

land called Bishop's contrivance, the courses of which correspond with those in the paper produced as signed by Calder, but in which boundaries are mentioned which are not contained in the said paper.

It is not necessary for the chancellor to express his opinion as to the question of interest in the caveator, as his case falls within other rules which are considered to be firmly established.

It is a rule to refer the parties to a jury trial in all cases where a caveat, instituted on the ground of interference with a patented tract, is not clearly and satisfactorily supported: the same rule, or nearly the same, has been laid down in other cases, as follows;—that unless the caveator who alleges that the land is contained in his grant can support his allegation beyond doubt the matter shall be referred to a jury;—and that inasmuch as the admission of the caveat puts an end to the pretensions of one party, and a dismissal leaves both parties in a condition to have a fair and full trial by jury the caveat shall not be ruled good unless the chancellor shall be thoroughly satisfied that the land has been already patented.

It has also been the practice not to decide on litigated points of law, which after such decision might in any way come before the judges of law: and where, with respect to location, questions of law are blended with questions of fact, they are most proper to be decided by a court of law.

The chancellor is not satisfied that the land deeded to the caveator is properly located; or that a deed was the proper conveyance; or as to the evidence on which the location stated in the deed was founded;—or with the evidence produced to prove the running as contained in the deed.—There is no proof that the land, when sold by the intendant, was described by metes and bounds, and when the caveator produced his deed, it was incumbent upon him to be secure in the location expressed therein, because it might have been made certain, if it existed by a survey returned to the land office.

It is urged by the caveator that the location given to Bishop's contrivance by the defendant is fictitious, and fraudulent, as tending to evince a belief that there are two doubtful locations:—but, if so intended, it could not answer the purpose, as no evidence is produced in support of it, and if the defendant is right in his objections, it could not have been located with certainty by him.

It appears to be used merely as a counter-location, to put the caveator upon the proof of his; though the necessity of it, in that view, may at least be doubtful, as it has been considered as a principle established that, in a caveat, the defendant must succeed of course unless affirmative evidence is produced by the caveator.