

county, taken out by Jonathan Wilson was *caveated* by James Condy and Jacob Markle. 1st, because the lots named in the survey as contiguous are in fact separate and distinct; 2d, because the certificate of survey attempts, contrary to law and practice, to connect lots which are separate by intervening vacancy, and thereby make them contiguous; 3d, because the plat and certificate by failing to gratify the calls of the original patents of these lots create vacancies where in fact none existed; and, 4th, because the certificate includes land already granted. A certificate for "Summit Point," owned by Markle, was *caveated* by Wilson, as was also a certificate for "Sacramento." Upon these several *caveats* the Chancellor delivered the following opinion.]

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THE CHANCELLOR:

It seems to be the undisputed law of the land office, that a patent will not be granted for lands taken up under a warrant of resurvey which are not contiguous. And with regard to the certificate of "Conway," it is quite apparent, that the necessary contiguity has been effected by shortening the lines of some of the original lots. This abridging the lines is not denied, but it is attributed to the mistake of the surveyor and the suggestion is made that if the certificate is sent back for the purpose of correction and the lines are extended to their full length, vacancies will still be found, and the required contiguity shown to exist.

It is also suggested on the part of Mr. Wilson, that he is entitled to abandon a portion of the lots comprehended in his survey and take a patent for such as are contiguous.

This right to abandon that which was not liable to be taken up under his warrant, and take the lands which were liable, can scarcely be disputed. *Hoffman vs. Walker, Landholders' Assistant*, 420. But then not content with this, the same party asks that another question may be kept open and undecided affecting the rights of other parties, for the purpose of ascertaining whether the surveyor did not make the mistake which has been imputed to him.