

From which it necessarily follows, that if a public street or road passes over any land belonging to the state, the patentee of such land can only take subject to such right of way. A wharf, in a public port, is, as to this matter, governed by the same general principles of law. The use of a wharf, like that of a road or a navigable river, may belong to the public, or it may be held entirely separate from the soil itself, upon which the wharf has been built. And, consequently, a grant of the state's title to the land cannot, in any manner, affect a pre-existing right to the use of the wharf any more than a grant of the bed of a navigable river, or of the land over which a road passes, can affect the previously vested usufructuary interest of the public, or of any individual. (t)

And, therefore, although it is in general true, that it is enough to prevent the issuing of a patent, for the *caveator* to shew an outstanding legal title any where, not belonging to the state; (u) yet as no such title has been shewn here, I am clearly of opinion, that a patent may well issue for this strip of land; because the grantee can only take it, as it is, subject to all the uses with which it may have been previously charged.

Whereupon it is *Decreed*, That the said *caveat* of *The Mayor and City Council of Baltimore*, against the said certificate of *Isaac McKim, &c.*, be and the same is hereby set aside and overruled with costs, to be taxed by the register.

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#### HUGHLETT'S CASE.

A right to take out a warrant of resurvey is an incident only of a *legal* title derived from a patent, or of an imperfect legal title under a certificate compounded on.— Where the holder of a tract of land by a legal title, by a warrant of resurvey, takes in some contiguous vacancy, and then makes sale of the original tract by its name and description, as the vacancy embraced by the certificate, under the warrant of resurvey, does not thereby pass to the purchaser, he cannot obtain a patent upon such certificate of resurvey.

THIS case arose in the Land Office on a petition by *William Hughlett*, for a patent. It appeared, that *Aaron Allford*, holding a patent for a tract of land containing three hundred and sixty-five acres, by the name of *Allford's Fancy*, had obtained a warrant of

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(t) *Godtitle v. Alker*, 1 Burr, 143.—(u) *Hammond v. Godman*, 1 Bland, 318, note.