as that the survey had not been made according to the rules of the land office; or, as in case of an alleged escheat, that the late owner had not died intestate and without heirs as averred by the applicant, *Land Ho. Ass.* 381;(*g*) or if the lands are actually es-

(*g*) AISQUITH *v.* GODMAN.—It appears from the statement of facts agreed on by the parties, that of lot No. 40, in the City of Baltimore, a certain William Nicholson was seized in fee simple on the 20th of June, 1761: and, being so seized, he made his will, and thereby devised it to his niece Elizabeth Connell, in fee tail general, remainder to his brother John Nicholson, of the County of Cumberland, in England, and his heirs: which said John Nicholson never was a citizen of the State of Maryland;—That William Aisquith, the caveator, intermarried with Elizabeth Connell, the devisee, by whom he had issue a son, John Aisquith;—that Elizabeth Aisquith, died on the first of January, 1782, leaving her husband, the present caveator, in possession of the lot, and their only child, John Aisquith, who died intestate and without issue on the 1st of July, 1785. It is further stated, that the caveator took out a warrant of escheat on the 15th of October, 1785, to affect said lot, and returned a certificate thereof, but did not compound thereon: and the caveatee, Samuel Godman, on the 3rd of June, 1796, proclamated the said certificate, and returned his certificate thereof to the office on the 29th of May, 1797; on which the said Aisquith entered a caveat against a patent issuing thereon; alleging, that by the laws of this country, the said lot is not liable to be affected by an escheat warrant, and is not escheatable.

HANSON, C., 24th May, 1798.—The said caveat being submitted to the Chancellor, on a statement of facts, signed by the counsel on each side, the said statement, and the certificate, and all other papers thereto relative, were by the Chancellor read and considered.

It appears to him, that the facts contained in that statement are conclusive for the caveator. It is stated, that Elizabeth, the wife of the caveator, being tenant in tail of the land in question, died in 1782, leaving one child only, a son, who died without issue in 1785; that after her death a warrant of escheat was taken out by the caveator, who returned a certificate: and that, on his failing to compound, the defendant took out a warrant of proclamation, and returned the certificate which is caveated.

There is no rule in this office better established than this,—that the validity of a proclamation warrant must depend on the warrant, under which the land intended to be affected by the proclamation warrant, was surveyed. In the present case, it is clear, from the statement, that the escheat warrant, under which the survey, proclamated by the defendant, was made, was invalid. The Act of November, 1781, ch. 20, sec. 8, expressly says, that no escheat warrant shall be good, unless the owner (that is, the person on whose death it issued) hath died seized in fee simple. But here the warrant recites the dying seized of the aforesaid Elizabeth Aisquith as the ground of the escheat; and it appears from the defendant's own shewing, that she did not die seized in fee simple; but that the land descended from her to her son, as issue in tail, and no attempt is made to show, that the land was otherwise liable to escheat.

The admission of the parties, which is at least equal to the result of a trial at law, has precluded a point, which might perhaps have been otherwise made.

Upon the whole, it is adjudged, and ordered, that the caveat of William Aisquith against Samuel Godman's certificate of lot No. 40, in the City of