may be granted, and will pass if distinctly comprehended by the terms of an ordinary patent, issuing from the land office; subject only to the then existing public uses of navigation, fishery, &c.; which cannot be hindered or impaired by the patentee, or those claiming under him. *Browne* v. *Kennedy*, 5 *H. & J.* 195; 13 *Niles' Reg.* 225; 1833, ch. 254, s. 7. *And, by a late Act of the Legislature, it is declared, that individuals may locate and **469** obtain an exclusive title to oyster-beds, in any navigable waters, in the manner therein prescribed, without applying to the land office. 1829, ch. 87; *Scratton* v. *Brown*, 10 *Com. Law Rep.* 385; *Attorney-General* v. *Burridge*, 6 *Exch. Rep.* 354. And, as it would seem, the General Assembly may, for the benefit of the public, grant to an individual any navigable water together with the land which it covers. 1826, ch. 212; 1827, ch. 33; 1828, ch. 54.

At an early period an obscure and unsettled notion seems to have prevailed; that the owners of the uplands had a sort of inchoate or pre-emptive right to the contiguous marshes, lying between their uplands and the shores of the tide. *Land Ho. Assis.* 147, 157. And such marsh was, by the land law of 1699, declared to belong absolutely to the land to which it was adjacent; *Land Ho. Assis. Append.* 9; but, that law has been long since repealed, and I find nothing which shews, that the owner of a tract adjoining navigable water could claim any sort of title to any part of the land covered by the tide beyond low water mark; because of its being immediately adjacent to the land held by him. (*f*)

---

ing the propriety of a grant, and the interest of the public. But the defendant may, on application, have an order to caveat his certificate.

FOWLER *v.* GOODWIN.—KILTY, C., 19th May, 1809.—The Chancellor in his decision and order in this case, (1 Bland, 327,) noticed the grounds on which they had been supported and opposed in the argument before him.

The surveys which were afterwards made at the instance of the caveator, were laid before him on the submission, without any explanation or further argument. And he perceived nothing in them to alter the main principle on which he decided.

It has since been suggested by the caveator, that a large part of the survey, number one, lies in the water of Bell's Cove, as appears by the plot and explanations, and the deposition of Charles Stewart. Whereupon, patents were directed to be issued in the other cases only—meaning number one.

The defendant, if he is desirous of obtaining a patent on that survey, will have to apply in writing for an order of correction for the purpose of excluding the part so lying in the water, or for such other order as he may think necessary. And any order for correction, or any other purpose that may be wanted by the caveator, must likewise be applied for in writing.

(*f*) But a fee simple owner may extend a wharf into a river so as he does not thereby injure the navigation or fishery; 1835, ch. 168.

HYDE'S CASE.—To His Excellency Robert Eden, Esquire, and the Honorable Daniel Dulany and John Morton Jordan, Esquires, commissioners for the sale of his lordship's lands.