

more in the way of evidence, etc., available, one might now declare the defendants' patent void; but it must not be forgotten that the Commissioner has had before him witnesses and documents, perhaps he had personal knowledge or information which is not before us. It would not be proper—if the responsible advisers of the Crown desire to insist upon the propriety of the Commissioner's decision and to contend that Duncan's patent did not cover this island—for us in the absence of the Attorney-General and without affording him an opportunity of supporting by evidence and argument the view of his former colleague and the validity of the patent issued in accordance with such view, to decide in favour of the plaintiff. I have been careful to say that the conclusions of fact arrived at are such as are justified by the evidence before Mr. Justice Latchford and this Court; but these conclusions may be in fact quite erroneous and by further evidence shewn to be erroneous.

I think that the Attorney-General must be given an opportunity to state, and if necessary, to justify the stand taken now by the Crown. If he upon being applied to by the plaintiff states that the Crown does not desire to intervene, the case may be disposed of upon the evidence now before the Court without further argument; if he desires to be heard in argument, such argument may be heard on some day to be arranged; if he desires to cross-examine witnesses already heard and (or) adduce further witnesses, he may be made a party to the action, all proper amendments made in the pleadings and the trial continued before Mr. Justice Latchford at some convenient time, the evidence already taken to stand.

In the meantime this motion will be retained.