

IN THE WARDEN'S COURT  
HOLDEN AT SYDNEY  
ON 12TH JULY, 1985  
BEFORE J.L. McMAHON,  
CHIEF MINING WARDEN.

MICHAEL RONALD GILLIGAN

v.

LESLIE MANN

On 2nd July, 1985 I embarked upon a hearing at the Warden's Court, Inverell, into allegations by Michael Ronald Gilligan (the complainant) against Leslie Mann (the defendant). The complainant had alleged to the Mining Registrar at Glen Innes that the defendant had refused and had continued to refuse access by the complainant to an area of land covered by Prospecting Licence No. 978 which was granted on 14th May, 1984 for a period of twelve months, which licence falls within property owned by the defendant. The complainant had alleged that such refusal was a dispute as to the working of the land the subject of an authority within the meaning of Section 133(m) of the Mining Act, 1973 and requested relief.

At the hearing the complainant was represented by Mr. Witherdin, Solicitor of Inverell, while appearing for the defendant was Mr. Jenkins, Solicitor of Glen Innes.

I embarked upon a defended hearing of the matter but at the request of Mr. Jenkins and with the subsequent consent of Mr. Witherdin and having heard the evidence, I also took a view of the defendant's property and some of the area the subject of Prospecting Licence No. 978. That view was conducted merely for the purpose of understanding the evidence which had been tendered to me and after completion of the view both solicitors took the opportunity of making a final address, following which I adjourned the matter until today for judgment.

The evidence shows, and it is not in dispute, that the complainant was granted a Prospecting Licence which was given the number 978 to operate for a period of twelve months from 14th May, 1984. I take judicial notice of the provisions of Section 53(1) to the Act and the grant of the Prospecting Licence. It seems clear that in pursuance of Section 53(5), the complainant lodged the sum of \$2,000 as security on the condition that he fulfil his obligations under the licence. Although the licence was not tendered as an exhibit, it is also obvious from the evidence that it permitted the complainant to prospect and that the purpose of his prospecting was to determine the existence or otherwise of sapphires in the land the subject of the licence. Such prospecting operations apparently included costeaning for the complainant sank several costeans.

Under the Act, by Section 6, "authority" means an exploration licence, a prospecting licence, a mining lease or a mining purposes lease and by Section 122(4) prospecting operations by virtue of an authority shall not commence until payment of compensation has been made in accordance with a valid agreement or compensation has been assessed by a Warden. Furthermore, by Section 175, the holder of an authority is entitled to access to the area the subject of that authority from the nearest practicable point of a public road and provision is made by Section 175(4) for the Warden to impose or stipulate conditions.

On the basis of these two provisions, i.e. Sections 122 and 175, the complainant previously approached the Warden's Court at Inverell for both an assessment of compensation and determination of conditions for right-of-way and on 8th August, 1984 agreement was reached between the complainant, the defendant and the defendant's wife in relation to both the question of compensation and right-of-way. It is a matter of record that after perusal of the terms of settlement those terms of settlement were accepted and the Court adopted for the purpose of the Mining Act as an assessment the amount

of compensation referred to in the terms of settlement, namely \$500, which was intended to be in full discharge of the complainant's obligations under the Mining Act. Furthermore, the complainant was permitted a right-of-way by the defendant in accordance with the terms of settlement and the Court directed that in the event of any dispute as to the right-of-way the matter could be relisted before it at any time by either party.

No application has apparently been made by the defendant to relist the matter although he has claimed several matters have arisen which are in breach of his rights as a landowner. Conversely, no application to relist the matter has been made as to the right-of-way by the complainant although he has now sought relief from the court because he has been refused access.

