

ed in the warrant, can, by any device, authorise a second survey, is the question which has never been decided on caveat in this office. It is true that where the same warrant has been applied to two surveys, each of which contained more than the whole quantity expressed in the warrant, and there has been no dispute, a patent has issued on each survey, after the certificates have been fully compounded on: and this practice can neither be productive of wrong to any individual, nor affect the revenue of the state.

But whether, *on caveat*, one warrant shall be permitted to cover two surveys, each of which is equal to, or greater than, the quantity expressed in the warrant, is another question, which, as it is suggested by the circumstances in the present case, it will be proper to decide, before any other case may arise in which it may be material;—and the chancellor is decidedly of opinion that he who claims under a survey made in virtue of a warrant which is applicable, and which has been applied, only to that survey, must have a better pretension than he who claims under a survey made (as it is said) in virtue of a warrant which had before been applied to a survey containing the full quantity, or more than, expressed in the warrant. Let the device of splitting a warrant into two or more parts, and applying each part to a survey containing more than the whole warrant, be used, as it has been to secure lands concerning which there is no dispute. The party who thus obtains a patent has abundant advantage, in obtaining a credit which originally was not intended to be given.

This opinion, however, is not to decide the present case, to which, although it suggested the question, the opinion will be found not strictly to apply.—The case is this. Z P having obtained a special warrant for five acres, in virtue thereof, returns two surveys, one containing  $4\frac{1}{2}$  acres, and the other  $5\frac{1}{4}$  acres. To one certificate the surveyor says he has applied too acres of the said warrant, and to the other he says he has applied 3 acres. Both certificates are dated on the same day, viz. Oct. 17th, 1793.

Two days after this, N P obtains a special warrant of re-survey, under which he returns a certificate, containing an original tract, and likewise the two tracts surveyed as aforesaid for Z P, as two pieces of vacancy contiguous to the original.

Now, the material consideration in this case is this; that if the surveyor had applied  $4\frac{1}{4}$  acres of the warrant to the survey containing that quantity, there would have been left  $\frac{3}{4}$  of an acre, in virtue of which, agreeably to the practice first mentioned, might be secured the parcel containing  $5\frac{1}{4}$  acres.—What the surveyor might have done, to cover surveys made before the date of the warrant under which the