to the effect that the pursuer is entitled to decree in terms of the third conclusion of the summons.

The other Judges concurred.

The Court pronounced this interlocutor—

"The Lords having heard counsel on the reclaiming-note for Mrs S. M. Moffat or Milne against Lord Young's interlocutor of 3d July 1875, Adhere to the said interlocutor, and refuse the reclaiming-note: Farther, in respect that no defence has been stated against the third conclusion of the summons, and that the defender does not dispute the right of the pursuer to dispose of her estate, notwithstanding the conveyance contained in the mutual disposition and settlement by her and her deceased husband, find and declare that the pursuer, having survived her husband, is vested in and entitled to dispose at will of her whole estate, heritable and moveable; and decern."

Counsel for Pursuers—Balfour—W. C. Smith. Agents—W. & J. Cook, W.S.

Counsel for Defenders—Dean of Faculty (Watson)—J. A. Crichton. Agent—William Steele, S.S.C.

Tuesday, January 18.

SECOND DIVISION.

[Sheriff of Forfar.

BRANDT & CO. *v.* DICKSON (LUMGAIR'S TRUSTEE).

Sale—Suspensive Condition—Mala fides.

A contract for the sale of a quantity of flax was entered into, in terms of which the price was to be payable by draft at four months from the date of sale. The flax was despatched by the sellers to the purchaser, and upon the day following they forwarded to him an invoice showing the price, and a bill at four months for acceptance. The flax was received at the purchaser's warehouse by his manager upon a Saturday, and upon the following Monday the purchaser had the first intimation of its arrival by seeing it at the warehouse. In the course of that day, in consequence of a communication received, he resolved to suspend business, and accordingly did not accept the bill nor pay the price, but ordered the flax to be set aside. *Held*, in an action for delivery of the flax at the instance of the sellers against the trustee upon the purchaser's sequestrated estate, that although they (the sellers) had failed to prove that the purchaser was in bad faith in taking delivery, they were entitled to recover the flax in respect that the delivery was not complete, the transfer of the property having been suspended until the bill was granted for the price, and the purchaser not having implemented that condition.

This was an appeal from the Sheriff-court of Forfar in a petition at the instance of Richard Brandt & Company, which set forth that they had, upon the 24th day of November 1874, sold to Robert Lumgair, merchant in Arbroath, about 10 tons of flax at £40, 10s. per ton, payable by draft at four months from the day of sale. It was further stated "that the said flax was forwarded by the petitioners to the respondent by railway on the 27th day of November last, and on the day following they forwarded the invoice thereof, showing the amount or price to be £401, 17s. 7d., and they at same time sent a bill for the said price, payable four months after date, for acceptance, conform to letter by the petitioners to the respondent, and copy invoice also herewith produced. That the respondent took delivery of the said flax on its arrival at Arbroath, but did not accept the said bill, and did not pay the said price. That at the time of purchasing the said flax the respondent was, and still is, in insolvent circumstances; and in particular, on Friday the 27th day of November last, when the said flax was forwarded to him, and when he took delivery of it on Saturday the 28th of November, he was in insolvent circumstances, and after communicating with his principal creditors as to the state of his affairs, he, on Monday the 30th of said month of November, suspended payment. That this state of matters was unknown to the petitioners, and the respondent represented or conducted himself to them as a person in good credit, and on this footing alone they dealt with him and delivered the flax."

In these circumstances the petitioners prayed the Sheriff to interdict the respondent, or any one coming in his room, from selling or disposing of the flax, and to ordain him to deliver it to them.

To this petition Mr Lumgair appeared at first as respondent, but afterwards Mr Dickson, banker in Arbroath, the trustee upon his sequestrated estates (and whose appointment had been confirmed by the Sheriff on 28th December 1874) was sisted in his room.

In their record in the Court below the petitioners rested their case upon the ground that Mr Lumgair being insolvent when he accepted delivery of the flax, did so in bad faith. On the other hand, the defence consisted in a denial of the fact of Mr Lumgair's insolvency at that particular date.

