

thenceforward, as to this claim, the proofs are silent. There has been no offer to return this bond of *Benner's*, or to assign the judgment against him to the vendee. From the lapse of time and all other circumstances, it may be presumed that this debt has been satisfied; or, if not, that it has been owing to the laches of the vendor; and, therefore, in this instance, also, the vendee is entirely discharged from all further responsibility.

Upon the whole, it thus appears, that the entire amount of the purchase money has been paid, or discharged in the manner agreed upon. And here this case might be closed, were it not, that the vendor, since he entered into this contract, has made a resurvey of these tracts of land, and included contiguous vacancy; and, that the vendee claims an allowance for deficiency in quantity. These 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 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 $22\frac{1}{2}$ acres, including the vacancy; and of $40\frac{1}{2}$ 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.