No. 4.

The Hon. J. N. WILSON, M.L.C., Napier, to the NATIVE-LAND LAWS COMMISSIONERS.

GENTLEMEN,— Napier, 3rd May, 1891.

I beg to acknowledge your circular of the 29th instant.

Having had no practice whatever in the Native Land Courts, I am not able to answer categorically the questions asked in your memorandum, but will make a few observations upon the working of the Native-land law which a residence in this district for more than thirty years, and a certain knowledge of the Natives (notwithstanding a total ignorance of the language) have impressed on my mind.

In the first place I would say that the original Native Land Act (I think of 1865) was framed with good intentions, and in a spirit of fairness towards the Natives. It was imperfectly framed, no doubt, and would have required amendment; but I conceive that the whole intention was destroyed by bad administration. The intention of the Act was that the lands of the Natives should be partitioned or individualled amongst them according to Native customs. The Native Land Court (composed of clerks and interpreters, promoted from the Native Affairs Office to become "Judges" of the Native Land Court) at once proceeded to form a system of Native real-property law according to Native custom. This attempt utterly failed, for the reason I will at once mention. I have never been able to discover that amongst the Natives there ever existed any such idea as that of freehold tenure in land, any more than that of individual ownership. The whole tenure was tribal, and the sole right was one of occupation. This was the cardinal error, and the whole work of the Native Land Court has been based on this false assumption. The result is, the Native Land Court (composed as I have stated) have for years past, with the active assistance of Native-land agents, been occupied in building up a system of Native-land succession upon a false foundation.

I look upon all the Acts that have passed since the original as all based upon the original false conception, and, in fact, as a piece of patchwork put together to keep in work a system originally essentially faulty. Not the least of the errors was the introduction in the Act of 1873 of a new tenure called "title under memorial of ownership"—a title, I need not say, utterly unknown to English law. This memorial of ownership assumed a title to the grantee of an undefined area in the block it contained. How was it possible for a purchaser, with the best intentions, to deal fairly with the holder of such a title? It was obviously impossible, and yet it is said that hundreds, and more, of such bargains have been completed.

Innumerable questions of law have arisen as to the construction of these numerous and complicated Acts, and such confusion has arisen that it is my belief that no lawyer of experience would venture to say that a proper title to Native land can be made out where any of these difficulties have arisen. On an occasion when Mr. Justice Richmond had to decide upon a question of the kind he observed, "The ill-advised issue of Crown grants, creating joint tenancy in large bodies of Natives, including women and children, the lax practices of Native agents, and the rapacity of speculators in Native land, have combined in this and similar cases to take us back to the law of the Year Books and to the times of the Plantagenets" (N.Z.L.R., Vol. iv., page 140.)

It would be easy to introduce instances in which gross injustice has been done to the Native race, but I will mention one. The Native Land Courts in Hawke's Bay, previous to the Act of 1873, not being empowered to order Crown grants to be issued to more than ten Natives, were in the habit of requiring (when the claimants were numerous) that such claimants should nominate ten of themselves as *quasi*-trustees, and of authorising grants to be issued to such ten without adding any restriction upon the alienation. In almost every instance, I believe, the *quasi*-trustees alienated for their own benefit, and their sub-claimants obtained nothing. Grosser spoliation cannot be conceived.

From what I have stated it may be deemed that I am of opinion that the present system has entirely failed in its purpose; nor do I think that any amended legislation on the lines of the past will have any good effect. I would propose an entire change of system—repeal all existing laws, forbid dealings by individuals, and resume the right of pre-emption by the Crown. I feel certain that, properly administered, such a system would be successful.

It has for long past been the custom to say that the Natives will not negotiate with the Crown; but I always looked upon this as a cry propagated by the Native agents. In the past, no doubt, the Crown were very unfortunate in the choice of their agents, and the interests of the Natives and the public were in many instances sacrificed. It would be invidious to mention names, but it may be said that it would only be necessary to mention the names of certain agents employed by the Crown to enable an ordinary person to prophesy the result of their negotiations.

Were the steps I have proposed taken, instead of the Native Land Court, I would invite the Natives to elect Committees of their own, and these Committees should, I think, be presided over by Europeans appointed by the Government with the assent of the Natives. The work of these Committees would, I feel certain, compare more than favourably with the work of the Land Court, and would, in addition, be favourably received by the Native race.

I think it sufficient to make the suggestions I have done, leaving the matter of detail to be worked out elsewhere. There remains, however, one important question, and that is the dealing with the large number of incomplete transactions effected under the existing land-laws. It will not be disputed, I think, that some steps must be taken for the settlement of these questions. I can suggest nothing better than the appointment of a Commission (small in number) with power to deal with all such matters. There should be an appeal, I think, to a Judge of the Supreme Court. Should the appeals be numerous, an additional Judge of the Supreme Court could be temporarily appointed. The number of outstanding transactions involve, I am informed, large amounts—larger, in fact, than should be submitted to the final arbitrament of a Commission.

I have, &c.,

The Native-land Laws Commissioners. J. N. WILSON.