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COUCH, C.J.:—This is a case between landlord and tenant. There is nothing to show that the tenancy confers any other right than that of occupying and cultivating the land for thirty years, as guaranteed by the settlement. Were it otherwise, the tenant might cut down the timber trees in one year, and throw up the land the next year, for nothing prevents his doing so. The thirty years' term restricts the power of the Government to alter the assessment, but in no way enforces a continued occupation of the land upon the tenant while the term lasts. The trees are timber trees growing on Government land, and the proprietory right to the trees is derived from the property in the land.

MELVILL, J. concurred.

Decree affirmed with costs.

Regular Appeal No. 9 of 1868.

Vaman Janardan Joshi ... ...*Appellant.*

The Collector of Thana and The Conservator of Forests. ... ...*Respondents.*

Sanad—*Construction*—Inamdars, *right to cut timber*—*Prescriptive title.*

Sept. 30.

In construing grants by former governments, the rule of English law as to the construction of grants to a subject by the Crown is the correct rule to be applied by the Courts in India.

Where a *sanad* contained only the words "the village of Manavali has been conferred on you as *inam*, to be enjoyed by you, your son, and grandson. The government dues of the village, viz., the *koolbab koolkanoo* (*i. e.*, all taxes, and assessments), present taxes, and future taxes, together with the house-tax, but exclusive of *haks* due to *hakdars*, shall continue to be debited from year to year, from the year next succeeding."

It was *held* that the plaintiff's *sanad* did not operate as an alienation of the *soil* of the villages, or confer on him a proprietory title in it, and therefore gave the plaintiff no right to the timber growing upon the soil.

The holder of such a *sanad* having only a right in the revenues and none in the soil of the village, cannot, by thirty years user, become the proprietor of the timber.

This was an Appeal from the decision of Arthur Bosanquet, Judge of the District of Thana, in Suit No. 8 of 1867.

The facts of the case are briefly these.

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The government of Angria, by a grant dated 1749-50, conferred upon the plaintiff's ancestor a village called Manavali, situated in taluka Kallian, as *inam*. This grant was confirmed by the government of the Peshva in 1798-99. In the year 1855 the defendants ordered the plaintiff not to interfere with the forests in the village, and took upon themselves the conservation thereof. The plaintiff, feeling aggrieved, brought this suit to establish his exclusive right to the forests, and to restrain the defendants from interfering with his management of them. The defendants pleaded, *inter alia*, that the grants under which the plaintiff claimed gave him no right to the forests.

The operative words of the grants are set out in the judgment of the Court.

The District Judge gave a decree in favour of the defendants, against which the plaintiff preferred an appeal to the High Court.

This appeal was argued before GIBBS and MELVILL, JJ., on the 29th July and 9th August 1869.

Shantaram Narayan for the appellant.

Dhirajlal Mathuradas (Government Pleader) for the respondents.

Cur. adv. vult.

30th September—MELVILL, J. :—The points for determination in this case are :

Whether the plaintiff has a title by grant to the forest which he claims.

If not, whether he has acquired such a title by prescription.

In construing the grant on which the plaintiff in this case relies, the Court below has applied the rule of English law that "a grant from the Crown is construed most strictly against the grantee, and most beneficially for the Crown, so that nothing will pass to the grantee but by clear and express words."

It has been urged upon us in appeal that rules of English law are not applicable in this country, and that this particular rule is oppressive and unjust. I will briefly consider if it is so.

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The British Government, having bound itself to respect all grants made by former governments, the application of this rule would be oppressive if it involves a harsher mode of construction than would have been applied under the native governments, by whom the grants were made. And if this be not the case, it is still not such a rule as should be applied if it be in any way opposed to justice, equity, and good conscience.

First, then, does not rule in question involve a harsher method of dealing with grants than would have been adopted by the governments by whom such grants were made ?

"In this country," wrote Sir Thomas Munro, "under the native governments, all grants whatever are resumable at pleasure ; grants for religious and charitable purposes to individuals or bodies of men, though often granted for ever or while the sun and moon endure, were frequen ly resumed at short intervals ; grants of *jagir* or *inam* lands from favour or affection, or as rewards for services, were scarcely ever perpetual. It made usually li tle difference whether the grant was for no particular period or perpetual ; the (*altamgha*) perpetual grant was as liable to resumption as any common grant containing no specification of time ; it was resumed because it was too large, or because the reigning sovereign disliked the adherents of his predecesors, and wished to reward his own at their expense, and for various other causes. There was no rule for the continuance of grants but his pleasure; they might be resumed in two or three years or they might be continued during two, three, or more lives; but when they escaped so long, it was never without a revision and renewal. I believe that the terms of their lives is a longer period than grants for services were generally permitted by the native princes to run."

