Act, 1869, declaring the area in the Second Schedule to that Act to be a goldfield). In my opinion, the fact that the Manaku deed No. 1 was not expressly validated is of no import now, both the Crown and the Natives having for so long acted upon it. The Ohinemuri deed of cession apparently was not validated until section 17 of the Mining Act Amendment Act, 1892, was passed. This section has been re-enacted in all the subsequent Mining Acts, and is now section 37 of the Mining Act, 1926.

The contention of counsel for the Natives was that the deeds of cession created an absolute grant of mining revenue from the lands described in them notwithstanding any change of ownership of the freehold, and that as the manner in which the deeds could be terminated was prescribed by the deeds themselves they could not be terminated in any other way. This provision was that the duration of the agreement should be for such term as the Government should require the land for gold-mining purposes, and if it was desired to terminate gold-mining, not less than six months' notice should be given. So far, however, as regards the agreements mentioned in the Validation Act, 1869, they could be terminated by Proclamation without notice. The question of whether the deeds constituted a trust I propose to discuss later. For one thing, there can be no trust so far as European purchasers are concerned, but they are interested in the question of the meaning of the deeds because, although in the majority of cases the lands purchased are subject to the mining rights, the revenue has been paid to them and not to the Natives. These purchasers have not been represented in this inquiry. Counsel for the Crown submitted that the mining revenue under the deeds of cession had been properly paid to the owners for the time being of the freehold of the land from which it came. There is no express judicial decision on the point.

Lengthy argument was submitted by counsel on both sides, based upon the respective views taken by them upon the language of the deeds themselves and upon the large number of legislative enactments which were cited as having a bearing on the question at issue.

I do not feel able to reach any definite conclusion upon the language of the deeds themselves. They are crude documents in many respects, and are executed by Native chiefs who claimed to be representatives of their respective peoples. The land being customary land only, the method followed the usual procedure in those days. The deeds, other than that of Ohinemuri, provided for the revenue being paid to the signatories and their "heirs" ("uri" in the Maori translation). But it is plain that it was not intended that only the signatories and their issue or successors should participate. In the Ohinemuri deed, clause 9 provided that the revenue should be "deemed to be the property of the Native owners of the lands comprising the Ohinemuri Block." That, I think, was the idea underlying the payment provisions of the other deeds. This can be read in two different ways: one that it means the present owners and their successors notwithstanding any change of ownership of the land itself, and the other that when there are no longer Native owners the revenue must be paid to some one else, who presumably would be the then owner of the freehold. There are no other salient features in these deeds themselves which, in my opinion, lead to any definite conclusion on the issue now under discussion. A strong point was made by counsel for the Natives that the deeds are still in operation, and reference was made to much legislation which, it was contended, showed that it established the claim that the mining revenue remained payable to the Natives notwithstanding the change of ownership of the land from which it came. Counsel for both sides expressed different opinions as to the effect of some of the different sections, each submitting that the effect of them was in his favour. On consideration of them, it is not to be doubted that the deeds of cession are still in operation so far as the mining rights granted by them are concerned, even though the land has been sold to others than the Crown but subject to the question of merger where the sale is to the Crown, but that does not, so far as I can see, affect the immediate question of the destination of the revenue from lands which have been sold by the Native owners. The legislation, in my decided opinion, was not mainly, if at all, for the purpose of protecting the rights of the Natives. It was to protect the rights of the Crown in respect of lands reserved for the Native owners from the sales to the Crown, which represented very considerable areas, and also in respect of lands sold to Europeans. Take section 37 of the Mining Act, 1926, previously referred to. It opens with "The rights acquired by the Governor-General on behalf of the Crown . . . shall not abate, &c."

Throughout the Mining Acts since 1892 the present section 37 has appeared under different numbers. The validation of the deed of cession was effected in 1892, and I can see no necessity for repeating that part of the original section 17 of 1892 or, indeed, any part of that section. But it is obviously for the benefit of the Crown, not the Natives. That seems to me to be the motive of all the legislation: to ensure that no rights acquired by the Crown should be prejudicially affected by any subsequent dealings with the land. Section 2 of the Validation Act of 1869 was referred to by Counsel on both sides, who took different views as to its meaning. In my opinion, its main purpose is to protect the mining rights of the Crown notwithstanding any change of ownership. The agreements were validated and to be binding on all persons whatsoever according to the true intent and meaning of the respective agreements. "All persons whatsoever" would include others than Natives. However, the true intent and meaning of the agreements is the issue now under discussion. Section 2 has, of course, no application to the Ohinemuri deed of cession. Mr. Sullivan suggested that it could not have been in the minds of the Natives that a sale would deprive them of the revenue, because such a sale might take place very shortly afterwards. The point is not without substance, but it must be remembered that the Natives could not sell until the land was clothed with a title, and even then it was a matter entirely for themselves to decide whether they would sell or not.

Reference was made by Mr. Sullivan to the provisions of section 65 of the Mining Act, 1926, which re-enacted section 64 of the Mining Act, 1908 (No. 120). He suggested that some of the payments to local bodies had been made under the authority of that section. I do not think that is at all probable, though on the material now forthcoming it cannot be definitely decided. If it were done, it would