As to the powers of a Warden's Court to grant relief, the Mining Act by Section 133 provides a jurisdictional area for a Warden to hear and determine all suits and actions relating to a list of contingencies which could arise in both contract and tort in regard to those engaged in or affected by the mining industry. These are contained in paragraphs (a) to (o) inclusive. The complainant has sought relief under paragraph (m) which provides that the Warden's Court has jurisdiction to hear and determine all suits and actions relating to "any question or dispute arising as to the working or management of land subject to a claim or authority". I interpret that as meaning that a Warden may for instance make an order for the payment of money, as is obvious from a reading of Section 141. A Warden could determine the boundaries of land under Section 142 or quantity of water to be taken or order the delivery of possession of anything to the complainant, or that the complainant be put into possession of any land etc. or machinery. Furthermore, under Section 142(4) like orders could be made in favour of a defendant or under Section 142(5) the Warden could order the diversion of water or the removal of facilities for that purpose and could restrain the defendant from interfering with that activity. Further, under Section 143 the Warden could order the deposit of any mineral, money or chattel and similarly under Section 145 could order the delivery of money or mineral to either party. Provision is made under Section 144 for the

grant of an injunction by the Warden. So it seems clear that a Warden's Court has power to remedy wrongs which are found proven to have been committed by persons engaged in, or associated in some way with the mining industry. Such remedies however are not limited to these matters but would in my opinion also include the power of a Warden to make a declaration or to order specific performance or otherwise to make other orders to determine questions in dispute between the parties.

The complainant has stated in evidence that following the assessment of compensation and the determination of the right-of-way matter in August, 1984 he had arranged for a testing plant to attend the property which contained the area of Prospecting Licence No. 978 but because of some breakdown in the arrangements, that had not occurred until mid December. He said that because it was so near to Christmas he had decided to postpone the testing activities until after the festive season and on 7th January, 1985 testing commenced. Exhibit 2 has been produced to indicate that the prospecting operations had commenced in early January, 1985.

Prospecting activities of the sought being conducted by the complainant required water and the complainant says that shortly afterwards that there became a shortage of water. Thereafter prospecting had ceased and around 21st March, 1985 the plant had been removed. To add to the problems it had been discovered that the plant had not been operating efficiently for some sapphire known to have been present in sapphire wash was not thrown up by the apparatus. After the plant had been removed in March, the complainant had then approached the defendant asking his permission to go back on the property but the defendant had then denied the complainant access to it and therefore to the Prospecting Licence No. 978, advising him that if he did then he would be charged with trespassing. It seems that the defendant's reasons for refusing the complainant access to the property were an alleged breach by him of restoration conditions, and disturbance and injuries which the defendant had alleged had occurred to two horses which were being grazed on the property. Although no mention is made of the injury to the horses by the defendant's solicitors in a letter to the solicitors acting for the complainant dated 18th April, 1985, which is exhibit

4, the allegation is there confirmed that the complainant had refused to restore any of the land affected by the workings. Nor had he attended, it was alleged, to the depositing of superphosphate and the seeding of the areas which has been refilled.

In his oral evidence, the complainant has asserted that only some of the areas that have been the subject of costeans have been refilled and that the supering and seeding had not taken place because the defendant had told him that the areas needed to settle and be re-topped before supering and seeding. This latter aspect of the evidence is agreed to by the defendant as he said that it would be a waste of time to super and seed areas which had not settled. The complainant stated in evidence that other areas had not been refilled because access by him to them had been prevented by the defendant. He stated that even as late as 5th May, 1985 he had telephoned the defendant asking for permission to go on the land contained in the Licence but that had been refused. The complainant stated that some physical threat was made to his person, although the defendant denied he made such a threat. The defendant does concede however that he refused the complainant access, which the defendant says, was for good reason.

As evidenced by exhibit 3, the complainant wrote to the defendant and the defendant's wife on 11th March, 1985 stating that he would be seeking an extension of the prospecting licence which expired on 13th May, 1985. That date having now passed and there has been no renewal although the complainant has stated that he has made an application for such renewal. I am therefore dealing with matters today, 12th July, 1985, which arose up to 13th May, 1985.

