

JOHN ASHTON } *Caveat in the Land-office, against the*
 agt } *certificate of Hammond's Right,*
 PHILIP HAMMOND } *February 17, 1795.*

The allegation of the caveator is that Hammond's right, surveyed for the defendant as vacancy, is contained within the lines of an ancient patented tract in the seizin of the caveator, called Ayno, granted for 400 acres.

The present case is not that of a man contending that the land attempted to be taken up as vacancy, is comprehended by the *original running* of an ancient grant, tho' now excluded by the variation of the compass. He insists that the present running of the course expressed comprehends all the defendant's pretensions; he rests in the first place on what he denominates a call in his grant, to carry the sixth line far beyond the distance expressed; and, in the next place, he insists that the seventh line shall run the course expressed in defiance of the defendants evidence, produced to shew the former running, and the general reputation concerning the termination of the line.—How far the call *for the line of an elder tract* ought to be gratified has perhaps never been determined; nor perhaps has the point ever been fairly debated or understood. The chancellor conceives the following distinction to be rational:—Wherever there is such a call, and it appears to correspond with the other expressions, and with the general intention of the grant, it shall be gratified, notwithstanding the line is thereby greatly lengthened, and the quantity of land increased: But wherever the other expressions in the grant are such as to induce an opinion that the call was grounded on a mistake relative to the running of the elder tract, the call is to be disregarded, and the party confined to his course and distance. However, in the present case, not only a line of "Whiteshall" is called for, but there is likewise a call for a tree, which is also the boundary of an adjacent grant, describing the very same course. This tree is expressly proved. On the suppositoin of its being the true boundary, a tract of land lying between "Ayno," and "Whiteshall" has been taken up;—possession has been held accordingly; and it is remarkable that, by going to that tree, the sixth line of "Ayno" is made at least 100 perches longer than the distance expressed in the grant. If the caveator, notwithstanding, should insist that both calls may be gratified, viz. that the line may first go to the tree, and then be continued to the line of "Whiteshall," it may be asked "wherefore was the tree called for at all?"—If that indeed be the true construction of the grant, the expression ought to have been this "thence E and by N, by a red oak, to the N. W. line of Whiteshall"--- But who ever heard of such a call in a grant? The fact is,