

*Pet.*, 410, has been read, and it is supposed to be in conflict with the decision of the Court of Appeals in *Browne vs. Kennedy*. But, upon carefully examining the language of the Chief Justice, it will be found, I think, that no such conflict exists. He was not discussing the power of the king since *magna charta*, to grant to the subject a portion of the soil, covered by the navigable waters of the kingdom, without interfering with, or affecting the public, or common right of user, for purposes of navigation or fishing; but his power to make such grant, so as to confer upon the grantee, the exclusive right of fishing, and he concluded, that from the opinions expressed by the judges of the court of King's Bench in the case of *Blundell vs. Caterall*, 5 *Barn & Ald.*, 287, 294, 304 and 309, and the *Duke of Somerset vs. Fogwell*, 5 *Barn & Cres.*, 883, 884, that the point must be regarded as settled in England, against the power, not to grant the soil covered by navigable waters subject to the common right, but to make such grant in violation of, or in restraint of, such right.

It is very clear, I think, that the opinion of the Chief Justice is not in opposition to the decision of the Court of Appeals in *Browne vs. Kennedy*; and that his high authority cannot be invoked to shake, or throw a doubt upon the correctness of that decision. But, if it were otherwise, considering as I do that the point in question was expressly adjudicated by the Court of Appeals, I should regard it as a binding authority, though sitting here as judge of the land office, my judgment is not, by direct appeal subject to the revision of the appellate court.

But, though looking to the case of *Browne vs. Kennedy*, I am clearly of opinion, the state has the power to grant land covered by navigable waters, subject to the right of the public to fish in, and to navigate them, it by no means follows, that she is bound to do so, or that she will do so, in every case in which application is made to her.

In the case now under consideration, Mr. Hoskins, the caveatee, obtained from the land office a special warrant for five acres of land, described as "vacant land, lying in the