

the first case of the kind which has occurred under the present government. The defendant by virtue of a common warrant, has had three pieces of vacant uncultivated land included in a certificate of survey. It is on this ground, that he is caveated; the caveator having, since the defendant's compounding on his certificate, taken out a special warrant, and returned a certificate for the said land.

The defendant's counsel admits that, as the certificate is caveated, he cannot have a patent for the three pieces of vacant land: but contends that the certificate ought to be corrected, by excluding the said three pieces, in the same manner as, where the surveyor has run into an elder tract, the certificate is corrected by excluding that part which is contained in the elder tract. The chancellor conceives a wide difference between the cases: whether or not the certificate contains land comprehended in an elder survey, is *generally*, if not always, a matter of doubt. If a certificate should, on account of running into an elder survey, be deemed void, no man would risk the validity of his certificate by taking in land alledged to be comprehended in an elder grant or certificate; and the state might be deprived of the benefit of granting many acres of land which, on a fair enquiry, would be found vacant. But whether or not land is improved or cultivated is known to every person from the information of his sight.

It is said, that the chancellor, in the land office, is to decide on the principles established in the court of chancery. I give this position its utmost force. In chancery, fraud is discouraged to that degree, that, almost in every case, the least ingredient of fraud vitiates all the proceedings in which it is discovered. Is it not a fraud *knowingly* to return under a common warrant vacant cultivated land, and, before the survey, to remove from the land fence rails, which are considered as improvements? Certainly it is.—Well,—but the case of Coale and Garretson, in the court of appeals, is cited. It was the case of a man, viz. of Garretson, obtaining a grant for two separate pieces of land, comprehended in one survey: the circumstance not appearing on the face of the certificate and plat, because part of an old patented tract, which separated the pieces, was contained in the survey, and was not laid down. Garretson having obtained a grant, it is said, the court of appeals determined that he had an equitable as well as legal title. What is that to the present case, when the question is, whether or not the defendant is entitled to a grant under the rules of the land office? There is a wide difference between undoing that which is done, and preventing a thing from being done:—In short, the chancellor conceives the case of Cole and Garretson, even if accurately stated, cannot affect