son who died seized was indebted to the *caveator*, and others who were entitled to have the lands sold, and the proceeds applied in

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be affected by the proclamation warrant, was surveyed. In the present case, it is clear, from the statement, that the escheat warrant, under which the survey, proclamated by the defendant, was made, was invalid. The act of November, 1781, ch. 20, sec. 8, expressly says, that no escheat warrant shall be good, unless the owner (that is, the person on whose death it issued) hath died seized in *fee simple*. But here the warrant recites the dying seized of the aforesaid Elizabeth Aisquith as the ground of the escheat; and it appears from the defendant's own shewing, that she did not die seized in fee simple; but that the land descended from her to her son, as issue in tail, and no attempt is made to show, that the land was otherwise liable to escheat.

The admission of the parties, which is at least equal to the result of a trial at law, has precluded a point, which might perhaps have been otherwise made.

Upon the whole, it is adjudged, and ordered, that the *caveat* of William Aisquith against Samuel Godman's certificate of lot No. 40, in the city of Baltimore, be, and it is hereby declared to be good, but that each party shall bear his own costs.

HAMMOND, IN BEHALF OF THE BALTIMORE COMPANY *v.* GODMAN.—*28th December*, 1799.—HANSON, *Chancellor*.—The caveator having taken out a *subpœna* from chancery, for the defendant to appear here on this day, to answer the said *caveat;* and the defendant appearing, as he alleges, in consequence of the service on him of the said *subpœna*, which is by him produced, there was presented to the Chancellor in behalf of the said caveator, and as the support of his *caveat*, a deed from Daniel Nicholson, for conveying to the company aforesaid the land in question. In the said deed, Daniel Nicholson is recited to be the heir of John Nicholson, the patentee of the said land, on whose supposed dying seized without heirs, the escheat warrant in this case was obtained by the defendant. No proof, except the said recital (which cannot operate otherwise than against the grantor, and those claiming under him,) is offered, to prove that the said land actually descended from the patentee to the said Daniel Nicholson, or that the said patentee ever conveyed or devised the said land to any person whatever, or that the said patentee has left any person capable of taking as his heir.

On a certificate, returned to this office, in consequence of an escheat warrant, it is the settled rule and practice, founded on the plain principle of benefit and convenience to the State, and on common sense, that the caveator of the certificate shall shew a title in himself, or in some other person. If he cannot do this, why should not the person, who applies for the land as escheat, and is willing to pay the State accordingly, be allowed to take a patent. The State assuredly is interested in, or at least cannot suffer from permitting him to take it as escheat, on the prescribed terms. He alone incurs a risk; and the patent, which he obtains, is not to invalidate, or affect, the right of any other person. The patent puts him in a condition fairly to contest the question with any person, who claims the land, under a superior title; and it is certainly nothing more than right, that the title be fairly tried in ejectment. Whatever title the aforesaid company has in the land, it will not be affected by a patent to the defendant.

The Chancellor makes these remarks, because he conceives it probable, that the practice and rules of this office may not be generally understood.

On the whole, it is adjudged and ordered, that the *caveat* of William Hammond against Samuel Godman's certificate of a tract of land, called Nicholson's Delight Rectified, be, and it is hereby declared to be, dismissed; and that the said caveator pay to the defendant, Samuel Godman, all costs, by him incurred in defence of the *caveat* aforesaid.