

“Wherefore the complainants claim that the defendants be adjudged to have encroached upon the said claim of the complainants; that the amount of damage sustained by the complainants by reason of the said encroachments may be assessed and awarded to the complainants; that the defendants, their servants, implements, goods, and chattels may be removed from the said claim; that the defendants be restrained from future encroachments as in the said Act provided; and that the complainants have such other relief as to the Court shall seem fit.

“PETER DIGNAN,
“Complainants’ Solicitor.

“Stated before me at Grahamstown aforesaid, this 22nd day of November, 1871. 10.32.

“W. FRASER, Judge.”

7. All the matters alleged are facts.

8. I, as Warden, was served with such a rule.

9. I believe that the services of the Attorney-General were procured to be given on the part of the Crown, and I believe on the part of the Warden; but, so far as I know, he was not retained on behalf of the petitioners, nor were his services obtained by reason of the matter alleged in relation to other barristers.

10. This is correct as far as it goes, but as part of the compromise it should be mentioned that the petitioners received a sum of £500 for the value of the gold taken and for costs.

11. I have no knowledge of petitioners’ information or belief.

12. This is not correct. The petitioners did not apply for a license in exchange for their title to their claim, but marked out the site of the claim afresh, and made application for a license under “The Gold Mining Districts Act, 1871,” of which application a copy is hereto annexed, marked “A,” with a tracing of the plan lodged therewith, marked “B.”

13. The matters alleged are true, with the distinction that they followed upon the application marked “A,” instead of upon the application as alleged in paragraph 12 of petition.

14. Robert Graham did commence an action for trespass as alleged, but the trespass for which he sued took place before the granting of the said license.

15. Correct as to petitioners’ claim, and some others.

16. Correct.

17. I believe this to be correct.

18. Correct, I believe, though I know nothing of the costs incurred.

19. This is correct, except that I have no knowledge as to the finding of the jury as to the nature of the *locus in quo* mentioned.

20. Correct, except that I have no knowledge of the amount of costs.

21. Substantially correct, I believe.

22. Consequent on the verdict in the second action, the petitioners took from the said Robert Graham his interest in certain land, and paid him therefor and for the costs of the said action the sum of £675.

So far as I am directed in my report “to state at length the facts bearing on the question” whether it was the fault of the petitioners or otherwise that they included ground in their claim which was not within the gold field or open for mining,” I beg to report—

1. By making reference to the agreement with the Native owners under which the Governor was empowered to authorize gold mining, as set out in Report of Mr. James Mackay, jun., in the Journals of the House of Representatives, 1869, A. No. 17, page 23, by paragraph numbered 1 it will be seen that certain lands within the external boundaries of the land were, as being cultivations, to be excluded from the lands for gold mining.

2. For the purpose of showing lands which were to be so excluded, a line was run intersecting the lots mentioned by the petitioners as shown on the plan annexed, marked C, the land to the seaward of such line being the subject of such exceptions, though the statement as to the precise site of the line is at variance with the evidence of Mr. Mackay, as reported in the Journals of the Auckland Provincial Council, Session XXIX., Report A. No. 25.

3. The claim held by the petitioners, as will be seen on reference to the said plan, comprised land on both sides of the said line, whereon it is set out coloured blue.

4. Thus the question arose between the petitioners on the one part, and Mr. Robert Graham, claiming under some of the Native owners, parties to the agreement, on the other part, as to whether the petitioners were (a) entitled to mine in the land to the seaward side of the said line; (b) whether they were entitled as claim-owners to occupy or pass over the surface on the seaward side of the said line.

5. The petitioners, no doubt, took up the said claim in the *bonâ fide* belief that they were entitled to the whole site.

6. The right to occupy for mining purposes had, however, in the early days of the gold field been considered by the Wardens then in office to be limited to the hill side of the said line, but subsequently sites in the debated land were marked off for the purpose of gold mining leases, under the Act of 1866, and such leases had been granted by the Superintendent, exercising the delegated powers.

7. This question was, however, finally settled by the operation of “The Gold Mining Districts Act, 1871,” conceding the right to mine, followed by the Act of 1873.

8. The cause of action in the suits mentioned arose, however, before the Act of 1871 came into operation, and, although at the time the proceedings were commenced the petitioners were possessed of a license under that Act, it was not contended that it could be used in justification of the trespass complained of.

9. It would appear to me, without presuming to decide what were actually the rights of the miners on the low land to the seaward of the line, that for a considerable time after the opening of