

Where lands are sold by metes and bounds, or in a body, by a designated name, number, or lot, without reference to quantity, 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.^(g) 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 in quantity is not, however, pecuniary,^(h) or made by

^(g) *Townshend v. Stangroom*, 6 Ves. 340; *Winch v. Winchester*, 1 Ves. & Bea. 375; 1 Pow. Cont. 375; *Land Hold. Assis.* 253; *Nelson v. Matthews*, 2 Hen. & Mun. 164; *Duval v. Ross*, 2 Mun. 290.

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 823½ 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.

17th February, 1804.—*HANSON, Chancellor*.—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.

^(h) *Land Hol. Assis.* 481.