

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Moss, C.J.O., Osler, Garrow, MacLaren, J.J.A.]

[From Teetzel, J.]

FARAH v. GLEN LAKE MINING CO.

Crown patent—Mining land—Trespass—Counterclaim to set aside patent for fraud, error or improvidence—Jurisdiction of High Court—Parties—Attorney-General—Fiat—Con. Rule 241—Land Titles Act—Bond fide purchaser for value without notice—Injunction—Damages.

In all cases of patents for lands issued through fraud or in error or improvidence, the High Court has power, under ss. 41, 42 of the Judicature, notwithstanding the repeal and non-re-enactment in terms of s. 29 of R.S.O. 1877, c. 23, in an action instituted in respect of such lands situate within its jurisdiction, to declare such patents to be void, and this remedy may be accorded in an action by a private individual, to which the Attorney-General may or may not be a party, but to the institution of which his consent is not necessary. The operation of Con. Rule 241 may properly be confined to cases in which it may be necessary to resort for remedy to a writ of scire facias.

In an action to restrain the defendants from trespassing or mining upon or removing ore from a small parcel of land in a mining district, the defendants disputed the plaintiffs' title and asserted title in themselves as assignees of the mining claim of one C., comprising the parcel in dispute. The defendants also counterclaimed, alleging inadvertence, omission, or mistake and claiming a declaration that the letters patent obtained by the plaintiffs did not give them the title to the parcel in dispute, or that, if they did, the letters patent should be repealed, in so far as the parcel in question was concerned, and an injunction and damages.

Held, that the matters set up by the defendants in their counterclaim would properly form the subject of an action which might have been instituted by the defendants, without obtain-