

refunding the purchase money; but it is made in kind, in other land warrants, or by an authority to take other vacant lands any where to the amount of the deficiency.(i) 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.(j)

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.(k)

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

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(i) Land Hol. Assis. 473.—(j) Land Hol. Assis. 319, 463, 490, &c.—(k) Land Hol. Assis. 153.