No. 5.

MEMORANDUM from Messrs. WHITAKER and RUSSELL, Barristers-at-Law, Auckland, to the NATIVE-LAND LAWS COMMISSIONERS.

THE existing Native-land laws affecting transactions between Europeans and Maoris are in a most unsatisfactory condition, to say the least of it, and this has been the case ever since the year 1886, when the Native-land laws existing in 1882 were repealed, and a new departure made in the mode of acquiring lands from the Natives. There are numerous cases of uncompleted purchases made by Europeans from the Natives which were perfectly fair and equitable when entered into: but, on account of the number of years taken in acquiring the signatures of the Natives, and numerous other difficulties, during which alterations were made in the law, were delayed in completion. These delays and alterations appear to be most unreasonable and unfair to the Native sellers, as well as to the purchasers.

There are cases under the 17th section of "The Native Land Act, 1867," in which the purchasers began to buy before 1886, still incomplete on account of the alterations in the law of that year. These transactions were entered into in good faith by all parties, and provisions in future legislation should be made to meet such cases, and enable these transactions to be legally completed. Again, there are cases where purchasers have bought lands under the Native Land Acts repealed in 1886, having paid fair prices for the land, but, on account of the alteration in the law in 1886, they have been unable to complete their purchases; and in many cases titles have been held to be bad because the Natives executed the instruments of transfer prior to the issue of the grants, and in some cases the District Land Registrars of various districts have refused to register the instruments of transfer, as well as subdivision orders of the Native Land Courts, made by virtue of these instruments. Provision should be made to meet these cases. In some cases it is practically impossible to decide whether the grant should be issued for registration under the Deeds Registration Act or Land Transfer Act. Again, in confiscated-lands districts, there are cases where the Natives have sold to Europeans for good value, and deeds have been executed and completed as required by law; but, because the deeds were executed before the grants were actually issued, they have been declared void, although in many cases the Governor has actually given his consent to the sale. This, we think, could be rectified by the repeal of the proviso in section 5 of "The Land Transfer Act 1885 Amendment Act, 1889."

There are a great many cases where deeds have been executed by Europeans before the grants have actually issued, and by the above clause validated; but Maori transactions of a similar nature are declared by the Registrars to be void on account of the above proviso. Again, where deeds have been executed in the name of a tribe, although the transaction was *bonâ fide*, the deeds have been decided by a recent case to be void, as the name of each individual owner in the tribe was not set forth in such deed. This is a matter requiring consideration.

There are many cases where Natives are willing to sell and Europeans to purchase, but, owing to the present law being so uncertain, nothing can be done with any reasonable degree of safety; but it is of great importance that provision should be made to enable *bonâ fide* transactions to be completed by registration, so that purchasers may at least have a good holding-title in all cases where the purchases have been *bonâ fide*.

WHITAKER AND RUSSELL.

No. 6.

E. BAMFORD, Esq., District Land Registrar, Napier, to the NATIVE-LAND LAWS COMMISSIONERS.

SIR,— Lands Registry Office, Napier, 4th May, 1891.

I have the honour to forward certain information asked for by Mr. Commissioner Mackay; also, to offer a few suggestions which have occurred to me *re* Native-land laws.

The number of Native titles caveated (defective) is sixteen, comprising an area of 9,702 acres. This, however, is no indication of defective dealings, as scores have been presented for registration, and registration has been refused. Of the dealings refused I have no record. The chief defect in all these titles is that the dealings have been signed before division of the land by the Court.

Before the decision in Paraone *v.* Matthews (followed by Poaka *v.* Ward), it was generally thought that the decision *In re* Kotarapaea was an authority for holding that transfer executed before partition could be made available after partition. To this is attributable most of the defective titles in this district, or, at all events, such titles as have any equity to be validated. I think the best mode of completing such titles as are defective is to pass a short Act enlarging the powers of Land Registrars, and enabling them to treat all such titles as if they were not under the Land Transfer Act. The titles could then be dealt with on application in the usual way. An additional fee, as also additional assurance fund, should be charged.

As to future dealings, I would suggest that all existing Native Lands Acts be repealed. A Native Land Court should be established to investigate and determine the Native owners, and at the same time the proportions in which they are to hold should be determined. The certificate embodying this information should be forthwith transmitted to the Land Registry Office with a view to the preparation of Land Transfer certificates.

It is to my mind a myth to suppose that successors to deceased Natives are determined by Native custom; the nearest relations being invariably appointed. A Native, then, should be empowered to will his land, and in case of intestacy the European law should prevail. Cohabitation might be assumed to constitute a legal marriage. A simple form of partition is probably necessary, but the Court should not be permitted to take cognisance of the interest of any European. The order should be made direct to the Native, leaving the European purchaser to prove his title to the