

matters must be disposed of; and they have presented the principal difficulties in the case.

Shall not this resurvey, made by the vendor, at his own expense, after entering into this contract, enure, in all respects to the benefit of the vendee? Shall the claim of the vendee for an allowance for deficiency be sustained to the full amount, notwithstanding it has been made up, in part, by contiguous vacancy included under the warrant of resurvey? and, shall the vendor be now called on to refund, to the amount of the deficiency, not so made up by contiguous vacancy, after the purchase money has been paid? The answers to these questions must be deduced from the peculiar rules of our law relative to real estate. It does not appear, that these questions have ever before been presented for judicial investigation; the Chancellor is, therefore, without the aid of precedent.

In this case the vendor, by his bond, dated the 23d July, 1791, binds himself to convey to the vendee "the tracts or parcels of land called Fout's Delight, and The Resurvey on Beauty, containing four hundred and twenty-four and an half acres of land, more or less." By a resurvey made in April, 1792, these tracts were found to contain together no more than 384 acres; but, by that resurvey, eighteen acres of contiguous vacancy were included, making, in all, 402 acres in this resurveyed tract which was called "The Reunion," leaving a deficiency of 22½ acres, including the vacancy; and of 40½ acres, if that addition is to be rejected. The claim for an allowance for deficiency was first made by the supplemental bill, filed on the 15th of August, 1821; and, it is there made and designated by a reference to this return on the warrant of resurvey executed by and at the expense of the vendor.

109 * Where lands are sold by metes and bounds, or in a body, by a designated name, number, or lot, without reference to quantify, in such cases, according to the English authorities and our own, no allowance is made for any deficiency; unless on the ground of fraud, or misrepresentation. And where lands are sold by measurement, or by the acre, no mere question as to the deficiency can arise. But where, as in this instance, the specified tract is stated to contain so many acres, more or less, difficulties often arise as to the claim of an allowance for deficiency. The precise meaning of the words "more or less," has been fixed by no decisions; but the better opinion seems to be, that they should be restricted to a reasonable allowance for small errors in surveys, and for variations in instruments. - Something, too, will depend on the proportion the deficiency bears to the whole tract. It seems to be difficult to fix a positive rule. *Townshend v. Stangroom*, 6 Ves. 340; *Winch v. Winchester*, 1 Ves. & Bea. 375; 1 *Pow. Cont.* 375; *Eand Hold. Assis.* 253; *Nelson v. Matthews*, 2 *Hen. & Mun.*