

It is said, there are some instances to be found, within the early periods of the Provincial Government, in which controversies instituted by caveat have been tried in the Courts of common law. *Land Ho. Ass.* 84, note; *Noland v. Cromwell*, 4 *Mun.* 160. In proceeding by *scire facias* in Chancery to repeal letters patent, where an issue of fact is joined between the parties, as the Chancellor cannot call a jury before him, the case is sent to a Court of common law for the purpose of obtaining the verdict of a jury upon it. 1 *Mad. Chan.* 4. And so, in the instances alluded to, it might formerly have been the practice here in cases of caveat, as on a *scire facias*, to have the facts found by a jury convened in a Court of common law. But however that may have been, it is certain, that no such practice appears to have ever prevailed in England, and that here, all caveat cases are now exclusively and finally determined by the Chancellor, from whose decision there never was, nor is at the present time any appeal allowed. *Land Ho. Ass.* 388, 409, 410, 415, 418, 424. But, although there be no appeal properly so-called; yet the party, if refused a patent, might have obtained redress from the sovereign, and, in that respect, unlimited discretion of the Lord Proprietary; or he may at present obtain it from the General Assembly of the State: or if the patent should be granted, the caveator is not concluded by it, for he may have it repealed by information or *scire facias* in Chancery, or nullify its operation in an action at common law. November, 1781, ch. 20, s. 13; *Carrill's Lessee v. Griffith*, 1 *H. & McH.* 316; *Report of D. Dulany*,

**321** 1 *H. & McH.* 554. So that in either alternative of \* putting or withholding the great seal, a direct appeal, in caveat cases, is thus rendered unnecessary; and, as regards the rights of the State, nugatory if not entirely improper. *Land Ho. Ass.* 496.

When a patent has been finally authenticated, by having had the great seal affixed to it, there can be no proceedings in the land office, by caveat, in relation to it, the Chancellor's legal jurisdiction in that form, as keeper of the great seal, having been thus entirely cut off; *Land Ho. Ass.* 495; except in the case of a patent obtained in secret trust for a surveyor. 1789, ch. 35, s. 2. After a patent has been thus finally passed, it is, before its being delivered, recorded together with the certificate, assignment, petition, and order on which it was granted. *Land Ho. Ass.* 495. But it must be recollected, that all cases of caveat on the Eastern Shore are there brought before the Judge of the land office for the Eastern Shore, from whose judgment there is an appeal allowed to the Chancellor. 1795, ch. 61. (*h*)

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(*h*) *WILLING v. WRIGHT*.—HANSON, C. 25th May, 1802.—This is the case of an appeal to the Chancellor from the decision of the Judge of the Land Office of the Eastern Shore. The Act of Assembly, creating the place of the said Judge, and giving an appeal from his decision, not having directed in what manner the appeal shall be prosecuted; but a transcript from the regis-