be improperly done. The section applies to cases where the "prescribed" fee exceeds 10s. It is true that fees are prescribed by section 64 of 1926, but section 36 of the same Act specifically provides that "Nothing in this Act shall be deemed to affect the Auckland Goldfields Proclamations Validation Act, 1869, or any of the provisions of the several agreements therein recited." These agreements all provided for a fee of 20s. to be paid for each miner's right issued relating to the land covered by the agreements. The Ohinemuri deed of cession is not protected in the same way, but it would have been a direct breach of faith and a grave injustice if the payment agreed upon by it was arbitrarily reduced. This omission was no doubt based on the assumption that the rights under the deed of cession had become vested in the Crown by virtue of the purchase of the land. It is, I think, plain that the Crown advisers have, ever since the deeds of cession were obtained, acted upon that assumption in respect of all purchases by the Crown of land covered by the deeds. But clearly that cannot of itself be justly held to bind the Natives, the other parties to the contracts. This applies with equal force to the several statutory provisions validating payments to local bodies and others and dealing with the incidence of payments of the mining-revenue. The Legislature, of course, has full power to pass such legislation if it thinks fit, but where it is founded on an assumption which affects the rights of subjects with whom the Crown has entered into solemn contracts it cannot at all events in natural justice prevent the subjects from challenging the correctness of such assumption. But there has been long acquiescence by the Natives. I have not been referred to and have not found any protests or complaints in respect of the revenue from lands sold which has for a great many years been paid to the Crown or private persons owning such land. Certainly no claim to such revenue has been put forward until the present proceedings. Such acquiescence is not a bar, but where it has continued so long that all legal rights are barred it must militate against a claim under natural justice. There can, of course, be no claim in equity which follows the law. It may be that the well-known maxim of equity *vigilantibus non dormientibus aequitas subvenit* should not in any event apply to Maoris who were mainly illiterate and incapable of appreciating the legal effect and implications of deeds such as were executed in this case, and I think it quite probable that they relied very largely on the Government representatives, especially Mr. James Mackay. But they were in a position later to have, and did have, other advisers. And it is on record in Mr. Gill's report of 29th July, 1882, that he expressly informed a Native deputation of Ngatikoi Tribe that nearly all the people had sold their rights to the Crown, and their claims, therefore, to any part of the revenue could not be entertained. On the other hand, the advisers of the Crown, who could have settled all questions in dispute beyond all doubt, did not do so. I was referred by Mr. Cooney to a statement by the Hon. Dr. Pollen, in charge of the Mining Bill of 1892 on behalf of the Minister (Parliamentary Debates, Volume 78, page 528), to the effect that section 17 provided that some arrangements made with the owners of the Ohinemuri Goldfields in 1877 (really 1875) should be still held inviolate, notwithstanding that the effect (*sic*) that the fee-simple of the land might have passed from the Natives in the meantime to the Crown or otherwise. This is an important statement, but I do not myself consider that the section does mean that. Certainly Dr. Pollen's statement has not been acted upon by the Crown. At the time of Dr. Pollen's statement, the Crown had been appropriating to itself the mining revenue from Ohinemuri Block for some ten years. Up to the time of the purchase being completed in 1882, the mining revenue was credited to the Natives' debt of £15,000 already mentioned, but after that time the Crown took all the revenue. Hence the deficit of £7,000 in repayment.

The true intent and meaning of the deeds can be gathered only from the language of them, together with the circumstances existing at the time. I do not consider that the subsequent legislation which has been referred to indicates any intention on the part of the Crown of admitting that the deeds constituted a right in the Natives to the revenue irrespective of ownership in the land itself. I have already dealt with that aspect. Subsection (5) of section 447 of the Mining Act, 1926, re-enacting an earlier section, is against that. Though with doubt and hesitation, I find myself, subject to the result of the consideration of the claim of trusteeship, which is also a cardinal feature in the petitioners' claim, unable to say affirmatively that the deeds bear the construction sought to be placed upon them by counsel for petitioners, and so abrogate the ordinary and usual principle that the rights, benefits, and liabilities created by grants of estates or interests less than the fee-simple, or licenses such as are now being considered, should pass with the ownership of the fee.

Much reliance was placed by counsel for petitioners on their contention that, by virtue of the deeds, the Crown was constituted a trustee for the grantors. Mr. Meredith submitted that the Crown was not a trustee, but that the true position of the Crown was that it was merely appointed the agent of the Natives for purposes of collecting and paying out to the Natives or other owners the moneys due to them. He relied on the case of *Aotea Maori Land Board* v. *Commissioner of Taxes* (46 N.Z.L.R. 817). I think, however, that case is distinguishable from the present one. I do not think the Crown was constituted a statutory trustee. In the Aotea case the Maori Land Board was held to be that. But the Board's powers and duties were defined by statute and it clearly had no beneficial interest. That, in my opinion is not so here. The position of the Crown was defined by the deeds themselves, and the fact that the deeds were validated by statute does not alter that position. I agree that there was no trust for sale. But the Crown by its contracts with the Native owners acquired control of the lands for all mining purposes, including in some cases power to lease, while on the other hand it undertook to issue miners' rights and other mining privileges, to collect the fees and other revenue from mining, and to distribute it to persons entitled. I certainly think that if the Crown was not an actual trustee it was a fiduciary agent responsible to the Native grantors to account for its actions and the revenues collected and distributed under the authority given by the deeds, but not further or otherwise.

With regard to the purchase by the Crown of some of the blocks affected by the deeds of cession, the purchases, with the possible exception of the Ohinemuri Block, seem to have followed the then usual practice in regard to Crown purchases of Native land. An order of the Native Land Court