Mr. Elphinstone,* speaking of alienation, says : "The power to interfere for the protection of subordinate rights was, however, retained by the Government, as well as a claim to any revenue which the tract assigned might yield beyond

*History of India, Vol. I., p. 142.

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the amount for which it was granted." The second of the two *sanads* produced by the plaintiff in this case shows that such a claim was in fact made upon his ancestor, though subsequently remitted.

The quotation which I have made are, I think, sufficient to show that if the Peshva had had to decide whether the plaintiff is entitled under the terms of his grant to the forests, which at the time of the grant were valueless, but have since become most valuable, he would have been guided by a rule of construction even less indulgent to the plaintiff than the rule which the Judge of Thana has borrowed from English constitutional law.

The second and more important question is, whether the rule is in accordance with justice, equity and good conscience. I think that it is so in the highest degree. In England the rule doubtless had its origin in the reverence of the Courts for the person and prerogative of the King; but I prefer to base it on a yet higher principle, and to consider it only in its bearing upon the public good.

"No man made the land, or the trees which naturally grow thereon. They are the original inheritance of the whole species." The King possesses them only as the representative and trustee of the people. He may be vested with power to alienate the property of the people; and there may be circumstances which justify him in doing so. Public services may be rewarded by public gifts. But any such alienation is a loss to the community, and the public good requires that it should be jealously watched and restricted. If it has been made, it must stand good, even though it be an injury to the community for all time; but it is not to be presumed that it has been made; nor it is to be allowed out of any feeling of indulgence for the individual; on the contrary, it should be sternly withheld, unless it has been expressly granted.

Something has been said during the arguments in this appeal (and in such cases something of the kind always is said) as to the harsh and tyrannical interference of Govern-

ment with the rights of private property. It seems to be forgotten that the Government which granted those rights (if indeed they have been granted) would not have hesitated to resume them; and it seems to be forgotten that the British Government, in seeking to restrain such rights within the narrowest possible limits, is not acting for any selfish end, but as the representative of the people, and for the good of the people.

If a strong sense of justice induces the British Government to give effect to all the improvident grants of former princes, it is surely right that it should not extend the mischief further than it need, and that it should refuse to recognise any claim which is not clearly supported by the grant.

The above considerations present themselves in the present case in the strongest possible light.

The question at issue is whether an *inamdar* holding a *sanad* from the Peshva is entitled to deal as he pleases with the forests. The importance of the question can hardly be overrated. The climate of a country, the rainfall, the fertility of the soil, are all affected by the preservation or destruction of its forests. The extension of railways is one of the great necessities of this country; and one of the chief obstacles to the rapid construction of railways is the scarcity of timber, produced by long years of neglect and improvidence. It may therefore be said that the parties to this suit are, on the one side the public, insisting on the intelligent conservation of the forests for the public good; on the other side an individual claiming to waste one of these forests as he pleases, on the ground that it was given to his ancestor, not for any great services to the public, but "in consideration of his being a venerable excellent family man, and for his treatment of the Brahmans passing through the village."

In a contest of this kind it is surely most just that such a rule as that by which English Courts of Law are guided in the construction of grants from the Crown should be applied in the most stringent possible manner; and that the plaintiff's

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sanads should not be construed as conferring a right to the forests, unless such right be conferred in clear and unambiguous terms.

I do not go so far as to say that the word "forests" need be found in the *sanads*. It will be sufficient if the *sanads* show plainly and unequivocally that the proprietorship of the land of the village was granted to the plaintiff's ancestors: for the owner of the land is owner also of the timber which grows upon the land.

I proceed now to consider the terms of the two *sanads* produced by the plaintiff as evidence of his rights.

