

In these respects this general, but implied warranty in every patent grant from the State, must be regarded as a peculiar, and beneficial incident, and privilege beginning, and associated with the legal title of the original grantee, and following that legal title from him to all others, who claim under him, until it has been separated, and complete satisfaction has been obtained by a holder of the legal title. *Land Hol. Assis.* 153.

In this case, these tracts of land were deficient in quantity, and this incidental claim against the State, and the privilege of including contiguous vacancy, subsisted in full force at the time the contract was entered into between these parties. The vendor stipulated to make a good and legal title to these tracts; tacitly, but clearly, including all incidents and privileges associated with the legal title. The vendor cannot be allowed to withhold any, then subsisting, beneficial incident to the legal title; nor can the vendee be allowed to relieve himself from any burthen or responsibility by rejecting any incident to the title he contracted to receive.

It is one of the chief purposes of a warrant of resurvey, issuing from the land office, to ascertain the existence and extent of this implied warranty; and, where a deficiency exists, to make it up by taking in contiguous vacancy. It is true, that under such a warrant, the party may take in any contiguous vacancy, not only

III * to the amount of the deficiency in the original tract, but to a much greater extent. Whether the vendor can be permitted, considerably, or in any degree, to enlarge the tract of land by a resurvey after the contract of sale is entered into, and can compel the purchaser to take and pay for such addition, is another and a very different question from that under consideration; and one which it will not now be necessary to determine.

But, in this case, the vendor, after ascertaining the deficiency, has supplied it, only in part, by the addition of contiguous vacancy. This mode of making up the deficiency subsisted as an incident to the legal title at the time the contract was entered into by these parties. The vendee, therefore, cannot be now permitted to reject this incident, and claim a deduction for these acres of vacancy, leaving the vendor to hold them as his separate estate. If the vendor were not allowed, in this way, to make up the deficiency, then the vendee would obtain the original tract together with, or divested of this privilege of including these eighteen acres of contiguous vacancy. In the first case, he might obtain them, by means of his legal title, without paying for them; or on the other hand, the vendor might have cast upon him a small inconvenient scrap of land, which, from its situation, would be alike unsaleable and unprofitable, unless in connexion with one or other of the immediately adjacent tracts. But these eighteen acres have been obtained from the State by the vendor as the holder of