

1875.

NEW ZEALAND.

PETITION OF W. THOMAS AND OTHERS RELATIVE TO THE QUEEN OF BEAUTY GOLD MINING CLAIM,

(REPORT ON, BY MR. WARDEN FRASER).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

Mr. CURTIS to Mr. HAUGHTON.

SIB,—

Wellington, 28th August, 1874.

In compliance with the request contained in your letter of date 27th instant, I have the honor to forward to you the documents required by the Government, namely,—

1. Copy of petition, William Thomas and others.
2. Copy of minutes of Gold Fields Committee relating thereto.

I have, &c.,

OSWALD CURTIS,
Chairman.

C. E. Haughton, Esq.

Enclosure 1 in No. 1.

To the Honorable the HOUSE of REPRESENTATIVES of the COLONY of NEW ZEALAND.

The humble petition of WILLIAM THOMAS, JAMES STEWART, RONALD McDONALD, JOHN McCABE, PATRICK WALSH, and WILLIAM BARKER, all of the Thames Gold Field, in the Province of Auckland, in the Colony of New Zealand, Miners,

Showeth,—

1. That on and long prior to the 1st day of September, 1871, your petitioners were the registered owners and occupiers for gold mining purposes, under and in pursuance of the provisions of "The Gold Fields Act, 1866," and the Rules and Regulations made thereunder, of a gold mine or claim containing ten men's ground, situate in the Thames Gold Field aforesaid, and called or known as "The Queen of Beauty Amalgamated Claim."

2. That part of the land included in your petitioners' said claim is comprised within certain blocks of land situate at Grahamstown, in the Province of Auckland aforesaid, and called or known as Kauwaeranga No. 4 and Kauwaeranga No. 5.

3. That, in or about the month of September, 1871, Mr. Robert Graham, as lessee from the Crown grantees of the said blocks of land called or known as Kauwaeranga No. 4 and Kauwaeranga No. 5, for the first time, as far as your petitioners are aware, claimed to be entitled to all minerals contained in such parts of your petitioners' said claim as are included within the boundaries of the said block of land, called or known as Kauwaeranga No. 4 and Kauwaeranga No. 5, and claimed from your petitioners an account of all gold taken or won by them out of the said land.

4. That your petitioners, believing, and being advised by the proper officers of the Crown, that the whole of the land included within their said claim was Crown land within the meaning of "The Gold Fields Act, 1866," took no notice of the said claim of Robert Graham.

5. That in or about the month of October, 1871, your petitioners received a notice informing your petitioners that the said Robert Graham had sold all his estate, right, title, and interest in and to all minerals within such parts of your petitioners' said claim as are included in the aforesaid blocks of land to the Bright Smile Gold Mining Company (Registered), the owners of an adjoining claim.

6. That some time after receiving the said notice your petitioners became aware that the said Bright Smile Gold Mining Company were mining for and obtaining large quantities of gold from your petitioners' said claim; and your petitioners, in consequence of the said Bright Smile Gold Mining Company refusing to desist, instituted proceedings in the Warden's Court against the said Company for the said trespasses.

7. That when the complaint laid by your petitioners came on for hearing in the said Warden's Court, the counsel for the said Bright Smile Gold Mining Company objected to the jurisdiction of the Warden to hear and adjudicate upon the said complaint, upon the ground that the *locus in quo* was not

Crown land; and upon the Warden asserting that he had jurisdiction, and expressing his determination to hear and adjudicate upon the said complaint, the counsel for the said Company applied for and obtained an adjournment of the hearing of the said complaint, in order to enable the said Company to apply to the Supreme Court for a writ of prohibition.

8. That the said Bright Smile Gold Mining Company accordingly applied for and obtained a rule *nisi* for a writ of prohibition in the said matter.

9. That the said Company having retained all the principal barristers in Auckland on their behalf, your petitioners applied to the Provincial Government of the Province of Auckland, and the then Superintendent of the said province (Mr. Gillies) obtained and placed the services of the learned Attorney-General at the disposal of your petitioners in the said suit.

10. That after much litigation, and in consequence of the difficulties involved in the question in dispute, your petitioners were advised to, and did on the 19th day of July, 1872, compromise the said litigation, upon the terms that, in consideration of your petitioners foregoing their claim for an account of the gold taken or won out of their said claim by the said Bright Smile Gold Mining Company, the said Company withdraw all claim to the minerals within your petitioners' said claim.

