

and that no patent issue on the said Edmonson's certificate of Edmondson's beginning; but that each party pay his own costs.

N. B. The certificates contain about 61 acres. There are three pieces of improved land, said in the whole to be about 10 acres. How strange it would be to correct the certificate by excluding the three pieces! Whom would it suit to take them? Would an individual sell lands in such a way? &c. &c. &c.

JOHN MOALE }
 vs } *In the Land-office, July 15th 1805.*
 JAMES CROXALL }

The chancellor has considered this case deliberately, and at length hath fully satisfied himself.

In cases arising on the 12th clause of the act of November 1781, ch. 20, it was the practice or rule of the chancellor's predecessor to dismiss the caveat, suffer the defendant to take a patent, and leave the parties to contend before a jury, unless he was perfectly satisfied that the caveat was well grounded, that is to say, that the land attempted to be taken up as vacancy was originally comprehended in an elder tract, and now left out by the variation of the compass. This practice appeared to the chancellor perfectly right, and therefore he has invariably pursued it. The present case however differs from any that has come before him under the said act. It is probable, from a view of the plats, that the several tracts, between which the vacancies are supposed to exist, and which were taken up at different times, cannot, on account of their different dates, be now run, either with or without allowances of variation, so as not either to interfere with each other, or to leave some very trifling opening between them, of the breadth of a few feet, or yards. No rule has ever yet been established by which variation has been ascertained and allowed. It is true, that commissioners and even some juries have allowed for a variation of one degree for 20 years. But the chancellor has never understood that any rule whatever has been fully *established* in the general court. When on proof of the original or former running of one line, the other lines are corrected so as to vary from the present running 1, 2, 3, or more degrees, this cannot properly be called an allowance, by rule, for the variation of the compass. It is in fact only allowing the proof of actual running to prevail. For if the first line of a tract appears at this day to be 3 degrees different from what it was at the original running, 50, 60 or 70