

164; *Duval v. Ross*, 2 *Mun.* 290.(c) But it is considered, that under all circumstances, this is a case in which there is a fair ground for presenting such a claim for deficiency; and therefore it must be investigated and decided.

It has been long settled, that every patent grant for land, from the State to an individual, binds the State to warrant and assure to the grantee, and those who claim under him, that the tract described shall contain the number of acres specified. The remuneration for deficiency is not, however, pecuniary, *Land Hol. Assis.* 481, or made by * refunding the purchase money; but it is made in kind, in other land warrants, or by an authority to **110** take other vacant lands anywhere to the amount of the deficiency. *Land Hol. Assis.* 473. This warranty, or implied covenant, passes with the legal title of the grantee to his assignee, and all those who hold the legal title under him; and is never extinguished until, after the amount of the deficiency having been ascertained, the legal holder has been satisfied by obtaining other land warrants, or has actually included other vacant land equal in quantity to the deficiency. Any legal holder, in order to ascertain the existence and extent of this claim against the State, may, of right, obtain from the land office a warrant of resurvey; and take in any vacant land immediately contiguous to the original tract. The deficiency, thus ascertained, is directly set off, in the land office, against the vacancy included; and, if the vacancy amounts to as much, or to more than the deficiency, the claim against the State is fully satisfied; but if less, then it is only satisfied in part. *Land Hol. Assis.* 319, 468, 480, &c.

(c) *MURDOCK v. BEALL.*—This was a creditor's bill, filed on the 7th of May, 1799, to have the real estate of Samuel Beall, deceased, sold to pay his debts. Sale decreed and made. The trustee reported, that he had sold the tract of land called Exchange, supposed to contain 828½ acres, more or less; that soon after the sale, it was discovered, that Walter Beall, who had conveyed to Samuel Beall, had retained fifty acres, for which he had made an allowance to the purchaser; but, that the purchaser had caused the land to be surveyed, and had discovered, that, in the residue, there was a deficiency of nine and a quarter acres, for which he claimed an allowance. Upon these facts the case was submitted.

HANSON, C., 17th February, 1804.—As the whole of Exchange was intended to be sold, and afterwards a discovery was made, that fifty acres thereof had been retained by Walter Beall, it was proper in the trustee to make the purchaser an allowance for the said fifty acres; because the deficiency was not of quantity, but in Exchange there was a defect of title. But, as to the nine and a quarter acres deficiency in quantity, the Chancellor is clearly of opinion, that the purchaser is not entitled to an allowance for that deficiency; and not being entitled to that allowance, he cannot possibly be entitled to an allowance for the expense to which he has voluntarily put himself to shew the deficiency.