On 4th March 1875 the following interlocutor was pronounced by the Sheriff-Substitute (ROBERTSON):—"The Sheriff-Substitute having heard parties' procurators and made avizandum with the closed record, Finds in law that a buyer who finds himself to be insolvent and unable to perform his engagements may and ought to reject goods he has purchased when offered for delivery: Finds that if he takes delivery under such circumstances a fraud is committed on the seller, of which the buyer's creditors can take no advantage: Finds in the present case that as insolvency was announced almost immediately after the purchase and delivery of the goods, the *onus* of proving solvency lies on the respondent: Finds that the *onus* of proving the bankrupt's knowledge of insolvency lies on the petitioner: Allows a proof to both parties accordingly of their respective averments, and to each conjunct proof; and appoints the case to be enrolled to fix a diet."

Both parties reclaimed against this interlocutor, and upon 12th April 1875 the Sheriff (MAITLAND HERIOT) pronounced a judgment, in which the following were the findings—"(1) That the petitioners, on 24th November 1874, sold to Robert Lumgair, Arbroath, about 10 tons, or 12 182 bobbins and 22 heads of superior Stararussa 12 head flax at £40, 10s. per ton, payable by draft at four months from that date, and 1 per cent discount, conform to sale-note, a copy of which is No. 3 of process. (2) That on 27th November the said flax was forwarded by the petitioners to the said Robert Lumgair, per railway. (3) That on Saturday the 28th November the petitioners wrote to the said Robert Lumgair advising him of their having forwarded the said flax to his address, enclosing the invoice, amounting to £401, 17s. 7d., and also a bill at four months for the said amount, for the acceptance of the said Robert Lumgair. (4) That the said Robert Lumgair took delivery of the said flax on the said Saturday the 28th day of November. (5) That on Monday the 30th November the said Robert Lumgair suspended payment, and his estates were sequestrated on the 11th day of December following, and the respondent was appointed judicial factor, and was thereafter duly elected and confirmed as trustee on the said sequestrated estates. (6) That the said Robert Lumgair did not grant or accept, and never had granted or accepted, a bill or draft for the said flax in terms of the said contract; and, in particular, that the said bill sent for his acceptance was not accepted by the said Robert Lumgair. Finds in law that the property of the said flax did not pass to the said Robert Lumgair or to his trustee, and that the petitioners are entitled to re-delivery and restitution of the same. Therefore ordains the respondent to deliver the same to the petitioners; failing which, grants warrant to officers of Court to search for, take possession of, and to remove the said flax from the premises of the said respondent, or wherever else the same may be lying, to the premises of the petitioners in Dundee. Finds the petitioners entitled to expenses."

The present appeal against this judgment was brought by Mr Dickson, the respondent. When the case was first before the Court for discussion the following pleas were allowed to be added by the petitioners:—"(6) The respondent never having granted his acceptance as stipulated, the delivery which took place did not pass the property in the flax libelled. (7) At least the respondent, on determining by reason of his insolvency not to grant his acceptance as stipulated, was bound to return the flax libelled."

A proof was then ordered, which was taken upon November 8, 1875, before Lord Ormidale. The principal facts brought out in this proof are referred to in the judgments pronounced.

Argued for Brandt & Company—As the purchaser was insolvent, and must have been aware of his insolvency at the time when he entered into this contract of sale, the contract was voidable. The acceptance of delivery when insolvent was a fraud on the right of the seller. An insolvent man was bound to reject. The petitioners were entitled to succeed even upon the assumption that delivery was complete, and that the property had passed. But that assumption was not warranted by the facts. Mr Lumgair only retained the flax *custodiæ causa*. The condition of the sale, as agreed upon, was that a bill should be granted for the price; until that suspensive condition was complied with by the purchaser, no transference of the property could take place. The purchaser did not and could not fulfil that condition, and was accordingly entitled to reject the goods.

Argued for the trustee—Neither at the time of the sale nor of the delivery of the flax to him was the purchaser aware of his insolvency, and there was therefore no evidence of fraud upon which to reduce the contract of sale. The granting of the bill was not made a suspensive condition by the seller, and even if it was at first intended to have that effect, by sending the bill after the goods had been delivered, they indicated that they had departed from this condition, and were willing to sell upon ordinary credit. Apart from the suspensive condition, delivery having taken place, nothing which the purchaser did subsequently could have the effect of setting aside the contract of sale.

