Where a party and those under whom he claims have held for nearly a century, uninterrupted and unmixed possession of lands, the title founded on this possession is impregnable against any title which the state can grant, as is conclusively shown by the acts of 1818, ch. 90, and 1849, ch. 424.

Where a person takes out a warrant for a particular parcel of land, as vacant land, and fails to proceed according to the rules of the land office to perfect his title under the warrant, he will be regarded as abandoning his title under the warrant; but he does not thereby surrender, or waive any title to the same land he may have previously possessed.

If the patentee of lands covered by navigable water should by any act obstruct the navigation, or interfere with the right of fishery, he will be held responsible for such act in the appropriate tribunal, and his patent will afford him no protection.

The land for which a grant was sought in this case was covered by navigable water, and so situated that in case the waters should recede, the rights of a riparian proprietor would attach. Under these circumstances, a grant was refused upon the ground, that it could confer no substantial rights, and its only effect would be to tempt the grantee into a contest with the riparian owner, or to interfere with the public right of fishery and navigation which the state can neither destroy nor impair.

The general rule of the land office is, in doubtful cases, to let the patent issue, because the decision of the Chancellor on the *caveat* being final, if the patent be refused, the party applying for it is concluded; whereas, if it be granted, the question may afterwards be brought before a court of law or equity by an action of ejectment or a *fieri facias*, and the benefit of an appeal be thus secured.

But, if from the nature and circumstances of the case, the decision of the Chancellor upon the *caveat* must be final either way; or if there is no ready or convenient mode of bringing the question, decided by him, before a court of law or equity, so as to subject his judgment to the revision of a superior tribunal, he must decide the case upon the best judgment he can form, and the above rule is inapplicable.

In this case, so long as the land is covered with water, which may be for an indefinite period, no mode exists by which, in case a patent should issue, the question of its validity could be brought before a court of law or equity. An action of ejectment could not be brought, because neither party would have any possessory right thereto, and a *scire facias* would not lie to vacate the patent in chancery, because there could be no pretence that there was either fraud or surprise, or undue advantage taken in procuring it.

In the absence of positive law upon the subject, or when the law of the land office does not prescribe the rule, the general principles of equity furnish the rule of the decisions in this court.

[This case came before the Chancellor as judge of the land office, upon a *caveat* to a certificate for "Hoskins' Island," filed by Pearson Chapman, the caveator, on the 23rd of August, 1851.