the property in such coal only as shall be dug, *Wilkinson* v. *Proud*, 1 M. & W. 33; *Chetham* v. *Williamson*, 4 East 469; and see *McIntosh* v. *Leckie*, 13 O.L.R. 54. The grant of such a right does not prevent the owner from exercising his right, as owner, of taking the same sort of thing from off his own land. The right granted may limit, but does not exclude, the owner's right. Clear and explicit language must be used in order to give the grantee the right to the exclusion of the land-owner, *Duke of Sutherland* v. *Heathcote*, [1892] 1 Ch. at p. 484.

It differs also from a mere license of pleasure or personal license, which must be exercised by the licensee only and is not assignable. Thus, if a land-owner grants merely the right to shoot, fish or hunt, without the liberty to carry away what is killed, it is a mere personal license, or license of pleasure, and is not assignable, or exercisable with or by servants, *Wickman* v. *Hawker*, 7 M. & W. at pp. 73, 77, 79; *Webber* v. *Lee*, 9 Q.B.D. at p. 317, *per* Bowen, J. But if, with the right to kill, there is given also the right to carry away what is killed, or part of what is killed, then the grant is of an incorporeal hereditament, a *profit à prendre*, *Wickham* v. *Hawker*, 7 M. & W. 63; *Webber* v. *Lee*, 9 Q.B.D. 315; *Rex* v. *Surrey Co. Ct. Judge*, [1910] 2 K.B. at p. 417. And so, being for profit, this right may be exercised with or by servants, and *a fortiorii* is that so when the right is granted to one, his heirs and assigns *Wickham* v. *Hawker*, 7 M. & W. 63. Each grant must be interpreted by itself; but a grant of the "exclusive right of fishing" has been held to imply the right to take away such fish as may be caught, and so to be a *profit à prendre*, *Fitzgerald* v. *Firbank*, [1897] 2 Ch. 96.

A *profit à prendre* is an interest in land, and an agreement to grant one is therefore within the Statute of Frauds, *Webber* v. *Lee*, 9 Q.B.D. 315; *Rex* v. *Surrey Co. Ct. Judge*, [1910] 2 K.B. at p. 417; *Smart* v. *Jones*, 15 C.B.N.S. 724. And it cannot be sold under an execution against goods, *Canadian Railway Acc. Co.* v. *Williams*, 21 O.L.R. 472. But it has been held that such a right, resting in agreement not under seal, is not such an interest in land as entitles the possessor of it to compensation under the wording of the English Lands Clauses Consolidation Act, 1848, from a railway company which expropriates part of the land which is subject to the right, *Bird* v. *G.E.R. Co.*, 19 C.B.N.S. 267.

Being an incorporeal hereditament, a *profit à prendre* must be created or transferred by deed, *Bird* v. *Higginson*, 2 A. & E. 696; 6 A. & E. 824; *Bird* v. *G.E.R. Co.*, 19 C.B.N.S. 268. But a writing, void as a grant, may operate as an agreement for one, and specific performance of it will be enforced in a proper case. And so, where a land-owner asked an injunction to restrain one who had such an agreement from shooting over his land, the injunction was refused, and specific performance of the agreement by the execution of a proper deed was ordered, *Frogley* v. *Lovelace*, John. 333. And where the circumstances are such that specific performance would be granted, the rights of the parties would now be adjusted as if the formality of a deed had been observed, *Walsh* v. *Lonsdale*, 21 Ch.D. 9.

Where a lease of sporting rights has been made not under seal, and the tenant has actually enjoyed the rights thereunder, he will be liable to perform any agreement made therein on his part, *Adams* v. *Clutterbuck*, 10 Q.B.D. 403.