Authorities (upon the question of *mala fides* and rejection of goods)—Bell, i. 261; Brown on Sale, 451; Bell's Prin. § 1310; Stair, i. 14, 2; Erskine, iii. 3, 8; *Jaffrey* v. *Allan, Stewart, & Co.*, Dec. 23, 1790, 3 Paton's Appeals, 191; *Morton* v. *Abercromby*, January 7, 1858, 20 D. 362; *Inglis* v. *Royal Bank*, June 16, 1736, M. 4936; *Steins* v. *Hutcheson*, November 16, 1810, F.C.; *Carnegie & Co.* v. *Hutchison*, February 25, 1815, Hume 704; *Drake* v. *Macmillan*, July 8, 1807, Hume 691; *Schummans* v. *Tweedie*, July 9, 1828, 6 Shaw 1111; *Brown* v. *Watson*, December 21, 1816, Hume 709; *Inglis* v. *Port Eglinton Spinning Coy.*, January 27, 1842, 4 D. 478.

Upon the question of suspensive condition—Smith's Mer. Law, 544; Blackburn on Sale, 311-5; *Brodie* v. *Todd & Co.*, May 20, 1814, F.C.; *Hill* v. *Buchanan* (H. L.), April 11, 1786, 3 Paton 47; *Watt* v. *Findlay*, February 20, 1846, 8 D. 529; *Brandt* v. *Bowlby*, 1831, 2 B. and A. 932; *Wilmshurst* v. *Bowker*, February 3, 1844, 7 M. and G. 882.

At advising—

LORD JUSTICE-CLERK—This case raises an important and, at the same time, narrow and difficult question. The Sheriff-Substitute in dealing with it directed a proof, but the Sheriff, upon a reclaiming petition, decided in favour of the pursuers, on the ground that the sale was not a completed contract, there being a suspensive condition.

The facts are simple enough. It seems that Mr Lumgair had been carrying on an extensive business, but that owing to the depressed state of the markets he was in difficulties, which he had endeavoured to tide over by a variety of devices. In particular, he had been in the habit of overdrawing his cash-credit account, and getting the bank to discount unaccepted bills for him. In this state of matters he had gone on for some time, and on the 24th of November 1874 he ordered flax from the pursuers to the extent of ten tons. The terms upon which the flax was purchased are important. They are contained in the pursuers' letter of 24th November—"We confirm the sale made to you to-day of, *ex* 'Success,' in Dundee public warehouses, about 10 tons superior Stararussa 12 hd. flax at £40, 10s. p. ton, *ex* warehouse. Draft at 4 months from this date, and 1 per cent. discount. Should

we require the draft payable in London, we shall allow the usual retiring charges of 2s. 6d. per cent." The goods arrived at Arbroath on Friday night or Saturday morning, the 27th, having been despatched by rail from Dundee on the Friday, with an invoice announcing their despatch, sent by post on the Saturday, and which was delivered in Dundee on the Saturday. The goods were received on the Saturday at the warehouse, where the manager proceeded at once to work them up. The bankrupt was not there when the goods arrived, but he received the invoice and bill of lading at his private residence. On the Monday he went to the warehouse and saw that the goods had been worked up, but gave no directions regarding them. This was the first time that he was made aware of the arrival of the flax. He went to his office and there found awaiting him an intimation from the bank to the effect that his credit was in future to be limited and mode of business with the bank restricted. Upon receiving this intimation he resolved at once to suspend business. He returned to the warehouse and gave directions that the flax should be laid aside, which was still quite separable, even that small portion of it which by that time had been heckled being still unmixed with any other flax. The flax was set aside, and it has since been sold, and the proceeds consigned in this process, and accordingly they were set aside. Mr Lumgair was sequestrated within a few days, and the present question has arisen between Messrs Brandt & Co. and the trustee upon his estate, who alleges that they are merely creditors for the price of these goods. When the case came here we thought it right that we should have the facts before us, and accordingly a proof was taken. The result has confirmed me in the opinion that that was the proper course to follow. It is contended for the sellers that the contract was in *mala fide*, as Mr Lumgair was aware at the time when it was entered into that he could not carry on business. On a consideration of the facts of the case I am of opinion that this cannot be maintained. The bankrupt's footing was admittedly a slippery one, but he had an honest faith in the system which he was following—he expected to tide over his difficulties, and thought that he had sufficient to meet his liabilities. The pursuers therefore have, in my opinion, failed to establish this ground.

