the Crown to Thomas Kedd, dated the 28th August, 1829, granting to him the front part of lot 15 in the 7th concession of Lansdowne, under a description which (as the plaintiffs alleged) included the island in question; and alleged that, by various mesne conveyances, the land patented to Kedd had devolved upon and was vested in them; consequently, that the assumed grant to the defendant was nugatory, because the Crown could not derogate from its former grant.

The plaintiffs' second contention was, that for more than 30 years they and their predecessors had been occupiers and users of the island; and that the defendant, by denying knowledge of the plaintiffs' claim and occupation, in affidavits filed in the Crown Lands Department, had misled the Crown, and that the patent to the defendant was granted in mistake.

The learned Judge, after stating the evidence, found as follows: (1) a patent was issued to the defendant on the 1st March, 1918, for the island in question; (2) the joint affidavit of Robert and George Steacy, filed in support of the defendant's application for a patent, was inaccurate and incorrect; (3) the defendant was unaware of the plaintiffs' claim and had not been guilty of any fraud in connection with the application; (4) the Department issued the patent in ignorance of the plaintiffs' claim, and, had it been aware of the plaintiffs' claim, would not have issued the patent without investigating and passing upon that claim; (5) by mistake and improvidence the plaintiffs had been prevented from presenting their claims to the Crown.

The learned Judge was against the plaintiffs on the first branch of the case. Upon the facts, he was of opinion that the island was not included in the grant from the Crown in 1829.

Speaking of the second claim, the learned Judge said that the Court had jurisdiction in such a case if a proper claim was made out: Florence Mining Co. Limited v. Cobalt Lake Mining Co. Limited (1909), 18 O.L.R. 275, at p. 284. But it was necessary to determine more than that the Court had jurisdiction and that a mistake had occurred. It was necessary to establish the plaintiffs' locus standi.

Reference to Farmer v. Livingstone (1883), 8 Can. S.C.R. 140, 146, 147, 158; Martyn v. Kennedy (1853), 4 Gr. 61; Proctor v. Grant (1862), 9 Gr. 26; Lawrence v. Pomeroy (1863), 9 Gr. 474, 476; Stevens v. Cook (1864), 10 Gr. 410, 414; Mutchmore v. Davis (1868), 14 Gr. 346, 356; Cosgrove v. Corbett (1868), 14 Gr. 617, 620; the Florence case, 18 O.L.R. at p. 284.

A careful consideration of these cases had led the learned Judge to the conclusion that as early as 1853 the Court of Chancery in Upper Canada recognised the locus standi of complainants whose bill of complaint rested upon facts similar to those shewn in