

5, 1794—no survey having been made under it, and of course, the land not compounded on before the 6th day of July 1795, the caveator was the first and only applicant for a warrant after the expiration of the time allowed for compounding; and Grammar's warrant having issued before the expiration of the time, is entitled to no more consideration than if its date had been cotemporary with Gilpin's warrant. Grammar, however, contends, that as he proceeded according to the records of the office, and the mistake was not in the record, but in the warrant, he ought to prevail. Should this be the case, he would be allowed to profit from the mistake of the register, in a transaction to which he was not a party, and in which he had no interest. Again—the chancellor has intimated that, had Gilpin executed his warrant, he might have compounded on the land, after the date of Grammar's warrant, at any time before the 6th of July 1795. It would be absurd to suppose this and to suppose, at the same time, that Grammar's application was not premature.

Upon the whole, it is adjudged and ordered, that the caveat of Samuel Selby against Frederick Grammar's certificate of a tract of land in Allegany county, called "the Lilley" be, and it is hereby, adjudged and ruled good.

THOMAS JOHNSON }
 vs
 ADAM HAWN } *In the Land-office ; June 18, 1799.*

The caveator objects to the certificate on the ground that the land comprehended in the certificate is contained in an elder grant. This elder grant describes the beginning of its land to be at a particular tree, standing a certain number of perches from the beginning of a line, in each of two other tracts of land, and it besides has several calls.

The caveator contends that the beginning is at a place, far distant from the beginning contended for by the defendant; and, by either of the beginnings, all the calls cannot be gratified.

It appears, that the deputy surveyor who was supposed to have originally surveyed the land has sworn to the beginning insisted on by the caveator: but there is testimony produced to refute or discredit the surveyor's evidence. In short, supposing the chancellor were the proper and sole judge of location, it would be extremely difficult for him to decide on the running of the said elder tract: and it seems extremely uncertain how any tribunal whatever will ascertain the lines. The chancellor conceived that the established rule, in cases of this kind, was too generally known for the caveator to contend against placing the defendant in a situation to have the dis-