cheatable, that the person who died seized was indebted to the caveator, and others who were entitled to have the lands sold, and the proceeds applied in * satisfaction of their claims.
319 1785, ch. 78. 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. *Land Ho. Ass.* 83; *West* v. *Hughes*, 1 *H. & J.* 9. 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. *West* v. *Hughes*, 1 *H. & J.* 10.

The method of bringing a controversy, instituted by a caveat, to a hearing appears to have been taken from that pursued in Eng-

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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.—HANSON, C., 28th December, 1799.—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.