The first is a *sanad*, from Angria, which was granted A. D. 1749-50. The operative part of this *sanad* is as follows ;—"Your maintenance and protection in every way having been deemed conducive to the happiness of His Majesty, the village of Manavli, Tarf Wankhal, Sobha Kallian, has accordingly been conferred on you as *inam*, to be enjoyed by you, your son, and grandson from generation to generation. The government dues of this village, viz., the *koolbab koolkanoo* (*i. e.* all taxes and assessments), present taxes, and future taxes, together with the house-tax, but exclusive of *haks* due to *hakdars*, shall continue to be debited from year to year from the year next succeeding. You are to enjoy the *inam* grant of the said village hereditarily without disturbance."

The second document is from the Peshva, and bears a date corresponding with A. D. 1798-99. It is addressed to Sadasiv Bhaskar, a government official, probably mamlatdar of the district.

After reciting that half the village of Manavli had been granted to an ancestor of the plaintiff by Angria, and that the grant had been confirmed, and that the other moiety of the village had been granted by a *sanad* from a former Peshva, which had been destroyed by fire, and after some further recitals which it is immaterial to consider, the *sanad* proceeds as follows:—

"Therefore the whole of the aforesaid village *koolbab koolkanoo*, excepting the (*haks* of the) *hakdars*, and ancient

inamdars, having been from the present year granted in *inam* as before to the Bhatji, in consideration of his being a venerable excellant family man, and for his treatment of the Brahmans passing through the village, this *sanad* is herewith forwarded to you.

"The village should therefore be continued to him as an *inam* grant, and the revenue of the said village, including that of Kusba Chowk, should be entered in the taluka account to the debit of the Joshi, on account of *inam*."

The last of these documents is that on which the plaintiff's title rests, and it is therefore that to which my consideration must be mainly, if not entirely, directed.

What is the meaning of the words "the whole of the aforesaid village *koolbab koolkanoo* ?" The words are all in the same case, and there is no conjunction between any of them. It seems to me that they are open to two interpretations. They mean either "the ownership of the village, together with the right of levying taxes and assessments," or "the ownership of the village *so far as relates* to the right of levying taxes and assessments." Here is an ambiguity which should, if possible, be explained by the rest of the document.

The announcement of the grant having been made, the *sanad* goes on to direct how effect is to be given to it. The amount of the revenue of the village is to be debited to the grantee in the Government records. I do not wish to import into this judgment any knowledge of my own as to the manner in which the revenue records were kept under the Peshva's government. I will, therefore, refer to a book which may, I think, be admissible as an authority on this subject. Mr. Grant Duff, in his history of the Mahrattas (India Reprint, vol. I., p. 26), says, describing the practice under the native government:—"It is the business of the kulkurni to keep all public accounts, which are made up annually. In his general account the whole of the land is first stated; then the commons, roads, the site of the village and all waste land incapable of cultivation, are deducted. The arable land is next shown, and alienations of every

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description specified. The remainder is the land on which the government assessment is levied." Now, under this system, what would have been the effect of the directions given by the Peshva. Simply, as it appears to me, that the village would have been entered in the government records as continuing to be the property of government, but on the debit side of the account there would have been an entry showing that the amount of the taxes and assessments had been alienated to the grantee. In other words, the accounts would have shown nothing more than that the right to the government revenue had been alienated. It seems to me that this suggests a strong inference that nothing further was intended.

I will now turn to Angria's *sanad*, for there seems reason in the plaintiff's argument that the Peshva evidently did not intend to take away anything which had been granted by Angria, and, therefore, if Angria's *sanad* contains any plain declaration that the absolute proprietorship of the village was granted, the plaintiff will be entitled to the benefit of such declaration. That *sanad* states, without any qualification, that "the village has been conferred on you as *inam*." But immediately after it goes on to say: "The government dues of this village, namely, the *koolbab koolkanoo*, &c., &c., shall continue to be debited from year to year from the year next succeeding." Now this was a *sanad* given to the grantee, not a direction to the person in charge of the accounts. What possible reason could there be for telling the grantee what entries would be made in the government records? It seems to me that these words are only intelligible on the supposition that they are intended to define the extent and meaning of the preceding words. The whole passage must be construed thus: "The village is given to you as *inam* to the extent of authorising you to take the government dues, which will accordingly (as evidence of your right) be debited to you in the government accounts."

Looking only to the contents of these two documents, I think that the most reasonable construction under any circumstances is that which I have adopted, and, *a fortiori*,

is it the construction which should be adopted in a case in which the grant is to be construed most strictly against the grantee.