11. That your petitioners were informed and believe that the said Bright Smile Gold Mining Company had taken out of your petitioners' said claim about 500 ounces of gold.

12. That after the passing of "The Gold Mining Districts Act, 1871," your petitioners, under the power contained in section 118 of that Act, applied to exchange their title to the claim held under the said "Gold Fields Act, 1866," for a license under the said "Gold Mining Districts Act, 1871."

13. That your petitioners' said application was duly advertised, and all the forms prescribed by the said Act were complied with, but no objection was made to your petitioners' said application, and a license was duly issued to your petitioners under the said Act, which license by section 18 of the said Act gives to your petitioners an indefeasible right to all gold within the boundaries of the land comprised therein, and an indefeasible right to dig and mine for gold therein and thereon, and dispose of the same, to erect machinery on such land, and to construct works connected therewith, and to do all lawful acts incident or conducive to the carrying out of these objects.

14. That immediately after your petitioners made the aforesaid arrangement with the said Bright Smile Gold Mining Company (Registered), viz. in the month of August, 1872, the said Robert Graham commenced an action in the Supreme Court against your petitioners for trespassing on the surface of lots 623 and 624 of the Township of Grahamstown, and being the same land as is hereinbefore referred to as part of Kauwaeranga No. 4 and Kauwaeranga No. 5, and also part of the land included in your petitioners' said license.

15. That your petitioners cannot, nor can any of the claimholders on the hill-side of your petitioners' claim, obtain a road out of their respective claims without passing over the land claimed by the said Robert Graham.

16. That your petitioners, believing and being advised as aforesaid that the said land was Crown land, defended the said action, and as a defence set up their title under the Gold Fields Act in justification of the alleged trespass.

17. That the said action was tried in the month of April, 1873, before his Honor Justice Johnston and a special jury, and a verdict was found in favour of your petitioners upon the ruling of the learned Judge.

18. That immediately after the said trial the said Robert Graham applied for and obtained a rule *nisi* for a new trial in the said action, upon the ground that the ruling of the learned Judge was erroneous, and after argument the said rule was made absolute and a new trial ordered, and it was also ordered that each party should pay his own costs. The costs of your petitioners amounted to £300.

19. That the second trial of the said cause was had in the month of February, 1874, before his Honor the Chief Justice and a special jury, which trial lasted five days and resulted in a verdict for the plaintiff, the jury finding that the *locus in quo* was not Crown land.

20. That the jury gave the plaintiff one farthing damages, but the costs of the case, amounting to about £1,000, followed the result.

21. That ever since the opening of the gold field in April, 1868, the said land has always been considered both by the miners and the officers of the Crown as being Crown land within the meaning of the Gold Fields Acts in force in this colony.

22. That as your petitioners could not work their said claim without passing over the land claimed by the said Robert Graham, your petitioners were compelled to and did purchase the said Robert Graham's interest in the same for the sum of £675.

Wherefore your petitioners humbly pray that your honorable House will be good enough to take the circumstances of your petitioners' case into consideration, and grant to your petitioners such relief as to your honorable House may seem meet.

And your petitioners as in duty bound will ever pray.

WILLIAM THOMAS.
RONALD McDONALD.
WILLIAM BARKER.
JAMES STEWART.

JOHN MCCABE.
JAMES MCCABE.
P. WALSH.

Enclosure 2 in No. 1.

EXTRACTS FROM MINUTE BOOK OF GOLD FIELDS COMMITTEE referring to the Petition of WILLIAM THOMAS and Others.

Tuesday, August 18, 1874.—The petition of William Thomas and others was then considered by the Committee and read by the Chairman, and was postponed until the next meeting, that Mr. Sheehan may be in attendance to give evidence in the matter.

Wednesday, August 19, 1874.—The petition of William Thomas and others was again considered. Mr. Sheehan made a statement to the Committee relative to the matter contained in the petition. A discussion took place thereon, when Mr. Tribe moved the following resolution, which was carried:—“The Committee is of opinion that the case for the petitioners is one of great hardship, and involves important questions which press for settlement. It recommends the Government to appoint a Commission to investigate the matter without delay.”

A true extract.

A. LE G. CAMPBELL,
Clerk to the Committee.

No. 2.

Mr. HAUGHTON to Captain FRASER.

Public Works Office (Gold Fields Branch), Wellington,
9th January, 1875.

(No. 137.)
SIR,—

I am directed by the Hon. the Minister for Public Works to forward to you the enclosed copy of a petition of W. Thomas and others, with copy of minutes of Gold Fields Committee, and to request that you will be good enough to report fully on each allegation of fact in the petition, with a view of assisting the Government in forming an opinion on the subject.

