possessor is in fact a disseisor. The Crown must prove its present title just like anyone else.[29]

We have seen that a disseisor has a tortious estate, in most cases a fee simple, by virtue of his possession. The estate is primarily the measure of his interest in the land. But since fee simple estates, when held by subjects in England, are always held in tenure, he holds his estate as tenant,[30] logically of the lord of the disseisee. However, Littleton wrote that a disseisee

---

Turn. & R. 209; *Doe d. Devine* v. *Wilson* (1855) 10 Moo. PC 502, at 527; 8 *Halsbury's Laws*', par. 1056–8. Furthermore, a lost grant, at least of an easement or *profit à prendre*, may be presumed even where it appears that no grant was made: see *White* v. *McLean* (1890) 24 SALR 97, at 101; *Tehidy Minerals* v. *Norman* [1971] 2 QB 528, at 552. Note, however, the distinction between a presumed grant of land to which the Crown once had an actual title, and a grant deemed in law to have been made of lands respecting which original Crown ownership is a mere fiction.

[29] Note that the Crown could at one time by *quo waranto* force a possessor of land to reveal his title in a general way, and show, for example, whether he held as heir or as possessor, but this action *in personam*, unless combined with an action *in rem*, such as a claim by escheat or as ancient demesne, could not be used to obtain the land; for even if the possessor had no right (apart from the title that goes with possession), it did not follow that the Crown had right: *Bracton*, IV. 168–9. See also *Bristow* v. *Cormican* (1878) 3 App. Cas. 641, at 667, where Lord Blackburn dismissed the suggestion that the Crown is entitled by prerogative to all land to which no one else can show a title; for if that were the case, acquisition of a *pur autre vie* estate by occupancy would not have been possible: see also per Lord Cairns at 652–3, Lord Hatherley at 658. Though that case arose in Ireland, a territory the Crown had acquired by conquest (*Campbell* v. *Hall* (1774) 1 Cowp. 204, at 210; Hale, *Prerogatives*, 92 SS, 32–3), the applicable law was assumed to be the same as in England: see per Lord Gordon at 671. See also *Johnston* v. *O'Neill* [1911] AC 552. The *Bristow* decision is consistent in this respect with the *Case of Tanistry* (1608) Davis 28, at 40, where it was resolved that the conquest of Ireland did not give the Crown possession of lands in the absence of a record that the conqueror had seized the lands at the time of the conquest and appropriated them to himself as part of his demesne: see discussion in Lester, 'Territorial Rights', 309–13; ch. 6, text acc. nn. 50–1 below. See too *Nireaha Tamaki* v. *Baker* [1901] AC 561, at 576; *Wallis* v. *Solicitor-General for New Zealand* [1903] AC 173, at 188; *Tamihana Korokai* v. *Solicitor-General* (1912) 32 NZLR 321, at 345, 352. In *Doe d. Wilson* v. *Terry* (1849) 1 Legge 505, at 508–9, Stephen CJ said: 'In England . . . the title of the Sovereign to land is a fiction; or, where the Crown really owns land, the property is enjoyed as that of a subject is, and by a title which admits of proof by documentary or other evidence.'

[30] See Simpson, *History of Land Law*[2], 102. But Simpson overstated the matter when he wrote that 'to say of a person that he has an estate is to describe his legal position *as tenant*': see ch. 5 nn. 78–85 and text below.