

patent for an island (called therein "Claytonwood Island") which, the plaintiff alleges, is the identical island patented to Duncan.

The plaintiff brings this action for a declaration that he is the owner of the island in question, and for an injunction restraining the defendants from interfering with his title, and for further and other relief.

The defendants assert that the island for which they obtained a patent is not shewn on the Government plan, and is to the west of the island granted to Duncan; and contend that the Minister of Lands having adjudicated upon the objection of the plaintiff to the defendants' title, the validity of the defendants' title is *res judicata*, and that it is not open to the plaintiff to impeach the same; and that in any action to impeach it the Crown is a necessary party.

The question of identity, therefore, becomes all-important; and I shall have to trace the transaction at some length. . . .

The trial Judge, who heard the witnesses, has made a very strong finding in favour of the plaintiff. . . . There is ample evidence, in my opinion, to support the finding of the trial Judge. I should, I think, upon the evidence, have reached the same conclusion. I entertain no doubt that the most northerly of the two islands in Bulger lake, shewn on the original plan, was intended to represent the largest island in the lake. It is incredible to me that a surveyor making an original survey, should have entered upon his plan the smallest island—a third of an acre—and have taken no notice of an island twenty times its size, when the line run by him was within a few rods of it.

I think the evidence conclusive that the island shewn on the original plan was the largest island in the lake, and was the one conveyed to Duncan.

The defendants deliberately, in my judgment, misrepresented facts to the Department, concealing the fact that they knew that the largest island, which they applied for, had already been patented to Duncan, and was known as "Duncan Island," and falsely suggesting that there was an island to the west, not shewn on the map, and not patented to Duncan.

After a careful perusal of the evidence, I entertain no doubt whatever that the island covered by the second patent is the same island that was applied for and for which a patent had previously been granted to Duncan. The description as "Duncan Island" in the patent, having been identified and recognised as such, was sufficient in itself. Those familiar with the island knew it by that name after it was applied for by Duncan; and