

ney-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.

But in such cases the relief is limited to declaring the patent void, leaving the parties to stand to one another as if the patent had never been issued, their final rights in respect of the land being left to be determined and settled by the Crown, to which the lands are restored by the avoidance of the patent.

The Court is not called upon, and in the absence of the Crown as a party to the record cannot be called upon, to exercise the jurisdiction which is vested in it by section 26 (7) of the Judicature Act, to decree the issue of Letters Patent from the Crown to rightful claimants. It is not necessary to enter upon a discussion as to the powers possessed by the Court under this provision, or to consider whether it applies to Letters Patent granting Crown lands, for in this case the record is not so framed or constituted as to parties as to enable such relief to be granted. Nor, in the absence of the Crown, can the Court undertake to make any declaration as to the ultimate title or right of the plaintiffs, for the reason that no such declaration could have any binding effect upon the Crown's right in the premises. The utmost to which the Court should go in this direction, is to enquire into the plaintiffs' claim to the extent necessary to ascertain whether they have a reasonable ground for invoking the jurisdiction of the Court to declare the Patent void in whole or in part as having issued through error or improvidence: *Farmer v. Livingstone* (1883) 8, S.C.R., 140. Fraud is not alleged or proved in this case.