

The history of this transaction is typical of the arrangements which were made in the other cases in which there were collateral agreements.

In addition to the cases mentioned above, there is another—that of Mereā Kingi—where the transfer is accompanied by a memorandum. Mereā, on the 14th February, 1918, executed in favour of the Crown a transfer covering three-quarters of her interest in the papakainga. The collateral memorandum contains a provision for the payment for improvements similar to that appearing in Te Rere Arama's case outlined above. Following the partitioning of her interests into Orakei No. 1 Reserve B, Mereā Kingi, on the 14th December, 1918, executed a transfer of the whole of her interest therein to the Crown, including her improvements.

15. Where the arrangements made were evidenced by a memorandum of transfer accompanied by collateral or modifying agreements, the documents together truly expressed the mind and intention of the parties. There were reasons of convenience why in particular cases such a conveyancing practice was adopted. If a vendor desired to sell all his interest except a certain area which he was desirous of reserving to himself, a difficulty at once presented itself, for he held with others only undivided shares in the land. He might not point to any particular area as that which he sold, because he sold only his undivided interest with others, and, equally, he could not say that a certain area was that which he reserved, because that area might not necessarily be allocated to him on partition. Until his undivided interest had been partitioned out it was not practicable to locate and survey any specified area and say that was his to dispose of, and that area of land was what he sold and another was what he retained.

It was possible for a Native owner to have his interest partitioned out and to make his reservation and to sell the balance. Such a method might have been adopted, but it would have interposed delays.

INSTRUMENTS OF TRANSFER.

16. I have personally perused the instruments of transfer held by the Crown in respect of purchases in the papakainga, and there is only one which calls for comment otherwise than as appears in paragraph 17.

The transfer signed by Mata Hare Terewai on the 3rd November, 1916, is from her “as successor to Nia Hare Terewai, Hori Winiata, and as an owner.” If “as an owner” means as an original owner—i.e., declared to be an owner by the partition order of the 10th January, 1898—then there is not included in the transfer her interest as successor to Toko Reweti. This purchase was arranged by Mr. Mays, who, on relinquishing the position as purchasing agent, made a memorandum which is dated 28th February, 1916, but obviously in error for 28th February, 1917. In it he refers to a collateral agreement which provides for a consideration of £345 being reduced to £230 if a half-acre and the house thereupon is reserved. He, however, notes that “the above transfer does not include the interest derived by the said Mata Hare Terewai as a direct successor to Toki Reweti and as a successor to Toki Reweti through Nia Hare Terewai.”

The final agreement executed on the 8th September, 1921, refers to the said Mata Hare Terewai having signed a transfer of the whole of her interest in Section No. 1 of the Orakei Block, the consideration expressed being £345, and to her having, on the same date, signed a collateral memorandum whereby it was indicated that the vendor had received in all £230 only, she retaining an interest in the land equivalent to half an acre. It is provided that “in consideration of the sum of £115 (the receipt whereof is hereby acknowledged) the vendor doth hereby confirm and assure unto His Majesty the King all right, title, and interest to which she is entitled, and doth hereby affirm that the said memorandum of transfer shall be fully applicable to the whole of her right title and interest in the said land.” The agreement further witnesses “that all instruments hitherto executed by the vendor shall be deemed to be and are hereby modified or amplified accordingly,” and that the vendor admits the said payment of £115 completes the full and final payment in respect of her interest in the land.

I think it is doubtful, assuming the truth of the memorandum made by Mr. Mays, whether the mind of this Native was ever, subsequent to the signing of the original transfer, explicitly directed to the consideration for the whole of her interest, including that part which she derived as a direct successor to Toko Reweti and as a successor to Toko Reweti through Nia Hare Terewai—namely, one-sixth share. The Crown has adopted the view that this interest was included in the transfer and the relevant Proclamation is based upon this assumption. If this is the correct view, then the Native owner has received payment only of £345 and not payment proportionate to the additional interest, which was not, according to Mr. Mays, included in the transfer. Neither Mr. Mays' memorandum nor the collateral agreement makes provision for any deduction from the £345 in respect of this interest, should it not be included. I infer that the sum named in the transfer was the sum paid for her interest, less that part which came to her from Toko Reweti (one-sixth share), and that in the result the Native seller has not been paid for her full interest in the Orakei No. 1 Reserve, for she has received only £345, although she should, if paid at the same rate, have received for her total interest the sum of approximately £458 5s. 8d. This inference is confirmed by a letter dated 7th May, 1917, from Mr. Mays to Mr. Bowler, the Land Purchase Officer, in which he says, with reference to an order: “It indicates Mata's willingness to sell her interest in Section No. 1 Orakei as a successor to Toko Reweti deceased (called Toko Re 45B in the order). You will remember that this is the interest which I omitted to purchase when acquiring Mata's interests in Section 1.” It may be noted that Rotana Ropiha Reihana had the same share in the papakainga as Mata Hare Terewai—namely, 89/132 share. On the 3rd November, 1916, she sold her interest, excepting one-sixth share, to the Crown for £345, this being the same consideration as was expressed in the transfer from Mata. Rotana sold the remaining one-sixth share to the Crown on the 3rd February, 1917, for £63 4s. 1d.

The position then is that the Crown has, in this particular instance, acquired an interest for which it has not, in fact, paid. I shall return to a consideration of this matter when dealing with the fourth question.