

the present case. Were it to govern the present case, why did not the counsel contend that, as the defendant had paid caution money for the whole, he should have the whole land, instead of having all which is left after excluding the three pieces?

That clause of the act of Nov. 1781, for opening the land office, which speaks of the chancellor's jurisdiction, is of great importance. As to former certificates and grants the chancellor shall determine according to the former rules and orders: As to future certificates and grants, the chancellor shall determine according to the rules and orders to be established by the governor and the council.

The governor and council, it seems, have laid down no rule applicable to the present case. Is then the old rule, or the dictate of equity to govern? Take either, and it will be found against the defendant. Under the old government, a certificate made out under a common warrant, containing improved cultivated land, was on caveat held void. The dictate of equity, or the general rule of chancery, is that fraud vitiates every thing in which it is found. Let us now consider the case on analogy. Rules, orders, or instructions, direct the surveyor to return an account of improvements.

Before a late act of assembly, the omission of improvements did, on caveat, invariably defeat a certificate, even where a part of the improvements had been returned. Why not say, "let the surveyor correct the certificate by inserting the improvements?" The truth is, that unless a plain intentional violation of a rule or order shall vitiate a certificate, fraud will constantly be practised, to the injury of the state. What right has the party to complain when he acts with his eyes open? Say, that it is the surveyor's fault: This is not likely: But if it be actually the case, the party, viewing the certificate before it is returned, might require the surveyor to correct the error before the return. The party may recover damages against the surveyor, who injures him by violating his own duty. But suppose 100 acres of improved land surveyed by the surveyor under a common warrant, for A B, without his instructions or knowledge.—The certificate is caveated: Shall A B have the land, merely because the surveyor has acted without his instructions? No! he shall not have the land, because it was not liable to be taken, without a special warrant. As to the case of *part* cultivated and part otherwise, the chancellor has already made remarks.

In conformity to ancient rule and practice, in compliance with the established principles of chancery, and in violation of no rule or right, as the chancellor conceives; it is adjudged and ordered, that the caveat of Thomas C. Wilcoxon against Thomas Edmondson be, and it is hereby, ruled good;