7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23

The following is the opinion of the Commissioner of the Land office

John T Day
vs
Wm T Day | Caveat vs Mud Island
| Baltimore County
In the Land Office of Maryland

The Caveat against patent issued on Wm T Days certificate of Mud Island was filed in the Land Office on the 7th day of December 1857, after numerous vexatious delays subjecting the office to much inconvenience, the locations of the County Surveyor and depositions of Witnesses were finally returned on Thursday the 3rd day of November 1859 and upon the same day the case was ably argued by John M Brewer Esq assisted by Geo G Brewer Esq for the Caveator, and by Richard T Gillenwater for the Caveatee.

In the argument the Caveator objected to the issuing of patent upon the certificate of "Mud Island" because,

1st The said certificate was not compounded on, until more than 20 years from the date of its return to the Land office, as shown by the certificate itself the return having been made on the 7th day of February 1857 and the composition money paid on the 28th day of October 1857, and consequently the certificate was void before the payment of the composition (which is required to be paid in 12 Months and a day from the date of the Warrant) and could not be restored to any legal standing or validity in the office by such payment.

2d "The tract called "Snipe Island" upon which the Caveator breds a grant from the State calls to bend upon the Water, and by extending its lines to low Water Marsh it includes the tract called "Mud Island" there being no Navigable Water between said Islands and Mud Island is called being really a part of the patented tract called "Snipe Island".

The Caveatee asks that patent may issue to him upon his certificate of Mud Island because,

1st His certificate was regularly returned to the Land office having been examined and passed by the Examiner General and although the certificate shows that the composition money was not paid until nearly 21 years thereafter, yet there is no evidence of intention to defraud the State and he acted in good faith in tendering the composition money to the Commissioner of the Land office, who accepted it, and it has been paid into the Treasury of the State, thereby sealing the contract entered into between the State and the Caveatee 21 years ago, and also because the certificate was not void by reason of his Neglect, but only voidable by proclamation.

2d Mud Island "has never been included in any other Survey and has never been granted by the State, as is proven by his Witnesses, who clearly show that Mud Island is and has been seperated from Snipe Island for more than thirty years and before the granting of Snipe Island to the Caveator, by a Swash or thoroughfare sufficiently large for the passage of small boats thus confining the lines of "Snipe Island" to the shore of this thoroughfare beyond which it does not extend when run by Course and distance.

The first point to be decided in this case is whether a certificate

regularly returned to the Land office but not compounded on within a certain specified time is void. The argument of the Caveator was directed mainly to this question and he seemed to rely principally upon it to prevent the issuing of patent to the Caveatee as far as I have been able to learn it was the practice of the Treasurers who formerly received the composition, to accept it at any time unless proclamation Warrant issued against the certificate, The Commissioner of the Land office by act of 1853 ch 415 receives all moneys for State Lands and Escheats, and pays the same to the Treasurer as an evidence of the fact that the practice of the Treasurers has been sanctioned by the Commissioners of the Land office, the acceptance of the composition money upon the certificate of "Mud Island" by my predecessor in office might be sufficient, but I have followed this practice myself, Its legality has never before been questioned as far as I have been able to ascertain.

By the act of 1751 ch 20 sec 6 the time for compounding on Vacant Land, was fixed at one year from the date of the Warrant, after which time if the composition money were not paid the certificate of survey became liable to proclamation.

The act of 1793 ch 88 secs 9 and 10 declares =

"That no certificate of Survey or Resurvey shall be liable to a Warrant of Proclamation before the first day of June thereafter.

"That in case any certificate of Survey or resurvey already made or hereafter to be made, shall have been, or may be returned by which it appears Land may be included and not compounded for according to Law, such Survey or Resurvey shall be liable to be affected by a proclamation Warrant by any person who shall apply for the same but no proclamation Warrant shall thereafter issue on any Survey made or hereafter to be made in this State unless one fourth part of the land contained in the said Survey or Resurvey is compounded upon and paid to the Treasurer of the Western or Eastern Shore, as the case may be before such Warrant shall issue provided that the person claiming the said Survey or Resurvey shall have one day after the said first day of June or after the expiration of the Warrant of such Survey or Resurvey made, or hereafter to be made as aforesaid for a proclamation, to pay and compound on the same and no application shall be received by the Register of the Land Office for the Western or Eastern Shore respectively until after such day of pre-emption shall have expired,

The acts of Assembly quoted above render a certificate not compounded on within a year and a day from the date of the Warrant liable to proclamation, whether the framers of these acts designed to render certificates not compounded in as specified above void or only in a condition to be made void, is not very clear the Treasurers of the State and Commissioners of the Land office, acting as the agents of the State in receiving the price of her Vacant and escheat Lands have clearly given to these acts the latter interpretation, and not I think without reasonable cause, The proclamation Warrant was designed to act upon the holder of a certificate as a spur, so to speak, urging him to greater diligence in perfecting his title, If he failed to do so within the time specified in the acts already referred to, he became liable to suffer a penalty for his Neglect