

I am of opinion that the appeal should be allowed and the action dismissed, both with costs.

HON. MR. JUSTICE RIDDELL:—The learned Judge's findings of fact are in my opinion, after a careful perusal of the evidence, entirely justified. Some of his conclusions which are complained of might indeed have been the other way, and perhaps a reading of the words used by the witnesses as they appear in cold black and white would suggest that his view of the conduct of the defendants was unduly severe; but my brother saw the witnesses, and could best judge of them; and I cannot say that his conclusions are not wholly warranted.

Duncan, who had been shooting in the neighbourhood of Bolger lake in Burton township, district of Parry Sound, and who with three others, was the owner of a lot of 28 acres, upon which they had a shooting camp, was desirous of buying an island in the lake. He knew quite well the island he wanted to buy, the largest island in the lake; he saw Mr. Aubrey White, told him he wanted to buy the largest island in the lake—put in a formal application in which, being misled by the departmental map, he described the island as being intersected by a certain line—the extent of the island was by an officer of the department, estimated at $2\frac{1}{2}$ acres. Duncan paid \$25 the purchase-price, got his patent and then his certificate of ownership from the Registrar at Parry Sound. This all took place before the end of the year, 1907. Thereafter the island was commonly known as Duncan Island; and Duncan had no idea that he had not become regularly the owner of the island he had desired to buy until April, 1909—and in the meantime in 1908, sold to the plaintiff. The island he claims as having been patented to him is not intersected by the said line, and it contains in fact about $7\frac{1}{2}$ acres, being admittedly the largest island in the lake. The defendant Clayton hunting in the vicinity was told by the guide, Brownell, that the large island was Duncan Island, but suggested some difficulty in the title. Clayton then made up his mind “to play for it and take a chance in getting it any way.” I do not think there is any doubt that Clayton knew perfectly well that the island was claimed by Duncan—but he put in an application for the island—Duncan was notified as was Zock, and the Minister took the matter into his consideration, heard witnesses and