There is, however, a second question raised. The creditors say that delivery was completed upon the reception of the goods at the warehouse, while it is contended, on the other hand, that delivery was not completed, as there was something still to be done. In all cases of this kind, when transactions on the eve of bankruptcy are in question, and the conduct of the bankrupt has a natural influence on the interests of his various creditors, the honest and straightforward line of conduct is always an important element in the consideration. This present case accordingly is not a favourable one for the general creditors. For clearly the honourable course was to do as the bankrupt did, and decline to grant a bill while retaining the goods for those who might be entitled to them. It might have been that the property was so transferred to the bankrupt as to entitle the creditors to claim it, notwithstanding that the bankrupt held his hand; but taking the case on the strictest and most technical view, I am clearly of opinion that delivery was not complete, and the transfer of the property was suspended until the bill was granted for the price, which bill never was, and in the circumstances never could be, honestly granted. My reasons for arriving at this conclusion are these. In so sending the goods and the invoice it was the intention of the parties that they should arrive simultaneously. Until the purchaser was made aware of the terms upon which the goods were despatched, it is impossible to say that the contract was completed, nor could the manager at the warehouse foretell by any act of his the delivery.

The sellers' letters and the invoice show conclusively that they never departed from the condition as to granting a bill. It appears to me that the action of the manager could not prevent the principal from countermanding the goods if disconform to invoice or otherwise, nor the seller from reclaiming his goods on the refusal or inability of the purchaser to implement a condition suspensive of the sale. It was argued that the defender must be held to have deliberately accepted delivery and to be now barred from resiling. But I am of opinion that though the bankrupt was aware of the arrival of the goods for an hour or two before his stoppage, there is no evidence of his having given any consideration to the matter or taken any deliberate determination which could be held as supporting the defender's view. I should have doubted whether, even although there had been no suspensive condition, the delivery would have been complete. But I think that there was a suspensive condition, and Mr Balfour admitted that this could not have been disputed had the goods and invoice arrived together. But it was most ingeniously argued that there was a waiver of the condition that a bill should be granted on arrival of the goods, and that the senders consented to give ordinary credit for them. I could not for a moment say that there was such a waiver merely because a letter was sent by post after the goods had started by rail.

Holding, therefore, that there was a suspensive condition, and seeing that the bankrupt did not and could not grant the bill required, I am of opinion that the sellers are entitled to recover.

Lord Neaves—This case raises a question of considerable interest, and has given rise to as able an argument from both juniors and seniors as I have ever listened to. It has been most satisfactorily brought before us. It is a case of great importance, as are all those of a mercantile character involving questions of honourable dealing.

It appears that Mr Lumgair was engaged in extensive transactions. I cannot agree in thinking that at this particular time he either knew himself to be insolvent or was insolvent. Who will put a limit to the sanguine credulity with which speculators regard their ultimate prospects? The bank had hitherto allowed him to overdraw his account, and he fully expected to pull through his difficulties. I cannot hold that a merchant so placed is so incapacitated that his transactions should be cut down on the ground of insolvency.

He orders this flax in question, and it is quite plain from the facts before us that it was to be

paid by a bill running from the day of purchase. Then we have a series of transactions—between the flax being sent and the stoppage of business by Mr Lumgair—of a somewhat peculiar nature. I think that there was an inherent condition, which, when not performed, altered the condition of the delivery. Look at the circumstances. The goods were sent by rail on the Friday. They arrived on the Saturday. It does not appear that they were personally taken possession of by Mr Lumgair, but by the people in his employment. But while things were thus *in pendente*, a change of circumstances took place. There is the letter of the bank written on the Saturday, and the invoice sent by the sellers on the same day. An attempt has been made to show that there was a waiver of the original bargain. But I think that attempt has failed. The goods and the invoice merely went in different ways—by different channels. Between the Friday and the Monday there was sent that letter from the bank which gave a fatal stab to Mr Lumgair's credit. When he saw that letter, he saw that he could no longer grant the bill demanded of him by the sellers. The bank refused to go on with him upon the old terms. His credit was at an end. What was his duty as an honest man? Could he go on? Most certainly not. Now, was this interval which thus elapsed long enough to give his creditors a vested right to insist that he should act as a dishonest man and keep their goods? Have we not here a plain case of an agreement to grant a bill for the goods, and then—when in consequence of a just conviction the purchaser finds that he cannot grant such a bill—the putting of them aside. A man is entitled to do what he is bound to do. There is no doubt here a suspensive condition never departed from, which remained a current condition between the time of sending the invoice and the return of the draft. There is nothing to entitle the creditors to lay their hands on these goods as delivered, so as to divest the sellers of the power of enforcing their condition.

