

## PAPERS RELATIVE TO LAWS ON GOLD FIELDS.

## THE MINER'S RIGHT AS AN ELEMENT OF TITLE.

## No. 1.

Judge GRAY to the Hon. W. GISBORNE.

SIR,—

Dunedin, Otago, 6th July, 1871.

By letter dated the 24th of October last, and marked No. 911, you did me the honor to inform me that the Government had under their consideration the subject of consolidating, revising, and amending the laws relating to the Gold Fields, and requested me to submit to you such suggestions as my experience of the working of these laws might enable me to offer.

In reply to this letter I forwarded to you a memorandum dated the 30th of November, containing some observations on several sections of the Acts, such as my very moderate experience of them suggested. I may say that I have had little to do with these Acts, except in appeals involving generally narrow issues, and these appeals have not been very numerous.

I now take the liberty of drawing your attention to some observations I then made upon the subject of miners' rights. They were made upon the 8th section of the Act of 1866, a section repealed by the Act of 1869, and for which the 4th section of the Act of 1869 has been substituted. I pointed out some difficulties which I apprehended might arise in connection with the miner's right considered as an element of title (if it has to be considered as such). My observations were brief, and I said "I have not had sufficient experience, nor given the matter sufficient thought, to suggest any remedy."

I have lately had occasion, in connection with an appeal which I have had to try, to give the question of the miner's right, as an element of title, a great deal of consideration; and although this consideration has not resulted in my entertaining any confident opinion as to the state of the law, and, owing to the circumstances of the case with which I was dealing, I have not been able to take the opinion of the Supreme Court by reserving the question for its determination, the case presents so strongly the difficulties growing out of the miner's right operating as an element of title (if such it be), that I take the liberty of enclosing to you a printed copy of notes of the observations I had occasion to make upon the case. It is cut from a local paper, to which I supplied the notes thus fully chiefly with the view of laying these considerations before you in a more readable shape than if I had submitted them in manuscript. I much regret that there did not arise a fair opportunity of obtaining the opinion of the Supreme Court as to the existing state of the law.

It is quite possible that, without my knowing it, this matter may have received judicial decision either at Auckland or at the West Coast, and that it has already been brought under your notice. In that case, I owe you an apology for troubling you with this letter. If any such decision has been made, it is as yet equally unknown to the other members of the profession here as it is to me.

I have appended to the printed note of judgment a note in manuscript supplying some observations which for sake of shortness I omitted in furnishing my notes to the newspaper, but which, on afterthought, I think it desirable to bring under your notice, as important to keep in mind with regard to the 112th section of the Act of 1866, if the matter should prove to have the importance that in the present state of my knowledge I am attributing to it. I have also added another note of a more general character.

May I further suggest that his Honor Mr. Justice Chapman, who is now going to Wellington to attend the Court of Appeal, has had great experience of the mining law of Victoria, having sat as Mining Judge at Ballarat for more than a year, besides sitting as single Judge in Equity in Melbourne for, I think, two years; and that if it so happens that the Government is desirous to be better acquainted with the Victorian law concerning miners' rights, his presence in Wellington will offer an easy opportunity of consulting him on that subject.

I have, &amp;c.,

The Hon. the Colonial Secretary,  
(Judicial Branch), Wellington.

WILSON GRAY,  
District Judge, Otago Gold Fields.

P.S.—As you may possibly desire to lay before each of the Law Officers a copy of the printed notes of judgment, as the easiest way of acquainting them with the suggested difficulties, I enclose two extra copies.

## Enclosure in No. 1.

HARRIS v. LABES.

In this case the hearing of evidence and the arguments of counsel occupied the greater part of three days. The facts have already appeared in our report of the case as heard before the Warden; so far as it is necessary again to refer to them, they are set forth in the judgment of His Honor given upon the appeal, which was in substance as follows:—

His Honor said: The appellant, Harris, was possessed of an extended claim (three men's ground, three acres) near Tuapeka Mouth, in which William Morrison was his partner, and on which they had a hired workman in charge (David Lewis). The claim had come to Harris and his partner (Morrison) through several assignments from parties who had taken up the claim in the year 1869. Some of the late owners (among whom Lewis, the working miner just named, was one) had put up extensive works