lands at the time of the conquest and specifically appropriated them to himself as part of his own demesnes, his successors cannot be said to have been in actual possession of them.[21] Though Carlisle's counsel attempted to get round this by relying on the distinction between the conquest of Christian and infidel kingdoms drawn by Coke in *Calvin's Case*,[22] that distinction is untenable, and has been discredited.[23] As for the contention that letters patent are records in themselves, that may be true with respect to the grantee,[24] but can hardly be so as against third parties who challenge the title of the Crown.[25]

[21] (1608) Davis 28, at 40, cited by petitioners' counsel in MS Rawl. C. 94, 15[a]. It is unlikely that this ruling, which involved 'private' lands, would apply to 'public' lands (i.e. lands held by the former ruler as sovereign) or to the territory itself, both of which would have been acquired by the Crown by the overt act of conquest, as we shall see when we examine acts of state in ch. 6.

[22] (1608) 7 Co. R. 1[a], at 17: see Trinity Coll. MS 736, at 167–70, and discussion in Lester, 'Territorial Rights', 331–4.

[23] See ch. 4 nn. 25, 51 above.

[24] See above, ch. 2 nn. 128, 151 and text, ch. 3 n. 71 and text.

[25] See *Bristow* v. *Cormican* (1878) 3 App. Cas. 641, from which it appears that a Crown patent is of little value as a documentary title in the absence of proof that the Crown had either possession or title at the time it was issued. Lord Blackburn, at 667, said: 'The Crown might have had title in many ways, by forfeiture or escheat, or otherwise. But generally speaking, in order to make such a title in the Crown perfect, there must be office found' (i.e. the Crown needs a record: see ch. 3 nn. 61–72 and text above). Since there was no evidence of an office in that case, his Lordship concluded that the patents in question had to be dealt with 'in the same way as if the grantor was a private individual.' The grantees had to prove the Crown's title, which shows that the patents themselves were not records thereof. (Significantly this decision, like the *Case of Tanistry*, related to Ireland, a conquest.) It seems, then that letters patent assume that the Crown already has title, and that it is in possession either because its title is a matter of record, or because the possession is originai or was cast upon it by law. If the Crown has a title but lacks possession, nothing will pass by its patent unless it expressly grants its right instead of the land: *Winchester's Case* (1583) 3 Co. R. 1[a], at 4[b]–5[a]. If it has possession but lacks a good title, as where it acquires possession by conveyance of record (e.g. deed enrolled) from a disseisor or pursuant to an information of intrusion mistakenly brought against a disseisor, and then grants the land, the disseisee can enter upon, or bring an action against, the patentee: *Sadlers' Case* (1588) 4 Co. R. 54[b], at 59[b]; *Friend* v. *Duke of Richmond* (1667) Hard. 460, at 462. If the Crown grants land where it has neither title nor possession the grant is simply void, and should the patentee enter, he will be a disseisor: *Viner's Abr.*, 'Disseisin', D. 19 marg. n.; *Comyns' Dig.*, 'Seisin', F. 1.