

the portion of the said land so excepted having been freely granted by the said Nicholas Sparks to the late Colonel By, of the Royal Engineers, for the purposes of the canal; and excepting also

"(3) A tract of sixty feet round the said basin and bywash . . . which was then freely granted by the said Nicholas Sparks to the Principal Officers of Ordnance for the purposes of the said canal, provided that no buildings should be erected thereon."

The site of the canal, and the two hundred feet which were included within the limits of the land so set out and ascertained, had been given by an instrument, dated 17th November, 1826, under the hand of S. and one B., who was acting for the Crown, by which it was agreed that such portion of the land so freely given as might not be required for His Majesty's service should be restored to S. when the canal was completed. The canal was completed in 1832. Subsequent to the passing of the Act 9 Vict., c. 42, all the lands of S. so set out and ascertained were given up to him, except the portions above described, and deeds in the terms of the Act were exchanged between S. and the Principal Officers of Ordnance in regard to the land so given up and so retained respectively.

*Held*, (1) that, apart from the question of acquiescence and delay on the part of S. and those claiming under him, the Act 9 Vict., c. 42 and the deeds of surrender so exchanged, were conclusive between the parties so far as the area and boundaries of the lands to be retained and restored respectively are concerned.

(2) That the lands so retained are held by the Crown for the purposes of the canal, and that as to the tract of sixty feet around the basin and bywash there is attached a condition that no buildings are to be erected thereon.

(3) That the proviso that no buildings are to be erected on the said tract of sixty feet does not create a condition subsequent, a breach of which would work a forfeiture and let in the heirs, nor would the use by the Crown of a portion of the lands in question for purposes other than the "purposes of the canal" work such a forfeiture.

(3) The court has no power or authority to restrain the Crown for making any unauthorized use of the land, or to compel the Crown to remove any buildings erected thereon contrary to the terms of the grant.

*Semble*, that the Crown cannot alien the land or any portion of it, and if it should do so the suppliants would have their action against the grantee. If the Crown should abandon the land or any portion of it, the land or such part of it would revert to the suppliants, and they might enter and possess it.

*Held*, also, that where a solicitor or counsel of one of the parties to a suit has put his name as a witness to a deed between the parties he ceases, in respect to the execution of the instrument, to be clothed with the character of a solicitor or counsel, and is bound to disclose all that passed at the time relating to such execution.

*Robson v. Kemp*, 5 Esp. 52, and *Crawcour v. Salter*, L.R. 18 Chy. 34, followed.

*McCarthy*, Q.C., and *Christie*, Q.C., for the suppliants.

*Robinson*, Q.C., and *Hogg*, Q.C., for the Crown.