

These claimants found their prayer for patents upon the facts, that the state had never, at any time, either by a grant from the Land Office, or, in any other legal manner, parted with its right of soil, in the land in question to any one; and that it is such a piece of grantable land for which they now may; or any one else might have obtained a patent, according to the rules of the Land Office, upon payment of the composition money.

On the other hand the *caveators* contend, that no patents can be allowed to issue; because the strip of land in question was a public wharf on which they, during many years, had charged and collected wharfage; and the right of soil in all such wharves had been virtually vested in them by the act which gives them the right to charge and collect wharfage; (a) since to give all the uses of land is, in effect, to give the land itself. And also because, even supposing no right had been vested in them by that act of Assembly; yet it was sufficient to prevent the issuing of a patent, for them to shew, that the state had previously parted with its right of soil to any one else; or that this ground was not the subject of a grant from the Land Office. To shew which they urged, that this ground was an extension, not of any land belonging to *John Smith*, or those claiming under him, but of a part of Gay street; and consequently belonged as a rightful incident to the patentee of *Cole's Harbour*, or those claiming under him; who alone were the owners of the ground over which Gay street passed, and the incidents and appurtenants thereto. Or, if, indeed, the right of soil in this strip of land had not accrued to and vested in those holding under the patent for *Cole's Harbour*, as a legal incident of their title; yet, that the ground in question, in its present condition, charged as it was with a public use, was not the proper subject of a grant from the Land Office.

The Land Office has always been, as it now is, the general market in which all public lands have been offered for sale; and into which any one capable of holding real estate might come and purchase according to the prescribed rules and terms of sale. This office, so peculiar in its nature, evidently originated from the circumstance of the right of soil of the whole country having been vested exclusively in the Lord Proprietary as a part of his private estate; and from the whole territory being at that time vacant, and held by tribes of savages in their national capacities, and not as

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(a) 1827, ch. 162.