arrangement as averred by the petitioners, but he does say this: "At the time the agreement was made with the Government Mrs. Morrison was assured by Mr. Fenton that her lease would not be interfered with. This is confirmed by witnesses. The boundaries set forth in the agreement—that is, Mr. Fenton's agreement—of the Native village are very vague and uncertain. The boundaries of the Native village are more particularly laid down in the 11th section of the Thermal Springs Districts Act, 1881. One of the points on that boundary is Mrs. Morrison's house. I have no doubt in my own mind that it was never the intention to include Mrs. Morrison's house in the Pukeroa Reserve."

This shows to our minds conclusively that an error was made in laying down the boundary as the road. Judge Clarke draws a distinction in his report between the case of Mrs. Morrison and that of Mr. Kelly, the ground of the distinction being that Mr. Kelly did not build his hotel until after the signing of the agreement with Judge Fenton.

We, however, are unable to agree with Judge Clarke on this point. These leases had been in existence at that time for a considerable number of years, and substantial rents were paid to the Natives thereunder, and we are of opinion that the whole of the facts disclosed show that it was not intended that either of these sections should be included in the Pukeroa Reserve.

In the year 1884, presumably in consequence of Judge Clarke's report, what purported to be leases of these two pieces within the Pukeroa Reserve were granted by the then members of the Rotorua Town Board, to Mrs. Morrison for the portion of Te Haka No. 7, and to Mr. Kelly for the portion of Tapuae. We have not been referred to any authority of the Board to grant such leases, and it would appear that they had none; but the documents would no doubt operate as an admission by the Crown of the occupation of the tenants for the terms mentioned in the documents. Up to that time, as we have said, the Native owners of these sections had been permitted to collect the rents themselves, notwithstanding Mr. Fenton's agreement and the Thermal Springs Districts Act, 1881. After that the Town Board collected the rent-moneys. It is admitted that at the time of the deed of sale to the Crown in 1889 the Town Board had collected and held in a separate account rent-moneys amounting in the case of Te Haka No. 7 to £125 14s. 6d., and in the case of Tapuae to £87 14s. 6d. It is also admitted that on the 12th May, 1890, subsequent to the sale to the Crown, there was paid to the Board a sum of £40 for rent due by Kelly for the two years ending the 31st January, 1890. The bulk of this rent, it will be seen, was due, though not paid, at the time of the sale.

In the year 1885 Judge Clarke divided the block into a large number of small sections. Amongst these sections was Lot 92, or Haka No. 7 South, being the portion on which is situated Mrs. Morrison's hotel, which was awarded to Whakarato Rangipahere and others, predecessors in title of some of the present petitioners, and Te Tapuae to Taekata te Tokoihi and others, predecessors of others of the present petitioners. These partition orders are still on record uncancelled, signed by the presiding Judge, though they do not bear upon them a diagram of the land affected by them. It is stated by Mr. Meredith for the Crown—though he is unable to give us any authority for the statement except some departmental notes—that this scheme of partition was found to interfere with the satisfactory disposal of the town sections owing to overlapping and necessity for streets, and he says the orders were practically ignored, though he admits they were not cancelled.

Later on Judge Clarke drew up a scheme of definition of relative interests, but he does not appear ever to have done this as a Native Land Court order in open Court. There is no record of it except his own report, and it consequently is not an order of any judicial tribunal. He himself refers to it as a "report" in his letter to the Under-Secretary, Native Department, of the 29th February, 1888. He divided the block into 1,100 shares. There is nothing to show that the Natives were represented in any way before Mr. Clarke, and this definition of relative interests is therefore merely Mr. Clarke's opinion of what ought to be the shares in the block. This was done in February, 1888. It is admitted for the Crown that this scheme of Mr. Clarke's is not a judicial finding.

In July, 1888, Mr. H. W. Mitchell, on behalf of the Native owners of Te Haka Block, applied to the Under-Secretary for Native Affairs for payment of the moneys received under Mrs. Morrison's lease. Correspondence ensued. On the 27th September the Under-Secretary wrote to Mr. Mitchell referring to this matter, and stating that the Chairman of the Rotorua Town Board had been instructed to hand over the sum of £110 14s. 6d. (the amount of rents then in hand) to Mr. R. S. Bush for payment to the Native owners of the block. On the 19th November of that year Mr. Bush minutes this letter, which had evidently been produced to him by Mr. Mitchell, as follows: "The instruction referred to in this letter countermanded, the money to remain in the hands of the Board for the present." The reason for this countermanding is disclosed in a letter to Mr. Mitchell from the secretary of the Town Board (Mr. Dansey), dated the 9th October, 1888, in which he says, "*Re* Te Haka rents, further hitches have cropped up. First hitch—A subsequent memo. from Elliott (the Under-Secretary) instructing that money be spent in tree-planting and improvements to Pukeroa. Second hitch—Hamuera Pango now states that these rents when paid to Mr. Bush must be included in rents to be divided among the whole Whakaue Tribe, as the owners of Te Haka were compensated for the loss of their rents by extra shares in the township."

As to the first of these points comment seems needless. There was no possible authority by which Mr. Elliott or anybody else could direct the Town Board to spend money, admittedly belonging to the Natives and not the Crown, in planting and improvements to Pukeroa. The second hitch arises out of the terms of the agreement made by Judge Clarke with the Natives, which it has been suggested meant that all rent-moneys, including the rent-moneys of these hotels, were to be divided amongst the whole body. We are not inclined to think that that was the arrangement with regard to these particular moneys, but we shall refer to this matter again