly surveyed, under the name of "Buck's lodge." The certificate of sale expresses, that, if on survey the land should turn out to be more, the surplus should be paid for, and if less, a deduction should be made. It corresponds with the intendant's other certificates of sale, and it is wonderful that the meaning of it should have been construed into a licence to add vacancy at pleasure. Its meaning is nothing more nor less than this:—"The state sells you a tract of leased land, and a tract of valued land; the quantity of both is supposed 101 acres; if there be more, you shall pay for it at the stipulated rate; if less, you shall have a deduction."

It is true, that in some cases, where purchasers have added vacancy, on the supposed licence, and no contest has afterwards taken place, they have obtained patents, on paying &c. But in every case where a person has claimed the vacancy in virtue of a warrant, intended to affect it, and executed accordingly, has the party been allowed a patent, without a correction of his certificate. The matter is too plain for doubt, or controversy: the said Jones, however, has returned a second certificate of his purchased land, made out by the county surveyor, which comprehends (as he says) all the leased land clear of elder surveys, to the amount of 45 acres, and 60 acres of vacancy added, in the whole 105, instead of 101 acres expressed in the certificate of sale.—It appears, from the plat for illustration that, although the quantity of vacancy corresponds with the quantity of valuation land, the survey is made without any regard to the courses of the valuation land (said to be Buck's lodge.)

From what has been said, the chancellor conceives that the matter is brought to a point. Wherever either of Jones's surveys of his purchases interferes with the lawful pretensions of Whitford, under his warrant of resurvey, the said Jones must submit. Wherever Jones's surveys do not interfere with Whitford's lawful pretensions, there can be no ground, *in the present contest*, for refusing Jones the benefit of one or the other of his surveys.

What then are the lawful pretensions of Whitford? By the rule or practice of this office established long before the chancellor's time, the warrant of resurvey entitled Whitford to all vacancy contiguous to the original tract to be resurveyed;—and if all the vacancy he has added to the said original be contiguous, he is entitled to the whole.—But it appears