whether under a deed granting an erroneous title, or whether such possession is the act of a mere "tort feasor", It is the grand principle which enters into the composition of all such titles. How then can they claim "Cairo" by possession under their deed of June 14th 1849 as giving them color of title when neither their possession or that of those under whom they claim nor their color of title was in esse twenty years prior to the issue of the warrant in this case.

It is absurd, rediculous.

I might make a few remarks concerning the "Exhibit B," a plat filed in this cause by the Caveators and which bears upon its face the impress of fraud, but as it has nothing to do with the merits of the cause before your Honor, I will refrain from such unnecessary infringement upon your patience and time.

Now I submit to your Honor whether in a case like this where the land in dispute is acknowledged by the Caveators to be free from and not connected with their property "The Birmingham Mines" tract, where the special warrant is conceded to have been correctly and properly located, where fraud is not alleged or attempted to be proved, where the chain of authorities declaring that parol evidence is inadmissible except in cases of fraud alleged, to set aside the certificate of the Surveyor is so entire and unbroken - Where fraud is denied and possession insisted upon as giving the Caveators title to Cairo, and where that possession is attempted to be evidenced by the flimsiest most inconclusive and unsatisfactory proof, where the acts of user and ownership do not cover the full period of twenty years, and are not proven with the requisite "clearness and precision". Where they do not comfort with the title and claim of one asserting ownership against all the world, but are such as were done with impunity by any and all persons" whether I say this is not a case of at least

such doubt as to admit of the application of the rule laid down in the Land holder's assistant page 431 in the case of Warfield vs Merrikin and 9th Md 570 which rule is in substance as follows, In cases of Caveats to patents if the case appear doubtful in its character the Patent shall issue. I should most certainly answer, yes.

In conclusion I request that a patent issue to Davisson Armstrong for all that tract containing 9/16 acres and mentioned in the Certificate caveated in this cause, and that the costs entailed by this Caveat be taxed to the Caveators -

Thomas J. McKaig &
A Beall McKaig
Solicitors for Caveatee -

Cumberland Md
April 30th 1870.

This Indenture made this fourteenth day of June in the eighteen hundred and forty nine, between James Smith and Ann Eliza his wife of Allegany County in the State of Maryland of the one part and David Wood of the same place of the other part. Witnesseth, that the said James Smith and Ann Eliza his wife, for and in consideration of the sum of two hundred and twenty five dollars, current money to them in hand paid by the said David Wood at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargain and sold and by these presents do grant bargain and sell, alien, enfeoff, release, convey and confirm unto the said David Wood, his heirs and assigns all that part or parcel of land, being part of a tract of land called the "Birmingham Mines" lying and being in the county and State aforesaid, and which said part of said tract of land hereby sold and conveyed is bounded and described as follows, to wit,