defining the area acquired by the Crown was obtained in each case, and apart from the question of the Crown's position in regard to the submission of a trust no reason has been shown for attacking the purchases, though I am not in a position to judge as to the adequacy of the consideration given. This question has not been raised by counsel for the Natives. The Ohinemuri Block, probably the most important of those mentioned in the deeds of cession, is in a different position. The purchase of this block extended over a period of some ten years, and the deed of purchase is a very crude document. But matters were settled at the time of the sitting of the Native Land Court in 1882. Mr. R. J. Gill, the Chief Government Land Purchase Officer, in a very full report dated 29th July, 1882, to the Native Minister, details the whole of the discussions and arrangements which took place. This report is available in the records of the Native Department. Owing to payments having been made to Natives prior to the investigation, a number received sums of money to which they were later found not entitled. These payments were lost by the Crown. I have previously referred to the advance of £15,000 by Mr. James Mackay. I do not see that the question of payment can be attacked now. The cost to the Crown amounted to £39,000 9s. 6d. for 66,017 acres, a price largely in excess of the original price offered of 5s. per acre. The block was proclaimed Crown land on 6th August, 1884 *Gazette* of 7th August, 1884, page 1212. Counsel for the Natives do not challenge these purchases. But they do strongly challenge the submission of the Crown in regard to the effect upon them of the deeds of cession *i.e.*, that they abrogate the deeds so far as the purchased areas are concerned.

A full and interesting address setting out the contention of the Natives' advisers was delivered by Mr. Cooney. He took the Ohinemuri purchase as the basis of his argument, but submitted the same principle applied to the other purchases. That may well be so, if the principle be established in the Ohinemuri case. Mr. Cooney's submission was, in his own words, that "the deed of cession constituted the Crown a fiduciary agent or a trustee for the Natives for certain purposes, and while that trusteeship existed the Crown had purchased the freehold, that if such a transaction had taken place between subjects of the Crown instead of between the Crown and a subject the transaction could not stand, and therefore as the Crown was the fountain of all equity and justice it must be presupposed that the Crown did not intend to commit a breach of trust and that therefore when it purchased, not denying its right to purchase, it still intended to keep alive the rights of the Natives."

I have already indicated my opinion of the Crown's position under the deeds of cession. It became a fiduciary agent responsible to the Native grantors to account for its actions in regard to mining privileges and for the revenues collected, but not further or otherwise. These was no trust of the land itself. Counsel for the Natives obviously appreciated that and based their argument accordingly by not challenging the actual sale. But I am unable to see anything sufficient to support the contention that the Crown intended to keep alive the rights of Natives notwithstanding the sale of the land. In every case it took to itself from the date of purchase the mining revenue. As an indication of intention, that is practically conclusive. With regard to the submission by Mr. Sullivan on the question of merger as being one of intention, the rule of equity cited by him states that a charge will be treated as kept alive or merged according to whether it be of advantage or no advantage to the person in whom the two interests have vested. That is, in the present case, the Crown. The case of *Reading* v. *Fletcher* ([1917] 1 Chancery, page 339), cited by Mr. Sullivan, turned upon an expression of intention by the persons in whom the two interests had vested. I cannot see that there was any intention on the part of the Crown to keep the charge alive. If it became vested by virtue of the purchase, it would merge in the freehold. There is nothing to indicate any contrary intention on the part of the Natives. In my view, the main object of the Crown in making these purchases was to secure the mining revenue with the freehold.

Looking back from the present time it would appear that the Natives made very bad bargains. Had the transactions been subject to judicial review it is unlikely that they would have been approved, at all events without modification. In that respect the transactions are similar to many other early purchases made by the Crown from Natives. If these now under consideration are to be challenged now on the ground of insufficient consideration, the same argument might be applied to practically all the early purchases. But these present ones are in a special position owing to the existence of the prior deeds of cession. I agree with the contention of counsel for the Natives that these transactions, if between subjects, would not stand if brought for review by a Court or tribunal of competent jurisdiction unless it was shown that the Natives were competently advised as to the whole facts. How far that may have been done is not ascertainable. There is Mr. Gill's announcement to Ngatikoi of Ohinemuri, and the 1872 deed of sale of Waikawau Block expressly purports to convey all minerals, which do not carry the matter very far. But the Crown was exercising its unfettered prerogative rights, and the Natives did not and have not till the present proceedings offered any protest or objection.

To sum up:—

(1) The Crown cannot now render any complete or satisfactory account of the revenue received and expended by it, firstly because the long delay has rendered it impossible to inspect many records formerly available, and secondly owing to the methods adopted for the distribution of money due to the Natives. Possibly nothing better was practicable under the circumstances, but more inspection and audit were desirable.

(2) In my opinion, it has not been affirmatively shown that the true intent and meaning of the deeds of cession was that the mining revenue should go to the Natives notwithstanding the extinguishment of the Native title to the land from which the revenue was derived.