

The first statement is an analysis of the cash-books of the receiver of Gold Revenue, Thames, for the period 1st August, 1867, to 31st March, 1881—*i.e.*, prior to the Treasury taking over. This shows a total of £87,169 8s. 7d. Of this amount £62,451 17s. 8d. was paid to the Miners' Rights Deposit Account already mentioned, and £24,717 10s. 11d. to Provincial or Public Account. Mr. Dunstan is of the opinion that this sum represented miscellaneous receipts not payable to the Natives under the deed of cession or otherwise. How much of the sum of £62,451 17s. 8d. was actually paid to the Natives is not ascertainable. Whether any of it was paid to others or charged to expenses of administration is also not ascertainable.

The other statement is a summary of disbursements by the Treasury of goldfields revenue from 1881 to 1939 compiled from Public Accounts and Treasury ledgers. This is a summary only and speaks for itself. The Treasury is not able to verify even the division of the payments among the different classes, except as to the minor items in columns 5 to 8. It cannot apportion the sum of £27,568 1s. 10d. in column 2 between Natives and Europeans. Nor can it say definitely whether the very large payments made to local bodies came entirely from lands the freehold of which had been acquired by the Crown. It is not clear that all of it came from the lands which were the subject of the deeds of cession. The Crown purchased much land besides that. The same position applies to the sum of £10,035 10s. in column 3. It is remotely possible that some information could be obtained, but only after a lengthy and exhaustive inquiry into the source of each item by representatives of the Crown and the petitioners. The experience of the Accountant of the Waikato-Maniapoto District Maori Land Board during the few years the Board has acted as distributing agent for the Treasury goes to show that successful inquiry is unlikely. But the inquiry would be unnecessary if the petitioners establish their submission as to the legal effect of the deeds of cession, which will be discussed later.

I may make one or two comments by way of explanation of particular matters. Included in the moneys paid to the Waikato-Maniapoto District Maori Land Board are two sums, amounting together to £1,154 17s. 10d., which are the subject of special legislation—namely, section 17 of the Native Purposes Act, 1938—and are not distributable as ordinary goldfields revenue.

Exception was taken to the amount charged for administration expenses, on the ground that no provision for them was made in the deed of cession. It was also contended that the Crown was constituted a trustee or at least placed in a fiduciary capacity by the deeds. Even if that be so, I do not know of any principle of equity which requires a trustee to pay out of his own pocket for necessary expenses of administration. The Crown did not make any charge further than that. I am not able to express any opinion as to the amount charged, except that in proportion to the amount involved it does not seem exorbitant. It is also to be remarked that some of the charges were expressly approved by the Natives themselves, notably in the case of C. J. Dearle.

Reference was made by Mr. Sullivan to a Treasury return dated 31st August, 1869, made in pursuance of an order of the House of Representatives of 17th August, 1869. This return showed receipts of £17,761 and disbursements of £10,075. But the return showed that the Treasury then had no information as to disbursements after the 31st January, 1869. I am not able to assume that the difference between receipts and disbursements shown in the return was misapplied. The reasonable probability is that if it had not actually been disbursed in the period between 31st January, 1869, and the date of the return it would be carried forward to next disbursement period. As to the Ohinemuri Block items in column 6 of the summary, a little more explanation is perhaps advisable. A sum of £15,000 was advanced by Mr. Mackay to the Native owners, which was acknowledged in the deed of cession and to be repaid out of mining revenue. As stated in a footnote to the summary, only £7,838 12s. was actually recovered, the balance of £7,161 8s. being lost.

I cannot scrutinize the accounts any further.

Before entering upon a discussion of other points of the petitioners' claim, I may refer to the portion of Mr. Cooney's address dealing with the position as between the Crown and the Natives in regard to the ownership of gold, that being one of the metals known as royal metals. There seems to have been no express ruling or decision on the point in New Zealand, but I have always understood that even in England though the Crown owns the royal metals it cannot enter upon the land of its subjects to win them except by consent. Be that as it may, the Crown in the present case, having entered into contracts with the Natives and expressly recognized their validity by legislation, could not now challenge the Native ownership, and, in fact, no such claim or suggestion has been made in these proceedings in regard to the lands affected.

The effect in law of the deeds of cession themselves and the effect in law or equity of the purchases by the Crown or by Europeans from the Native owners of the lands affected by the deeds are the main questions involved in the Native petitioners' claims as presented by their counsel, who obviously appreciated the difficulties in respect of the general accounts. Upon the result of these questions would depend whether or not it can be said that the large payments made out of mining revenue to local bodies and others should not have been made or validated.

In the majority of references of the nature of this, the inquiry is held by one of the District Judges and the report submitted to the Chief Judge for his review before it goes to the Hon. the Native Minister. In this case I held the inquiry as Judge of the Waikato-Maniapoto District, but in the interval between the close of the inquiry and the preparation of this report I have been appointed Chief Judge, which entails my reviewing my own report.

As to the interpretation of the deeds of cession, it has been pointed out already that the Mamaku No. 1 deed of cession dated 9th November, 1867, was not validated, but the area affected was proclaimed a goldfield, together with the area covered by the Mamaku No. 2 deed of 9th March, 1868 (Proclamation, 20th November, 1867, validated by the Auckland Gold Fields Proclamations Validation