Lord Ormidale—This case has been anxiously presented to us by counsel for both parties, and I feel that I would not be doing right if I did not express in short compass the opinion which I have formed.

I lay the foundation for what I have got to say by reading a few sentences from the evidence of Mr Lumgair and his foreman. Mr Lumgair says—"On 24th November I bought some flax from Richard Brandt and Company, through one of their clerks. I made the purchase personally. It was payable by draft at four months from the day of sale, and 1 per cent. discount. I first learned on the Monday morning, between nine and ten, that the flax had arrived. I called at the shop in passing, and found that it had been delivered. I had received the invoice on the Saturday afternoon, and also a draft for the price. I kept the draft over till the Tuesday. I never transmitted it. I was in the habit of accepting such drafts on the day they arrived, with the exception of some Dundee bills, which I occasionally took with me to the market on Tuesday. It is generally the practice to return these drafts in course of post. This was the first transaction I had had with Brandt and Company. I intended to have transmitted their draft, but my stoppage took place before I had time to do so. So far as I remember, it was between five and six o'clock on the Saturday afternoon when I got the draft. I resolved upon stoppage between eleven and twelve o'clock on Monday forenoon. Between three and four in the afternoon I sent up word to my heckling foreman James Fyffe to lay aside the flax. I was not sure whether the flax was mine or not, and therefore directed it to be laid aside. I got an intimation from the bank that morning a little before eleven o'clock, and made up my mind in about half an hour that I could not go on." And then he says—"My business was going on in the ordinary course,—buying, selling, and doing everything else as usual, until I stopped on the Monday forenoon. I was making additions to my premises down to the time of my stoppage, in the intention and expectation of carrying on. The purchase in question from Brandt and Co. was made in the usual course of business, and until I got the bank's letter I expected to be able to meet the draft at maturity." The foreman says—"I was foreman heckler to Mr Lumgair previous to and at the time of his failure. I recollect a parcel of 10 tons of flax from Brandt and Company arriving upon Saturday, 28th November 1874. At that time we were out of that particular description of flax. In spinning flax it is necessary to mix up different sorts of it. The flax in question was quite distinguishable from other flax we had on the premises. On its arrival we commenced to heckle a portion of it, and continued heckling it until Monday the 30th, between three and four o'clock afternoon, when I received a message from Mr Lumgair not to begin to it, and if I had begun to stop. About a ton of it had been heckled by that time. That ton had not been in any way mixed with other flax, and I was able to lay it aside perfectly separate. The whole parcel was laid aside by itself, and was thereafter kept entirely separate from any other stuff."

This contains the whole essential circumstances of the case. Mr Lumgair seems to have acted with perfect fairness. His trade was in a risky condition, but I cannot doubt from the statements before us that he acted *bona fide*. This appears not only from his own testimony, but on that also of others.

If that be so, he was in good faith in entering into the transaction with Brandt and Co. Now, are Brandt & Co. entitled to have their goods restored? If not, and if they are not to have anything of a dividend, it would be a hard case, but that is not a reason of weight in the legal argument. The question is, whether these goods were delivered in the sense of the possession having passed. Now, that question is one of considerable delicacy, and in the circumstances a narrow one. It was not presented as a question of stoppage *in transitu*, nor well could be, for the *transitu* was completed. But in this transaction there was something more necessary in order that the possession of the goods might pass, viz., the invoice to be sent with them—along with them in a reasonable sense. The goods having arrived on Saturday, the invoice was sent in a reasonable sense concurrently with them, although there were a few hours between their respective arrivals. Until the invoice was seen it was impossible for Mr Lumgair to return the draft as agreed upon. He could not tell until he saw it

whether the goods were conform to order. Furthermore, I take it, before the possession could be held to have passed, something else remained to be done. The purchaser had to return the draft. Now, no time was lost in all this. He had got the invoice intimating that the goods had been despatched upon Saturday evening, and upon Monday forenoon, shortly after learning that they had been received, he made up his mind, in consequence of a letter which he had received from the bank, to suspend business, and then he at once sent orders to lay these goods in question aside, like a sensible and honest man. Mr Bell in his Commentaries (i. 238) lays it down thus, without hesitation—"So if it be stipulated as the condition of a bargain, or if goods be sent accompanied by a draft to be accepted and returned, and the goods are received, but the acceptance not sent, the property is not passed, the goods are still unsold." And the case of *Brodie* v. *Tod & Co.*, 20 March 1814, F. C., on which he founds, is directly in point. If that be so, we must decide for the pursuers on the second ground of action, and direct the goods to be returned to them.