I am also to request that in your report you will state at length the facts bearing on the question, —whether it was the fault of the petitioners, or the officer of the Gold Field, that the petitioners took up ground or had ground included in their claim which was not within the gold field or open for mining.

I have, &c.,

C. E. HAUGHTON,
Under Secretary.

The Warden, Grahamstown.

No. 3.

Captain FRASER to Mr. HAUGHTON.

Superintendent's Office, Auckland, 9th August, 1875.

SIR,—

Referring to your letter of 9th January, 1875, No. 137, P.W. 74/3961, forwarding petition of W. Thomas and others, with copy of minutes of Gold Fields Committee thereon, I have now the honor to forward to you enclosed my report on each allegation of fact in the said petition, together with a statement of facts bearing on the question.

I am, &c.,

W. FRASER,
Warden.

The Under Secretary, Public Works Office,
(Gold Fields Branch), Wellington.

Enclosure in No. 3.

REPORT by Warden FRASER on Allegation of Facts in the Petition of WILLIAM THOMAS and Others to the House of Representatives.

1. William Thomas, James McCabe, Patrick Walsh, William Barker, Ronald McDonald, and James Gordon became the registered owners of a claim of eight men's ground, on the 24th March, 1871, called “Queen of Beauty No. 2,” under “The Gold Fields Act, 1866.” On the 3rd April, 1871, James Stewart was registered as owner by purchase of Gordon's share in said claim. The other petitioner, John McCabe, became registered owner on 24th April, 1871, of a claim of two men's ground, adjoining, called “The Queen of Beauty No. 3;” and on 27th April, 1871, these two claims were amalgamated by the petitioners, and called “The Queen of Beauty Amalgamated Claim,” containing ten men's ground, and as such was held by the petitioners until a license under “The Gold Mining Districts Act, 1871,” was, on their application, granted to them by the Warden for the site of the said claim.

2. Correct.

3. Mr. Robert Graham did make such a claim, but whether September, 1871, was the date of his first making it I cannot, of my own knowledge, say; nor can I say whether his claim was based upon title as lessee of the Crown grantees or otherwise; nor can I say at what time, if any, he made the claim for an account as mentioned.

4. The matters here alleged are not within my knowledge.

5. Same answer.

6. Such a proceeding was instituted in my Court by a complaint in these words:—

“In the Warden's Court of Hauraki District, in the Province of Auckland, New Zealand.

“BE it remembered that upon the twenty-second day of November, 1871, cometh before me the undersigned, Judge of the Hauraki District Warden's Court, sitting at Grahamstown, in the said district, William Thomas, James Stewart, John McCabe, James McCabe, Ronald McDonald, Patrick Walsh, and William Barker, all of the Hauraki Gold Field, miners, and complain against the Bright Smile Gold Mining Company (Registered), defendants, that the complainants are the registered owners of a quartz claim situate in the Waiokaraka Creek, in the said district, known as ‘The Queen of Beauty (Amalgamated),’ and the defendants have been for some time past, and are still, encroaching upon the said claim of the complainants by occupying, mining, undermining, and otherwise interfering with the said claim:—

