

satisfaction of their claims.(*m*) But the most common ground of *caveat* is, that the lands specified in the certificate on which the patent is asked, are not vacant; but are, in whole or in part, included in an elder warrant, entry, survey, or patent.(*n*) And, wherever the same land is contained in the certificates of both parties to a *caveat*, it is considered, that each of the parties has *caveated* his antagonist.(*o*)

The method of bringing a controversy, instituted by a *caveat*, to a hearing appears to have been taken from that pursued in England; and was always, from a very early period of the provincial government, essentially the same as at present.(*p*) On a *caveat* being entered, both parties may be considered as actors; for, if called for, by either party, an order may be passed appointing a day for hearing; but no *caveat* can be dismissed without hearing, or giving the parties an opportunity of being heard.(*q*) After a party has thus obtained an order appointing a day for hearing, a *subpœna* is issued from the chancery office under the great seal, as formerly, to summon the opposite party to appear before the Chancellor to maintain, or to answer the *caveat*. And *subpœnas* may, in like manner, be issued to summon witnesses to testify.(*r*) If required, the parties may, by the same or a separate order, obtain authority to take the depositions of witnesses before any justice of the peace on giving notice as usual, and also, a direction to the surveyor of the county, or some other impartial person to survey the lands, and lay down the conflicting pretensions of the parties; and the surveyor may summon witnesses to give evidence on the survey.(*s*) Upon the return of all which, on the day appointed, the arguments of the parties are received by themselves, or their attorneys either orally or in writing; unless before, or on that day, further time be allowed for the hearing, of which the party obtaining the order must give his antagonist notice.(*t*)

The applicant for the patent must make out his case by shewing himself entitled to a patent for the tract of land he has caused to be designated in his warrant, his entry on the surveyor's book, or by his certificate; and thus, in general, holding the affirmative, he opens and concludes the argument.(*u*) After which the case is

(*m*) 1785, ch. 78.—(*n*) Land Ho. Ass. 83; *West v. Hughes*, 1 H. & J. 9.
(*o*) *West v. Hughes*, 1 H. & J. 10.—(*p*) Land Ho. Ass. 73, 83.—(*q*) *Garretson v. Cole*, 1 H. & J. 374; April 1782, ch. 38, s. 8.—(*r*) Land Ho. Ass. 331, 488; April 1782, ch. 33, s. 11.—(*s*) Land Ho. Ass. 426, 458; 1789, ch. 35, s. 6.—(*t*) Land Ho. Ass. 459.—(*u*) Land Ho. Ass. 453.