LORD GIFFORD concurred.

The Court pronounced the following interlocutor:—

"Find that the goods in question were ordered from the respondents (petitioners) by the bankrupt, Robert Lumgair, on 24th November 1874, at the price of £40, 10s. per ton, for which a bill was to be granted as at that date; that the goods were forwarded on the evening of Friday, 27th November, by railway from Dundee, and were delivered at the bunkrupt's warehouse on Saturday morning, and were received into stock by his manager, who used a certain portion of the goods, but without the bankrupt's knowledge; that the respondents on the 28th November sent by post a letter of advice, invoice, and bill, which were received after business hours by the bankrupt at his private residence: Find that the bankrupt on calling at his works on Monday the 30th November learned for the first time that the goods had arrived; that, without giving any instructions, the bankrupt proceeded to his office, and there found a letter from the bank with which he did business, restricting his credit to an extent which obliged him to stop payment: Find that the bankrupt did not accept the bill sent him, and directed the goods to be put aside: Find that in these circumstances the property in these goods never passed to the bankrupt, and that the sellers were entitled to have them back: Therefore dismiss the appeal and affirm the judgment appealed against, and decern; and in respect that the goods in question were sold of consent of both parties, and that the proceeds thereof, amounting to £416, 8s. were deposited by Messrs David Martin & Company, merchants, Dundee, in the National Bank of Scotland, Dundee, to await the orders of the Court, conform to deposit-receipt, dated 13th September 1875, No. 25 of process, grant warrant to the Accountant of Court, or other custodier thereof, to deliver up the said receipt to the respondents or their agents, and ordain the Bank to make payment to the respondents of the said sum of £416, 8s. with the interest accrued thereon, upon delivery of the said receipt, and decern: Find the respondents entitled to expenses, and remit to the Auditor to tax the same, and to report."

Counsel for the Petitioners—Dean of Faculty—H. Johnston. Agents—Leburn, Henderson, & Wilson, S.S.C.

Counsel for the Respondent—Balfour—Pearson. Agents—Webster & Will, S.S.C.

Tuesday, January 11.

FIRST DIVISION.

[Lord Mackenzie.

LADY GRAY *v.* RICHARDSON AND OTHERS.

Property—Title—Salmon Fishing.

A and B were co-terminous proprietors of lands situated on the river Tay. The description in A's titles was "All and haill, the just and equal sunnie half of all and haill the lands of I . . . as the same is presentlie occupyed and possessed by A. P . . with the just and equal half of the salmond fishings and others fishings of the saidis lands of I." The description in B's titles was —"All and haill, the quarter or fourth part of the town and lands of I., ... last occupyet be J. B., and now by myself," as also "the other quarter or fourth pairt of all and haill the said town and landis of I., . . presentlie possesset by G. L., my tennent, . . together with the just and equal half of the salmond fishings and other fishings of the saidis lands of I." Prior to 1795 the whole lands of I. were held by the predecessors of A. and B. in alternate lots or kavels, and each proprietor possessed the salmon fishing *ex adverso* of his respective kavels. In 1795, by decreet-arbitral, the kavels were done away with, and the lands of I. were divided into two continuous parts, the one to belong to A. and the other to B. By this decreet the salmon fishings were reserved to the parties "according to their present boundaries." *Held*, that A and B had each an absolute right of property in the salmon fishings, not *ex adverso* of their lands, but as reserved by the decreet-arbitral, and defined by possession.

Opinion per Lord Deas that A and B were not *pro indiviso* proprietors of the lands and salmon fishings of I., but that by their titles each was sole and absolute proprietor of one-half of the lands, and of one-half of the salmon fishings.

Salmon Fishing—Crown Charter.

Circumstances in which *held* that a Crown grant in favour of a proprietor of the salmon fishings *ex adverso* of certain lands