

*incipiens* title against every person who has not before taken some method to secure the same land.(p) It is held, upon common law principles, that the grant relates back to the date of the specification; and, by a kind of *jus postliminii*, the purchaser is deemed to have had a perfect legal title from that period to all intents and purposes whatever.(q) He may maintain an action of trespass for any injury done to the land within that interval of time;(r) and he may, in that interval, if he has paid the whole caution money, obtain a warrant of resurvey, which is only incident to a *legal* title, and cannot be founded upon a mere *equitable* right of any kind.(s) On the death intestate of the holder of such an imperfect legal title, the right descends to his heirs, as real estate, to whom alone the patent can be granted. This doctrine of *relation* is founded upon principles of common law altogether and exclusively.(t) There are, however, some cases in which this *imperfect title*, which precedes the grant, is spoken of as being an *equitable interest*.(u) But that cannot properly be called an *equitable* title, which a court of equity cannot enforce, or have specifically executed. And it would seem strange to call that an equitable title, which, after a grant has issued, all common law courts, upon the common law principle of *relation*, treat as the commencement of a *perfect legal title*. Besides, to speak of an imperfect legal title as an equitable interest, has a tendency to confuse legal distinctions, and to obscure that which is otherwise sufficiently plain and clear.

In reference to the jurisdiction of the Chancellor, in cases of *caveat*, the distinction between *legal* and *equitable* rights, properly so called, is unknown. The true and only difference, as regards his power in such cases, being that which exists between *imperfect* and *perfect* legal titles; those which are merely in *fieri*, and those which are *complete*. The cognizance of all controversies respecting imperfect legal titles derived immediately from the State, belongs exclusively and finally to the Chancellor in his common law capacity as the keeper of the great seal, the affixing of which is essential to the authentication of a patent; which capacity of the Chancellor, as relates to patent grants for *land*, is designated

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(p) Land Ho. Ass. 461.—(q) 3 Blac. Com. 210.—(r) *Chapline v. Harvey*, 3 H. & McH. 396.—(s) Land Ho. Ass. 152, 149, 420, 427, 447, 455.—(t) *Lloyd v. Tilghman*, 1 H. & McH. 85; *Spalding v. Reeder*, 1 H. & McH. 189; *Hath's Lessee v. Polk*, 1 H. & McH. 363; Report of D. Dulany, 1 H. & McH. 553; *Kelly's Lessee v. Greenfield*, 2 H. & McH. 133; *West v. Hughes*, 1 H. & J. 13; *Beall's Lessee v. Beall*, 1 H. & J. 347.—(u) *Howard v. Cromwell*, 4 H. & McH. 329, & 1 H. & J. 118; *Ringgold v. Malott*, 1 H. & J. 317; *Beall's Lessee v. Beall*, 1 H. & J. 348.