

is not established. The evidence does not satisfy me that what plaintiff got as Duncan Island is, or was, intended to be the same as what the defendants got as the Clayton Wood Island. The description in grant to plaintiff's predecessor is "Duncan Island, containing $2\frac{1}{4}$ acres, more or less, situate in Bolger lake opposite lots No. 20 and 21 in the 7th concession of the said township of Burton."

The description in the patent to defendants, is "Clayton Wood Island, containing 7 and $\frac{1}{5}$ acres, more or less, situate in Bolger lake, in the said township of Burton, as shewn on a plan of survey . . . a copy of which plan is attached to and forms part of the said letters patent." It is not clear to me that any person can possibly from this plan say, with any degree of certainty, that the islands so differently described are really only one island. The plaintiffs attack the ownership of what was unquestionably conveyed to them as Clayton Wood Island—and the proof must be made by plaintiff that this very island bought and paid for by defendants had already, by another name, been bought and paid for by Duncan. The plaintiff has failed in his proof.

Second.—The question of identity was raised by the plaintiff in opposition to the application of the defendants to the Minister of Lands, Forests, and Mines, for a patent for this island. An investigation was had—enquiry was made—the result of which was that the opposition of plaintiff was not effective, and the patent issued to defendants. The Minister issued his certificate. The plaintiff had caused a caution to be filed against the issue to the defendants of a certificate of title.

After the disposition of the matter by the Minister of Lands, Forests, and Mines, the plaintiff withdrew this caution and the certificate of title issued to the defendants. The question of identity seems to me as between the parties to this action is *res judicata*. As I said the act of the Crown was advisedly done. The plaintiff had full opportunity if the facts would warrant it of preventing the patent issuing to the defendants.

Fraud in applying for the purchase of land should not be imputed where all parties interested were heard—and when there was a decision apparently on the merits.