In his oral evidence the defendant stated that the land which he purchased in 1979 had been previously the subject of extensive mining. In addition to the title which Mr. Gilligan had under the prospecting licence, another person called Hobday held a lease which it seems is still current, Mr. Hobday also gaining access to his property. The defendant stated that he was running several horses on his property but when he had signed the agreement with the complainant he had expressed to him the fact that he was a racehorse owner and trainer and

ran a thoroughbred stallion and mares. Therefore these animals should not be disturbed especially as the roadway which was the right-of-way went close to the training track. His racehorse trainer's licence would be placed in jeopardy if there were any injury to any of the horses in his charge or a breach of agreements that he had to train them. He said that his insurance would not necessarily cover all contingencies.

He complained with vehemence that when personnel had come to collect the plant and remove it from the site all the gates had been left open and as a result all the horses had been boxed, meaning in effect that the horses had been mixed in together, including the stallion. In addition, he complained in the same tone about the injury which one horse had suffered to its fetlock when it became entangled in wire which had been constructed around one of the complainant's prospecting sites. There was also an injury to a black mare which is a thoroughbred. In effect, the defendant stated that the actions by the complainant were interfering with the management of the property, and his rights as a trainer and owner were being placed in jeopardy.

The defendant stated emotionally that he had requested that the complainant make good the earth damage done by the prospecting operations but that had not been done. Requests by the defendant to get a Mr. David Laurence of the Department of Mineral Resources to attend to his complaints as to non restoration had been unsuccessful although he stated that Mr. Laurence had told him that although someone else had been responsible for the disturbance to the area the subject of the prospecting licence, once the complainant became a licensee it was his responsibility to make good to its original condition the land covered by the prospecting licence. Further, the defendant claimed that when he complained to Mr. Laurence about this and other matters it was Mr. Laurence who told him to shut the gates thereby to exclude the complainant from entry. When the complainant had telephoned the defendant at around 6.00 a.m. on a Sunday morning requesting permission to re-enter the property, the defendant had therefore refused him. He denied however making any physical threats to the complainant. He stated aggressively that he would have nothing to do with any extension of the prospecting licence which the complainant

indicated by exhibit 3 he was seeking, stating "I won't have him back on the place". The defendant further pointed to the complainant's difficulties with finance stating that the complainant had admitted to him that he was short of funds and the defendant expressed concern that the complainant would be financially unable to rectify any damage that might be done.

The complainant was cross examined as to his finances and conceded that he was on social services having suffered an injury. However he stated that his former father-in-law, a Mr. Cummings, had expressed a willingness to assist him with finances and although Mr. Cummings was not called as a witness, the complainant's evidence has to be taken at its face value.

In cross examination, the defendant agreed that it was a long time since he had trained a racehorse that had won a race. Further, he agreed that there had been a conversation between himself and Mr. Witherdin, solicitor, around about 19th March, 1985. Mr. Witherdin had put to him in cross examination that he had said in that conversation that he was going to lock the gates but the defendant said that he did not think that he had said that. He said that he had in fact left the gates unlocked and that the gates have never been locked.

It is a matter which is not in dispute that much of the land within the area of the prospecting licence which covers some 40 hectares and lands adjacent to that acreage, has been substantially mined for a large number of years. I heard evidence that a Mr. Keith Marshall and people called Ballantyne had previously mined the land. Some of the lands mined by these persons had been re-dug by the complainant. It was the claimed absence of a need for the complainant to do this which is one of the matters about which the defendant bitterly complained.

