

In the first place I much regret that Mr. Hesketh and I have not been able to agree as to a joint recommendation to the Government for the solution of this difficulty, as we take quite a different view of the extent of the claim. I the more regret this, as I am aware how anxious the Government are to see the matter settled; indeed, knowing this to be the case, I finally proposed to Mr. Hesketh to join in a recommendation, which was, I believe, more than an equivalent for Mr. Russell's claim, in order that it might be fairly set at rest. To this last proposal, however, Mr. Hesketh informs me he cannot accede; it therefore merely remains for me to put my view of the case before the Government, and leave them to decide as to what should be done further. The papers in connection with this claim are already sufficiently voluminous, and I will therefore state as briefly as possible the conclusion I come to. In the first place, there can be no doubt that an absolute promise was made to Mr. Russell by Mr. Mackay that Waiharakeke West should be granted to Mr. Russell on his repaying to Government the cost of acquiring the same. Secondly, I believe, over and above this, Mr. Russell was led to believe that an indefinite part of Te Aroha should be granted to him on the same conditions after completion of the purchase by the Crown. I use the term "indefinite" advisably, for the exact boundary proposed by Mr. Russell in his letter,* which Mr. Mackay agreed to recommend, and on which the whole thing rests, cannot be fixed. Now, it is as to the position of this line that Mr. Hesketh and I differ, he relying on the map certified by Mr. Mackay in 1877, whilst I base my conclusions on circumstantial and other evidence, which I wish to place on record here. I would state at once that I consider the claim fairly met by taking as a boundary the production of Mr. Russell's present northern boundary of Hungahunga No. 2 to the Waihou River; this would include an area of about 3,000 acres of Te Aroha. I rely on the following facts as evidence of this: In Mr. Russell's letter of the 31st July, 1874,† he furnishes a rough sketch of the portion north of Waiharakeke West which he proposes to include (and which at that time represented his claim to Te Aroha). A comparison of this rough sketch with the tracing enclosed will show that the part enclosed south of the north boundary of Hungahunga No. 2 (line B.E) has nearly the same shape and appearance on both, that both lines start from Moon's south-west corner, and that such line roughly fulfils the conditions of squaring the boundary mentioned in Mr. Russell's letter. I am, of course, aware that Mr. Russell's sketch is a very rough one, but it is important as showing the extent and form as pictured to his mind at the time. Had Mr. Russell at that time been aware of the direction of his proposed boundary as shown on the tracing of 1877, he certainly would not in his own interests have made the shape of the proposed additions so different to what the tracing of 1877 shows it to be. I am not aware whether the agreements‡ to sell to Mr. Russell certain lands in this district were ever put forward as evidence of any claim to part of Te Aroha; but I would here state that a comparison of the names of places mentioned in these with the original Native Land Court plans shows that they are confined to the boundaries of Hungahunga No. 1 and 4 and Waiharakeke West—that, in fact, they include no part of Te Aroha.

With respect to the tracing, No. N. and D. 77 2048, enclosed in Mr. Russell's letter of the 3rd May, 1877, on which Mr. Mackay's certificate appears, and on which, no doubt, Mr. Russell mainly depends for the definition of his boundary, I would remark that I can explain the origin of this. I am persuaded that until the beginning of 1877 Mr. Russell was not aware that the sentence in his letter of the 31st July, 1874, "to run at a right angle from the river to south-west boundary of Moon's survey," was capable of being interpreted as including such a large portion of Te Aroha as is shown in that tracing; that, in fact, from that date the claim increased in magnitude. About March or April, 1877, Mr. Russell came to my office and asked to see the map of the Thames District, and when shown it asked me to draw on it a line at right angles to the river from the south-west corner of Orongomairoa. I showed Mr. Russell that it was impossible to do so exactly owing to sinuosities of the river, but that a line which most nearly complied with the conditions was one striking the river at the Manawaru Bush. Now, the tracing on which Mr. Mackay's certificate appears is taken from this Thames District map, or from one of the copies of it, and the line A.B is just the one I laid off. I may be mistaken, but I believe, until this visit to my office, Mr. Russell had no idea that the loose wording of his former letter might be made to include such an area, but, finding that it did so, he perhaps naturally adhered to it.

In reference to Mr. Mackay's certificate on the tracing he states that the line A.B is the boundary mentioned in correspondence between himself and Mr. Russell (*vide* C.—A, 1876, Enclosure in No. 5). He omits to add the words "and to which I agreed on behalf of the Government," which would have saved any further inquiry at all. It is to be observed all through the correspondence that Mr. Mackay carefully confines himself to saying that he agrees to Mr. Russell's proposals as respects Waiharakeke West and Hungahunga, without any mention of Te Aroha, excepting in his letter of the 18th July, 1874, where he says, "I don't see that the Government would derive any advantage from the purchase of Mangapouri Swamp," &c., and "I am prepared to recommend the boundary mentioned by you," &c., this boundary being, I feel convinced, one approximating to that I have indicated as what I consider Mr. Russell justly entitled to; or how otherwise are we to reconcile the fact that Mr. Mackay was actually engaged in purchasing Te Aroha at that time with the statement above, to the effect that the Government would derive no advantage from the possession of Mangapouri Swamp (or Te Aroha)? Mr. Mackay alone can explain under what circumstances he certified to the tracing of 1877, but it is clear to me that there is the same mental reservation in this as in his letters—the same seeming acquiescence, without positively committing himself. It does not appear that Mr. Mackay ever made the recommendation he was prepared to do, or that the Government ever approved it. My study of the claim has led me to believe that it has grown considerably since Mr. Russell first proposed his amended boundary, and that at the date I have indicated I believe that the justice of the case would be fully met by taking as his boundary the

* C.—3A, 1876, Enclosure 5 in No. 5. † C.—3A, 1876, Enclosure 6 in No. 5.

‡ C.—3A, 1876, Enclosures 1, 2, 3, in No. 5.