

resurvey, by which he included ninety acres of vacancy, making in the whole four hundred and fifty-five acres; which tract, in the certificate of resurvey, is called *Aaron's Addition*. *Aaron Allford* fully compounded for the vacancy; and afterwards died leaving an only child, *Sarah*, his heir; who married *Richard Cooper*, and had issue, *Ezekiel Cooper* and *Sarah Cooper*. After which *Richard Cooper* and wife died; and these lands descended to their two children. *Sarah Cooper* married *Charles Buckmaster*. And on the 10th of January, 1824, *Ezekiel Cooper* and wife, and *Charles Buckmaster* and wife conveyed the tract called *Allford's Fancy*, by a special reference to the patent for its boundaries, to *Henry M. Goodwin*, who, on the 25th of July, 1825, conveyed the same tract, specially describing it, to *William Hughlett*, the petitioner, who by this, his petition, prayed for a patent on the certificate for *Aaron's Addition*.

5th January, 1828.—BLAND, Chancellor. (a)—It is clear, that the right to take out a warrant of resurvey for the purpose of including contiguous vacancy is incident to every legal title to land. But it is an incidental right which belongs to the holder of the legal, not of the equitable title to the estate. If *Aaron Allford* had bound himself to convey *Allford's Fancy* to the petitioner; and had, afterwards, taken advantage of his being the mere legal holder to obtain the contiguous vacancy to the tract he had thus sold; but for some peculiar circumstances, equity would compel him to convey to the purchaser all the land he had thus obtained by virtue of the right incident to the legal title. (b)

Here, however, the holder of the perfect legal title to *Allford's Fancy*, by virtue of the certificate returned and compounded on, has obtained a good, but imperfect title to ninety acres as an addition to that tract. In some respects the title under a mere certificate is considered as equal to a perfect legal title. The land, thus held, descends as realty to the heirs of the deceased holder; and the patent, when called for, issues to them accordingly. A title by certificate is not a mere chattel interest. It is an imperfect legal title, not a mere equitable interest; for, when the patent is obtained, the formal legal title conveyed by it relates back to the date of the certificate, and vests the legal title in the patentee, by relation, from that time. A right to include contiguous vacancy is an incident

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(a) This case was, by an oversight, not inserted in its proper chronological order.—  
 (b) *Hoffman v. Johnson*, 1 Bland, 108; *Cunningham v. Browning*, 1 Bland, 325.