GEORGE SMITH, EXC'R OF JOHN HOYE
vs.
NELSON BAKER.
AND
CHARLES OLIVER
vs.
THOMAS PERRY.

LAND OFFICE, 19TH OF MARCH, 1851.

[PRACTICE IN THE LAND OFFICE.]

As a general rule, no patent will issue for any land for which a patent has been previously granted so long as such patent remains in force, and exceptions to this rule should be admitted with much caution.

Escheat land must be taken up by a warrant of escheat, and if under such a warrant it is included as vacancy the title does not pass to the patentee but remains in the state.

Where a party takes up escheatable lands as vacancy, and obtains a patent therefor, the title does not pass, and such lands are liable to be granted under an escheat warrant, notwithstanding the pre-existing patent.

[Certificates upon certain escheat warrants were caveated in these cases upon the ground that certain lots included in them had previously been granted to the caveators, and which they had taken up as vacancy. These *caveats* were resisted upon the ground that the title to such lots never passed to the caveators by their patents, but still remained in the state, and were, therefore, liable to be taken up by the caveatees under their escheat warrants. Upon this question, the Chancellor delivered the following opinion:

THE CHANCELLOR:

It is unquestionably a general and well established rule of the land office, that no patent shall be issued for any land for which a patent had been previously granted, so long as such patent remains in force; and it is equally undeniable that exceptions to this general rule should be admitted with much caution. But notwithstanding this is the acknowledged principle, I feel constrained, in deference to the decision of the Court of Appeals in the case of *Lee* vs. *Hoye*, 1 *Gill*, 188, to consider these cases either as exceptions to the rule, or as not