It is also a matter of evidence that the defendant had purchased the land in 1979 and no doubt would have been fully aware firstly from his own legal sources and secondly from visual inspection of the extent of mining and prospecting activity which had taken place and which was taking place on the lands. In court he sought to indicate that he was exercising his rights as a landowner and would

be excluding the complainant from entering onto the lands and accused the Department of Mineral Resources of what amounted to incompetence in granting a title to the complainant when the area had been previously mined out. However, there is no evidence before me to show that it has been all mined out and I come to the conclusion that the grant of the title was both reasonable and lawful, bearing in mind the security deposit that the complainant lodged and the fact that he was granted a licence to prospect over lands which, from their very history, had obviously been productive of considerable sapphire stone. The defendant displayed aggressiveness and at times attempted to bring into the hearing matters relating to other title holders. Although he claimed that Mr. Laurence had given him permission to close the gates, Mr. Laurence was not called as a witness to attest to this, nor was that person called to indicate the nature of the damage nor the need for rehabilitation.

The defendant appears to have overlooked that he agreed to, and received, compensation arising under this licence, and that the amount of compensation was paid in respect of the period up to 13th May, 1985 and that during that period he was instrumental in refusing the complainant access to the area of that licence. I am satisfied on the evidence that a dispute has arisen between the parties as to the working of the land the subject of Prospecting Licence No. 978. I am also satisfied on the evidence that the action by the defendant in excluding the complainant was not only a breach of the agreement but was also an apparent breach of the Act in that Section 192 empowered the complainant as the holder of an authority to prospect on the area. The defendant could have pursued under the Act his claims for damages arising out of the alleged breaches by the complainant but there is no evidence before me that he has done so. I find that he not justified in taking the extreme action that he did.

The question now arises as to what relief should be afforded the complainant. No evidence has been forthcoming as to what, if any, damages the complainant suffered. Indeed, if a figure had been forthcoming it might well have had to be discounted somewhat because of the obvious delay of which the complainant was guilty between the date of the assessment of compensation by this court, i.e. 8th August, 1984, following the agreement, and the date of actual



commencement of prospecting operations, which was 7th January, 1985. On the other hand, I would have accepted his evidence and not discounted any claim for damages which he would have made by reason of the cessation of his operations after they had commenced because of the shortage of water. However, there being no evidence as to whether the complainant is seeking any damages, the question need not be considered by this court.

The matter of relief has been somewhat complicated by the fact that the prospecting licence expired on 13th May, 1985 and although there is evidence that the complainant has sought a renewal of it, there is no evidence that that application has been granted. Further, as I have said, it is clear that from some date in March, 1985 until 13th May, the defendant prevented by deliberate action in the form of a statement to the complainant and the complainant's own solicitor, entry by the complainant upon the land, thereby stopping the complainant from prospecting on it. I conclude that the matter might best be resolved by a declaration that this is a fact. As to whether or not the complainant would seek to take any action under Section 192 is a matter for the complainant. Unfortunately, the complainant has not formally sought an injunction under Section 144 and I interpret subsection (3) to that section as being a requirement that an injunction be properly sought before one is granted. However, I would indicate that had the complainant sought an injunction and had the licence been current, more likely than not on the evidence presently before me I would have granted an injunction against the defendant restraining him from interfering with the use by the complainant of his right, title and interest in Prospecting Licence No. 978. I would have obtained, if necessary, the assistance of the police to ensure that full and adequate effect be given to the Court's order.

Having indicated that I would be making a declaration, I now consider the question of costs. Section 146 empowers a Warden to award costs and whilst Mr. Jenkins has assiduously put argument to me as to why costs should not be awarded, I feel they should go with the event and the defendant will be ordered to pay the complainant's costs. I make the following orders:-

I declare that between an unspecified date in March, 1985 until 13th May, 1985 the defendant, Leslie Mann, wilfully, deliberately and wrongfully denied access to the complainant, Michael Ronald Gilligan, to the area of land the subject of Prospecting Licence No. 978 granted to the said Michael Ronald Gilligan. I direct that the said Leslie Mann pay to the Mining Registrar at Glen Innes for payment out to Michael Ronald Gilligan, the sum of \$320 which I assess by way of costs in the matter.

Such costs are to be paid on or before 12th August, 1985.