

ceptions including a solicitor's fee to be taxed by the register. 1820, ch. 161, s. 8.

And it is further ordered, that the said plea of the defendant be overruled; and that the defendant pay unto the plaintiffs, the sum of £5 current money, and the costs of the said plea to be taxed by the register, and be in contempt until the said sum of money and costs be fully paid. 1785, ch. 72, s. 25.

And it is further ordered, that the defendant make a full and sufficient answer to the bill of complaint on or before the 20th day of February next.

The defendant answered as required by this order, to which the plaintiffs having put in a general replication; and commissions having been issued and returned with evidence taken under them, the case was, by consent, referred to the auditor, with directions to state accounts; and notice having been given by advertisement in the newspapers, to the creditors of James Clarke, deceased, to file the vouchers of their claims, the auditor made a report accordingly, which was confirmed, &c.

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\* THE RAILROAD *v.* HOYE.

## LAND WARRANT.—CAVEAT.

All common warrants must be lodged with the principal surveyor, and entered in the manner prescribed; otherwise surveys made under them, will be deemed void as against others regularly made.—No positive rule, or law can be suffered to be made the instrument of fraud.—Where there is a material difference between the location in the surveyor's book, and the actual survey, the latter is taken as a virtual abandonment of the former.—In caveat cases, there being no appeal, it is usual, where there is a reasonable doubt, to let the patent go, so as thereby, in effect, to give the parties the benefit of an appeal. (a)

THIS case arose in the land office upon cross-caveats, the one by The Baltimore and Ohio Railroad Company, as the holders of a certificate of a tract of land, called Clara Fisher, against the issuing of a patent on the certificate for the tract of land, called River's Bend; and the other by The Chesapeake and Ohio Canal Company, as the assignee of a certificate obtained by William W. Hoyer, of the tract of land, called River's Bend, against the issuing of a patent on the certificate of the tract of land, called Clara Fisher.

It appears, that about the 23d of May, 1828, the surveyor of Allegany County, was requested to attend on the Potomac River.

(a) Approved in *Chapman v. Hoskins*, 2 Md. Ch. 496.