

derived entirely from those of England with only such modifications here as the circumstances of the country required.

But by an Act of Assembly touching the taking up of land, passed during the Government of the first Lord Proprietary, it was * among other things declared, that every one claiming title to any land in certain to be holden of his lordship, may de- **324**
mand his claim to be entered upon record, and such entry shall bar all ensuing grants of the same land till the claim be tried. 1642, ch. 51; *Land Ho. Ass.* 248. This legislative provision may probably have been the suggestion from which special warrants arose; and it is also not unlikely, that it gave rise to a practice, which was introduced not long after, of designating the land intended to be surveyed by a caveat in the office, and the marking of trees as a still more conclusive location and appropriation of the land until it could be actually surveyed. But this mode of designating lands by caveat endured but a short time, and is now entirely obsolete. *Land Ho. Ass.* 215. A caveat against the emanation of a patent, it will be recollected, has always been regarded as, in fact, the commencement of a judicial controversy; whereas this caveat in the office was nothing more than a warning to all persons not to take up the lands therein described; it was in truth no more than a special entry of the party's claim upon record, like that made in a special warrant, or in a surveyor's book; and had no analogy whatever to a caveat in Chancery. It may also be well

warrant, however distant they may be from the land described in the special warrant.

It appears then to the Chancellor, that the Judge's direction to exclude the vacancy not contiguous to the land, mentioned in the special warrant, is wrong; and that Coleston is entitled to a patent for every part of the land, included as vacancy in his certificate, when certificates of the several parts shall be returned, and

It is accordingly adjudged and ordered, that the transcript of the record in this case be returned to the aforesaid Judge, and that he be and is hereby directed to proceed, and to direct proceedings for carrying into effect his decision for returning as many separate certificates of the vacancy, surveyed for the defendant, James Coleston, as there appear to be distinct pieces of vacancy, in the certificate of "Guardian's Neglect."

The Chancellor's decision, or rather his declaration of the rules of the Land Office is simply as follows:—whatever may be done by a common warrant, may be affected by a special warrant of vacant cultivation. It makes no difference whether or not the survey under a special warrant includes part of the land designated by the special warrant. In fact the important difference between the two warrants is, that the special warrant, before survey, affects the land accurately described in it. The common warrant affects no land, until it is surveyed, or located with the surveyor. When a certificate has returned two or more distinct tracts, each having a certain beginning, the surveyor is directed to return several distinct certificates on each of which a patent is to be obtained.

As to costs, they are left to the discretion of the Judge.