

## DIVISIONAL COURT.

JULY 17TH, 1912.

## ZOCK v. CLAYTON.

3 O. W. N. 1611.

*Crown Lands—Patent—Misdescription—Application for same Lands—Dispute—Finding of Minister of Lands, Forests and Mines—Patent for same Lands Issued to Second Applicant—Certificate of Title—Action by First Patentee to Establish Title—R. S. O. 1897 c. 138, s. 169—Parties—Attorney-General—Intervention.*

Action for a declaration that plaintiff is owner in fee of a certain island, and for an injunction restraining defendants trespassing thereon. Plaintiff's predecessor in title, one Duncan, had applied in 1907 for a patent for what he considered was a specific island with which he was well acquainted. By inadvertence and mistake the application and the patent issued in pursuance thereof had apparently described another and much smaller island in the same lake. Defendant in 1909 applied for the island which Duncan had intended to purchase, knowing Duncan considered it his, and a patent therefor was issued to him after a hearing before the Minister of Lands, Forests and Mines of which both Duncan and plaintiff were notified. Plaintiff then brought action as above.

LATCHFORD, J., gave judgment for plaintiff with costs.

DIVISIONAL COURT, (BRITTON, J. *dissenting*) *held*, that as plaintiff alleged fraud on the part of defendant in his application to the Department, the Attorney-General should be given an opportunity to intervene and until then judgment should be withheld.

*Held*, that the Court has no power to review the decision of the Minister on an application of this character.

*Per* FALCONBRIDGE, C.J.K.B., if the Attorney-General decides not to intervene, the appeal from the judgment of Latchford, J., should be allowed and the action dismissed with costs.

*Per* BRITTON, J., the appeal should be allowed and the action dismissed with costs.

An appeal by the defendant from a judgment of HON. MR. JUSTICE LATCHFORD, at trial of an action for a declaration that plaintiff was owner in fee of a certain island, and for an injunction restraining the defendants from entering thereon, and for other relief.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

E. D. Armour, K.C., for the defendants.

M. C. Cameron, for the plaintiff.