

this account, erroneous, and a patent cannot issue for it as it now stands. So far the caveators succeed. But then, they insist that in correcting the certificate the place of beginning must be retained, and, of course, no land shall be retained except about three acres lying on the north side of the aforesaid Great Fall branch that is, the defendant shall have only about three acres of his original tract and the first vacancy thereto added by the resurvey containing three acres more, although it is manifest from the evidence that the main intent of the resurvey was to take the other vacancies, containing  $62\frac{2}{3}$  acres in addition to the original, which contained 78 acres.

Should the caveators succeed in consequence of the rigorous observance of a rule, the result will be this; the defendant will loose about 125 acres for which he has paid and to which at the time of the survey, the caveators had no pretension whatever, and which the said defendant at the same time might have secured by making two surveys instead of one, provided he had known of the interference and situation of the Great Fall branch, which as appears from the evidence was unknown at that time. Such a result assuredly would not be considered to be consistent with the principles of equity, on which the chancellor is directed to decide all disputes in this office. But the truth is, that no such rule was ever established or even laid down confining the party to his first place of beginning and thereby depriving him of that, which was manifestly the object of his surveys; and the true rule dictated by common sense, is that where a man has in one survey included two distinct unconnected tracts, both of which were equally liable to his warrant, and at the time of the survey not located or affected by the warrant of any other person, the party shall take his election.

In the present case the party elects to take the land lying to the southward of the said Great Fall branch, and it is thereupon adjudged and ordered, that the caveat be and it is hereby ruled good, and that the certificate of Prospect Valley and the certificate of the resurvey thereon called Mount Vernon, be corrected by excluding such part thereof as lies on the north side of the Great Fall branch, and that the surveyor of Montgomery county make the said correction, and return the corrected certificate along with the originals to this office.

THOMAS C. WILCOXEN  
agt.

THOMAS EDMUNDSON, jun. }

*Caveat in the Land-office ;*  
Dec. 9, 1802.

This appears to the chancellor an important case, on account of the principles on which it is to be decided. It is