are sufficiently stated in the opinion of the Chancellor, delivered on the 30th of December, 1851.]

THE CHANCELLOR:

This case, which comes before the court upon a *caveat* to the certificate of "Hoskin's Island" filed by Pearson Chapman, having been argued orally, and in writing, with learning and ability by the counsel of the respective parties, has been very carefully considered by the court, and I proceed now, briefly, to state the grounds upon which my opinion is formed.

Since the decision of the Court of Appeals of this state in the case of *Browne* vs. *Kennedy*, 5 *Har. & Johns.*, 195, it appears to me quite impossible to deny that it is competent to the state to grant land covered by navigable waters, subject to the right of the public to fish in and navigate them. The point, not only as I understand it, arose in that case, but every judge who sat in the cause, concurred in the opinion so far as this question is concerned, though upon the other points, some disagreement seems to have existed, and I strongly incline to think, that the doubts which have been expressed upon various occasions, and the apparent conflict, and difficulties which embarrass the subject proceed from the cause referred to by the judge who delivered the majority opinion; that is, inattention to the distinction between the power to grant the exclusive privilege of fishing in navigable water, in violation of the common piscatorial right, and the power of granting the soil, *aqua cooperta*, subject to the common user.

It is one thing to grant the soil covered by the navigable waters of a river, subject to the right of the public to fish in, and navigate them, and another, and a very different thing to grant to an individual the exclusive right of fishing therein; and it was against the authority of the crown, to grant this latter right, that the provision in *magna charta*, to which reference has been made, was directed. 3 *Kent Com.*, 409 *(note c.)* 5 *Har. & Johns.*, 203.

A passage from the opinion of the Chief Justice of the United States in the case of *Martin et al.* vs. *Waddell*, 16,