June 9, 1813.

EMBARGO.—SEAMEN'S WAGES.

July 12, 1813.

the time he was kept out of the ship, as found in the Special verdict.

The Judges attended this day, and the Lord Chief Baron delivered their unanimous opinion that the Plaintiff was entitled to recover.

Lord Eldon (Chancellor). This appeared to him to be a case of considerable difficulty; but, on the whole, he concurred in opinion with the Judges.

Judgment of the Court below affirmed.

Agents for Plaintiff in Error, ATCHESON and MORGAN.
Agent for Defendant in Error, RIPPINGHAM.

ENGLAND.

APPEAL FROM THE COURT OF EXCHEQUER.

PARMETER and others—*Appellants.*
ATTORNEY-GENERAL—*Respondent.*

Feb. 13. 15. 1813.

QUESTION AS TO A NUISANCE IN PORTSMOUTH HARBOUR.

THE Appellants, claiming under a grant by Charles I., of the soil between high and low water marks, along the coast of the county of Southampton, erect a wharf, dock, &c. between high and low water marks in Portsmouth harbour. Information to abate this as a nuisance. No possession of this particular spot under the grant, till 1784. Court of Exchequer decree a removal of the nuisance, and this decree affirmed by the Lords, solely on the ground of non-user as to this particular place, without reference to general validity of grant.

THIS was an appeal from a decree of the Court of Exchequer, made in a cause commencing by

information filed by his Majesty's Attorney-General in Hilary term, 1803, for the purpose of abating a nuisance in Portsmouth harbour. The information stated, that in 1784 the Defendants (Appellants) began to erect, and did erect, and make on the Gosport side of Portsmouth harbour, and within the high and low water marks there, and near to a place which had been commonly used for the mooring his Majesty's ships, and called the King's Moorings, a certain wharf, quay, or stage, (with a storehouse, &c. at the side,) connected with the shore by a wooden bridge, and extending from the shore, or high water mark, toward the low water mark, 336 feet, and in this wharf, quay, or stage, the Defendants had placed the hull of a large ship, to serve as a dry dock; and near the side of the wharf between high and low water marks, they had placed another large ship for the same purpose, embanking the intervening space with stones, soil, and rubbish, to form a communication between the last mentioned ship and the wharf; and also that the Defendant's had inclosed a certain piece of mud-land in the said harbour, between high and low water marks, for a timber-pound, &c.

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Information, Hil. T. 1803.

Appellants erect a wharf, &c. between high and low water marks.

The information then stated, "that the said wharf, "quay, or stage, dock, bridge, storehouse and tim- "ber-pound, and other buildings, erections, and "works, which had been so erected, built, and made "as aforesaid, were a nuisance and injury, and if "continued, would be a great nuisance and injury "to the said harbour, and would prejudice the "aforesaid moorings, and would also be an obstruc- "tion to a quantity of water proportionable to their

The wharf, &c. stated to be injurious to the harbour.

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" dimensions coming into and going out of the said " harbour on each flux and reflux of the tide, and " thereby prevent a great scouring and cleansing of " the lower part of the channel of the said harbour " of soilage there, and greatly endanger the loss of " the said harbour; and that if similar erections, " buildings, and works, should be made in all parts " of the said harbour between high and low water " marks, the same would entirely destroy the said " harbour, or render the said harbour useless, so " that his Majesty's ships and vessels, and other " ships and vessels of burthen, would not be able " to come into or go out of the said harbour as " they had always been used to do; or if such ships " and vessels should be able to come into or go out " of the said harbour, the same would not be able " to remain long there, or ride with any safety."

The information then prayed, that the nuisance might be abated, and the Defendants restrained from erecting any other works, &c. of the same description.

The Defendants in their answer insisted, that the erections in question, instead of being a nuisance, were of great use to the harbour. They also stated their title to the soil on which the erections were made, as derived from a grant by letters patent of King Charles I., in 1631, " at four-pence per acre, " to certain persons therein named, and their heirs, " all and singular the lands and marshes surrounded " and overflowed, or subject to the overflowing of " the sea in the county of Southampton, from the " county of Sussex, beginning at Emsworth, to " Hurst-Castle, near the confines of the county of

Title of Appellants under grant by Cha. I.

" Dorset, containing five thousand four hundred
" and thirty-two acres, or thereabouts, and that
" they the said Defendants, or some or one of them,
" had purchased of some persons or person claiming
" under such letters patent a large quantity of land
" within the said harbour of Portsmouth, and be-
" tween the high and low water marks aforesaid,
" whereon or wherein, or on parts of which they
" the said then Defendants, or some or one of
" them, had erected and made the said wharf, quay,
" or stage, dock, bridge, storehouse, and timber-
" pound, and other buildings, erections, and works
" as aforesaid." The Defendants likewise claimed the benefit of the Act, 9 Geo. 3. cap. 16.

