

sale to the Crown of Rotorua Township. That deed is dated the 16th October, 1889. The history of the matter is as follows:—

On the 26th November, 1880, Mr. Fenton, Chief Judge of the Native Land Court, on behalf of the Government, made an agreement with Native chiefs to hand over to the Crown the control of certain land. An agreement in writing was entered into. The land the subject of the agreement appears to be that which became subsequently known as Pukeroa-Oruawhata, excluding therefrom the Native village of Ohinemutu. The title of the land had not been investigated, and one of the clauses of the agreement provided for that being done at once.

Clause 3 of the agreement declared “that the site of the present Maori village between Pukeroa and the lake be left as it is—a kainga Maori—but the present road is to be widened if necessary and carried on into the town. The persons who own pieces of land in Te Pukeroa are to be compensated by allotments in the town.” (“Town” here means the contemplated town of Rotorua, not the village of Ohinemutu.)

Clause 14 of the agreement says, “No land within the Native village excluded shall be let or sold hereafter to the pakeha. . . . This provision is not to affect in any way the supposed rights of Europeans now settled in Ohinemutu. The provisions of this agreement also shall not apply to those pakehas on that piece of land.”

The petitioners say that it was promised by Judge Fenton that if the proposal to hand over the block to the Crown was carried unanimously the right given to the Crown would not operate over the blocks leased by the petitioners’ predecessors to Mrs. Morrison and Mr. Kelly until the terms set out in the leases had expired. These blocks were Te Haka No. 7, leased to Mrs. Morrison, and Tapuae, leased to Mr. Kelly.

In the following year the Thermal Springs Districts Act, 1881, was passed. This Act appears to have been partly for the purpose of giving statutory effect to Mr. Fenton’s agreement. Section 11 of the Act has some bearing upon the question now in issue. It provides for the validation by the Native owners of certain invalid leases where the lessee was in actual occupation on the day of Mr. Fenton’s agreement. It provides, however, that the section shall apply only to the land in Ohinemutu situated between Lake Rotorua on the north and the road from the Utuhina River to Mrs. Morrison’s house on the south, and between the Utuhina River on the west and a line from Mrs. Morrison’s house due north to the said lake on the east. This is the area which is excluded from Pukeroa-Oruawhata Block—that is to say, from the land handed over to the Government to manage in terms of Judge Fenton’s agreement. But it does not appear to us to cover the whole of the land excepted by the agreement. That agreement excepted the village of Ohinemutu between Pukeroa and the lake. Mrs. Morrison’s house or hotel and Mr. Kelly’s hotel were both on the south side of the road, but we think would certainly be considered to be covered by the expression “the village of Ohinemutu.” Judge MacCormick himself has a recollection of seeing Mrs. Morrison’s hotel (then occupied by Mr. Falloona) in the year 1894, and it would certainly, in his opinion, be covered by the description “the village of Ohinemutu.” He, however, has no special recollection of Mr. Kelly’s hotel. But it would no doubt be in the same position as Mrs. Morrison’s: the locality-plan itself shows that.

The next step was the investigation of the title of the Pukeroa-Oruawhata Block, and a certificate of title issued on the 27th April, 1882, to a large number of persons. The boundary of the land comprised in this certificate of title followed the road mentioned in the Thermal Springs Districts Act. The relative interests of the owners were not defined. Thus the southern portion of Tapuae Block and the southern portion of Te Haka No. 7 Block, on which were situated these two hotels, became included in the Pukeroa-Oruawhata Block, and subject to the control of the Crown on behalf of the Native owners.

Early in 1883 Judge Henry Tacy Clarke made a further agreement with the Natives slightly modifying Judge Fenton’s agreement. An important modification was to cancel the clause relating to the exchange of rights on Pukeroa Hill for other sections in the proposed new town. Clause 3 of this agreement provides that the moneys accruing from rents of the town shall be spread over the whole block called or known as Pukeroa-Oruawhata Block, excepting that part of it called Tarewa, awarded by the Court to Ngati Ara and Ngati Hea. Tarewa, we may explain, has nothing to do with the questions now in issue. Clause 4 prescribes that all the hapus or individuals who shall be found to be owners within the above block shall receive a share of the money so accruing in proportion to their ascertained claims within the block. Clause 5: The money for rent for the town now in the hands of the Government shall be given to the six hapus of Ngati Whakaue. The persons who are to receive this money are the persons in the list hereto affixed—each respective hapu its own receivers. Clause 6: The above section is only intended as a temporary arrangement. Clause 7: When the claims to the land within the block have been investigated, then will be known the proportionate claims of hapus or individuals.

It will be observed that this agreement refers to rents received from the town. Pukeroa Hill itself was, by Mr. Fenton’s agreement, set apart as a reserve: it was not to be leased as were the town sections. We understand from both sides before us that in pursuance of this agreement the moneys then in the hands of the Commissioner of Crown Lands, being the rents paid on the allotments leased at the first sale of Rotorua Township, were distributed in the manner provided for in the agreement. Those moneys, however, did not include the rent-moneys paid in respect of Morrison’s hotel and Kelly’s hotel. Those moneys, in the years 1881 and 1882, were collected by the Native owners themselves, notwithstanding the arrangements made with the Crown.

In the same year, 1883, Judge H. T. Clarke appears to have been instructed to report on the position of the leases to Mrs. Morrison and Mr. Kelly. His reports do not mention any such