In a very learned judgment on the subject of *inams* in the case of *Krishnarav Ganesh* v. *Rangrav* (*a*), WESTROPP, J., says : " *Sunadi* grants in *inam*, *saranjam*, *jagir*, *wazifa*, *wakf*, *devasthan*, and *sevasthan*, are generally speaking, more properly described as alienations of the royal share in the produce of the land, *i.e.*, of land revenue, than grants of land, although in popular parlance, and in this judgment, occasionally so called."

I believe that this is perfectly accurate, and that, unless a *sanad* contains words expressly granting the ownership of the soil, it must be held that the ownership of the soil was not granted.

The defendant has put in three *sanads* to prove that when the right of cutting timber was intended to be granted, the word "trees" was expressly inserted. I think these *sanads* show even more than this. In addition to the words contained in the plaintiff's title-deeds granting the taxes and assessments, there is in these *sanads* a further grant of "water trees, grass, wood, stone, and buried or concealed treasure." WESTROPP, J., in his judgment, above quoted (page 22), refers to another *sanad* of the same kind. Now, what would be the meaning of these additional words, if the previous words, which are the same as those of the plaintiff's title-deeds were sufficient to transfer the proprietorship of the village ? They would be simply idle and foolish. " The soil of the village is granted to you absolutely ; and in addition to this you may take the water, trees, grass, wood, and stone." Can such a construction be admitted for an instant ? How could a man have the soil of the village, and not have the right to use the water and the grass ? The Peshva must have known as well as Blackstone that " the word land includes not only the face of the earth, but everything under it or over it ; and, therefore, if a man grants all his lands, he

(*a*) 4 Bom. H. C. Rep., A. C. J.

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grants thereby all his mines, his waters, and his houses, as well as his fields and meadows." The truth is, these additional words were not more surplusage, but where the very words which conferred the proprietorship of the village, the words which preceded them conferring no more than the right to take the government dues. The addition of these words in this class of *sanads* is not more suggestive than the omission of any words regarding the entries to be made in the government records. When a village had once been granted absolutely, there would be no occasion to enter all the details which were usually shown in the government accounts when only the government revenue was alienated, and therefore in this class of *sanads* no allusion is made to the subject.

We have been referred by the plaintiff's pleader to the case of *Ruttonji Edulji Shet* v. *The Collector of Thana and the Conservator of Forests* (*b*), which came before the High Court in Regular Appeal No. 12 of 1863, and was finally decided by the Privy Council. In that case the plaintiff, who held a lease of land from Government, claimed the right of cutting timber. His claim was disallowed in all the Courts. In the judgment of the High Court is the following passage:—"In the *kowl*, or, as it may more properly be termed, *sanad*, relating to the *inam* village of Harialee, from which extract D is taken, we find that, independently of the most comprehensive expression, *jaltaru*, *trun*, *pashan*, *nidhi nikshep* (water, trees, wood, grass, and stone, and treasure-trove) used in that document, after the fashion of similar grants both under the late and the present Government an express clause has been inserted to permit the *inamdar* to cut timber in the forests of his village. If, therefore, an *inam* grant, with the comprehensive expression above referred to, will not, without an express provision, operate as conveying any rights over the forests in the *inam* village, how much less could the effect of a lease silent on the point be in passing such rights to a lessee."

The opinion of the Court in that case therefore was, that even the comprehensive words quoted by them did

(*b*) 10 Calc. W. Rep. P. C. 13.

not necessarily give the right of cutting timber; so that there can be no doubt that the Court would have held that the omission of such words would necessarily negative such right.

The Privy Council, while confirming the decision of the High Court, did not refer to that portion of their judgment which I have quoted They simply held that, as a lessee, the plaintiff had no right to cut timber, because " the trees upon the land were part of the land, and the right to cut down and sell those trees was incident to the proprietorship of the land." These are the words upon which the plaintiff's pleader relies, and they are certainly sufficient to maintain the proposition that if the plaintiff be the proprietor of the land he has a right to the timber. But it is this very fact of proprietorship which, in my opinion, he has failed to establish; and therefore, the judgment of the Privy Council does not help him.

As regards the first question for consideration therefore I find that the forest over which the plaintiff claims to exercise rights of ownership was not granted to him by the *sanad* under which he claims.

