McH. 540. In this instance, however, he improved upon and filled up land which was, confessedly, not an extension of his own lot, but a part of Gay street. It is, therefore, perfectly clear, that no right could have been acquired to this strip of land by John Smith, or any one else, under this Act of Assembly.

This Act of the Provincial Legislature had prescribed a mode whereby the owners of lots in Baltimore might acquire a title to portions of the land covered by the navigable waters of the basin without applying to the land office. But, according to the English law, the king can at present make no grant in derogation of the rights of navigation and fishery; *Blundell* v. *Catterall*, 7 *Com. Law Rep.* 108; in which respect also the Lord Proprietary had been expressly restrained by his charter; *Chart. of Maryland*, *s.* 4 *and* 16; 13 *Niles' Reg.* 13; and, as it would seem, under a sense of that restriction, by one of his instructions, he had directed his surveyors, that, in surveying old tracts, whereof part might be found to lie in the water, to be careful in certifying whether it had been washed away, or had been an error in the original survey. *Land Ho. Assis.* 289. From which, and the proceedings in the land office, an opinion seems to have been entertained by those who might be presumed to have been sufficiently well informed of the law of the office, that here as in Virginia, *Mead* v. *Haynes*, 3 *Rand.* 36, a patent gave title, at most, no further than to low water mark; 2 *Hen. Virg. Stat.* 456; 1 *Hazard's State Papers*, 488; and that no land, covered by any navigable tide-water, could be made the subject of a patent from the land office of Maryland. *Land Ho. Assis.* 148; *Lord Proprietary* v. *Jennings*, 1 *H. & McH.* 95; *Smith* v. *The State*, 2 *H. & McH.* 251. (*e*) Upon a more careful consideration of the whole subject, however, it has been finally settled, that the bed of any of the navigable waters of the State

(*e*) RITCHIE *v.* SAMPLE.—KILTY, C., 10th July, 1816.—This caveat came on to be heard in the presence of the parties and by counsel for the defendant. It appears to be a case of considerable importance in its principles, and it would have been desirable to have heard counsel on the caveator's side also, so that the propriety of granting a patent, in such a case, might have been more fully examined.

I am, however, of opinion, that the defendant is not entitled to a patent, as the certificate stands, it being in express terms, for a tract or parcel of the Susquehanna River, comprehending a number of small islands. And the land covered by the water cannot be called grantable land; though possibly islands may have been taken up together, between which the water sometimes flows. It cannot be certainly known what effect a grant of the ten and a quarter acres would have on the river and the fisheries. And it is to be observed also, that, under a patent, the defendant would not be put to a suit to obtain possession, as there would be no person to bring suit against.

The attempt by Ritchie to take up the same land is not conclusive against him, as to the right; because he might have been caveated also; neither is his want of interest, if he has none, an objection, as it is a question involv-