

It is urged, however, that the owner of "Craney Island" has no right of exclusive fishing in these waters, and this is certainly true. But Mr. Hoskins does not require a patent from the state, to secure him in the privilege of participating in this right. It exists independently of patent, and may be enjoyed by him in common with other citizens.

Again, the counsel for Mr. Hoskins call to their aid the rule of the land office, that in doubtful cases it is usual to let the patent issue. This is believed to be the general rule, because as the decision of the Chancellor, on a *caveat*, is final, without appeal, if he refuses the patent, the party applying for it is concluded; whereas, if the question can be left open after the patent has issued, so as to be brought before a court of law, in an action of ejectment, or in some other way, or before a Court of Chancery by a *scire facias*, to vacate the patent; the effect is to give the party the benefit of an appeal, which in case of difficulty or importance, is entitled to consideration. But if from the nature and circumstances of the case, the decision of the Chancellor upon the *caveat*, must be final either way, or at least if there is no ready or convenient mode of bringing the questions decided by him before a court of law, or equity, so as to subject his judgment to revision before a superior tribunal, then, as I conceive, it is his duty to decide the case upon the best judgment he can form, and the rule which has been mentioned is inapplicable.

This case, it appears to me, is one of that description; because I do not see how it is possible to try the efficacy or validity of the patent, if one issues, either in an action of ejectment, or in any other form of action, in a court of law, or by *scire facias*, or information in a court of equity. It is clear, I think, that Mr. Chapman could not bring an action for the land included in this survey, so long as it is covered by water, because whilst so covered, he has no possessory right thereto, nor could the sheriff put him in possession. Neither could Hoskins institute such a proceeding against Chapman, because the latter is not in possession, nor in its present situation, does he claim any exclusive title to it. His position being, that so long as it