The second question raised by the plaintiff in appeal is, whether by long enjoyment he has acquired a prescriptive right to the forest.

I have no doubt that such a claim cannot be maintained. It is perfectly true that the Peshwa's government, and, until within a very recent period, the English Government, have allowed persons to cut timber in the government forests with scarcely any restriction. I have no doubt the plaintiff has, for more than thirty years, been allowed to cut timber in the Manavli forest, and it is very possible that, as he alleges, he gave permission to other persons to cut timber in that forest. But, granting that such a user has existed to the full extent alleged by the plaintiff, it would not make the plaintiff the proprietor of the soil, and if it do not make him proprietor of the soil, it cannot make him proprietor of the trees, which belong to the owner of the soil. The only right

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, which can have been created is of the nature of what is termed a servitude or a right of profit a prendre *in alieno solo*. Now, it is certain that there can be no prescriptive right in the nature of a servitude so large as to preclude the ordinary uses of property by the owner of the land affected by the privilege, and to extinguish or destroy all the profits or produce ordinarily derivable from the soil. In a case in which a defendant claimed a prescriptive right, as the occupier of a brick-kiln, to dig and carry away from an adjoining close of the plaintiff as much clay as was required for the making of bricks in the brick-kiln, it was held that an unlimited claim of this nature upon the soil of the plaintiff could not be maintained, for it would, as claimed, enable the defendant "to take all the clay", or, in other words, to "take from the plaintiff the whole close" (*c*). So a privilege claimed of taking sand without limit is bad (*d*), although a custom to dig sand and gravel in the waste for the repair of dwelling-house, when out of repair, may be supported (*e*). It is possible that the plaintiff might establish a prescriptive right to take wood from the Manavli forest for certain limited purposes, such as the rebuilding of his house or the houses of his tenants, the repair of fences, or the manufacture of agricultural implements. But a claim to a prescriptive right to dispose as proprietor of all the timber growing on another's land is absolutely inadmissible. Such a right could only be created by express grant, and such grant the plaintiff has failed to prove.

For these reasons I am of opinion that the decree of the Court below must be affirmed.

GIBBS, J.:—After the elaborate judgment of my learned colleague, it is sufficient for me to say that I have arrived at the same conclusion on both the questions raised in the appeal. My judgment on the question whether the plaintiff has proved his proprietory title to the forest in the village of Manavali is based mainly on the construction of the *sanads*, which, I hold, did not convey to the plaintiff anything more than a

(*c*) *Clayton* v. *Corby* 5 Q. B. 415, 422; *Wilkes* v. *Broadbent*, 1 Wils. 63.

(*d*) *Blewett* v. *Tregonning*, 3 Ad. and E. 544.

(*e*) *Shakspear* v. *Peppin*, 6 T. R. 741.

right to receive the Government dues. They did not convey to him a right of property in the forest. As regards the 2nd question; I entirely concur with my brother Melvill in considering the plaintiff has failed to establish his prescriptive right to cut the wood. We must, therefore, confirm the decree of the Court below.

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Decree confirmed.

NOTE.—The following extract, as germane to the above case, made from a highly valuable note, to a recently published work of much ability—(Cases and opinions on Constitutional Law, collected by Forsyth (1869), p 175,—on the subject of the construction of grants in England by the Crown to subjects, may perhaps be usefully inserted here :

"In cases of grants by the Crown, the rule of law has been that they are construed most strongly against the grantees, and that nothing passes by them without clear and determinate words. *Stanhope's Case*, Hob. 243, Bro. Abr. *Patent*, 11. 62. But this must be taken with the qualification that the words are really doubtful, and when the interpretation in favour of the Crown might be without violation of the apparent object of the grant. In *Molyne's Case*, 6 Co. 5, it was held that the King's grant should be taken beneficially for the honour of the King and the relief of the subject; and Sir Edward Coke says there, that the ancient sages of the law construed the King's grants beneficially, so as not to make any strict or literal construction in subversion of such parts: see also, 2 Inst. 497. As to grants by the Crown *ex certa scientia et mero motu*, see a valuable note to *The Case of Alton Woods*, 1 Co. 43 b. in the edition by Thomas and Fraser, vol. I., p. 110. The rule of strict interpretation is said not to apply to royal grants made upon a valuable consideration: Kent's Com. ii., 556.

