

On 20th February, 1907, under and by virtue of letters patent, the Crown demised and leased to the defendants all and singular that certain parcel or tract of land under the water of Current river, passing through and within the limits of mining location "S" in the township of McIntyre, in the district of Thunder Bay, containing by admeasurement 10 acres more or less, as shewn on plan of survey by provincial land surveyor Hugh P. Savigny, dated May, 1868, of record in the department of lands, forests, and mines.

Clause 20 of the said letters patent provides as follows: "It is further expressly agreed and understood that should any litigation arise with regard to the title of the land hereby demised, the lessees, their successors and assigns, will, at their own costs and charges, defend their title and carry on the said litigation and will indemnify Us, as representing the province of Ontario and government and officers thereof, in respect of all costs which may be awarded in connection with the litigation, and in respect of all claims as well for costs as for damages, if any, which may arise or be incurred, or which may be established, against Us, as representing the said province of Ontario, or any officers thereof, by reason of this lease and any connection with the property hereby demised."

The statement of claim alleges (paragraph 5) that the tract of land under the waters of the Current river which His Majesty by the said letters patent purported to demise to the defendants is a part of the parcel or tract of land granted to the said Ferrier, and is now vested in the plaintiff.

The plaintiff asks to have it declared that the letters patent to the defendants, dated 20th February, 1907, are null and void as against the plaintiff, and form a cloud upon the plaintiff's title to the lands covered by the patent of 10th March, 1870; to have the letters patent of 20th February, 1907, delivered up to be cancelled, and to have the registration thereof vacated.

Robert R. Wickam, a civil engineer, who was with Hugh P. Savigny, provincial land surveyor, in May, 1868, when he laid out mining location "S" and planted a boundary post at the north-east corner thereof, stated that the Current river is 64 feet wide where it enters location "S" about two chains from the north-west angle thereof, and runs through the