is covered by the navigable waters of the river, it is not grantable, or if grantable, it must be subject to the *jus publicum*, which the state has no power to impair, and that if hereafter the waters should recede from the shore, or there should be any increase of the land from alluvion, his rights as riparian proprietor attach to it. But until then, and so long as the waters flow over the land, which may be for an indefinite period, no mode exists by which the question can be brought before a court of law, and it is not perceived, upon what ground the patent can be called in question in a court of equity because there could be no pretence that there was either fraud, surprise, or undue advantage taken in procuring it. It would present a case, therefore, in which the state would grant a patent, which would confer upon the grantee no valuable right, but which would hang like an incubus over the rights of another person, without giving that person an opportunity of removing it. Such a course surely can find no warrant in the principles of equity, which furnish the rule of decisions in this court, in the absence of positive law upon the subject, or when the law of the land office does not prescribe the rule. *Cunningham* vs. *Browning*, 1 *Bland*, 326; *The Rail Road* vs. *Hoye*, 2 *Bland*, 263.

The case of *John M. Carpenter* vs. *Mandus*, decided by the late Chancellor, in the land office, in 1845, has been cited as conclusive in favor of the right of the caveatee in this case. But it appears to me distinguishable from it in several material particulars. In the first place, the land for which the patent issued, was in some states of the tide, above the water. That it was an island, and the depositions taken in that case, show that improvements were made upon it by the caveatees, and there was no pretence, that by making these improvements, they interfered with the rights of navigation and fishing. And in the next place, Mr. Carpenter, the caveator, whose land lay on the Virginia side of the river, from which the island was separated by its navigable waters, had and could have no claim to it, as riparian proprietor. That case, therefore, is not like the present.

Upon the whole case, therefore, my opinion is, that no patent