in Maryland, and might be barred by limitations and adverse possession, Kelly v. Greenfield, 2 H. & McH. 121, affirmed in Russell v. Baker, 1 H. & J. 71, in which latter case the Lord Proprietary, being tenant in common, was considered to have been ousted by his co-tenant, who claimed the whole land adversely and paid quit-rents thereon which were accepted by his lordship, and to be barred accordingly by adverse possession and lapse of time. This, however, was otherwise as to the State, against whom adversary possession did not avail, Hall v. Gittings, 2 H. & J. 112.[28] And a party in possession was therefore liable to be turned out by another obtaining a patent upon any warrant laid on a vacancy. The rule elsewhere has been, that priority and greater length of possession need only be shewn by a plaintiff in ejectment, where the defendant relies solely on possession of a lesser duration in point of time. But, in Maryland, the rule was always that a plaintiff must negative any outstanding title, and shew in himself the legal title and the right of possession, and, independent of the Act of 1852, ch. 177, sec. 2, he could not establish such legal right in himself without shewing that the land had been granted by the State. That Act (Code, Art. 75, sec 52,) [29] provides that it shall not be necessary for any party to any action to prove that the lands in question have been patented, but that a patent shall be presumed in favor of a party shewing a title otherwise good, as to which see Warner v. Hardy *supra*.

Patents—Land Office.—The Act of 1818, ch. 90, provided, that whenever land should be taken up under a common or special warrant, or a warrant
456 of resurvey, any person might give his *possession in evidence under the general issue, and if he should have held the lands in possession for twenty years before action brought, such possession should be a bar to all right or claim derived from the State under any patent granted on such warrant, but the Act was not to affect titles under warrants laid before the 26 Jan. 1819. The Act of 1849, ch. 424, included escheat warrants under this provision, and forbade the renewal of any such after twelve months. And the provision of these Acts, including also proclamation war-

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[28] **Limitations against State or public.**—Limitations do not run against the state, or the public. Ulman v. Chas. St. Ave. Co., 83 Md. 145; American Bonding Co. v. Mechanics' Bank, 97 Md. 598. So it is settled in Maryland that an *encroachment* on a public highway is a public nuisance which can never ripen into a private right by prescription. Baltimore v. Frick, 82 Md. 77; Ulman v. Chas. St. Ave. Co., 83 Md. 144; Baltimore v. Coates, 85 Md. 534.

When, however, the use of a highway has been totally *abandoned* by the public and private rights have grown up in consequence of such abandonment, an equitable estoppel is created against the public to assert a right to use it. Baldwin v. Trimble, 85 Md. 396; Arey v. Baer, 112 Md. 541.

And in Canton Co. v. Baltimore, 106 Md. 69, it was held that a dedication of land not accepted by the public might be defeated by an adverse possession of the land.

Title to a market stall cannot be acquired against the city by adverse possession. Border Inst. v. Wilcox, 63 Md. 532.

[29] Code 1911, Art. 75, sec. 79.