

(1868), 14 Gr. 224; *Farmer v. Livingstone* (1882), 8 S.C.R. 140.]

But in none of these cases was there a prior patent issued to the plaintiff on the strength of which an attack was made on the defendants' patent or its validity, as in the present case.

Section 169 of R.S.O. 1897 ch. 138, which was the enactment in force at the time of the transactions in question, is relied upon by the defendants. The Local Master found Duncan's patent registered (sec. 169 (2)), and gave notice accordingly to Zock; he received a certificate under sec. 169 (3), and thereupon discontinued the proceedings and disallowed the objection and claim founded on the Zock-Duncan instruments, as was his duty under that section. The legislation, it seems to me, makes the position of the defendants under their patent and the decision of the Commissioner unassailable—and the plaintiff must get rid of that patent before he can say that the defendants have no right in the island.

"A long line of decisions has settled that an action to declare void a patent for land, on the ground that it was issued through fraud or in error or improvidence, may be maintained, and that measure of relief granted, at the suit of an individual aggrieved by the issue of such patent, and to such an action the Attorney-General as representing the Crown is not a necessary party: *Martyn v. Kennedy* (1853), 4 Gr. 61; *Stevens v. Cook* (1864), 10 Gr. 410. See also *Farah v. Glen Lake Mining Co.* (1908), 17 O.L.R. 1:" per Moss, C.J.O. in *Florence Mining Co. v. Cobalt Lake Mining Co.* (1909), 18 O.L.R. 275, at p. 284.

If it were quite clear that there is nothing more in the way of evidence, etc., available, one might now declare the defendants' patent void: but it must not be forgotten that the Commissioner has had before him witnesses and documents—perhaps he had personal knowledge or information which is not before us. It would not be proper—if the responsible advisers of the Crown desire to insist upon the propriety of the Commissioner's decision and to contend that Duncan's patent did not cover this island—for us, in the absence of the Attorney-General and without affording him an opportunity of supporting by evidence and argument the view of his former colleague and the validity of the patent issued in accordance with such view, to decide in favour of the plaintiff. I have been careful to say that the conclusions of fact arrived at are such as are justified by the evidence before Mr. Justice Latchford and this Court: but these conclusions may be in fact quite erroneous, and by further evidence shewn to be erroneous.