“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

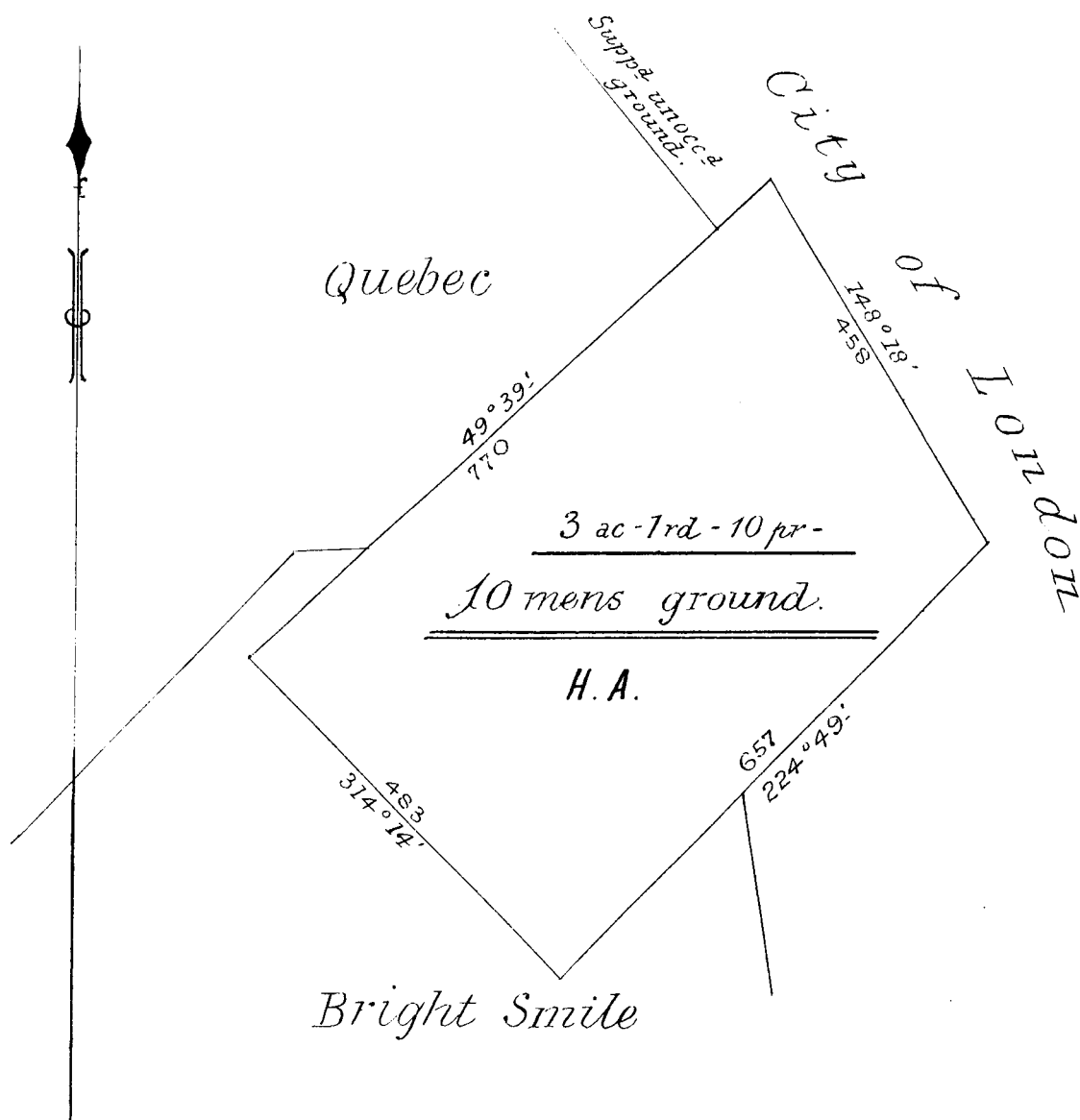
Queen of Beauty G.M.L.

— KARAKA BLOCK. —

Applied for by W. Thomas 19. 7. 1872.

Surveyed by Lesson & Buscki.

Scale, 2 chains to one inch.



the gold field the immunity of that land from mining was tacitly recognized by all parties, and it was not until the gold-bearing leads were traced seaward that such immunity was questioned and gradually invaded.

Auckland, 9th August, 1875.

W. FRASER,
Warden.

[Received in the Warden's Office, Grahamstown, 19th day of July, 1872, at 11h. 45m. a.m.]

Application for License under section 12.

In pursuance of the provisions of "The Gold Mining Districts Act, 1871," I hereby apply for a license, under section 12 of the said Act, for the claim whereof particulars are as follows, to be granted to William Thomas, James Stewart, John McCabe, Ronald McDonald, James McCabe, Patrick Walsh, and William Barker, all of the Hauraki District, miners.

Date and hour when marked out as a claim: 13th July, 4 p.m.

Description of the distinguishing mark or pegs: H.A.

Area: 3 acres 1 rood 10 perches.

Description of claim, a correct plan of which is herewith deposited with the Warden, showing its position with reference to some well-known point, and as to creeks, water-courses, and existing claims or holdings: Bounded by the Quebec, City of London, and Bright Smile Claims, on the Waiokaraka Creek.

Dated this nineteenth day of July, 1872.

(his
WM. × THOMAS,
mark)

Applicant.

Witness—Jno. O'Meara.

I hereby appoint my residence, Augustus Street, Shortland, as the place where all notices required to be given respecting the above application may be served, and where, if so served, I will consider them as served on myself personally.

By Authority: GEORGE DEDSBURY, Government Printer, Wellington.—1875.

