

finally decided that Duncan's patent did not cover the island in question, and directed a patent of the island to issue to the defendants. Zock had in the meantime filed a caution, but upon receiving a notice under R. S. O., ch. 138, sec. 169 (2), he withdrew his caution, a certificate was produced whereby it appeared that the claim arising upon Zock's patent had been considered by the Commissioner and disposed of by him before the issue of the defendants' patent, and thereupon the defendants received their certificate of title.

The plaintiff brought his action claiming (1) patent to Duncan; (2) transfer to himself; (3) patent of same land to the defendants, and claimed; (a) a declaration that he is owner in fee of the island; (b) an injunction restraining the defendants from entering, etc., the same; (c) an injunction restraining the defendants from transferring or mortgaging, etc., the same; (d) costs; (e) general relief. At the trial my learned brother gave the plaintiff his claim (a), (b), and (d) only.

The defendants now appeal.

So far as the facts are concerned, upon the evidence there can be no doubt that the Crown did grant a patent to Duncan of the island, not quite accurately described in deed. No doubt, it was thought that there were only  $2\frac{1}{2}$  acres instead of  $7\frac{1}{2}$ , probably because the water had been high when the original surveyors were in the neighbourhood. The exact position topographically also was not correctly represented. But that the large island for which the patent was afterwards issued to the defendants was bought and paid for by Duncan, and that it was intended that the patent he got should cover this island, upon the evidence adduced before the trial Judge and before us, there can be no doubt.

But it is contended by the defendants that the Court cannot go behind the finding and judgment of the Minister (Commissioner). There are several cases in our own Courts in which there was a dispute between parties as to who was entitled to a patent to certain lands—and it has been invariably held that where the Government have examined into and considered the claims of such opposing parties to receive the patent and decided in favour of the one, and issued a patent accordingly, the other cannot successfully appeal to the Court—the Court will not, and cannot interfere.