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After witnesses examined on both sides, and much contradictory evidence given, the cause was first argued in the Court below, principally upon the question of nuisance; upon which the Court did not deliver any opinion; but, on the 16th day of May 1811, ordered that it should be re-argued by one Counsel on each side, on the 17th day of June following, as to the validity and effect of the letters patent; and the cause accordingly came on to be re-argued on the last-mentioned day; and on the 23d day of December 1811 the Court, by its decree, declared " that the right to the soil in the pleadings
" mentioned therein was in his Majesty, and there-
" upon decreed that the wharf, quay, or stage, docks,
" bridge, storehouse, timber-pound, and other erec-
" tions and works erected and made by the Defendants
" on the piece of ground within the harbour of Ports-
" mouth, between high and low water marks, should
" be abated and removed, and that the Appellants,

23d December, 1811. Decree to abate the nuisance.

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"or some of them, should forthwith, at their own expense, pull down and remove the same, and should "be restrained by the injunction of the Court from "making, setting up, or erecting any other erections, "buildings, or works on the soil in the pleadings "mentioned."

Appeal.

From this decree the Defendant appealed; and, upon an assurance by the First Lord of the Admiralty in his place, that the very existence of Portsmouth harbour might be endangered, unless the question was speedily decided one way or other, the cause was advanced and heard out of its course.

Sir T. Plumer and *Mr. Jervis* contended, that the decree ought to be affirmed on these grounds:

1st, Because the letters patent under which the Appellants derive their title were absolutely void *ab initio*, and of no effect.

2dly, Because, admitting the said letters patent to have been originally good and valid in law, the same have been abandoned.

3dly, Because the said wharf, quay, or stage, dock, bridge, store-house, counting-house, pitch-house, timber-pound, and other buildings, are not, nor is any part thereof *locally* within any of the premises granted by the said letters patent.

4thly, Because all the erections, buildings, and premises in question are a public nuisance; and are prejudicial to the harbour of Portsmouth, and tend to lessen the depth of water in the said harbour, and to destroy the same.

Hale de Jure Mar.

They argued that, in the first place the grant was void as to the soil in question, upon the ground that the King could not grant his *jus privatum* in pre-

judice to his *jus publicum*. It was void on another ground, viz. the variance between the commission and inquisition on which the grant was founded. The commission was to consider, whether the revenue would be benefited, and the grant of use to his Majesty, his heirs, and successors. The inquisition upon this did not follow the terms of the Commission, for it proceeded on private grounds and entirely lost sight of the interests of the Crown and revenue; and it did not appear that any part of the rent reserved to the Crown had been paid. Besides, no possession had been taken of the spot in question, under the grant, till 1784, so that, though the grant were valid and included this particular place, it had been abandoned by non-user. But the evidence, they submitted, proved that the place in question was not within the terms of the grant at all; and, at any rate, the title to the soil could not justify the erection upon it of a public nuisance. 2 Anst. 603.

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Messrs. Hart and *Johnston* (for the Appellants). There was evidence on the part of the Appellants, that the works which they erected were no nuisance. But, at any rate, the object of the information had been to abate the nuisance, if the erections in question should be considered as such. The title to the soil had only incidentally come into question, and their Lordships would hardly decide that point without the judgment of a Court, where the facts could be more accurately examined, than in a Court of Equity. If then these erections were to be abated as a nuisance, the Appellants ought to have compensation, since they were begun under the eye of

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the government officers, in 1784, nearly twenty years before the information was filed. As to the question of abandonment by non-user, or want of possession taken, possession of some of the places comprised in the original grant had been taken, and possession of part in such a case was virtual possession of the whole. The evidence on the other side did not show distinctly that this spot was not comprised in the grant; and it would be extremely hard if there was to be a forfeiture for mis-user, when the works were carried on under the eye of the government officers, without any legal steps taken to prevent their progress; and when they were only such as were made use of in places of a similar description.

Lord Redesdale. This grant might affect the lands of a great number of proprietors on the sea coast. The places included in it were only described generally with a reference to maps, which were not produced. It might be a question, therefore, whether the grant was not void for incertainty. If the maps were produced, that would be another case; as by decided cases, if there was a reference to a certainty, that would be sufficient; or if there was a prescriptive possession from which a grant was to be presumed. But of the spot of ground in question, there had been possession only for about twenty years, before the information filed.

Lord Eldon (Chancellor). He did not see clearly how the space between high and law water marks could be represented in maps. There appeared no

other way here of making good the title, but by showing sufficient possession. In this case there was no sufficient possession, for the Crown had still remained in possession for upwards of one hundred and fifty years, which created a presumption against its own grant. If there had been possession under the Appellants' title for sixty years, then there would have been an adverse possession against the Crown; but they could show nothing more than possession for nineteen or twenty years.

Mr. Hart. Possession had been taken of part, and that was virtually possession of the whole.

Lord Eldon. But how did it appear that this was a part of the ground comprized in the grant?

Mr. Hart. That was an additional reason for not deciding the question of title, till the matter should be further investigated.

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Crown in possession for more than 150 years after the time of grant, which presumed against its own grant. Appellants in quiet possession for only 20 years, and therefore no adverse possession against the crown.

Decree of the Court of Exchequer affirmed, upon the ground of non-user as to this particular place merely, without reference to the general question as to the validity of the grant, or the right under it to other places.

Decree of the Court below affirmed.

Agent for Appellants, GREGORY.
Agent for Respondent, BICKNEL.