which penalty was the loss of the rights already acquired by the issuing of a proclamation Warrant to another person. It may even be doubted whether the simple issuing of a proclamation Warrant vests a certificate, I believe however that the custom of the Land Office has been to regard a proclamated certificate as void, whether or not a certificate was ever returned under the Warrant of proclamation. As this question is not at issue in the present case, I shall not express an opinion upon it, as to the portion of this question, which is material to the present issue, I have after earnest investigation, and mature deliberation formed the opinion that a certificate not compounded on within 12 months and a day from the date of Warrant, but not proclamated, is not void but in a condition to be made void, By receiving the composition Money even twenty years from the date of the Warrant if no proclamation Warrant has been issued, the State loses no participation of the money due her, while no individual rights can be affected thereby, But admitting that the agent of the state, ought to refuse to accept composition Money, if tendered upon a certificate after it had become liable to proclamation, this I think could not affect the present case, Here the money the price of the Land, was tendered in good faith without any effort to defraud the State of a single farthing, the holder of the certificate fully under the impression that he was fairly entitled to compound upon his certificate at any time before proclamation, and the State by her agent accepts the tender, thus sealing a contract partially entered into at the moment the Warrant under which the certificate was returned was issued under the seal of the Land Office, Patent should not be refused upon land proved to be escheat though taken up under a common Warrant if there were no improvements, and the party so taking it up, honestly supposed it to be vacant Land and paid the purchase money therefor – James vs Paddy 4 Ma Chan R 167. The principle of equity enunciated in the case just cited clearly indicates that if no other reasons exist why patent should not issue upon "Mud Island" the first objection of the Caveator ought not to prevail against it, His in my opinion, to matter entirely between the State and the Caveatee, she has accepted the Caveatees money for land supposed to belong to her, and if it does belong to her, the stands pledged to give it to him,

This brings us to the Caveators second objection which is altogether a Matter of Evidence, The return of testimony for the Caveator does not show that due notice was given, but from the proceedings in the case I think it is just sufficiently shown to Warrant the introduction of the testimony, much of the testimony on both sides I regard as of little or no bearing upon the case, The question to be decided is the existence or Non existence of Navigable Water between "Wipe Island" and "Mud Island" Most of the Witnesses for the Caveator from that with very facility for knowing, whether or not such a thoroughfare, did exist, they have seen Nothing of it until within a few years ago The Caveatees Witnesses are positive in saying that it did exist, Eight, ten 12, 15, 20, 30 and 40 odd years ago only one Witness swearing, to his knowledge of it for 43 years, but several highly respectable gentlemen swearing positively that they had known it for thirty years after a careful Examination of the testimony, I am clearly of opinion that the Weight of evidence is in favor of the Caveatee, I will not say that the Matter is perfectly free from doubt, but it is certainly of a Nature to entitle the Caveatee to his patent,

These reasons I think is sufficient to justify me in overruling the Caveat, which I accordingly declare over ruled with costs to the Caveatee

Wm L W Seabrook
Comr of the Land office

Nov 18th 1859.

On the 16 day of August 1860 the following appeals and Paper were filed,

To the Honorable
W L Seabrook Comr of the Land office

The petition of John T Day respectfully represents that he considers himself aggrieved by a decision rendered by your Honor and asks an appeal to the Court of appeals of the State in a cause tried in your Court of John T Day vs William T Day for the following reasons

Caveat 1st That your Honor erroneously decided in favor of William T Day the Caveatee and ordered a patent to issue upon a certificate called "Mud Island" which was not compounded on for over twenty one years, altho the act of assembly opening the Land office require the composition money to be paid within twelve Months from the issue of the Warrant and that is an old and well established rule of the Land office that all certificates must be compounded on within twelve Months.

2d That the law of 1853 which creates the Land office into a Court of Record and invests the Commissioner with certain powers your petitioner is advised are unconstitutional

3d Your petitioner avers that "Mud Island" was allotted to his land by Allowance as the testimony taken in the cause will show, That a great portion of the testimony taken by the Caveatee was illegal as notice was never served on your petitioner, but the testimony was taken without the knowledge of your petitioner and in the House of the Caveatee William T Day,

4th That the plot used as an illustration in the cause is not a correct illustration of the land in controversy and that Leonard Dunlap the magistrate who took the testimony in the cause refused to issue summons at the instance of your petitioner though often requested, thereby preventing all his rebutting testimony being taken,

Alex Scott for John T Day.

Aug 16th 1860. August 16th 1860 Appeal granted as prayed
Wm L W Seabrook.
Comr of the Land Office

Know all Men by these presents that we John T Day of Baltimore County and State of Maryland and Francis B Toney of Baltimore City and State of Maryland are held and firmly bound unto William T Day or to his certain Attorney executors, administrators or assigns in the sum and just sum of One thousand dollars to which payment well and truly to be made we bind ourselves and every of us and our and every of our Heirs executors and administrators jointly and severally firmly by these presents Sealed with our seals and dated this Ninth day of August in the year of our Lord 1860.

Whereas by a decree of the Court of the Commissioner of the Land office passed in a cause therein between John T Day Caveator and William