

“Craney Island,” the land embraced in the survey of Mr. Hoskins’, binding upon the island, if the waters gradually recede, or accretion is formed by alluvion, the caveator’s title as riparian proprietor attaches upon it, and as long as the waters of the river flow over it, the grant would be barren of fruits, because any obstruction of the navigation, or fishery, would be contrary to the common right.

But it is said this court has nothing to do with the question of any injury which may result to the caveator or other persons from an abuse by the caveatee, of his patent, if one issues to him ; and that for such abuse, he would be amenable in a different form of proceeding, and in another *forum*. It is certainly true, that if a patent is issued to Mr. Hoskins for land covered by navigable water, and he should, by any act, obstruct the navigation, or interfere with the right of fishery, he would be responsible for such act in the appropriate tribunal, and his patent would afford him no protection. But does it therefore follow, that this court will grant him a patent when it was manifest it can avail him nothing, unless the waters of the river, from some cause, should cease to occupy the land it now covers ? or unless in derogation of the acknowledged right of the public to fish in, or navigate them, he should place obstructions in them ?

If the waters should gradually fall back from the land, or there should be an accretion by alluvion, the owner of the adjacent land would be entitled to the soil thus formed ; or if the patentee of the land covered by the water, should appropriate the water flowing over it, exclusively to his own use, or prevent or interfere with the free use of it by the public for purposes of navigation or fishing, he would be exercising a right which the state has neither the power nor the inclination to confer upon him ; and hence it seems to follow that a grant under such circumstances, can confer no substantial right. Its only effect would be to tempt the grantee into a contest with the riparian owner, for land which if found within the limits of the patent, would belong to the latter, or to interfere with a public right, which the state can neither destroy or impair.