

The injury which the caveator alleges may be done to him by the patent, if granted in this case, by preventing his obtaining a patent on his special warrant, does not require consideration; the warrant being subsequent in date, and the caveator having had it in his power to apply for it before.

For the reasons above stated, the chancellor is of opinion that the caveat in this case ought not to be ruled good, and it is accordingly adjudged, ordered, and decreed, that the said caveat be dismissed, but each party to pay his own costs.

LANCELOT WARFIELD }
 vs } *Caveat in the Land-office.*
 JOHN MERRIKIN. }

After hearing on the 12th, the arguments of the counsel on this caveat, and examining the plat, the depositions, and the other papers referred to, the chancellor has in the first place considered how far this case is brought within the rule adopted by the judges of the land office, which has been that, unless the caveator could support his allegation beyond a doubt, the matter should be referred to a jury.—The reason given for this rule has been that an admission of the caveat puts an end to the pretensions of one party, and a dismissal leaves both parties in a condition to have a full and fair trial:—But, this principle does not prevent the ruling a caveat good, where the certificate returned, and other circumstances, shew that the defendant's location is not a just one, so as to shew any vacancy.

The location made by the defendant, of the tract called Scotland, is grounded on the finding of the jury, in 1700;—and the caveator is willing also to rely on that finding, but contends that it should be located without the allowance for variation, and by regarding the expressions;—and it is admitted that the question shall be considered as if the finding of the jury was located by the caveator as he contends it should be.

It would be extending the rule abovementioned to a dangerous length to say that every location set up by a person claiming land as vacancy should create a doubtful question, proper to be left to a jury,—and that the judge of the land office should not judge of a location made contrary to other long established rules;—and there is no rule more certain than that a boundary, or other call, is to be gratified, and that the course and distance, in such case, is to be disregarded.

The patent for the tract called Scotland mentions three boundaries, which are marked on the plat A, B, & C; and the lines on which they are placed correspond with those laid down by the defendant, from C to B, & to A. The patent