

forbids the recording of certificates when they are ready for patent, although the circumstance of their being subject to caveat until actually patented may be a good *reason* why they should not till then be entered on record: but under the practice of 1684, when land affairs were in the greatest activity, I conceive that it was not only customary but necessary that a certificate should be recorded before a patent was passed on it. I have been somewhat particular upon this point, although it cannot be exactly settled as to time, because it must necessarily have influence in those cases in which courts of justice are required to *presume* patents which do not appear, at least so far as the record of a certificate is proposed as the ground for that presumption.

We have noticed in the early practice the designating of land, intended to be surveyed, by a caveat in the office, and the marking of trees as a still more conclusive location and appropriation of the land until it could be actually surveyed.— It has been observed that these two customs took their rise at a time when the government of the proprietary had been subverted, and that they were therefore not to be considered as among the established usages in land affairs. The right of entering caveats for particular parcels of land was affirmed by an act of Assembly “concerning the rights of Lands” passed in the year 1654 during Cromwell’s protectorship; but this act also declared that, without any application whatever to lord Baltimore or his officers, those who transported themselves to the province had a right to land by virtue of their transportation, and might enter their rights in their several county courts; positions which certainly could bear a test with the charter, however reasonable they might be in themselves: the locations by caveat therefore do not appear to be in use after lord Baltimore got completely reinstated in his rights at the period of the *restoration* of Charles II, but the marking of trees is found to have been occasionally permitted afterwards. The following are examples of these proceedings:

*At a provincial court, held 1655-*

“Michael Brooke enters a caveat for 200 acres of land lying easterly in the Hunting Creeke, and running west into the woods upon the Five Cabbins, now seated according to his marked trees.”

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“For Henry } Five hundred acres of land, being due to  
Coxe, caveat, } him by assignment from capt. John Barriffe,  
rection however, which can be founded on no reason peculiar to the Eastern Shore, would certainly be interpreted as a general one if a question concerning it was to arise.