

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 the legal title to the original tracts, by virtue of a privilege incident to that title, and as immediately contiguous to those tracts; they must, therefore, pass from the vendor to the vendee as connected with, and parcel of those tracts; and consequently, these tracts are not, so far, deficient.

As to the residue, or the deficiency of twenty-two and a half acres, it is now too late to claim an allowance for them, after the whole amount of the purchase money has been voluntarily and fully paid. Under all the circumstances of this case, the vendor cannot now be called on to refund any part of the purchase money.

It appears, that the equitable interest which *George Schnertzell* had obtained from the holders of the legal title has been fully and entirely transferred to, and is now vested in *John Hoffman*, one of the plaintiffs. And the representatives of the parties to the original contract, having been all of them made parties to this suit:

*Decreed*, that the defendants, by a good and sufficient deed made, executed, and acknowledged according to law, transfer and