"At all events, whatever may have been the old rule, one consistent with justice and common sense now prevails, and it has been expressed in a recent case: '*Upon a question of the meaning of words the same rules of common sense and justice must apply, whether the subject matter of construction be a grant from the Crown or from a subject; it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances:*' per Sir John. Coleridge delivering the judgment of the Privy Council (present Lord Kingsdown, Dr. Lushington Lord Justice Knight Bruce, Sir Edward Ryan, and Sir John Coleridge) in the case of *Lord v. Commissioners of Sydney*, 12 Moore, P. C. 497. (*f*)

"All grants from the Crown are matters of public record. 'The King cannot grant or take anything but by matter of record. * * * It hath this sovereign privilege that it is proved by no other but by itself:' 3 Inst 71. Royal franchises never pass by assignment without special

(*f*) Sir J. Coleridge prefaced the passage, placed above in italics, by saying that their Lordships were 'clearly of opinion that upon the true construction of this grant, the creek where it bounds the land is *ad medium filum*, included within it. In so holding, they do not intend to differ from old authorities in respect to Crown grants; but upon a question of the meaning of words," &c., &c.—*Ed.*

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words in the Crown's grant (Year Book, 30 Edw. I.); and it is said that a royal franchise does not pass to the assignee of him to whom it was granted: *Ibid.* As to the necessity of express words to convey property of the Crown by reason of prerogative, see *Duke of Beaufort v. Mayor of Swansea*, 3 Ex. R. 413, and *Attorney General v. Persons*, 2 C. and J. 279. In the latter case the Court said: 'The rules of construction upon grants from the Crown are much more favourable to the grantor than the rules of construction upon grants from ordinary persons.' But this does not mean than a *forced* construction is to be put upon the words in favour of the Crown, but only that where there is a doubt they shall be interpreted in its favour contrary to the ordinary rule by which *verba fortius accipiuntur contra proferentem*: a rule, however, which the Court said in *Lindus v. Melrose* 27 L. J. Ex. 329, ought to be applied only where other rules of construction fail. 'If the King's grant can endure to two intents, it shall be taken to the intent that makes most for the King's benefit:' Com. Dig. *Grant* (G. 12): see *Jewison v. Dyson* 9 M. & W. 540; *Doe d. Devine v. Wilson*, 10 Moore, P. C. 502.

"In the absence of any reservation to the Crown of any right of killing or taking wild cattle on lands granted or demised in a colony by the Crown, such right included in the grant or demise: *The Falkland Islands Company v. The Queen*, 2 Moore P. C. (N. S.) 266.

"In an opinion given by Sir A. Cockburn, A. G., and Sir R. Bethell, S. G., August 1854, on certain questions relating to the fishery revenues in Newfoundland, and including a question as to the extent of a Crown grant, they said: 'The meaning of the term 'coast' in the grant must, as it seems to us, be taken to mean the shore of what may be properly called the sea. Such is the ordinary acception of the term, and we see nothing to vary its sense in the present instance. We cannot, therefore go the length of the opinion given by Sir F. Pollock, and Sir W. Follett that the term 'coast' will include the shores bays, inlets and rivers, where the tide flows. It may or may not comprehend the shores of bays and inlets, according to circumstances. We think it does not include the shores of rivers. * * * * The grant from the Crown vested in the owner all the soil, except a particular 500 feet. The sea having swallowed up the latter, there can be, so far as the grant is concerned, no pretence for calling on the owner to make good the loss, and there is no prerogative right in the Crown to land so circumstanced.'

"In *The Lord Advocate v. Hamilton*, 1 Macqueen, H. L. 55, where the Crown claimed the bed of a public navigable river which by an Act of Parliament had been vested in trustees, on the ground that by a saving clause the rights of the Crown had been reserved, Lord Brougham said: 'You cannot out of this saving clause construe any right to be given to the Crown. The right which the Crown had independently of it and previously to it, is saved and nothing more. The Crown is not to have its right lessened or dismissed; but nothing whatever is *given* to the Crown by the saving clause, except the mode of ascertaining its rights by petition to the Court of Session. As, generally speaking, you cannot raise out of a proviso or an exception in a statute any affirmative enactment, so you cannot, generally speaking, raise out of a saving clause any affirmative or positive right whatever.'" *Ed.*